

89th Congress }
1st Session }

COMMITTEE PRINT

AMENDMENTS TO THE ADMINISTRATIVE PROCEDURE ACT

COMPARISON OF THE ADMINISTRATIVE PROCEDURE ACT AS PROPOSED
TO BE AMENDED BY S. 1336 WITH THE EXISTING LAW

Compiled by the

SUBCOMMITTEE ON ADMINISTRATIVE PRACTICE AND PROCEDURE

of the

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

Pursuant to S. Res. 39, 89th Congress, 1st Session



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FOREWORD

Since the introduction of S. 1663, 88th Congress, 1st Session, considerable progress has been made with respect to updating the Administrative Procedure Act. This progress has been feasible only through the generous contributions of time and ideas from many sources, especially the Federal agencies, the American Bar Association, and the Subcommittee's expert Board of Consultants.

This comparative print includes the Administrative Procedure Act and S. 1336, 89th Congress, 1st Session, which is the latest of many drafts referred to the Subcommittee on Administrative Practice and Procedure of the Committee on the Judiciary. It is hoped that the comparative print in this form will be useful in future months as accelerated consideration is given to this urgently needed legislation.

EDWARD V. LONG,
*Chairman, Subcommittee on Administrative
Practice and Procedure.*

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TITLE

SECTION 1. This Act may be cited as the "Administrative Procedure Act".

DEFINITIONS

SEC. 2. As used in this Act—

(a) AGENCY.—"Agency" means each authority (whether or not within or subject to review by another agency) of the Government of the United States other than Congress, the courts, or the governments of the possessions, Territories, or the District of Columbia. Nothing in this Act shall be construed to repeal delegations of authority as provided by law. Except as to the requirements of section 3, there shall be excluded from the operation of this Act (1) agencies composed of the representatives of the parties or of representatives of organizations of the parties to the disputes determined by them, (2) courts martial and military commissions, (3) military or naval authority exercised in the field in the time of war or in occupied territory, or (4) functions which by law expire in the termination of present hostilities, within any fixed period thereafter, or before July 1, 1947, and the functions conferred by the following statutes: Selective Training and Service Act of 1940; Contract Settlement Act of 1944; Surplus Property Act of 1944.

1 The Administrative Procedure Act (5 U.S.C. 1001-11)
2 is amended to read as follows:
3 "SHORT TITLE
4 "SECTION 1. This Act may be cited as the 'Administra-
5 tive Procedure Act of 1965'.
6 "DEFINITIONS
7 "SEC. 2. As used in this Act—
8 "(a) AGENCY.—'Agency' means each authority
9 (whether or not within or subject to review by another
10 agency) of the Government of the United States other than
11 Congress, the courts, or the governments of the possessions,
12 Territories, Commonwealths, or the District of Columbia.
13 Nothing in this Act shall be construed to repeal delegations
14 of authority as provided by law. Except as to the require-
15 ments of section 3, there shall be excluded from the opera-
16 tion of this Act courts-martial and military commissions, and
17 military or naval authority exercised in the field in the time
18 of war or in occupied territory. Except as to the require-
19 ments of sections 3 and 4, there shall be excluded from the
20 operation of this Act, agencies composed of representatives
21 of the parties or of representatives of organizations of the
22 parties to the disputes determined by them.
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1 (b) PERSON AND PARTY.—“Person” includes indi-
2 viduals, partnerships, corporations, associations, or public or
3 private organizations of any character other than agencies.
4 “Party” includes any person or agency named or admitted
5 as a party, or properly seeking and entitled as of right to be
6 admitted as a party, in any agency proceeding; but nothing
7 herein shall be construed to prevent an agency from admit-
8 ting any person or agency as a party for limited purposes.
9

10 (c) RULE AND RULE MAKING.—“Rule” means the
11 whole or any part of any agency statement of general or
12 particular applicability and future effect designed to imple-
13 ment, interpret, or prescribe law or policy or to describe the
14 organization, procedure, or practice requirements of any
15 agency and includes the approval or prescription for the
16 future of rates, wages, corporate or financial structures or
17 reorganizations thereof, prices, facilities, appliances, services
18 or allowances therefor or of valuations, costs, or accounting,
19 or practices bearing upon any of the foregoing. “Rule mak-
20 ing” means agency process for the formulation, amendment,
21 or repeal of a rule.

1 “(b) PERSON AND PARTY.—‘Person’ includes individ-
2 uals, partnerships, corporations, associations, or public or pri-
3 vate organizations of any character other than agencies.
4 ‘Party’ includes any person or agency named or admitted as
5 a party, or properly seeking and entitled as of right to be
6 admitted as a party, in any agency proceeding; but nothing
7 herein shall be construed to prevent an agency from admit-
8 ting any person or agency as a party for limited purposes.
9 ‘Private party’ means any party other than an agency.

10 “(c) RULE AND RULEMAKING.—‘Rule’ means the
11 whole or any part of any agency statement of general appli-
12 cability and future effect designed to implement, interpret,
13 or prescribe law or policy or to describe the organization,
14 procedure, or practice requirements of any agency and in-
15 cludes any exception from a rule. ‘Rulemaking’ means
16 agency process for the formulation, amendment, repeal of, or
17 exception from a rule.

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1 (d) ORDER AND ADJUDICATION.—“Order” means the
2 whole or any part of the final disposition (whether affirma-
3 tive, negative, injunctive, or declaratory in form) of any
4 agency in any matter other than rulemaking but including
5 licensing. “Adjudication” means agency process for the
6 formulation of an order.

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1 “(d) ORDER, OPINION, AND ADJUDICATION.—‘Order’
2 means the whole or any part of the final disposition (whether
3 affirmative, negative, injunctive, or declaratory in form) by
4 any agency in any proceeding, including licensing, to deter-
5 mine the rights, obligations, and privileges of named parties.
6 ‘Opinion’ means the statement of reasons, findings of fact,
7 and conclusions of law, upon all the material issues of fact,
8 law, or discretion presented on the record, issued in explana-
9 tion or support of an order. ‘Adjudication’ means agency
10 process for the formulation, amendment, or repeal of an
11 order.

1 (e) LICENSE AND LICENSING.—“License” includes the
2 whole or part of any agency permit, certificate, approval,
3 registration, charter, membership, statutory exemption or
4 other form of permission. “Licensing” includes agency
5 process respecting the grant, renewal, denial, revocation,
6 suspension, annulment, withdrawal, limitation, amendment,
7 modification, or conditioning of a license.

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10 (f) SANCTION AND RELIEF.—“Sanction” includes the
11 whole or part of any agency (1) prohibition, requirement,
12 limitation, or other condition affecting the freedom of any
13 person; (2) withholding of relief; (3) imposition of any
14 form of penalty or fine; (4) destruction, taking, seizure, or
15 withholding of property; (5) assessment of damages, reim-
16 bursement, restitution, compensation, costs, charges, or fees;
17 (6) requirement, revocation, or suspension of a license; or
18 (7) taking of other compulsory or restrictive action. “Re-
19 lief” includes the whole or part of any agency (1) grant
20 of money, assistance, license, authority, exemption, excep-
21 tion, privilege or remedy; (2) recognition of any claim,
22 right, immunity, privilege, exemption, or exception; or (3)
23 taking of any other action upon the application or petition
24 of, and beneficial to, any person.

1 “(e) AGENCY LICENSE AND LICENSING.—‘License’
2 includes the whole or any part of any agency permit, cer-
3 tificate, approval, registration, charter, membership, statu-
4 tory exemption, or other form of permission. ‘Licensing’
5 includes agency process respecting the grant, renewal, denial,
6 revocation, suspension, annulment, withdrawal, limitation,
7 amendment, or modification of a license, and the prescription
8 or requirement of terms, conditions, or standards of conduct
9 for named licensees thereunder.

10 “(f) SANCTION AND RELIEF.—‘Sanction’ includes the
11 whole or part of any agency (1) prohibition, requirement,
12 limitation, or other condition affecting the freedom of any
13 person; (2) withholding of relief; (3) imposition of any
14 form of penalty or fine; (4) destruction, taking, seizure, or
15 withholding of property; (5) assessment of damages, re-
16 imbursement, restitution, compensation, costs, charges, or
17 fees; (6) requirement, revocation, or suspension of a license;
18 or (7) taking of other compulsory or restrictive action.
19 ‘Relief’ includes the whole or part of any agency (1) grant
20 of money, assistance, license, authority, exemption, excep-
21 tion, privilege, or remedy; (2) recognition of any claim,
22 right, immunity, privilege, exemption, or exception; or (3)
23 taking of any other action upon the application or petition
24 of, and beneficial to, any person.

1 (g) AGENCY PROCEEDING AND ACTION.—“Agency
2 proceeding” means any agency process as defined in subsec-
3 tions (c), (d), and (e) of this section. “Agency action”
4 includes the whole or part of every agency rule, order,
5 license, sanction, relief, or the equivalent or denial thereof, or
6 failure to act.

7 PUBLIC INFORMATION

8 SEC. 3. Except to the extent that there is involved (1)
9 any function of the United States requiring secrecy in the
10 public interest or (2) any matter relating solely to the
11 internal management of an agency—

12 (a) RULES.—Every agency shall separately state and
13 currently publish in the Federal Register (1) descriptions
14 of its central and field organization including delegations by
15 the agency of final authority and the established places at
16 which, and methods whereby, the public may secure infor-
17 mation or make submittals or requests; (2) statements of
18 the general course and method by which its functions are
19 channeled and determined, including the nature and require-
20 ments of all formal or informal procedures available as well
21 as forms and instructions as to the scope and contents of all
22 papers, reports, or examinations; and (3) substantive rules
23 adopted as authorized by law and statements of general
24 policy or interpretations formulated and adopted by the
25 agency for the guidance of the public, but not rules addressed
26 to and served upon named persons in accordance with law.
27 No person shall in any manner be required to resort to orga-
28 nization or procedure not so published.

1 “(g) AGENCY PROCEEDING AND ACTION.—‘Agency
2 proceeding’ means any agency process as defined in sub-
3 sections (c), (d), and (e) of this section. ‘Agency action’
4 includes the whole or part of every agency rule, order,
5 license, sanction, relief, or the equivalent or denial thereof,
6 or failure to act.

7 “PUBLIC INFORMATION

8 “SEC. 3. Every agency shall make available to the
9 public the following information—

10 “(a) PUBLICATION IN THE FEDERAL REGISTER.—
11 Every agency shall separately state and currently publish
12 in the Federal Register for the guidance of the public (A)
13 descriptions of its central and field organization and the
14 established places at which, the officers from whom, and
15 the methods whereby, the public may secure information,
16 make submittals or requests, or obtain decisions; (B) state-
17 ments of the general course and method by which its func-
18 tions are channeled and determined, including the nature
19 and requirements of all formal and informal procedures
20 available; (C) rules of procedure, descriptions of forms avail-
21 able or the places at which forms may be obtained, and
22 instructions as to the scope and contents of all papers, reports,
23 or examinations; (D) substantive rules adopted as author-
24 ized by law, and statements of general policy or inter-
25 pretations of general applicability formulated and adopted

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(b) OPINIONS AND ORDERS.—Every agency shall publish or, in accordance with published rule, make available to public inspection all final opinions or orders in the adjudication of cases (except those required for good cause to be held confidential and not cited as precedents) and all rules.

1 by the agency; and (E) every amendment, revision, or
2 repeal of the foregoing. Except to the extent that a person
3 has actual and timely notice of the terms thereof, no person
4 shall in any manner be required to resort to, or be adversely
5 affected by any matter required to be published in the
6 Federal Register and not so published. For purposes of this
7 subsection, matter which is reasonably available to the class
8 of persons affected thereby shall be deemed published in the
9 Federal Register when incorporated by reference therein
10 with the approval of the Director of the Federal Register.
11 “(b) AGENCY OPINIONS AND ORDERS.—Every agency
12 shall, in accordance with published rules, make available for
13 public inspection and copying (A) all final opinions (including
14 concurring and dissenting opinions) and all orders made
15 in the adjudication of cases, (B) those statements of policy
16 and interpretations which have been adopted by the agency
17 and are not published in the Federal Register, and (C) staff
18 manuals and instructions to staff that affect any member of
19 the public, unless such materials are promptly published and
20 copies offered for sale. To the extent required to prevent a
21 clearly unwarranted invasion of personal privacy, an agency
22 may delete identifying details when it makes available or
23 publishes an opinion, statement of policy, interpretation, or
24 staff manual or instruction; provided, that in every case the
25 justification for the deletion must be fully explained in

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(c) PUBLIC RECORDS.—Save as otherwise required by statute, matters of official record shall in accordance with published rule be made available to persons properly and directly concerned except information held confidential for good cause found.

1 writing. Every agency also shall maintain and make avail-
2 able for public inspection and copying a current index pro-
3 viding identifying information for the public as to any mat-
4 ter which is issued, adopted, or promulgated after the effec-
5 tive date of this Act and which is required by this subsec-
6 tion to be made available or published. No final order,
7 opinion, statement of policy, interpretation, or staff manual
8 or instruction that affects any member of the public may be
9 relied upon, used, or cited as precedent by an agency against
10 any private party unless it has been indexed and either made
11 available or published as provided by this subsection or unless
12 that private party shall have actual and timely notice of the
13 terms thereof.

14 “(c) AGENCY RECORDS.—Every agency shall, in ac-
15 cordance with published rules stating the time, place, and
16 procedure to be followed, make all its records promptly
17 available to any person. Upon complaint, the district court
18 of the United States in the district in which the complainant
19 resides, or has his principal place of business, or in which the
20 agency records are situated shall have jurisdiction to enjoin
21 the agency from the withholding of agency records and in-
22 formation and to order the production of any agency records
23 or information improperly withheld from the complainant.
24 In such cases the court shall determine the matter de novo
25 and the burden shall be upon the agency to sustain its action.

1 In the event of noncompliance with the court's order, the
2 district court may punish the responsible officers for con-
3 tempt. Except as to those causes which the court deems of
4 greater importance, proceedings before the district court as
5 authorized by this subsection shall take precedence on the
6 docket over all other causes and shall be assigned for hearing
7 and trial at the earliest practicable date and expedited in
8 every way.

9 “(d) AGENCY PROCEEDINGS.—Every agency having
10 more than one member shall keep a record of the final votes
11 of each member in every agency proceeding and such record
12 shall be available for public inspection.

13 “(e) EXEMPTIONS.—The provisions of this section shall
14 not be applicable to matters that are (1) specifically re-
15 quired by Executive order to be kept secret in the interest of
16 the national defense or foreign policy; (2) related solely to
17 the internal personnel rules and practices of any agency; (3)
18 specifically exempted from disclosure by statute; (4) trade
19 secrets and commercial or financial information obtained
20 from the public and privileged or confidential; (5) inter-
21 agency or intra-agency memorandums or letters dealing solely
22 with matters of law or policy; (6) personnel and medical
23 files and similar files the disclosure of which would constitute
24 a clearly unwarranted invasion of personal privacy; (7)
25 investigatory files compiled for law enforcement purposes
26 except to the extent available by law to a private party;

1 and (8) contained in or related to examination, operating,
2 or condition reports prepared by, on behalf of, or for the use
3 of any agency responsible for the regulation or supervision
4 of financial institutions.

5 “(f) LIMITATION OF EXEMPTIONS.—Nothing in this
6 section authorizes withholding of information or limiting the
7 availability of records to the public except as specifically
8 stated in this section, nor shall this section be authority to
9 withhold information from Congress.

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RULEMAKING

"RULEMAKING

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2 SEC. 4. Except to the extent that there is involved (1)
3 any military, naval, or foreign affairs functions of the United
4 States or (2) any matter relating to agency management
5 or personnel or to public property, loans, grants, benefits,
6 or contracts—

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(a) NOTICE.—General notice of proposed rulemaking shall be published in the Federal Register (unless all persons subject thereto are named and either personally served or otherwise have actual notice thereof in accordance with law) and shall include (1) a statement of the time, place, and nature of public rulemaking proceedings; (2) reference to the authority under which the rule is proposed; and (3) either the terms or substance of the proposed rule or a de-

10 "SEC. 4. (a) INFORMAL CONSULTATION PRIOR TO
11 NOTICE.—Prior to notice of proposed rulemaking and either
12 with or without public announcement, an agency may afford
13 opportunity to interested persons to submit suggestions for
14 rulemaking or with respect to proposed rules.

15 "(b) NOTICE.—Notice of rulemaking to be undertaken
16 by the agency on its own motion or pursuant to petition
17 shall (1) be published in the Federal Register, (2) give
18 all interested persons a reasonable time in which to prepare
19 and submit matter for consideration, and (3) state the time,
20 place, and manner in which any interested person may submit
21 matter for consideration, the authority under which the rule
22 is proposed, and either the terms or substance of the pro-
23 posed rule or a description of the subjects and issues involved.

ADMINISTRATIVE PROCEDURE ACT

1 description of the subjects and issues involved. Except where
2 notice or hearing is required by statute, this subsection shall
3 not apply to interpretative rules, general statements of policy,
4 rules of agency organization, procedure, or practice, or in
5 any situation in which the agency for good cause finds (and
6 incorporates the finding and a brief statement of the reasons
7 therefor in rules issued) that notice and public procedure
8 thereon are impracticable, unnecessary, or contrary to the
9 public interest.

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1 (b) PROCEDURES.—After notice required by this sec-
2 tion, the agency shall afford interested persons an oppor-
3 tunity to participate in the rulemaking through the submis-
4 sion of written data, views, or arguments with or without
5 opportunity to present the same orally in any manner; and,
6 after consideration of all relevant matter presented, the
7 agency shall incorporate in any rules adopted a concise gen-
8 eral statement of their basis and purpose. Where rules are
9 required by statute to be made on the record after opportunity
10 for an agency hearing, the requirements of sections 7 and 8
11 shall apply in place of the provisions of this subsection.

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1 “(c) PROCEDURES.—After notice required by this
2 section—

3 “(1) The agency shall afford interested persons an
4 opportunity to participate in rulemaking through the sub-
5 mission of written data, views, or arguments with an oppor-
6 tunity to present the same orally unless the agency deter-
7 mines that oral argument is inappropriate or unwarranted;
8 and, after consideration of all relevant matter presented, the
9 agency shall make its decision.

10 “(2) Where rules are required by the Constitution or
11 by statute to be made on the record after opportunity for
12 an agency hearing, the requirements of section 7 shall apply
13 in place of the provisions of subsection (c) (1) except that
14 the presiding officer may be any responsible officer of the
15 agency.

16 “In proceedings in which the agency has not presided
17 at the hearing, the officer who presided shall make a recom-
18 mended decision. The parties may file exceptions to the
19 recommended decision within such time and in such form as
20 the agency shall provide by rule. After prompt considera-
21 tion of the recommended decision and all exceptions thereto,
22 the agency shall make its decision. In any proceeding, the
23 agency may omit a recommended decision when the agency
24 finds upon the record that due and timely execution of its
25 functions imperatively and unavoidably so requires. When

1 the recommended decision is omitted or when the agency
2 has presided at the hearings, the agency, after prompt con-
3 sideration of all relevant matter presented, shall make its
4 decision.

5 “(3) The agency shall incorporate in any rules adopted
6 a concise general statement of the basis and purpose of such
7 rules.

8 “(d) EMERGENCY RULES.—In any situation in which
9 an agency finds (and incorporates the finding and a brief
10 statement of the reasons therefor in the rule issued) that rule-
11 making without the notice and procedures provided by sub-
12 sections (b) and (c) of this section is necessary in the public
13 interest, an agency may issue an emergency rule which shall
14 be effective for not more than six months from the effective
15 date thereof. The agency may extend such emergency rule
16 for a period not to exceed one year only by commencement,
17 prior to the expiration of the original effective period, of a
18 rulemaking proceeding dealing with the same subject matter
19 as did the emergency rule and upon giving notice required
20 by subsection (b) of this section. Such notice shall contain
21 an express statement of the extension of such emergency
22 rule and the period for which it is extended. Nothing herein
23 shall preclude use of emergency rulemaking procedures as
24 provided by other statutes.

25 “(e) RULEMAKING DOCKETS.—Each agency shall
26 maintain a rulemaking docket showing the current status
27 of all published proposals for rulemaking.

1 (c) EFFECTIVE DATES.—The required publication or
2 service of any substantive rule (other than one granting or
3 recognizing exemption or relieving restriction or interpreta-
4 tive rules and statements of policy) shall be made not less
5 than thirty days prior to the effective date thereof except as
6 otherwise provided by the agency upon good cause found
7 and published with the rule.

8 (d) PETITIONS.—Every agency shall accord any inter-
9 ested person the right to petition for the issuance, amend-
10 ment, or repeal of a rule.

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1 “(f) EFFECTIVE DATES.—The required publication of
2 any rule shall be made not less than thirty days prior to the
3 effective date thereof except as otherwise provided by the
4 agency upon good cause found and published with the rule.

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8 “(g) PETITIONS.—Every agency shall accord any in-
9 terested person the right to petition for the issuance, amend-
10 ment, exception from, or repeal of a rule.

11 “(h) EXEMPTIONS.—The provisions of this section shall
12 not apply to (1) rulemaking required by an Executive order
13 to be kept secret in the interest of the national defense or
14 foreign policy; (2) rulemaking that relates solely to inter-
15 nal personnel rules and practices of an agency; (3) advisory
16 interpretations and rulings of particular applicability; (4)
17 minor exceptions from, revisions of, or refinements of rules
18 which do not affect protected substantive rights; and (5)
19 rules of agency organization.

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ADJUDICATION

SEC. 5. In every case of adjudication required by statute to be determined on the record after opportunity for an agency hearing, except to the extent that there is involved (1) any matter subject to a subsequent trial of the law and the facts de novo in any court; (2) the selection or tenure of an officer or employee of the United States other than examiners appointed pursuant to section 11; (3) proceedings in which decisions rest solely on inspections, tests, or elections; (4) the conduct of military, naval, or foreign affairs functions; (5) cases in which an agency is acting as an agent for a court; and (6) the certification of employee representatives—

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“ADJUDICATION

“SEC. 5. (a) In those cases of adjudication which are required by the Constitution or by statute to be determined on the record after opportunity for an agency hearing—

1 (a) NOTICE.—Persons entitled to notice of any agency
2 hearing shall be timely informed of (1) the time, place, and
3 nature thereof, (2) the legal authority and jurisdiction under
4 which the hearing is to be held; and (3) the matters of fact
5 and law asserted. In instances in which private persons are
6 the moving parties, other parties to the proceeding shall give
7 prompt notice of issues controverted in fact or law; and in
8 other instances agencies may by rule require responsive
9 pleadings. In fixing the times and places for hearings, due
10 regard shall be had for the convenience and necessity of the
11 parties or their representatives.

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1 “(1) NOTICE.—Persons entitled to notice of an agency
2 proceeding shall be timely informed of (A) the nature of
3 the proceeding; (B) the legal authority and jurisdiction
4 under which the proceeding is to be held; (C) the matters
5 of fact and law asserted; and (D) the time and place of
6 each hearing; and (E) if the issues or matters at the hearing
7 are to be limited, the particular issues or matters to be
8 considered at the hearing. In fixing the times and places
9 for hearings, due regard shall be had for the convenience
10 of the parties or their representatives.

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12 “(2) PLEADINGS AND OTHER PAPERS.—Every
13 agency shall provide adequate rules governing its pleadings,
14 including responsive pleadings, and other papers. To the
15 extent practicable, such rules shall conform to the Rules of
16 Civil Procedure or the Rules of Criminal Procedure for the
17 United States district courts.

1 “(3) PREHEARING CONFERENCES.—Every agency
2 shall by rule provide for prehearing conferences for use in
3 such proceedings as the agency or the presiding officer may
4 designate. Prehearing conferences shall provide for a dis-
5 cussion and, to the extent practicable, determination of the
6 facts and issues involved in the proceeding. Such confer-
7 ences shall be conducted by a presiding officer who may at
8 any appropriate time require (A) the production and serv-
9 ice of relevant matter upon all parties; (B) oral or written
10 statements of the facts and issues; and (C) arguments in
11 support thereof. At the conclusion of a prehearing confer-
12 ence, the presiding officer shall issue an order setting forth
13 all action taken at the conference, amendments allowed to
14 the pleadings and the agreements made by the parties as to
15 any of the matters considered. The order shall limit the
16 issues for hearing to those not disposed of by admissions or
17 agreements and shall control the subsequent course of the
18 proceedings, unless modified thereafter to prevent manifest
19 injustice.

1 (b) PROCEDURE.—The agency shall afford all inter-
 2 ested parties opportunity for (1) the submission and consider-
 3 ation of facts, arguments, offers of settlement, or proposals of
 4 adjustment where time, the nature of the proceeding, and
 5 the public interest permit, and (2) to the extent that the
 6 parties are unable so to determine any controversy by con-
 7 sent, hearing, and decision upon notice and in conformity
 8 with sections 7 and 8.

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1 “(4) REGULAR HEARING PROCEDURE.—Where mod-
 2 ified procedures have not been designated or to the extent
 3 that the controversy has not been settled or adjusted, there
 4 shall be a hearing and decision upon notice and in con-
 5 formity with sections 7 and 8.

6 “(5) MODIFIED HEARING PROCEDURE.—Every agency
 7 shall by rule provide for abridged procedures which shall
 8 be on the record and be reasonably calculated to promptly,
 9 adequately, and fairly inform the agency and the parties as
 10 to the issues, facts and arguments involved. The agency
 11 may designate hearing examiners or agency personnel of
 12 appropriate ability to conduct such abridged proceedings.
 13 The procedures shall be for use by consent of the parties in
 14 such proceedings as the agency may designate. Without
 15 delay after the conclusion of the abridged proceeding, the
 16 officer who conducted it shall make his decision based on the
 17 record and subject to the provisions of section 8.

1 (c) SEPARATION OF FUNCTIONS.—The same officers
2 who presided at the reception of evidence pursuant to sec-
3 tion 7 shall make the recommended decision or initial
4 decision required by section 8 except where such officers
5 become unavailable to the agency. Save to the extent
6 required for the disposition of ex parte matters as authorized
7 by law, no such officer shall consult any person or party on
8 any fact in issue unless upon notice and opportunity for all
9 parties to participate; nor shall such officer be responsible
10 to or subject to the supervision or direction of any officer,
11 employee, or agent engaged in the performance of investi-
12 gative or prosecuting functions for any agency. No officer,
13 employee, or agent engaged in the performance of investi-
14 gative or prosecuting functions for any agency in any case
15 shall, in that or a factually related case, participate or advise
16 in the decision, recommended decision, or agency review
17 pursuant to section 8 except as witness or counsel in public
18 proceedings. This subsection shall not apply in determining
19 applications for initial licenses or to proceedings involving
20 the validity or application of rates, facilities, or practices of
21 public utilities or carriers; nor shall it be applicable in any
22 manner to the agency or any member or members of the
23 body comprising the agency.

1 “(6) SEPARATION OF FUNCTIONS.—(A) No officer
2 who presides at the reception of evidence shall be responsible
3 to or subject to the supervision or direction of any officer,
4 employee, or agent engaged in the performance of investigat-
5 ing, prosecuting, or advocating functions for any agency.
6 No officer, employee, or agent, other than a member of an
7 agency, engaged in the performance of investigating, prose-
8 cuting, or advocating functions for any agency in any case
9 shall, in that or a factually related case, participate or advise
10 in the decision, or in agency appeal or review pursuant to
11 section 8, except as witness or counsel in public proceedings.
12 “(B) Save to the extent required for the disposition of
13 ex parte matters as authorized by law, no presiding officer or
14 member of an agency appeal board, other than a member of
15 an agency, shall consult with any person or agency on any
16 fact in issue unless upon notice and opportunity for all
17 parties to participate, except that a member of an agency
18 appeal board may consult with other members of the appeal
19 board.

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1 “(7) EMERGENCY ACTION.—Upon a finding that im-
2 mediate action is necessary for the preservation of the public
3 health or safety, or where otherwise provided by law, an
4 agency may take action without the notice or other pro-
5 cedures required by this subsection. Such action shall be
6 subject to immediate judicial review in accordance with the
7 provisions of section 10, unless the agency provides for an
8 immediate hearing to be conducted in accordance with this
9 Act and takes such other action as will effectively protect
10 the rights of the persons affected. Nothing herein shall be
11 construed to preclude a person from obtaining injunctive re-
12 lief to stay the taking of emergency action by the agency
13 in appropriate cases.

14 “(b) In all other cases of adjudication except those
15 involving inspections and tests, the agency shall by rule pro-
16 vide procedures which shall promptly, adequately and fairly
17 inform the agency and the parties of the issues, facts and
18 arguments involved. Without delay after conclusion of the
19 proceeding, the officer who has conducted it shall make his
20 decision. Such decision shall constitute final agency action,
21 subject only to such appeal and review as may be provided
22 by agency rule.

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(d) DECLARATORY ORDERS.—The agency is authorized in its sound discretion, with like effect as in the case of other orders, to issue a declaratory order to terminate a controversy or remove uncertainty.

1 “(c) SETTLEMENT.—The agency shall afford all parties
2 an opportunity, at such time in advance of the hearings as
3 the agency may by rule prescribe, or, in the discretion of
4 the agency, at any time thereafter where time, the nature
5 of the proceeding, and the public interest permit, to submit
6 and have considered offers for the settlement or adjustment
7 of the questions presented.
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SEC. 6. Except as otherwise provided in this Act—

(a) APPEARANCE.—Any person compelled to appear in person before any agency or representative thereof shall be accorded the right to be accompanied, represented, and advised by counsel or, if permitted by the agency, by other qualified representative. Every party shall be accorded the right to appear in person or by or with counsel or other duly qualified representative in any agency proceeding. So far as the orderly conduct of public business permits, any interested person may appear before any agency or its responsible officers or employees for the presentation, adjustment, or determination of any issue, request, or controversy in any proceeding (interlocutory, summary, or otherwise) or in connection with any agency function. Every agency shall proceed with reasonable dispatch to conclude any matter presented to it except that due regard shall be had for the convenience and necessity of the parties or their representatives. Nothing herein shall be construed either to grant or to deny to any person who is not a lawyer the right to appear for or represent others before any agency or in any agency proceeding.

“SEC. 6. Except as otherwise provided in this Act—

“(a) APPEARANCE.—Any person appearing voluntarily or involuntarily before any agency or representative thereof in the course of an investigation or in any agency proceeding shall be accorded the right to be accompanied, represented, and advised by counsel or, if permitted by the agency, by other qualified representative. Every party shall be accorded the right to appear in person or by or with counsel or other duly qualified representative in any agency proceeding or investigation. So far as the orderly conduct of public business permits, any interested person may appear before any agency or its responsible officers or employees for the presentation, adjustment, or determination of any issue, request, or controversy in any proceeding (interlocutory, summary, or otherwise) or in connection with any agency function.

“(b) PRACTICE BY ATTORNEYS.—(1) Any person who is a member in good standing of the bar of the highest court of any State, possession, territory, Commonwealth, or the District of Columbia may represent others before any agency; and whenever such a person acting in a representative capacity appears in person or signs a paper in practice before an agency, his personal appearance or signature or any paper

1 filed in the proceeding shall constitute a representation that
2 he is both properly qualified and authorized to represent the
3 particular party in whose behalf he acts.

4 “(2) Nothing herein shall be construed either (A) to
5 grant or to deny to any person who is not a lawyer the
6 right to appear for or represent others before any agency
7 or in any agency proceeding; (B) to authorize or to limit
8 the discipline, including disbarment, of persons who appear
9 in a representative capacity before any agency; (C) to au-
10 thorize any person who is a former officer or employee of
11 an agency to represent others before an agency where such
12 representation is prohibited by statute or regulation of an
13 agency; or (D) to prevent an agency from requiring a
14 power of attorney before the agency transfers funds to the
15 attorney for the party whom he represents.

16 “(c) SERVICE.—When any participant in any matter
17 before an agency is represented by an attorney at law or
18 other qualified representative, and that fact has been made
19 known in writing or in person by the representative to the
20 agency, any notice or other written communication required
21 or permitted to be given to or by such participant shall be
22 given to or by such representative in addition to any other
23 service specifically required by statute. If a participant
24 is represented by more than one attorney or other qualified
25 representative, service by or upon any one of such repre-
26 sentatives shall be sufficient.

1 (b) INVESTIGATIONS.—No process, requirement of a
2 report, inspection, or other investigative act or demand shall
3 be issued, made, or enforced in any manner or for any
4 purpose except as authorized by law. Every person com-
5 pelled to submit data or evidence shall be entitled to retain
6 or, on payment of lawfully prescribed costs, procure a copy
7 or transcript thereof, except that in a nonpublic investigatory
8 proceeding the witness may for good cause be limited to
9 inspection of the official transcript of his testimony.

10 (c) SUBPENAS.—Agency subpoenas authorized by law
11 shall be issued to any party upon request and, as may be
12 required by rules of procedure, upon a statement or showing
13 of general relevance and reasonable scope of the evidence
14 sought. Upon contest the court shall sustain any such sub-
15 pena or similar process or demand to the extent that it is
16 found to be in accordance with law, and in any proceeding
17 for enforcement, shall issue an order requiring the appear-
18 ance of the witness or the production of the evidence or data
19 within a reasonable time under penalty of punishment for
20 contempt in case of contumacious failure to comply.

1 “(d) INVESTIGATIONS.—No process, requirement of a
2 report, inspection, or other investigative act or demand shall
3 be issued, made, or enforced in any manner or for any
4 purpose except as authorized by law. Every person who
5 submits data or evidence shall be entitled to retain or, on
6 payment of lawfully prescribed costs, procure a copy or
7 transcript thereof.

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10 “(e) SUBPENAS.—Unless otherwise provided by statute,
11 every agency shall by rule provide for the issuance of
12 subpoenas and shall issue subpoenas upon request to any
13 party to an adjudication and shall by rule designate officers,
14 including the presiding officer, who are authorized to sign
15 and issue such subpoenas. When objection is made to the
16 general relevance or reasonable scope of such subpoena, the
17 presiding officer or the agency may quash or modify the
18 subpoena. Agency subpoenas authorized by law shall be
19 issued to any party to a rulemaking proceeding upon request
20 upon a showing of general relevance and reasonable scope
21 of the evidence sought. Upon contest in the district court
22 in the judicial district in which the appearance is required
23 or in which the person to whom the subpoena is directed is
24 found, resides, or has his principal place of business, the
25 court shall upon request by the agency or by any party

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(d) DENIALS.—Prompt notice shall be given of the denial in whole or in part of any written application, petition, or other request of any interested person made in connection with any agency proceeding. Except in affirming a prior denial or where the denial is self-explanatory, such notice shall be accompanied by a simple statement of procedural or other grounds.

1 sustain any such subpoena or similar process or demand to
2 which no objection has been made or which has been sus-
3 tained by the presiding officer or the agency, to the extent
4 that it is found to be in accordance with law. In any
5 proceeding for enforcement, the court shall issue an order
6 requiring the appearance of the witness or the production
7 of the evidence of data within a reasonable time under
8 penalty of punishment for contempt in case of contumacious
9 failure to comply.

10 “(f) DENIALS.—Prompt notice shall be given of the
11 denial in whole or in part of any written application, petition,
12 or other request of any interested person made in connection
13 with any agency proceeding. Except in affirming a prior
14 denial, or where the denial is self-explanatory or of an appli-
15 cation for agency review such notice shall be accompanied
16 by a simple statement of reasons.

17 “(g) COMPUTATION OF TIME.—Any period of time
18 prescribed or allowed by this Act, by any other statute ad-
19 ministered under this Act, or by rule or order of an agency,
20 shall not include the day of the act, event, or default after
21 which the designated period of time begins to run. How-
22 ever, the last day of the period so computed is to be in-
23 cluded unless it is a Saturday, Sunday, holiday or half
24 holiday, in which event the period runs until the end of the
25 next day which is neither a Saturday, Sunday, holiday nor
26 half holiday.

1 “(h) DEPOSITIONS AND DISCOVERY.—Depositions and
2 discovery shall be available to the same extent and in the
3 same manner as in civil proceedings in the district courts of
4 the United States except to the extent an agency deems such
5 conformity impracticable and otherwise provides for deposi-
6 tions and discovery by published rule.

7 “(i) CONSOLIDATION.—Upon reasonable notice an
8 agency may consolidate related proceedings or order joint
9 hearings on common or related issues in different proceedings.

10 “(j) NATIONAL DEFENSE OR FOREIGN POLICY.—
11 Every agency proceeding or action exempted by this Act
12 because the national defense or foreign policy is involved,
13 from the procedures otherwise required by this Act shall be
14 governed by rules of procedure which conform to the greatest
15 extent practicable to the procedures provided in this Act.

16 “(k) DECLARATORY ORDERS.—An agency shall act
17 upon requests for declaratory orders and is authorized with
18 like effect as in the case of other orders, to issue a declaratory
19 order to terminate a controversy or remove an uncertainty.
20 Any action taken shall constitute final agency action within
21 the meaning of section 10.

22 “(l) SUMMARY DECISIONS.—An agency is authorized
23 to dispose of motions for summary decisions, motions to dis-
24 miss or motions for decision on the pleadings.

HEARINGS

1
2 SEC. 7. In hearings which section 4 or 5 requires to be
3 conducted pursuant to this section—

4 (a) PRESIDING OFFICERS.—There shall preside at the
5 taking of evidence (1) the agency, (2) one or more mem-
6 bers of the body which comprises the agency, or (3) one or
7 more examiners appointed as provided in this Act; but noth-
8 ing in this Act shall be deemed to supersede the conduct of
9 specified classes of proceedings in whole or part by or before
10 boards or other officers specially provided for by or desig-
11 nated pursuant to statute. The functions of all presiding
12 officers and of officers participating in decisions in conformity
13 with section 8 shall be conducted in an impartial manner.
14 Any such officer may at any time withdraw if he deems him-
15 self disqualified; and, upon the filing in good faith of a timely
16 and sufficient affidavit of personal bias or disqualification of
17 any such officer, the agency shall determine the matter as
18 a part of the record and decision in the case.

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“HEARINGS

1
2 “SEC. 7. In hearings which section 4 or 5 requires to
3 be conducted pursuant to this section—

4 “(a) PRESIDING OFFICERS.—There shall preside at the
5 taking of evidence (1) the agency, (2) one or more mem-
6 bers of the body which comprises the agency, or (3) one
7 or more examiners appointed as provided in this Act; but
8 nothing in this Act shall be deemed to supersede the con-
9 duct of specified classes of proceedings in whole or part by
10 or before boards or other officers specially provided for by
11 or designated pursuant to statute. The functions of all pre-
12 siding officers and of officers participating in decisions in
13 conformity with sections 4 (c) (2) and 8 shall be conducted
14 in an impartial manner. Any such officer may at any time
15 withdraw if he deems himself disqualified; and, upon the
16 filing in good faith of a timely and sufficient affidavit of per-
17 sonal bias or disqualification of any such officer, the agency
18 shall determine the matter as part of the record and decision
19 in the proceeding. In any proceeding in which a presiding
20 officer is disqualified or otherwise becomes unavailable, an-
21 other presiding officer may be assigned to continue with
22 the proceeding unless substantial prejudice to any party is
23 shown to result therefrom. In event substantial prejudice
24 is shown, the agency may determine the manner in which
25 and the extent to which the proceeding shall be reheard.

1 (b) HEARING POWERS.—Officers presiding at hearings
 2 shall have authority, subject to the published rules of the
 3 agency and within its powers, to (1) administer oaths and
 4 affirmations, (2) issue subpoenas authorized by law, (3) rule
 5 upon offers of proof and receive relevant evidence, (4) take
 6 or cause depositions to be taken whenever the ends of jus-
 7 tice would be served thereby, (5) regulate the course of the
 8 hearing, (6) hold conferences for the settlement or simpli-
 9 fication of the issues by consent of the parties, (7) dispose
 10 of procedural requests or similar matters, (8) make decisions
 11 or recommended decisions in conformity with section 8, and
 12 (9) take any other action authorized by agency rule con-
 13 sistent with this Act.

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 17 (c) EVIDENCE.—Except as statutes otherwise provide,
 18 the proponent of a rule or order shall have the burden of
 19 proof. Any oral or documentary evidence may be received,
 20 but every agency shall as a matter of policy provide for the
 21 exclusion of irrelevant, immaterial, or unduly repetitious
 22 evidence and no sanction shall be imposed or rule or order
 23 be issued except upon consideration of the whole record or
 24 such portions thereof as may be cited by any party and as

1 “(b) HEARING POWERS.—Presiding officers shall have,
 2 if within the powers of the agency, authority to (1) adminis-
 3 ter oaths and affirmations; (2) sign and issue subpoenas;
 4 (3) rule upon offers of proof and receive relevant evidence;
 5 (4) take or cause depositions to be taken and require com-
 6 pliance with other discovery procedures as the ends of justice
 7 require; (5) regulate the course of the hearing; (6) direct
 8 the parties to appear for prehearing conferences and such
 9 other conferences as may be desirable for the settlement or
 10 simplification of the issues by consent of the parties; (7)
 11 dispose of procedural requests or similar matters; (8) dis-
 12 pose of motions for summary decisions, motions for decisions
 13 on the pleadings or motions to dismiss; (9) make decisions
 14 in conformity with section 4(c) (2) or 8; and (10) take
 15 any other action, including action to maintain order, author-
 16 ized by agency rule consistent with this Act.

17 “(c) EVIDENCE.—Except as statutes otherwise provide,
 18 the proponent of a rule or order shall have the burden of
 19 proof. Any oral or documentary evidence may be received,
 20 but every agency shall provide for the exclusion of irrelevant,
 21 immaterial, or unduly cumulative or repetitious evidence.
 22 No sanction shall be imposed or rule or order be issued except
 23 upon consideration of the whole record or such portions
 24 thereof as may be cited by any party and as supported by

1 supported by and in accordance with the reliable, probative,
2 and substantial evidence. Every party shall have the right
3 to present his case or defense by oral or documentary evi-
4 dence, to submit rebuttal evidence, and to conduct such
5 cross-examination as may be required for a full and true
6 disclosure of the facts. In rulemaking or determining claims
7 for money or benefits or applications for initial licenses any
8 agency may, where the interest of any party will not be
9 prejudiced thereby, adopt procedures for the submission of
10 all or part of the evidence in written form.

11 (d) RECORD.—The transcript of testimony and exhibits,
12 together with all papers and requests filed in the proceeding,
13 shall constitute the exclusive record for decision in accord-
14 ance with section 8 and, upon payment of lawfully prescribed
15 costs, shall be made available to the parties. Where any
16 agency decision rests on official notice of a material fact not
17 appearing in the evidence in the record, any party shall on
18 timely request be afforded an opportunity to show the
19 contrary.

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1 and in accordance with the reliable, probative, and substan-
2 tial evidence. Every party shall have the right to present his
3 case or defense by oral or documentary evidence, to submit
4 rebuttal evidence, and to conduct such cross-examination as
5 may be required for a full and true disclosure of the facts.
6 Any presiding officer may, where the interest of any party
7 will not be prejudiced thereby, require the submission of all
8 or part of the evidence in written form.

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11 “(d) RECORD.—The transcript of testimony and ex-
12 hibits, together with all papers and requests filed in the pro-
13 ceedings, shall constitute the exclusive record for decision in
14 accordance with section 4 (c) (2) and (8) and, upon pay-
15 ment of lawfully prescribed costs, shall be made available to
16 the parties. Official notice may be taken of all facts of which
17 judicial notice could be taken and of other facts within the
18 specialized knowledge of the agency. Where any decision
19 rests on official notice of a material fact not appearing in the
20 evidence in the record, any party shall on timely request be
21 afforded an opportunity to show the contrary.

1 “(e) INTERLOCUTORY APPEALS.—A presiding officer
2 may certify to the agency, or allow the parties an interlocu-
3 tory appeal on, any material question arising in the course of
4 a proceeding, where he finds that to do so would prevent
5 substantial prejudice to any party or would expedite the
6 proceeding. No interlocutory appeal shall otherwise be al-
7 lowed, except by order of the agency upon a showing of
8 substantial prejudice and after a denial of such appeal by the
9 presiding officer. The presiding officer or the agency may
10 stay the proceeding during the pendency of the interlocutory
11 appeal to protect the substantial rights of any party. The
12 agency, or one or more of its members as it may designate,
13 shall determine the question forthwith, and further proceed-
14 ings shall be governed accordingly.

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DECISIONS

SEC. 8. In cases in which a hearing is required to be conducted in conformity with section 7—

(a) ACTION BY SUBORDINATES.—In cases in which the agency has not presided at the reception of the evidence, the officer who presided (or, in cases not subject to subsection (c) of section 5, any other officer or officers qualified to preside at hearings pursuant to section 7) shall initially decide the case or the agency shall require (in specific cases or by general rule) the entire record to be certified to it for initial decision. Whenever such officers make the initial decision and in the absence of either an appeal to the agency or review upon motion of the agency within time provided by rule, such decision shall without further proceedings then become the decision of the agency. On appeal from or review of the initial decisions of such officers the agency shall, except as it may limit the issues upon notice or by rule, have all the powers which it would have in making the initial decision. Whenever the agency makes the initial decision without having presided at the reception of the evidence, such officers shall first recommend a decision except that in rulemaking or determining applications for initial licenses (1) in lieu thereof the agency may issue a tentative decision or any of its responsible officers may recommend a decision or (2) any such procedure may be omitted in any case in which the agency finds upon the record that due and timely execution of its functions imperatively and unavoidably so requires.

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“DECISIONS

“SEC. 8. In all adjudications subject to section 5 (a) —

“(a) GENERAL.—The same officers who preside at the reception of evidence shall make the decision except where such officers become unavailable to the agency. In the absence of either an appeal to the agency or review by the agency within time provided by statute or by rule, such decision shall without further proceedings then become the decision of the agency. In proceedings in which the agency presides at the taking of evidence, its decision shall be the final agency action in the proceeding.

1 (b) SUBMITTALS AND DECISIONS.—Prior to each
2 recommended, initial, or tentative decision, or decision upon
3 agency review of the decision of subordinate officers the parties shall be afforded a reasonable opportunity to submit for
4 the consideration of the officers participating in such decisions (1) proposed findings and conclusions, or (2) exceptions to the decisions or recommended decisions of subordinate
5 officers or to tentative agency decisions, and (3) supporting
6 reasons for such exceptions or proposed findings or conclusions. The record shall show the ruling upon each such finding,
7 conclusion, or exception presented. All decisions (including initial, recommended, or tentative decisions) shall
8 become a part of the record and include a statement of (1)
9 findings and conclusions, as well as the reasons or basis therefor, upon all the material issues of fact, law, or discretion
10 presented on the record; and (2) the appropriate rule, order, sanction, relief, or denial thereof.

1 “(b) SUBMITTALS AND DECISIONS.—Prior to each
2 decision of presiding officers the parties shall be afforded a
3 reasonable opportunity to submit for the consideration of the
4 officers participating in such decisions (1) proposed findings
5 and conclusions and (2) supporting reasons for such proposed findings and conclusions with the opportunity, in the
6 discretion of the presiding officer, for oral argument thereon.
7 The record shall show the ruling upon each such finding or
8 conclusion presented. All decisions shall become a part of
9 the record, shall be served by the agency on the parties,
10 and shall include (A) the opinion, and (B) the appropriate
11 order, sanction, relief, or denial thereof.

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1 “(c) APPEAL AND REVIEW.—(1) Any party may ap-
2 peal the decision of the presiding officer by serving upon the
3 agency and the other parties, within the time prescribed
4 by agency rule after being served with the decision, written
5 exceptions and the reasons in support thereof which shall
6 state specifically and concisely the manner in which (A)
7 prejudicial error was committed in the conduct of the pro-
8 ceeding; (B) the findings or conclusions of material fact
9 were clearly erroneous; (C) the conclusions of law were
10 erroneous; (D) the decision was contrary to law or to the
11 duly promulgated rules or decisions of the agency; or (E)
12 there was a novel question brought into issue. The record for
13 appeal shall include all matters constituting the record upon
14 which the decision of the presiding officer was based. Any
15 portion of the record relied upon shall be identified by de-
16 tailed page references. Except for good cause shown, no
17 exceptions by any party shall rely on any question of fact
18 or law upon which the presiding officer had not been af-
19 forded an opportunity to pass. The appeal shall be limited
20 to the questions raised by the exceptions.

21 “(2) Except to the extent that the establishment of
22 an agency appeal board is clearly unwarranted by the
23 number of proceedings in which exceptions are filed or
24 that agency appellate procedures have been otherwise pro-
25 vided by Congress, each agency shall establish by rule one

1 or more agency appeal boards composed of agency members.
2 hearing examiners (other than the presiding officer), or
3 both. Proceedings before the appeal board shall be as
4 provided by agency rule and shall include oral argument
5 if requested by a party. If an appeal board has been estab-
6 lished, exceptions shall be considered and determined by the
7 appeal board unless a private party shall promptly file an
8 application for a determination of the exceptions by the
9 agency. If the agency denies the application, it shall be
10 deemed to have considered and denied each exception and
11 affirmed the decision of the presiding officer. If the agency
12 grants the application, it shall determine the exceptions after
13 considering the reasons therefor.

14 “If no appeal board has been established, the exceptions
15 shall be considered and determined by the agency after
16 considering the reasons therefor.

17 “(3) Except where the agency simply affirms the
18 decision of the presiding officer by denying the application
19 for a determination of the exceptions, there shall be a ruling
20 upon each material exception; the record shall show the
21 ruling and the reason therefor; and the decision of the
22 presiding officer shall be affirmed, set aside, or modified to
23 conform with such rulings or remanded with instructions.

1 “(4) After entry of the decision of the presiding officer
2 or after the action of the appeal board, the agency in its
3 discretion may, within the time prescribed by agency rule,
4 order the case before it for review but only upon the ground
5 that the decision or action may be contrary to law or agency
6 policy, that the agency wishes to reconsider its policy, or
7 that a novel question of policy has been presented. The
8 agency shall state in such order the specific agency policy
9 or novel question of policy involved. On such review the
10 agency shall have all the power it would have if it were
11 initially deciding the proceeding, provided that if the agency
12 raises any issue of fact it deems material, the agency shall
13 remand the case with instructions for further proceedings
14 before the presiding officer.

15 “(5) The action on review or on appeal if no review
16 is taken shall be on the record and be the final action of
17 the agency except when the decision is remanded or set
18 for reconsideration or rehearing.

SANCTIONS AND POWERS

"SANCTIONS AND POWERS

SEC. 9. In the exercise of any power or authority—

"SEC. 9. In the exercise of any power or authority—

(a) IN GENERAL.—No sanction shall be imposed or substantive rule or order be issued except within jurisdiction delegated to the agency and as authorized by law.

"(a) IN GENERAL.—Every agency shall have a duty, with due regard for the rights and privileges of all interested parties or adversely affected persons and with reasonable dispatch, to set and complete any investigation or proceedings required to be conducted pursuant to this Act or other proceedings required by law and to make its decision. No sanction shall be imposed, investigation commenced, or substantive rule or order be issued except within jurisdiction delegated to the agency and as authorized by law.

"(b) PUBLICITY.—Publicity, which a reviewing court finds was issued by the agency or any officer, employee or member thereof, to discredit or disparage a person under investigation or a party to an agency proceeding, may be held to be a prejudicial prejudging of the issues in controversy, and the court may set aside any action taken by the agency against such person or party or enter such other order as it deems appropriate.

1 (b) LICENSES.—In any case in which application is
2 made for a license required by law the agency, with due re-
3 gard to the rights or privileges of all interested parties or
4 adversely affected persons and with reasonable dispatch,
5 shall set and complete any proceedings required to be con-
6 ducted pursuant to sections 7 and 8 of this Act or other pro-
7 ceedings required by law and shall make its decision. Except
8 in cases of willfulness or those in which public health,
9 interest, or safety requires otherwise, no withdrawal, suspen-
10 sion, revocation, or annulment of any license shall be lawful
11 unless, prior to the institution of agency proceedings there-
12 for, facts or conduct which may warrant such action shall
13 have been called to the attention of the licensee by the
14 agency in writing and the licensee shall have been accorded
15 opportunity to demonstrate or achieve compliance with all
16 lawful requirements. In any case in which the licensee has,
17 in accordance with agency rules, made timely and sufficient
18 application for a renewal or a new license, no license with
19 reference to any activity of a continuing nature shall expire
20 until such application shall have been finally determined by
21 the agency.

1 “(c) LICENSES.—Except in cases of willfulness or those
2 in which the public health, interest, or safety requires other-
3 wise, no withdrawal, suspension, revocation, or annulment
4 of any license shall be lawful unless, prior to the institution
5 of agency proceedings therefor, facts or conduct which may
6 warrant such action shall have been called to the attention of
7 the licensee by the agency in writing and the licensee shall
8 have been accorded opportunity to demonstrate or achieve
9 compliance with all lawful requirements. In any case in
10 which the licensee has, in accordance with agency rules,
11 made timely and sufficient application for a renewal or a new
12 license, no license with reference to any activity of a con-
13 tinuing nature shall expire until such application shall have
14 been finally determined by the agency.

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2 SEC. 10. Except so far as (1) statutes preclude judicial
3 review or (2) agency action is by law committed to agency
4 discretion—

5 (a) RIGHT OF REVIEW.—Any person suffering legal
6 wrong because of any agency action, or adversely affected or
7 aggrieved by such action within the meaning of any relevant
8 statute, shall be entitled to judicial review thereof.

9 (b) FORM AND VENUE OF ACTION.—The form of pro-
10 ceeding for judicial review shall be any special statutory
11 review proceeding relevant to the subject matter in any
12 court specified by statute or, in the absence or inadequacy
13 thereof, any applicable form of legal action (including actions
14 for declaratory judgments or writs of prohibitory or manda-
15 tory injunction or habeas corpus) in any court of competent
16 jurisdiction. Agency action shall be subject to judicial re-
17 view in civil or criminal proceedings for judicial enforcement
18 except to the extent that prior, adequate, and exclusive
19 opportunity for such review is provided by law.
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2 “SEC. 10. Except so far as (1) statutes preclude judicial
3 review or (2) judicial review of agency discretion is pre-
4 cluded by law—

5 “(a) RIGHT OF REVIEW.—Any person adversely af-
6 fected in fact by any reviewable agency action shall have
7 standing and be entitled to judicial review thereof.
8

9 “(b) JURISDICTION, VENUE, AND FORM OF ACTION.—
10 The district courts of the United States shall have (1) juris-
11 diction to review agency action reviewable under this Act,
12 except where a statute provides for judicial review in a spe-
13 cific court; and (2) jurisdiction to protect the other sub-
14 stantial rights of any person in an agency proceeding.
15 Agency action shall also be subject to judicial review in
16 civil or criminal proceedings for judicial enforcement of
17 agency action except to the extent that prior, adequate, and
18 exclusive opportunity for such review is provided by law.
19 The form of the proceeding for judicial review shall be any
20 special statutory review proceeding or, in the absence or
21 inadequacy thereof, any applicable form of legal action (in-
22 cluding actions for declaratory judgments, proceedings in the
23 nature of mandamus, writs of prohibitory or mandatory
24 injunction or habeas corpus). The proceeding for judicial

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10 (c) REVIEWABLE ACTS.—Every agency action made
11 reviewable by statute and every final agency action for which
12 there is no other adequate remedy in any court shall be
13 subject to judicial review. Any preliminary, procedural, or
14 intermediate agency action or ruling not directly reviewable
15 shall be subject to review upon the review of the final agency
16 action. Except as otherwise expressly required by statute,
17 agency action otherwise final shall be final for the purposes
18 of this subsection whether or not there has been presented
19 or determined any application for a declaratory order, for
20 any form of reconsideration, or (unless the agency other-
21 wise requires by rule and provides that the action mean-
22 while shall be inoperative) for an appeal to superior agency
23 authority.

1 review of agency action shall be commenced by the filing
2 of a complaint in the district court in the judicial district in
3 which the complainant resides or has his principal place of
4 business, or in which the acts giving rise to the agency action
5 took place, or in which any real property involved in the
6 action is situated, except where a special judicial review pro-
7 cedure is otherwise provided by statute. The action for
8 judicial review may be brought against the agency by its
9 official title.

10 “(c) REVIEWABLE ACTIONS.—Every agency action
11 made reviewable by statute and every final agency action for
12 which there is no other adequate remedy in any court shall
13 be subject to judicial review. Any preliminary, procedural,
14 or intermediate agency action or ruling not directly review-
15 able shall be subject to review upon the review of the final
16 agency action. Except as otherwise expressly required by
17 statute, agency action otherwise final shall be final for the
18 purposes of this subsection whether or not there has been
19 presented or determined any application for a declaratory
20 order, for any form of reconsideration, or (unless the agency
21 otherwise requires by rule and provides that the action mean-
22 while shall be inoperative) for an appeal to superior agency
23 authority.

1 (d) INTERIM RELIEF.—Pending judicial review any
2 agency is authorized, where it finds that justice so requires,
3 to postpone the effective date of any action taken by it.
4 Upon such conditions as may be required and to the extent
5 necessary to prevent irreparable injury, every reviewing
6 court (including every court to which a case may be taken
7 on appeal from or upon application for certiorari or other
8 writ to a reviewing court) is authorized to issue all neces-
9 sary and appropriate process to postpone the effective date
10 of any agency action or to preserve status or rights pending
11 conclusion of the review proceedings.

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2 agency is authorized, where it finds that justice so requires,
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4 Upon such conditions as may be required and to the extent
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7 on appeal from or upon application for certiorari or other
8 writ to a reviewing court) is authorized to issue all neces-
9 sary and appropriate process to postpone the effective date of
10 any agency action or to preserve status or rights pending
11 conclusion of any review proceedings.

1 “(e) SCOPE OF REVIEW.—So far as necessary to deci-
2 sion, and where presented, the reviewing court shall decide
3 all relevant questions of law, interpret constitutional and
4 statutory provisions, and determine the meaning or applica-
5 bility of the terms of any agency action. It shall (A) com-
6 pel agency action unlawfully withheld or unreasonably de-
7 layed; and (B) hold unlawful and set aside agency action,
8 findings, and conclusions found to be (1) arbitrary, capri-
9 cious, and abuse of discretion, or otherwise not in accordance
10 with law; (2) contrary to constitutional right, power, privi-
11 lege, or immunity; (3) in excess of statutory jurisdiction,
12 authority, or limitations, or short of statutory right; (4)
13 without observance of procedure required by law; (5) un-
14 supported by substantial evidence in any case subject to
15 the requirements of sections 7 and 8 or otherwise reviewed
16 on the record of an agency hearing provided by statute; or
17 (6) unwarranted by the facts to the extent that the facts
18 are subject to trial de novo by the reviewing court. In
19 making the foregoing determinations the court shall review
20 the whole record or such portions thereof as may be cited
21 by any party, and due account shall be taken of the rule
22 of prejudicial error.

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15 the requirements of sections 7 and 8 or otherwise reviewed
16 on the record of an agency hearing provided by statute; or
17 (6) unwarranted by the facts to the extent that the facts
18 are subject to trial de novo by the reviewing court. In
19 making the foregoing determinations the court shall review
20 the whole record or such portions thereof as may be cited
21 by any party, and due account shall be taken of the rule
22 of prejudicial error.

EXAMINERS

1
2 SEC. 11. Subject to the civil service and other laws to
3 the extent not inconsistent with this Act, there shall be ap-
4 pointed by and for each agency as many qualified and com-
5 petent examiners as may be necessary for proceedings pur-
6 suant to sections 7 and 8, who shall be assigned to cases in
7 rotation so far as practicable and shall perform no duties
8 inconsistent with their duties and responsibilities as exam-
9 ers. Examiners shall be removed by the agency in which
10 they are employed only for good cause established and de-
11 termined by the Civil Service Commission (hereinafter
12 called the Commission) after opportunity for hearing and
13 upon the record thereof. Examiners shall receive compensa-
14 tion prescribed by the Commission independently of agency
15 recommendations or ratings and in accordance with the
16 Classification Act of 1923, as amended, except that the pro-
17 visions of paragraphs (2) and (3) of subsection (b) of sec-
18 tion 7 of said Act, as amended, and the provisions of section
19 9 of said Act, as amended, shall not be applicable. Agencies
20 occasionally or temporarily insufficiently staffed may utilize
21 examiners selected by the Commission from and with the
22 consent of other agencies. For the purposes of this section,
23 the Commission is authorized to make investigations, require
24 reports by agencies, issue reports, including an annual report

"EXAMINERS

1
2 "SEC. 11. Subject to the civil service and other laws
3 to the extent not inconsistent with this Act, there shall be
4 appointed by and for each agency as many qualified and
5 competent examiners as may be necessary for proceedings
6 pursuant to sections 7 and 8, who shall be assigned to cases
7 in rotation so far as practicable and shall perform no duties
8 inconsistent with their duties and responsibilities as exam-
9 iners. Examiners shall be removable by the agency in which
10 they are employed only for good cause established and
11 determined by the Civil Service Commission (hereinafter
12 called Commission) after opportunity for hearing and upon
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15 recommendations or ratings and in accordance with the
16 Classification Act of 1923, as amended, except that the pro-
17 visions of paragraphs (2) and (3) of subsection (b) of
18 section 7 of said Act, as amended, and the provisions of
19 section 9 of said Act, as amended, shall not be applicable.
20 Agencies occasionally or temporarily insufficiently staffed
21 may utilize examiners selected by the Commission from and
22 with the consent of other agencies. For the purposes of this
23 section, the Commission is authorized to make investigations,
24 require reports by agencies, issue reports, including an annual

ADMINISTRATIVE PROCEDURE ACT

1 to the Congress, promulgate rules, appoint such advisory
2 committees as may be deemed necessary, recommend legis-
3 lation, subpoena witnesses or records, and pay witness fees
4 as established for the United States courts.

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1 report to the Congress, promulgate rules, appoint such
2 advisory committees as may be deemed necessary, recom-
3 mend legislation, subpoena witnesses or records, and pay
4 witness fees as established for the United States courts.

CONSTRUCTION AND EFFECT

1
2 SEC. 12. Nothing in this Act shall be held to diminish
3 the constitutional rights of any person or to limit or repeal
4 additional requirements imposed by statute or otherwise
5 recognized by law. Except as otherwise required by law,
6 all requirements or privileges relating to evidence or proce-
7 dure shall apply equally to agencies and persons. If any
8 provision of this Act or the application thereof is held invalid,
9 the remainder of this Act or other applications of such pro-
10 vision shall not be affected. Every agency is granted all
11 authority necessary to comply with the requirements of this
12 Act through the issuance of rules or otherwise. No sub-
13 sequent legislation shall be held to supersede or modify the
14 provisions of this Act except to the extent that such legisla-
15 tion shall do so expressly.

"CONSTRUCTION AND EFFECT

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2 "SEC. 12. (a) GENERAL.—Nothing in this Act shall
3 be held to diminish the constitutional rights of any person or
4 to limit or repeal additional requirements imposed by statute
5 or otherwise recognized by law. Except as otherwise re-
6 quired by law, all requirements or privileges relating to evi-
7 dence or procedure shall apply equally to agencies and
8 persons. If any provisions of this Act or the application
9 thereof is held invalid, the remainder of this Act or other
10 applications of such provision shall not be affected. Every
11 agency is granted all authority necessary to comply with the
12 requirements of this Act through the issuance of rules or oth-
13 erwise. No legislation shall be held to supersede or modify
14 the provisions of this Act except to the extent that such legis-
15 lation shall do so expressly."

ADMINISTRATIVE PROCEDURE ACT

1 This Act shall take effect three months after its approval,
2 except that sections 7 and 8 shall take effect six months after
3 such approval, the requirement of the selection of examiners
4 pursuant to section 11 shall not become effective until one
5 year after such approval, and no procedural requirement
6 shall be mandatory as to any agency proceeding initiated
7 prior to the effective date of such requirement.

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1 (b) **EFFECTIVE DATE.**—This Act shall take effect six
2 months following the date of its enactment. No change in
3 procedure shall be mandatory with respect to any proceeding
4 initiated prior to the effective date of such change.

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