



Administrative Rule-Making Process in Public Administration

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DESCRIPTION

The Administrative Procedures Act (APA), which applies to all federal government agencies, provides common procedures for different types of rule administration. The APA's detailed regulations rarely use procedures for formal rules as well as requirements for informal rule-making, under which most agency rules are promulgated. This report provides a brief legal overview of the methods by which agencies can enact rules, including the development of formal, informal, hybrid, and final rules, Direct and negotiable. In addition, this report discusses the legal standards that apply to the repeal or modification of existing rules.

Administrative rule-making is a type of function performed by administrative agencies. The procedural issues related to the performance of this function are, to a certain extent, different from those surrounding the performance of other administrative acts, such as decisions and orders taken delegated to individuals in licensing matters, workers' compensation administration and public health regulation. Rule-making, sometimes referred to as "administrative law", and a related function, often referred to as "administrative adjudication", have become a major category in the study of administrative law.

There are important case law related to APA procedures and agency rules. This report summarizes both the procedural and basic standards that review courts use to determine whether agency rules have been duly enacted, amended, or repealed. In addition, the report highlights many exceptions to the APA's general procedural requirements, including the "good cause" standard and rules regarding the agency's publication of policy statements, the agency's rules of interpretation and rules of procedure.

Because an agency has the sole discretion to decide whether or not to issue a rule, the agency may determine the need to initiate the rule-making process in a variety of ways, including: We may

determine identify a problem as a result of reports from inspectors or agencies monitoring For example, we review accident reports or data that may indicate a growing safety concern due to motor vehicle side collisions or the leakage of hazardous materials during transit. An accident investigation may indicate a manufacturing problem that needs to be fixed. We may have difficulty enforcing existing rules, which may prove necessary to change the rules. A request for an explanation or waiver can demonstrate that a rule needs clarification or change. Ultimately, the evolution of technology may justify revising a rule. For example, a new technology may justify modifying existing rules to allow the use of new materials. Internet accessibility may justify modifying reporting requirements to allow electronic filing.

Before deciding to begin the regulatory process, an agency evaluates possible alternatives. For example, we assess whether the problem can be solved without the need for a rule, using what are commonly referred to as "market dynamics". For example, we look at whether a consumer response to an issue prompted a manufacturer to make changes to fix the problem. We may also consider if there are less burdensome alternatives to requirements such as changes to manufacturing or operating procedures; for example, we may decide that requiring disclosure of information about or product labelling would achieve the agency's goals. We can also evaluate a range of possible significant alternatives to solve the problem. For example, we might assess whether we should require replacement of a part or more frequent inspections of it. Whenever possible, agencies try to use performance standards rather than design standards. A specific solution will then be specified, such as half inch thick steel plating. First set a standard or goal to be achieved. For example, if crash testing with the dummy is required, the test instruments in the dummy must show that the injury does not exceed the specified level. The manufacturer may meet the performance standard by whatever means it deems best.

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