

and, to the extent feasible, with State and local governmental rules; and

(5) the length of time since the rule has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the rule.

(c) Each year, each agency shall publish in the Federal Register a list of the rules which have a significant economic impact on a substantial number of small entities, which are to be reviewed pursuant to this section during the succeeding twelve months. The list shall include a brief description of each rule and the need for and legal basis of such rule and shall invite public comment upon the rule.

(Added Pub. L. 96-354, §3(a), Sept. 19, 1980, 94 Stat. 1169.)

#### REFERENCES IN TEXT

The effective date of this chapter, referred to in subsection (a), is Jan. 1, 1981. See Effective Date note set out under section 601 of this title.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 605 of this title.

### § 611. Judicial review

(a) Except as otherwise provided in subsection (b), any determination by an agency concerning the applicability of any of the provisions of this chapter to any action of the agency shall not be subject to judicial review.

(b) Any regulatory flexibility analysis prepared under sections 603 and 604 of this title and the compliance or noncompliance of the agency with the provisions of this chapter shall not be subject to judicial review. When an action for judicial review of a rule is instituted, any regulatory flexibility analysis for such rule shall constitute part of the whole record of agency action in connection with the review.

(c) Nothing in this section bars judicial review of any other impact statement or similar analysis required by any other law if judicial review of such statement or analysis is otherwise provided by law.

(Added Pub. L. 96-354, §3(a), Sept. 19, 1980, 94 Stat. 1169.)

### § 612. Reports and intervention rights

(a) The Chief Counsel for Advocacy of the Small Business Administration shall monitor agency compliance with this chapter and shall report at least annually thereon to the President and to the Committees on the Judiciary of the Senate and House of Representatives, the Select Committee on Small Business of the Senate, and the Committee on Small Business of the House of Representatives.

(b) The Chief Counsel for Advocacy of the Small Business Administration is authorized to appear as *amicus curiae* in any action brought in a court of the United States to review a rule. In any such action, the Chief Counsel is authorized to present his views with respect to the effect of the rule on small entities.

(c) A court of the United States shall grant the application of the Chief Counsel for Advocacy of the Small Business Administration to

appear in any such action for the purposes described in subsection (b).

(Added Pub. L. 96-354, §3(a), Sept. 19, 1980, 94 Stat. 1170.)

## CHAPTER 7—JUDICIAL REVIEW

Sec.	
701.	Application; definitions.
702.	Right of review.
703.	Form and venue of proceeding.
704.	Actions reviewable.
705.	Relief pending review.
706.	Scope of review.

#### SHORT TITLE

The provisions of sections 551 to 559 of this title and this chapter were originally enacted by act June 11, 1946, ch. 423, 60 Stat. 237, popularly known as the "Administrative Procedure Act". That Act was repealed as part of the general revision of this title by Pub. L. 89-554 and its provisions incorporated into sections 551 to 559 of this title and this chapter.

#### CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 559, 8902 of this title; title 2 sections 501, 502; title 7 sections 1642, 6999; title 8 section 1421; title 10 sections 2397, 2397a, 2397c, 2409; title 12 sections 1441a, 1467a, 1749bbb-17, 1786, 1787, 1815, 1818, 1821, 1959, 2266, 2268, 4583, 4634; title 15 sections 57a, 78dd-1, 78dd-2, 266, 648, 687e, 1193, 1715, 2060, 2603, 2618, 2622, 3416, 5623, 6208; title 16 sections 460aa-3, 470g, 823b, 1374, 1536, 1855, 2404, 3636; title 17 sections 701, 908; title 18 sections 843, 3625; title 19 section 1337; title 20 sections 107d-2, 1683; title 21 sections 350b, 360e, 360g, 360kk; title 22 sections 277d-24, 1623, 1645n, 3794, 4140; title 25 sections 954, 1776b, 2713, 2714; title 26 section 9041; title 29 sections 214, 727, 792, 1137; title 30 sections 956, 1411, 1415, 1416; title 33 sections 524, 597; title 35 section 135; title 38 section 502; title 39 sections 404, 410, 3001, 3008, 3012, 3603; title 41 sections 43a, 265; title 42 sections 300j-9, 1395h, 1395oo, 1436c, 2000d-2, 2022, 2231, 2236, 2239, 2282a, 2286f, 4104, 5405, 5851, 6105, 6303, 6306, 6973, 6976, 7276, 7525, 7607, 7622, 7920, 8412, 8433, 8441, 10132, 10155, 10244; title 44 section 2203; title 45 sections 1116, 1212; title 47 sections 303, 305, 310, 409; title 49 sections 31102, 31141, 70110; title 50 sections 835, 2011; title 50 App. sections 463, 2159, 2412.

### § 701. Application; definitions

(a) This chapter applies, according to the provisions thereof, except to the extent that—

- (1) statutes preclude judicial review; or
- (2) agency action is committed to agency discretion by law.

(b) For the purpose of this chapter—

(1) "agency" means each authority of the Government of the United States, whether or not it is within or subject to review by another agency, but does not include—

- (A) the Congress;
- (B) the courts of the United States;
- (C) the governments of the territories or possessions of the United States;
- (D) the government of the District of Columbia;
- (E) agencies composed of representatives of the parties or of representatives of organizations of the parties to the disputes determined by them;

(F) courts martial and military commissions;

(G) military authority exercised in the field in time of war or in occupied territory; or

(H) functions conferred by sections 1738, 1739, 1743, and 1744 of title 12; chapter 2 of title 41; subchapter II of chapter 471 of title 49; or sections 1884, 1891–1902, and former section 1641(b)(2), of title 50, appendix; and

(2) “person”, “rule”, “order”, “license”, “sanction”, “relief”, and “agency action” have the meanings given them by section 551 of this title.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 392; Pub. L. 103–272, §5(a), July 5, 1994, 108 Stat. 1373.)

#### HISTORICAL AND REVISION NOTES

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
(a) .....	5 U.S.C. 1009 (introductory clause).	June 11, 1946, ch. 324, §10 (introductory clause), 60 Stat. 243.

In subsection (a), the words “This chapter applies, according to the provisions thereof,” are added to avoid the necessity of repeating the introductory clause of former section 1009 in sections 702–706.

Subsection (b) is added on authority of section 2 of the Act of June 11, 1946, ch. 324, 60 Stat. 237, as amended, which is carried into section 551 of this title.

In subsection (b)(1)(G), the words “or naval” are omitted as included in “military”.

In subsection (b)(1)(H), the words “functions which by law expire on the termination of present hostilities, within any fixed period thereafter, or before July 1, 1947” are omitted as executed. Reference to the “Selective Training and Service Act of 1940” is omitted as that Act expired on Mar. 31, 1947. Reference to the “Sugar Control Extension Act of 1947” is omitted as that Act expired on Mar. 31, 1948. References to the “Housing and Rent Act of 1947, as amended” and the “Veterans’ Emergency Housing Act of 1946” have been consolidated as they are related. The reference to former section 1641(b)(2) of title 50, appendix, is retained notwithstanding its repeal by §111(a)(1) of the Act of Sept. 21, 1961, Pub. L. 87–256, 75 Stat. 538, since §111(c) of the Act provides that a reference in other Acts to a provision of law repealed by §111(a) shall be considered to be a reference to the appropriate provisions of Pub. L. 87–256.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

#### REFERENCES IN TEXT

Sections 1891–1902 of title 50, appendix, referred to in subsec. (b)(1)(H), were omitted from the Code as executed.

#### AMENDMENTS

1994—Subsec. (b)(1)(H). Pub. L. 103–272 substituted “subchapter II of chapter 471 of title 49; or sections” for “or sections 1622.”

#### CROSS REFERENCES

Atomic Energy Community Act of 1955, administrative review only, see section 2309 of Title 42, The Public Health and Welfare.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 2 sections 501, 502; title 7 sections 1508, 2143; title 16 section 839f; title 18 sections 843, 3625; title 20 section 1683; title 25 section 954; title 30 section 956; title 41 section 422; title 42 sections 5405, 6105, 6976; title 50 App. section 2412.

### § 702. Right of review

A person suffering legal wrong because of agency action, or adversely affected or ag-

grieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof. An action in a court of the United States seeking relief other than money damages and stating a claim that an agency or an officer or employee thereof acted or failed to act in an official capacity or under color of legal authority shall not be dismissed nor relief therein be denied on the ground that it is against the United States or that the United States is an indispensable party. The United States may be named as a defendant in any such action, and a judgment or decree may be entered against the United States: *Provided*, That any mandatory or injunctive decree shall specify the Federal officer or officers (by name or by title), and their successors in office, personally responsible for compliance. Nothing herein (1) affects other limitations on judicial review or the power or duty of the court to dismiss any action or deny relief on any other appropriate legal or equitable ground; or (2) confers authority to grant relief if any other statute that grants consent to suit expressly or impliedly forbids the relief which is sought.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 392; Pub. L. 94–574, §1, Oct. 21, 1976, 90 Stat. 2721.)

#### HISTORICAL AND REVISION NOTES

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C. 1009(a).	June 11, 1946, ch. 324, §10(a), 60 Stat. 243.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

#### AMENDMENTS

1976—Pub. L. 94–574 removed the defense of sovereign immunity as a bar to judicial review of Federal administrative action otherwise subject to judicial review.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 2 sections 501, 502; title 7 section 2143; title 16 section 839f; title 18 sections 843, 3625; title 19 section 1677c; title 25 section 954; title 28 section 2631; title 41 section 422; title 42 section 5405; title 43 section 1337; title 50 App. sections 16, 2412.

### § 703. Form and venue of proceeding

The form of proceeding for judicial review is the special statutory review proceeding relevant to the subject matter in a court specified by statute or, in the absence or inadequacy thereof, any applicable form of legal action, including actions for declaratory judgments or writs of prohibitory or mandatory injunction or habeas corpus, in a court of competent jurisdiction. If no special statutory review proceeding is applicable, the action for judicial review may be brought against the United States, the agency by its official title, or the appropriate officer. Except to the extent that prior, adequate, and exclusive opportunity for judicial review is provided by law, agency action is subject to judicial review in civil or criminal proceedings for judicial enforcement.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 392; Pub. L. 94–574, §1, Oct. 21, 1976, 90 Stat. 2721.)

HISTORICAL AND REVISION NOTES

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C. 1009(b).	June 11, 1946, ch. 324, §10(b), 60 Stat. 243.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1976—Pub. L. 94-574 provided that if no special statutory review proceeding is applicable, the action for judicial review may be brought against the United States, the agency by its official title, or the appropriate officer as defendant.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 2 sections 501, 502; title 7 section 2143; title 16 section 839f; title 18 sections 843, 3625; title 25 section 954; title 41 section 422; title 42 section 5405; title 50 App. section 2412.

§ 704. Actions reviewable

Agency action made reviewable by statute and final agency action for which there is no other adequate remedy in a court are subject to judicial review. A preliminary, procedural, or intermediate agency action or ruling not directly reviewable is subject to review on the review of the final agency action. Except as otherwise expressly required by statute, agency action otherwise final is final for the purposes of this section whether or not there has been presented or determined an application for a declaratory order, for any form of reconsideration, or, unless the agency otherwise requires by rule and provides that the action meanwhile is inoperative, for an appeal to superior agency authority.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 392.)

HISTORICAL AND REVISION NOTES

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C. 1009(c).	June 11, 1946, ch. 324, §10(c), 60 Stat. 243.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface of this report.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 2 sections 501, 502; title 7 section 2143; title 15 sections 78l, 78ccc; title 16 section 839f; title 18 sections 843, 3625; title 25 section 954; title 41 section 422; title 42 sections 5405, 7174, 7194; title 50 App. section 2412.

§ 705. Relief pending review

When an agency finds that justice so requires, it may postpone the effective date of action taken by it, pending judicial review. On such conditions as may be required and to the extent necessary to prevent irreparable injury, the reviewing court, including the court to which a case may be taken on appeal from or on application for certiorari or other writ to a reviewing court, may issue all necessary and appropriate process to postpone the effective date of an agency action or to preserve status or rights pending conclusion of the review proceedings.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 393.)

HISTORICAL AND REVISION NOTES

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C. 1009(d).	June 11, 1946, ch. 324, §10(d), 60 Stat. 243.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface of this report.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 2 sections 501, 502; title 7 section 2143; title 15 sections 78y, 1262, 1474, 3416; title 16 sections 839f, 1855, 3636; title 18 sections 843, 3625; title 25 section 954; title 41 section 422; title 42 sections 5405, 7172; title 50 App. section 2412.

§ 706. Scope of review

To the extent necessary to decision and when presented, the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action. The reviewing court shall—

- (1) compel agency action unlawfully withheld or unreasonably delayed; and
- (2) hold unlawful and set aside agency action, findings, and conclusions found to be—
  - (A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;
  - (B) contrary to constitutional right, power, privilege, or immunity;
  - (C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right;
  - (D) without observance of procedure required by law;
  - (E) unsupported by substantial evidence in a case subject to sections 556 and 557 of this title or otherwise reviewed on the record of an agency hearing provided by statute; or
  - (F) unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court.

In making the foregoing determinations, the court shall review the whole record or those parts of it cited by a party, and due account shall be taken of the rule of prejudicial error.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 393.)

HISTORICAL AND REVISION NOTES

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C. 1009(e).	June 11, 1946, ch. 324, §10(e), 60 Stat. 243.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface of this report.

ABBREVIATION OF RECORD

Pub. L. 85-791, Aug. 28, 1958, 72 Stat. 941, which authorized abbreviation of record on review or enforcement of orders of administrative agencies and review on the original papers, provided, in section 35 thereof, that: "This Act [enacting section 2112 of Title 28, Judiciary and Judicial Procedure, and amending sections 1036 and 1037(c) of former Title 5 [now sections 2346 and 2347(c) of Title 28], sections 8, 9, 193(c), 194(b)-(d), (h), 1115(c), 1599(c), 1600, and 1601 of Title 7, Agriculture, section 1848 of Title 12, Banks and Banking, sections 21,

45(b)–(d), 77i(a), 78y(a), 79x(a), 80a–42(a), 80b–13(a), and 717r(a), (b) of Title 15, Commerce and Trade, section 825f(a), (b) of Title 16, Conservation, sections 81r(c) and 1641(b) of Title 19, Customs Duties, section 277(b) of Title 20, Education, sections 346a(i)(2), (3), 371(f)(1), (3) of Title 21, Food and Drugs, section 1631f(b) of Title 22, Foreign Relations and Intercourse, section 204(h), Title 27, Intoxicating Liquors, sections 160(d)–(f) and 210(a) of Title 29, Labor, section 576 of former Title 39, The Postal Service, section 291j(b)(1), (2) of Title 42, Public Health and Welfare, section 315(f) of Title 45, Railroads, section 1181(b) of Title 46, Appendix, Shipping, section 402(d) of Title 47, Telegraphs, Telephones, and Radiotelegraphs, section 646(c) of former Title 49, Transportation, and sections 793(a), 820(e), 821(c), (d) of Title 50, War and National Defense] shall not be construed to repeal or modify any provision of the Administrative Procedure Act.”

#### CROSS REFERENCES

Federal Communications Commission proceedings, applicability of section to, see section 402 of Title 47, Telegraphs, Telephones, and Radiotelegraphs.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7123 of this title; title 2 sections 501, 502, 1409, 1571; title 7 section 2143; title 11 section 1172; title 12 sections 1701q–1, 17231, 1735f–14, 1735f–15, 3105; title 15 sections 57a, 78y, 1262, 1474, 2618, 5408; title 16 sections 773f, 839f, 973f, 1379, 1855, 1858, 2437, 3142, 3636, 5010, 5507; title 18 sections 843, 3625; title 19 section 1337; title 22 section 4140; title 25 section 954; title 28 section 2640; title 29 sections 727, 1813, 1853; title 30 sections 956, 1462; title 39 section 3628; title 41 section 422; title 42 sections 608, 3545, 5405, 5919, 6976, 7607, 9152; title 45 sections 726, 904, 915, 1105; title 47 section 402; title 49 sections 20104, 32904; title 50 App. section 2412.

### CHAPTER 9—EXECUTIVE REORGANIZATION

Sec.	
901.	Purpose.
902.	Definitions.
903.	Reorganization plans.
904.	Additional contents of reorganization plan.
905.	Limitations on powers. <sup>1</sup>
906.	Effective date and publication of reorganization plans.
907.	Effect on other laws, pending legal proceedings, and unexpended appropriations.
908.	Rules of Senate and House of Representatives on reorganization plans.
909.	Terms of resolution.
910.	Introduction and reference of resolution.
911.	Discharge of committee considering resolution.
912.	Procedure after report or discharge of committee; debate; vote on final passage.
[913.]	Omitted.]

#### AMENDMENTS

1984—Pub. L. 98–614, §3(e)(3), Nov. 8, 1984, 98 Stat. 3193, substituted “passage” for “disapproval” in item 912.

1977—Pub. L. 95–17, §2, Apr. 6, 1977, 91 Stat. 29, reenacted chapter heading and items 901 to 903, 905 to 909, and 911 without change, substituted “plan” for “plans” in item 904 and “Introduction and reference of resolution” for “Reference of resolution to committee” in item 910, inserted “; vote on final disapproval” in item 912, and omitted item 913 “Decisions without debate on motion to postpone or proceed”.

#### CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 20 section 3463; title 42 sections 2000e–6, 3534, 7176, 8401, 8819; title 49 sections 103, 104, 106, 703.

<sup>1</sup> So in original. Does not conform to section catchline.

### § 901. Purpose

(a) The Congress declares that it is the policy of the United States—

(1) to promote the better execution of the laws, the more effective management of the executive branch and of its agencies and functions, and the expeditious administration of the public business;

(2) to reduce expenditures and promote economy to the fullest extent consistent with the efficient operation of the Government;

(3) to increase the efficiency of the operations of the Government to the fullest extent practicable;

(4) to group, coordinate, and consolidate agencies and functions of the Government, as nearly as may be, according to major purposes;

(5) to reduce the number of agencies by consolidating those having similar functions under a single head, and to abolish such agencies or functions thereof as may not be necessary for the efficient conduct of the Government; and

(6) to eliminate overlapping and duplication of effort.

(b) Congress declares that the public interest demands the carrying out of the purposes of subsection (a) of this section and that the purposes may be accomplished in great measure by proceeding under this chapter, and can be accomplished more speedily thereby than by the enactment of specific legislation.

(c) It is the intent of Congress that the President should provide appropriate means for broad citizen advice and participation in restructuring and reorganizing the executive branch.

(d) The President shall from time to time examine the organization of all agencies and shall determine what changes in such organization are necessary to carry out any policy set forth in subsection (a) of this section.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 394; Pub. L. 92–179, §1, Dec. 10, 1971, 85 Stat. 574; Pub. L. 95–17, §2, Apr. 6, 1977, 91 Stat. 29.)

#### HISTORICAL AND REVISION NOTES

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C. 133z.	June 20, 1949, ch. 226, §2, 63 Stat. 203.

In subsection (a), the words “from time to time examine” are substituted for “examine and from time to time reexamine” since the initial examination has been executed. The words “of the Government” following “agencies” are omitted as unnecessary in view of the definition of “agency” in section 902. In subsection (a)(1), the words “of the Government” following “executive branch” are omitted as unnecessary and to conform to the style of this title.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

#### CODIFICATION

Section 901(c) of former Title 5, Executive Departments and Government Officers and Employees, was transferred to section 60e–2(a) of Title 2, The Congress.