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Legal Sidebar

Judicial Review Under the Administrative Procedure Act (APA)

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Federal agencies administer a wide range of areas by adopting rules, adjudicating disputes and claims, and providing guidance on matters within their purview. Given the potential impact of these agency actions on individual rights, the Supreme Court has recognized a "strong presumption that Congress intends judicial review of agency action"; this presumption is embodied in the Administrative Procedure Act (APA). For agency actions not governed by another statute, the APA defines the federal courts' *scope of review*—*how* courts review agency actions, including the legal standards used to review those actions.

This Sidebar provides a brief summary of the APA's judicial review requirements before exploring the scope of that review. It does not address other issues affecting judicial review of agency actions, such as subject-matter jurisdiction or the case-or-controversy requirement. (Other CRS products discuss these topics in more detail.)

Seeking Judicial Review Under the APA

The APA, originally enacted in 1946, establishes the procedures that federal agencies use for rulemakings and adjudications. The Act also sets out procedures for how courts may review those agency actions. These judicial review procedures are default rules that apply unless another law supersedes them.

To obtain review under the APA, a *person*—an individual, business, or other organization—seeking review must have suffered a legal wrong or been otherwise harmed by an *agency action*. The APA defines *agency* as "each authority of the Government of the United States" minus several exceptions, including Congress, federal civilian and military courts, and the D.C. and territorial governments. In addition, the Supreme Court has held that the President is exempt from the APA's requirements. Agency *actions* include both rulemakings and adjudications—such as the award or denial of a license, sanction, or other form of relief—as well as an agency's failure to act.

If a case satisfies these criteria, the APA authorizes judicial review of an agency action when (1) another statute expressly authorizes review of the action or (2) the action is *final* and "there is no other adequate remedy in a court" with respect to that action. Courts may not, however, review challenges to an agency's action under the APA if another statute precludes judicial review of the action. This preclusion could apply to an entire class of decisions, such as the pre-1989 prohibition on judicial review of Veterans'

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Administration benefits determinations, or to review sought by certain classes of persons. Third, the APA prohibits review of actions "committed to agency discretion by law." This exception is "quite narrow[]" and the Supreme Court has confined it to "those rare circumstances where the relevant statute 'is drawn so that a court would have no meaningful standard against which to judge the agency's exercise of discretion.'"

Unless Congress has enacted a specific statute of limitations for a particular type of challenge, claims under the APA are subject to the general six-year statute of limitations for civil suits against the government set by 28 U.S.C. § 2401(a). As the Supreme Court explained in *Corner Post, Inc. v. Board of Governors of the Federal Reserve System*, a plaintiff's claim *accrues* under the APA—that is, the statute of limitations starts to run—when that plaintiff is injured by an agency action. For facial challenges under the APA to agency regulations, *Corner Post* represents a departure from longstanding precedent in many federal circuits, which had interpreted Section 2401(a) to mean that the statute of limitations began to run from the date an agency action became final. (A separate Legal Sidebar discusses *Corner Post* in more detail.) In a footnote, the majority opinion in *Corner Post* questioned but did not decide whether claims raising certain *procedural* challenges to a regulation—such as an assertion that an agency did not comply with the APA's notice-and-comment rulemaking requirements—may accrue on the date an agency action becomes final. Future cases may address this question.

Scope of Judicial Review Under the APA

For cases that fall within its ambit, the APA defines the scope of courts' review of agency actions. Specifically, the APA authorizes federal courts to (1) decide all relevant questions of law; (2) interpret constitutional and statutory provisions; and (3) determine the meaning or applicability of the terms of an agency action. By default, the U.S. district courts have jurisdiction to hear APA challenges, but Congress has vested review in other courts, such as the federal courts of appeals, in specific circumstances. The APA authorizes courts reviewing agency actions to

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 Title 5 or otherwise reviewed on the record of an agency hearing provided by statute; and
    f. unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court.

In making these determinations, the court's review is based on the agency's administrative *record*. In addition, the court must take "due account" of the *rule of prejudicial error*.

Compelling Agency Action

Pursuant to Section 706 of the APA, a person can challenge an agency for withholding or unreasonably delaying a required action. For this type of claim to proceed, a challenger must assert "that an agency failed to take a *discrete* action that it is *required to take*." If a reviewing court determines the agency unlawfully withheld or unreasonably delayed action, it can compel the agency to act. The court cannot,

however, tell the agency *how* to act. For example, if a statute requires an agency to issue regulations by a certain date, a court could compel an agency to issue the required regulations but could not issue a "decree setting forth the content of those regulations."

Reviewing Agency Action

When examining an agency's actions under the APA, a court will generally consider whether (1) the agency action is lawful; (2) the agency adequately supported its factual findings and discretionary decisions; and (3) the agency complied with procedural requirements. Each of these inquiries requires the court to apply one or more *standards of review* set out in Section 706—the lenses through which the court examines the agency's action.

Lawfulness

The APA requires a reviewing court to consider whether an agency action complies with applicable laws. This type of review includes whether an agency action is "contrary to constitutional right, power, privilege, or immunity." As an example, a court might consider whether an agency's decision to redirect appropriated funds for a new purpose violates the Constitution's Appropriations Clause. Likewise, the court must consider whether an agency action exceeds the agency's statutory jurisdiction or authority or if it violates a statutory right. For example, a court may be asked to decide whether an agency has statutory authority to implement a new program or initiative. Finally, the reviewing court must decide whether the agency action is "otherwise not in accordance with law," including whether it complies with applicable agency regulations.

Courts generally decide questions of law, including the meaning of statutes or regulations, de novo—that is, without deference to a lower court or agency decision. The Supreme Court has, however, created several *deference doctrines* that instruct courts to defer (or at least give weight) to certain agency interpretations of ambiguous statutes and regulations.

Prior to 2024, the Court recognized three main forms of deference:

- *Chevron* deference (named for *Chevron U.S.A. Inc. v. Natural Resources Defense Council*, 467 U.S. 837 (1984)) generally applied to an agency's legally binding, reasonable interpretation of an ambiguous statute it administers;
- *Auer* or *Seminole Rock* deference (named for *Auer v. Robbins*, 519 U.S. 452 (1997), and *Bowles v. Seminole Rock & Sand Co.*, 325 U.S. 410 (1945)) generally applies to an agency's reasonable interpretation of its own ambiguous regulations (but only if a court finds "genuine ambiguity" after "bring[ing] all its interpretive tools to bear," per the Supreme Court's decision in *Kisor v. Wilkie*, 588 U.S. 558 (2019)); and
- *Skidmore* weight (named for *Skidmore v. Swift & Co.*, 323 U.S. 134 (1944)) applies to an agency's interpretation of a statute that has the "power to persuade" a reviewing court.

In its June 2024 decision in *Loper Bright Enterprises v. Raimondo* and *Relentless Inc. v. Department of Commerce*, the Supreme Court overruled *Chevron*. The Court explained that *Chevron* deference "defies the command" of Section 706 of the APA, which requires courts, among other things, to "decide all relevant questions of law" and "interpret . . . statutory provisions." Thus, the Court held that, rather than deferring to an agency interpretation of a statute, courts should "use every tool at their disposal to determine the best reading of [a] statute and resolve [any] ambiguity." These tools may include considering an agency's expertise and its power to persuade under *Skidmore*.

The Court did not address the continuing viability of *Auer* deference in light of *Loper Bright*; as a result, *Auer* and *Kisor* are still controlling law with respect to when courts should defer to agencies'

interpretations of their own regulations. It appears, however, that *Auer* deference may conflict with the APA in a manner similar to *Chevron* deference. In addition to the APA's direction that reviewing courts "decide all relevant questions of law" (which the Court considered in *Loper Bright*), the statute directs courts to "determine the meaning or applicability of the terms of an agency action," which includes regulations. If the Court interprets the scope of courts' review of regulations under the APA as similar to that of statutes, then the Court could potentially overrule *Auer*.

Other CRS products provide more information on the Court's decision in *Loper Bright* and the now-overruled *Chevron* framework.

Factual Findings and Discretionary Decisions

In addition to whether an agency action adheres to applicable laws, a reviewing court may also examine the agency's *factual findings* and *discretionary decisions*. The types of discretionary decisions courts review under the APA are distinct from actions "committed to agency discretion by law," which, as discussed, are not reviewable. The Supreme Court "has noted the 'tension'" between the APA's mandate that courts review agency actions for abuses of discretion and its prohibition against review of actions committed to agency discretion. Recognizing that courts "could never determine that an agency abused its discretion if all matters committed to agency discretion were unreviewable," the Supreme Court has limited the committed-to-agency-discretion exception to those situations where there is "no meaningful standard against which to judge the agency's exercise of discretion."

Courts generally cannot review an agency's factual findings and discretionary decisions de novo—that is, a court cannot substitute its own judgment for the agency's. Instead, a court will generally consider whether the agency determination was "arbitrary, capricious, [or] an abuse of discretion." Under this "deferential" standard, courts examine whether the agency "examined 'the relevant data' and articulated 'a satisfactory explanation'" for its decision. A reviewing court is "limited to 'the grounds that the agency invoked when it took the action'" and whether the agency acted "within the bounds of reasoned decisionmaking."

The APA provides two exceptions to this general standard of review. First, when a court reviews an agency rulemaking or adjudication made on the record after a hearing (i.e., *formal* rulemakings and adjudications, which employ trial-like evidentiary proceedings), the court may only vacate an agency's determinations if they are "unsupported by substantial evidence." Under this standard, the court must assess whether there is *substantial evidence*—that is, "more than a scintilla" but potentially subject to plausible alternative interpretations—supporting the agency's findings. Second, courts may, in two limited cases, review factual determinations de novo: (1) "when the action is adjudicatory in nature and the agency factfinding procedures are inadequate"; and (2) "when issues that were not before the agency are raised in a proceeding to enforce nonadjudicatory agency action." In these situations, reviewing courts must determine whether an agency action is "unwarranted by the facts."

Procedural Requirements

A reviewing court may also consider whether an agency failed to observe the procedures required by law, including the APA, the agency's own regulations, and, potentially, other statutory requirements. This review could include whether an agency complied with the APA's notice-and-comment provisions before issuing a final rule. Likewise, a reviewing court could be asked to decide whether an agency followed its adjudicatory procedures, such as whether to consider new evidence and argument. Courts generally review de novo whether an agency complied with its procedural requirements.

Review on the Record

In reviewing an agency's actions, courts must "review the whole record or those parts cited by a party." The Supreme Court has interpreted this provision to mean that, in general, "the focal point for judicial review should be the administrative record already in existence, not some new record made initially in the reviewing court." Although judicial review "is typically limited to the administrative record," courts have recognized several narrow exceptions to this general rule, such as "when the administrative record is so deficient in its explanation of the agency action that judicial review is not possible" or when there is "a strong showing of bad faith or improper behavior" on the part of agency decisionmakers.

Prejudicial Error

The APA mandates that a reviewing court must take due account of the rule of prejudicial error. Under this rule, when a reviewing court determines that an agency erred, the court must ask whether the error prejudiced—or harmed—the person challenging the agency's action. As the Supreme Court has explained, the APA's prejudicial-error rule mirrors more general harmless-error rules, like the one codified at 28 U.S.C. § 2111. Thus, an alleged error is prejudicial if it "would affect the substantial rights of the parties." The party challenging an agency action generally has the burden of demonstrating that an error is harmful.

The Supreme Court most recently applied this doctrine in *Little Sisters of the Poor Saints Peter & Paul Home v. Pennsylvania*. In that case, the Court considered whether the Departments of Health and Human Services, Labor, and Treasury complied with the APA when they created exceptions to the contraceptive mandate rules issued under the Patient Protection and Affordable Care Act of 2010. The Court discerned no prejudicial error in the creation of the exceptions, holding that even if the Departments did not comply fully with APA notice-and-comment procedure, the challengers were not harmed because they in fact received notice and had a chance to submit comments.

Considerations for Congress

Congress has a great degree of authority over whether and how courts review agency actions. The lower federal courts possess limited jurisdiction and can only act when authorized by the Constitution and statute. Because the APA provides the default rules for how and when courts may review agency actions, Congress can amend the APA to change these conditions. In addition, Congress can create statutory exceptions to the APA's default rules for particular agencies or types of agency action.

Members introduced several bills in the 118th Congress that would modify the scope of judicial review under the APA. Some bills introduced before the Court's decision in *Loper Bright* would explicitly direct courts to give no deference to agency interpretations of statutes or regulations. For example, the Separation of Powers Restoration Act (SOPRA), H.R. 288 (which passed the House on June 15, 2023), S. 4527, and S. 4727, would require courts to examine "de novo relevant questions of law, including the interpretation of constitutional and statutory provisions" and "rules made by agencies." Similarly, the Regulatory Accountability Act, S. 1615 and H.R. 442, would require courts to consider additional factors, such as the thoroughness and validity of an agency's reasoning, when determining how much weight to give an agency's interpretation of its own rule. The likely effect of these bills after *Loper Bright* would be to codify *Loper Bright* and limit or eliminate *Auer* deference.

Since the Court's decisions in *Loper Bright* and *Corner Post*, Members have introduced additional bills affecting judicial review under the APA. Some, like the Bureaucratic Overreach Review Act, S. 4641; the Sunset Chevron Act, H.R. 8889; and the Returning Power to the People Act of 2024, H.R. 8928, would require the Government Accountability Office to compile a list of regulations upheld under *Chevron* and

either automatically sunset those regulations or require agencies to reexamine them. Conversely, the Stop Corporate Capture Act, S. 4749, would, among other things, codify *Chevron* deference by amending the scope of judicial review under Section 706 of the APA. (It is not clear whether this codification would survive Supreme Court review; the *Loper Bright* majority overruled *Chevron* on statutory grounds without reaching the petitioners' constitutional challenge to the doctrine, but at least two Justices have expressed doubt that *Chevron* deference is constitutional.) In addition, the Agency Stability Restoration Act of 2024, S. 4751, and Corner Post Reversal Act, H.R. 9014, would clarify that the six-year statute of limitations for reviewing agency actions would begin to run on the date the agency action becomes final, essentially abrogating *Corner Post*. (These bills follow the Supreme Court's acknowledgement in *Corner Post* that "the ball is in Congress' court.")

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