

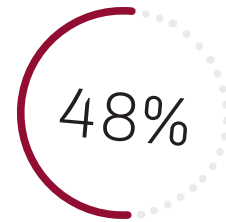


Administrative Law

Regulations and orders issued by federal agencies, as well as other agency actions, have monumental consequences for American businesses and professionals. We litigate challenges to agency actions under the Administrative Procedure Act (APA) and represent clients in agency proceedings. We work with trade associations and businesses across industries to challenge agency actions that transgress statutory or constitutional limits. We also represent parties that support agency actions, including decisions to deregulate, that are challenged by others.

PRACTICE AT A GLANCE

- Our team includes lawyers who have served in senior positions at a broad range of federal agencies—including the US Department of Justice, the agency tasked with defending APA challenges in court—and who have substantial knowledge of and experience in specific regulated industries.
- We regularly advise clients at every stage of the administrative process—from developing initial legal strategy and drafting comments during the rulemaking process to litigating in federal district or appellate courts across the country—and we are particularly well equipped to address novel and complex statutory and constitutional issues that arise during administrative law proceedings or resulting litigation.
- Significant agency actions are almost always challenged in court, either by the industry or party being regulated or by third parties objecting to agency deregulatory efforts or urging more stringent regulation. Parties that support agency actions challenged by others often intervene in the litigation to help defend the action at issue. Before litigation begins, we ensure that parties' interests are represented before the agency in question.



of cases pending in the DC Circuit as of the end of 2019 involved administrative agencies.

WilmerHale has deep experience handling DC Circuit appeals.

EXPERIENCE

- Obtained a preliminary injunction and temporary restraining order for a leading medical provider in an emergency challenge to a “midnight” rule (a rule issued by an outgoing administration after a presidential election) promulgated by the Department of Health and Human Services.
- Successfully represented trade associations in APA litigation challenging the Fiduciary Rule promulgated by the Department of Labor to regulate the life insurance and financial services industries.
- Successfully represented a major defense company in an APA challenge to an adverse Sarbanes Oxley whistleblower retaliation determination by the Department of Labor Administrative Review Board.
- Successfully litigated an immigration case in which the US Supreme Court held that an immigration policy was arbitrary and capricious.
- Represented a property and casualty insurers association in an APA challenge to a Department of Housing and Urban Development rulemaking that applied disparate impact analysis under the Fair Housing Act to homeowners insurers.
- Represented a major financial institution in a federal court challenge to penalties assessed by the Federal Energy Regulatory Commission for alleged manipulation of pricing in wholesale electric energy markets.
- Represented Native American tribes in APA suits challenging or defending Department of the Interior actions.
- Represented a trade association in multiple DC Circuit challenges to EPA rules and decisions relating to the Renewable Fuel Standard.
- Successfully defended clients in Federal Trade Commission privacy, information security and advertising investigations.
- Represented a major student loan servicer in enforcement litigation initiated by the Consumer Financial Protection Bureau.
- Challenged the Federal Communications Commission’s application of its indecency policy on several grounds and challenged the Commission’s children television regulations as contrary to law.
- Represented a biopharma company in an APA challenge to a CMS decision under the Part D program.
- Persuaded the Small Business Administration’s Office of Hearings and Appeals to reverse its ruling concerning a telecommunications company’s classification under the Small Business Act.
- Successfully represented a trade association as an *amicus*, before both the district court and the DC Circuit, in an APA challenge to the Financial Stability Oversight Council’s designation of a life insurance company as a systemically important financial institution.
- Prepared comments for a trade association in response to Notices of Proposed Rulemaking from the US Patent and Trademark Office regarding America Invents Act trials and patent prosecution requirements.

REPRESENTING CLIENTS IN AGENCY PROCEEDINGS, AND CHALLENGING OR DEFENDING REGULATIONS AND ORDERS BY A RANGE OF AGENCIES:

- Consumer Financial Protection Bureau
- Department of Agriculture, Defense, Education, Energy, Health and Human Services, Homeland Security, Housing and Urban Development, the Interior, Justice, Labor, and Transportation
- Drug Enforcement Administration
- Environmental Protection Agency
- Federal Aviation Administration
- Federal Communications Commission
- Federal Energy Regulatory Commission
- Federal Housing Finance Agency
- Federal Reserve Board
- Federal Trade Commission
- Financial Stability Oversight Council
- Food and Drug Administration
- Office of the Comptroller of the Currency
- Patent and Trademark Office
- Securities and Exchange Commission

For more information, please contact:

David W. Ogden — Partner | +1 202 663 6440 | david.ogden@wilmerhale.com

Kelly P. Dunbar — Partner | +1 202 663 6262 | kelly.dunbar@wilmerhale.com