
Administrative Law

Clients rely on our team of experienced regulatory litigators and former high-level Department of Justice and other agency officials to handle all aspects of administrative law litigation—from submitting comments to agencies and analyzing potential litigation challenges, to bringing and defending challenges in federal court.

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Regulations, Presidential Executive Orders, and other federal agency actions (including grant terminations) can have significant consequences for businesses, academic institutions, nonprofit entities, and individuals. Our attorneys have substantial experience both litigating challenges to agency actions and representing clients in agency proceedings. We work with trade associations, businesses in a wide range of industries, and other adversely affected parties to challenge federal government actions that transgress statutory or constitutional limits. We also represent parties that support Executive Branch actions—including decisions to deregulate—that are challenged by others.

Our team includes lawyers who have served in senior regulatory and litigation positions at a broad range of federal agencies—including the Department of Justice, the agency tasked with defending challenges in court. Our deep understanding of how the government defends challenges to agency actions allows us to best represent our clients who are either adverse to the government or seek to work with the government in defense of government actions. We also have substantial experience working with specific regulated industries, including healthcare, pharmaceuticals, financial institutions, communications, energy, technology, and defense. Our team regularly advises clients at every stage of the administrative process—from developing an 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 proceedings or resulting litigation.

Significant agency actions are almost always challenged in court, often under the APA. Agency

and other executive actions can be challenged under the Constitution, as contrary to statute, or as arbitrary and capricious. The challenges can be brought 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 even begins, parties should ensure that their interests are represented before the agency in question. We assist clients during agency proceedings of all types, and we have challenged—and in other contexts, defended—regulations and orders by a wide range of federal agencies, including the:

- Department of Agriculture
- Department of Defense
- Department of Education
- Department of Energy
- Department of Health and Human Services (HHS)
- Department of Homeland Security
- Department of Housing and Urban Development (HUD)
- Department of Interior (DOI)
- Department of Justice (DOJ)
- Department of Labor (DOL)
- Department of Transportation
- Consumer Financial Protection Bureau (CFPB)
- Drug Enforcement Administration
- Environmental Protection Agency (EPA)
- Federal Aviation Administration
- Federal Communications Commission (FCC)
- Federal Energy Regulatory Commission (FERC)
- Financial Stability Oversight Council (FSOC)
- Federal Trade Commission (FTC)
- Food and Drug Administration (FDA)
- Patent and Trademark Office (PTO)
- Securities and Exchange Commission (SEC)
- Federal banking agencies such as the Federal Reserve Board and Office of the Comptroller of the Currency (OCC)

Whenever there is a change in Administration, there is typically an increase in the volume of Presidential and agency actions that may significantly affect regulated parties. In the coming years, we anticipate significant actions relating to trade, higher education, healthcare, pharmaceuticals, energy and the environment, immigration, and communications, among others. We are well situated to bring and defend challenges in these and other areas.

Key Contacts



Brian M. Boynton

PARTNER

✉ brian.boynton@wilmerhale.com

📍 WASHINGTON DC

☎ + 1 202 663 6137



David W. Ogden

PARTNER

✉ david.ogden@wilmerhale.com

📍 WASHINGTON DC

☎ + 1 202 663 6440



Kelly P. Dunbar

PARTNER

✉ kelly.dunbar@wilmerhale.com

📍 WASHINGTON DC

☎ + 1 202 663 6262

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HEALTHCARE

- Obtained a preliminary injunction and temporary restraining order on behalf of a leading medical provider in an emergency preliminary injunction challenge to a midnight rule promulgated by HHS.
- Represented a biopharma company in an APA challenge to a CMS decision denying Medicare coverage for its primary drug product.
- Challenged a decision by the secretary of HHS to exclude a former executive at a medical device manufacturer from participation in federal healthcare programs based upon a strict liability misdemeanor conviction.
- Represented a major prescription drug wholesaler in an APA challenge to a Drug Enforcement Administration order suspending the registration of one of the company's distribution facilities.
- Represent four groups of hospitals in APA litigation in the DC Circuit challenging HHS's decision to approve California's Medi-Cal reimbursement plan that discriminates against out of state hospitals.

FINANCIAL SERVICES

- Represented trade associations in APA litigation challenging the "Fiduciary Rule" promulgated by the DOL to regulate the life insurance and financial services industries.
- Represented an association of property and casualty insurers in an APA challenge to a rulemaking by the HUD that applied disparate impact analysis under the Fair Housing Act to homeowners insurers.
- Represented a major student loan servicer in enforcement litigation initiated by the CFPB.
- Represented a company in litigation contesting enforcement of a civil investigative demand issued by the CFPB.
- Represented an individual former bank employee in administrative enforcement proceedings initiated by the OCC.
- Advised a major life insurance company in connection with its designation as a systemically important financial institution by the FSOC.
- Represented a major business organization as an amicus in support of a petition challenging the portions of an SEC and Federal Reserve Board rule issued under the Dodd-Frank Act that placed credit-risk-retention requirements on managers of collateralized loan obligations.
- Represented a trade association as an amicus, before both the district court and the DC Circuit, in an APA challenge to the FSOC's designation of a life insurance company as a systemically important financial institution.

COMMUNICATIONS

- Represented an intervenor and served as co-counsel to a petitioner in a challenge to an FCC order implementing the Telephone Consumer Protection Act.

- Obtained a stay of the FCC’s wireless E911 location accuracy requirements from the DC Circuit.
- Advised a major national programmer on regulatory and litigation options in connection with the FCC’s set-top-box rulemaking.
- Submitted comments to the FCC on behalf of a communications company in FCC Open Internet rulemaking proceedings.
- Challenged the FCC’s application of its indecency policy on several grounds, and also challenged the FCC’s children television regulations as contrary to law.
- Persuaded the Small Business Administration’s Office of Hearings and Appeals to reverse its previous ruling concerning a telecommunications company’s classification under the Small Business Act.

ENERGY & ENVIRONMENT

- Represented a producer of cellulosic ethanol challenging EPA’s decision not to provide appropriate credits under the Renewable Fuel Standards
- Challenged FERC’s approval of a pipeline lease on the grounds that it was discriminatory and would harm existing pipeline customers.
- Represented a major financial institution in a federal court challenge to penalties assessed by FERC for alleged manipulation of pricing in wholesale electric energy markets.
- Represented an intervenor in the DC Circuit in its defense of an EPA rule allowing up to 15% ethanol to be blended with gasoline.

BUSINESS REGULATION

- Represent tax-preparation company in challenge to FTC administrative finding of deceptive advertising.
- Successfully defended clients in FTC privacy, information security, and advertising investigations.
- Advised a trade association in connection with litigation challenging the DOL overtime rules.
- Submitted comments on behalf of trade groups regarding a DOJ rulemaking adjusting False Claims Act penalties for inflation.

PATENT AND TRADEMARK OFFICE

- Litigated multiple APA challenges to decisions by the PTO improperly calculating the length of patent term adjustments.
- Prepared comments on behalf of 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.

NATIVE AMERICAN LAW

- Represented Native American tribes in APA suits challenging or defending actions by the DOI, including defending a decision by the DOI to allow a tribe to develop a gaming facility on a parcel of land in California under the Indian Gaming Regulatory Act and to take that land into trust for the tribe under the Indian Reorganization Act.

IMMIGRATION

- Litigated an immigration case in which the US Supreme Court held that an agency policy was arbitrary and capricious.

TRANSPORTATION

- Represented a major passenger railroad company as intervenor in an APA action in the Eighth Circuit in defense of a rule promulgated by the Surface Transportation Board.

ELECTION LAW

- Challenged a regulation issued by the Federal Election Commission.