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*The Case for (Finally) Fixing the APA's Definition of "Rule"*

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Abstract by Raymond R. Janairo

The author comments on the inability of Congress to clarify the definition of “rule” within the APA. In particular, the author takes issue with § 551(4) and Congress’ inclusion of “particular applicability” and “future effect” in the definition of rule. Although the masses do not perceive this as a particularly salient legislative issue, the inclusion of these words, the author argues, has led even the ablest of jurists down the path of incorrect interpretation. The “proper definition of ‘rule’ [should] turn on generality, not prospectivity.” Moreover, although retroactivity is disfavored, the “future effect language” flies in the face of actual practice. After presenting his basic recommendation—that is, removing “particular applicability” and “future effect” from § 551(4)—the author discusses two implementation issues that Congress must address. First, Congress must address whether the definition of “rule” should continue to include ratemaking, corporate reorganization and other types of specific actions listed in § 551(4) and what effect that would have separation of function provisions. Second, Congress must consider the scope of general applicability and where the boundaries lie in determining whether a statement is a rule. The author finally concludes that the modern focus on positive law is a sufficient reason to pursue the amendments.