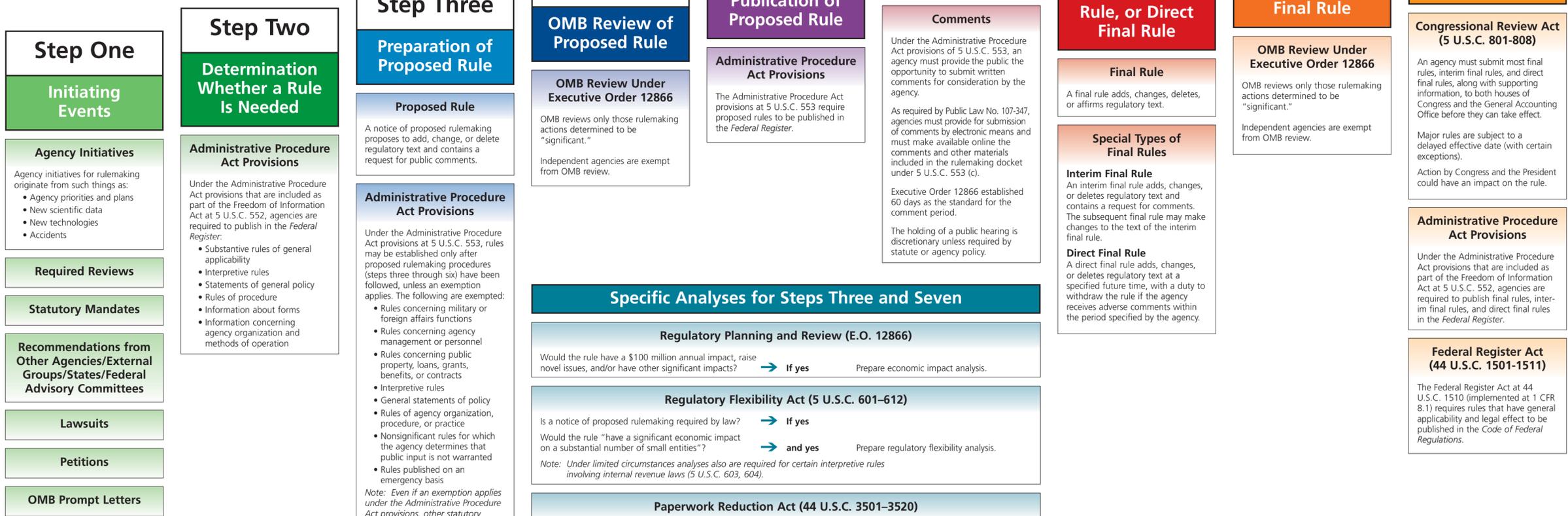


The Reg Map

Informal Rulemaking



Using The Reg Map

The Reg Map is based on general requirements. In some cases, more stringent or less stringent requirements are imposed by statutory provisions that are agency specific or subject matter specific. Also, in some cases more stringent requirements are imposed by agency policy.

In a typical case, a rulemaking action would proceed from step one through step nine with a proposed rule and a final rule.

However, if a rulemaking action is exempt from the proposed rulemaking procedures under the Administrative Procedure Act provisions (explained under step three) or under other statutory authority, an agency may:

- promulgate a final rule omitting steps three through six, or
- promulgate an interim final rule omitting steps three through six, but providing a comment period and a final rule after step nine.

Also, if an agency determines that a rule likely would not generate adverse comment, the agency may promulgate a direct final rule, omitting steps three through six, but with a duty to withdraw the rule if the agency receives adverse comments within the period specified by the agency.

Optional Supplementary Procedures to Help Prepare a Proposed Rule

Advance Notice of Proposed Rulemaking
An advance notice of proposed rulemaking requests information needed for developing a proposed rule.

Negotiated Rulemaking
Negotiated rulemaking is a mechanism under the Negotiated Rulemaking Act (5 U.S.C. 561-570) for bringing together representatives of an agency and the various interests to negotiate the text of a proposed rule.

Specific Analyses for Steps Three and Seven

Regulatory Planning and Review (E.O. 12866)		
Would the rule have a \$100 million annual impact, raise novel issues, and/or have other significant impacts?	→ If yes	Prepare economic impact analysis.
Regulatory Flexibility Act (5 U.S.C. 601-612)		
Is a notice of proposed rulemaking required by law?	→ If yes	
Would the rule "have a significant economic impact on a substantial number of small entities"?	→ and yes	Prepare regulatory flexibility analysis.
<i>Note: Under limited circumstances analyses also are required for certain interpretive rules involving internal revenue laws (5 U.S.C. 603, 604).</i>		
Paperwork Reduction Act (44 U.S.C. 3501-3520)		
Does the rule contain a "collection of information" (reporting, disclosure, or recordkeeping)?	→ If yes	Prepare information collection clearance package for OMB review and approval, and prepare request for public comments.
Unfunded Mandates Reform Act (2 U.S.C. Chs. 17A, 25)		
Does the rulemaking process include a proposed rule?	→ If yes	
Does the rule include any Federal mandate that may result in the expenditure (direct costs minus direct savings) by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million in any one year (adjusted annually)?	→ and yes	Prepare unfunded mandates analysis (unless an exclusion applies).
Federalism (E.O. 13132)		
Is the rule a discretionary rule that has federalism implications and imposes substantial unreimbursed direct compliance costs on State and local governments?	→ If yes	Prepare federalism summary impact statement.
Does the rule have federalism implications and preempt State law?	→ If yes	Prepare federalism summary impact statement.
Indian Tribal Governments (E.O. 13175)		
Is the rule a discretionary rule that has tribal implications and imposes substantial unreimbursed direct compliance costs on Indian tribal governments?	→ If yes	Prepare tribal summary impact statement.
Does the rule have tribal implications and preempt tribal law?	→ If yes	Prepare tribal summary impact statement.
National Environmental Policy Act (42 U.S.C. 4321-4347)		
Is the rule categorically excluded from review?	→ If no	
Does the rule constitute a major Federal action that could significantly affect the quality of the human environment?	→ and yes	Prepare environmental assessment or environmental impact statement, as appropriate.
National Technology Transfer and Advancement Act (15 U.S.C. 272 note)		
Does the rule contain provisions for which the use of voluntary standards is applicable?	→ If yes	Adopt voluntary consensus standards or explain why not.
Governmental Actions and Interference with Constitutionally Protected Property Rights (E.O. 12630)		
Does the rule regulate private property use for the protection of public health or safety?	→ If yes	Prepare takings analysis.
Is the rulemaking a proposed regulatory action that has takings implications (other than regulating private property for the protection of public health and safety)?	→ If yes	Prepare takings analysis.
Protection of Children from Environmental Health Risks and Safety Risks (E.O. 13045)		
Is the rulemaking a "covered regulatory action"?	→ If yes	Prepare analysis of the environmental health or safety effects on children.
Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use (E.O. 13211)		
Is the rulemaking action a "significant energy action"?	→ If yes	Prepare statement of energy effects.

Drafting Requirements for Rulemaking Documents

- Regulatory Planning and Review (E.O. 12866)**
Rulemaking documents must comply with the specified regulatory philosophy and principles of regulation.
- Civil Justice Reform (E.O. 12988)**
Rulemaking documents must be written in clear language designed to help reduce litigation.
- Presidential Memorandum on Plain Language (63 FR 31885)**
Rulemaking documents must comply with plain language principles.
- Federal Register Publications**
Rulemaking documents must comply with the Federal Register regulations (1 CFR). Additional guidance and requirements are contained in the Federal Register's *Document Drafting Handbook*.

Agendas for Rules Under Development or Review

- Unified Regulatory Agenda**
The Unified Regulatory Agenda provides information concerning agency rules under development or review.
The Unified Regulatory Agenda is published in the *Federal Register* in the spring and fall of each year.
- Regulatory Plan**
The Regulatory Plan provides information concerning the most important significant regulatory actions that the agency is planning to take.
The Regulatory Plan is published in the Unified Regulatory Agenda in the fall of each year.
- Regulatory Flexibility Agenda**
The Regulatory Flexibility Agenda provides information concerning any rule that an agency expects to prepare or promulgate that is likely to have a significant economic impact on a substantial number of small entities.
Agency regulatory flexibility agendas are published as part of the Unified Regulatory Agenda in the spring and fall of each year.



Experts in drafting rulemaking documents and preparing supporting analyses

Visit us at www.regsupport.com. Also, check out www.CommentWorks.com for a faster, cheaper, and better way to respond to public comments on proposed rules.

Copyright ©2003 by ICF Incorporated.
All rights reserved. This document may not be reproduced in any form without permission.