Congressional Research Service
Informing the legislative debate since 1914

IN FOCUS

Updated July 15, 2026

An Overview of Federal Regulations and the Rulemaking Process

Overview of Rulemaking

What Is Federal Rulemaking? Congress often grants rulemaking authority to federal agencies to implement statutory programs. The regulations issued pursuant to this authority can carry the force and effect of law and have substantial implications for policy implementation. When issuing these regulations, agencies are required to follow a certain set of procedures prescribed in law and executive order. These procedures collectively comprise the federal rulemaking process.

> "A valid legislative rule is binding upon all persons, and on the courts, to the same extent as a congressional statute. When Congress delegates rulemaking authority to an agency, and the agency adopts legislative rules, the agency stands in the place of Congress and makes law." —National Latino Media Coalition v. Federal Communications Commission, 816 F.2d 785, 788 (D.C. Cir. 1987)

Why Does Congress Delegate Rulemaking Authority? Congress delegates rulemaking authority to agencies for a number of reasons. Perhaps most importantly, agencies possess significant technical expertise and can establish details of programs that Congress created in statute. Also, even after delegating rulemaking authority to agencies, Congress retains its general legislative power and can conduct oversight, modify or repeal regulations, and amend agencies' underlying statutory authority. Congress has maintained control over the rulemaking process itself by enacting statutory procedural controls, such as stipulating that the public has an opportunity for participation through the public comment process required by the Administrative Procedure Act (APA).

On the other hand, sometimes Members of Congress and outside observers have been critical of Congress's delegation of rulemaking authority. One commonly cited concern is that agency personnel and officials who write regulations are not as directly accountable to the electorate as Members of Congress. In addition, agencies may issue rules in a manner that is inconsistent with congressional intent. Congress may mitigate these criticisms by stating their intent more precisely; the more precise statutory directives are, the less discretion an agency has to independently develop policy objectives.

The Rulemaking Process

Introduction. By delegating authority to federal agencies to write and enforce regulations that have the force and effect of law, Congress provides those agencies with considerable power. Therefore, to control the process by which agencies create these rules, Congress has enacted procedural statutes, such as the APA, that dictate what procedures an agency must follow to establish a final, legally binding rule. The rulemaking process, including the requirements of the APA, is summarized in **Figure 1**.

Figure 1. The Rulemaking Process

Source: Graphic created by CRS.

APA: Notice and Comment Rulemaking. Unless an agency's authorizing statute provides for different procedures, the APA provides the default practice that all agencies must follow to promulgate rules. The APA stipulates that these procedures are to apply whenever an agency creates, amends, or repeals a rule.

Section 553 of the APA requires that an agency generally must first provide notice that it intends to promulgate a rule. An agency does this by publishing a notice of proposed rulemaking in the *Federal Register*. The notice must provide information about any rulemaking proceedings, a reference to the legal authority under which the rule is proposed, and the terms or subject of the proposed rule.

The agency must then allow "interested persons an opportunity" to comment on the proposed rule. Typically, an agency will provide at least 30 days for public comment, and most agencies primarily solicit comments on the website Regulations.gov. The agency must review the public comments and may make changes to the proposal.

Once this process is complete, the agency is to publish the final rule in the *Federal Register* along with a "concise general statement" of the rule's "basis and purpose" and the agency's responses to the public comments. The rule may not go into effect until at least 30 days after it is published in the *Federal Register*, with certain exceptions.

An agency need not follow notice and comment procedures when promulgating certain rules such as guidance documents, which include interpretive rules and general statements of policy; matters affecting agency management or personnel; matters relating to public property, loans, grants, benefits, or contracts; and matters that constitute a military or foreign affairs function of the United States. Also, if undergoing a full rulemaking process is "impracticable, unnecessary, or contrary to the public interest," an agency may go straight to issuing a final rule.

Office of Information and Regulatory Affairs (OIRA) Review of Rules. In 1981, President Ronald Reagan issued Executive Order (E.O.) 12291, which established centralized review of most agencies' rules through the Office of Management and Budget's OIRA. In 1993, President Bill Clinton issued E.O. 12866, which replaced President Reagan's order but left much of the centralized review process intact. Under E.O. 12866, which still remains in effect as amended, agencies submit their "significant" proposed and final rules to OIRA for review prior to publication. In addition, covered agencies must determine whether a rule is *economically significant* and, if it is, conduct a cost-benefit analysis of the rule, ensuring that the benefits justify the rule's costs. OIRA reviews the content of the rule and the quality of the cost-benefit analysis to ensure that the rule is consistent with the President's policy preferences. As part of its review, OIRA also oversees an interagency review process that involves seeking further input on the rule from other agencies, including entities within the Executive Office of the President, such as the Office of White House Counsel, that may have an interest in the substance of the rule.

Various Presidents have made additional changes to the rulemaking process by establishing their own regulatory processes and policies, often tasking OIRA with implementation of these changes. For example, President Trump has established a regulatory budget and a "ten-for-one rule" for new regulations, and OIRA has issued guidance to agencies on implementation.

Judicial Review of Agency Action

In addition to the procedural controls in the APA, described above, Congress also established an oversight role for courts.

Availability of Judicial Review. The APA provides for a strong presumption of judicial review of final agency action. The APA provides judicial recourse for a person aggrieved by final agency action unless a statute precludes judicial review or leaves a decision to agency discretion.

Scope of Judicial Review. Under the APA, a court may compel any agency action that is unreasonably delayed or unlawfully withheld. A court may vacate an agency rule if the agency acted (1) arbitrarily or capriciously, (2) in excess of its statutory authority, (3) contrary to a constitutional right, or (4) in violation of procedures required by statute.

Congressional Oversight

Statutory Control over Agency Action. Congress maintains ultimate control over federal agencies' actions through individual statutes, as well as by creating procedural controls in statute. Congress can pass statutes that expand or contract agency authority, repeal existing rules, or compel an agency to issue certain rules. Congress can also change the procedures agencies must follow in order to promulgate a valid regulation.

Congressional Review Act (CRA). Congress can use the CRA to overturn rules through enactment of a joint resolution of disapproval. The CRA requires agencies to submit rules to Congress and provides Congress, particularly the Senate, with a special set of fast-track procedures to facilitate overturning regulations through legislation.

Appropriations. Congress may use the "power of the purse" to prevent agencies from acting in certain ways. If Congress does not want an agency to issue a rule or to enforce a previously finalized rule, it may prohibit the agency from using appropriated funds for certain actions, such as developing, finalizing, or implementing the rule.

Other Forms of Congressional Oversight. Beyond Congress's power to legislate, Congress may also use the traditional tools of congressional oversight to direct agency priorities and to influence agency actions. Such congressional tools might include holding committee hearings or gathering information on an agency's rulemaking activities. Members of Congress can also submit comments on regulations and request meetings with an agency or with OIRA.

Online Resources. Various websites and online resources can be useful for tracking regulations. CRS is available to provide assistance with using these resources.

- https://www.federalregister.gov: search or browse proposed and final rules in current and past issues of the *Federal Register*
- https://www.regulations.gov: submit comments on rules and read other comments
- https://www.reginfo.gov: search proposed and final rules under review at OIRA; search the Unified Agenda, which is a list published twice each year by OIRA that identifies proposed and final rules under development in all federal agencies
- https://www.gao.gov/legal/congressional-review-act: search for "major" rules and rules submitted to the Government Accountability Office under the CRA
- https://www.congress.gov: search for rules received in the House and Senate under the CRA (under "House Communications" and "Senate Communications")

•

Maeve P. Carey, Specialist in Government Organization and Management

Disclaimer