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Transparency, Public Consultation Practices and Government Accountability in U.S. Rulemaking

IN-DEPTH ANALYSIS FOR THE AFCO COMMITTEE

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2015

DIRECTORATE GENERAL FOR INTERNAL POLICIES

POLICY DEPARTMENT C: CITIZENS' RIGHTS AND CONSTITUTIONAL AFFAIRS

CONSTITUTIONAL AFFAIRS

Transparency, Public Consultation Practices and Government Accountability in U.S. Rulemaking

In-Depth Analysis

Abstract

This paper provides basic information on transparency, public participation and government accountability in U.S. rulemaking procedures, in constitutional and historical context. Under the U.S. Administrative Procedure Act, regulatory agencies must (1) provide the public with sufficient specific information about a regulatory proposal to fairly apprise interested parties of the subjects and issues involved so that they may present responsive data or arguments, and (2) consider, analyze and address significant public comments when issuing any final rule.

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LIST OF ABBREVIATIONS

APA	Administrative Procedure Act
CFR	Code of Federal Regulations
EO	Executive Order
FACA	Federal Advisory Committee Act
FOIA	Freedom of Information Act
NPRM	Notice of Proposed Rulemaking
OIRA	Office of Information and Regulatory Affairs
OMB	Office of Management and Budget
USC	U.S. Code

EXECUTIVE SUMMARY

On June 17, 2015, the AFCO committee held a workshop on "Best Practices in Legislative and Regulatory Processes in a Constitutional Perspective" in which the author participated, to provide information about U.S. approaches to *transparency, public consultation practices, and government accountability in rulemaking by U.S. Federal agencies.* This paper reflects and supplements the author's oral contribution, focusing on clarifying the fundamental requirements of the U.S. Administrative Procedure Act (APA) with respect to rulemaking, with the aid of two explanatory graphs (Figures 1 and 2). It covers:

- the U.S. constitutional context, in which the President's role is limited, and agencies may not act without Congressionally delegated statutory authority;

- the historical context of the APA, including a fear of over-reaching by unelected federal officials and a desire to level the playing field for outside stakeholders potentially affected by a future rule;

- the basic requirements of the APA, including (1) a Notice of Proposed Rulemaking containing sufficient information about a regulatory proposal to fairly apprise interested parties of the subjects and issues involved so that they may present responsive data or arguments—usually including the draft text of the proposal, a description and references to any underlying studies, and extensive explanatory materials about the object and purpose of the draft rule (2) the requirement for agencies to consider and analyze significant public comments received and to ensure that their Final Rule addresses them, whether by modifying the rule in light of the comments or explaining why it was not necessary or appropriate to do so.

This paper also briefly delineates supplementary public outreach activities and accountability mechanisms, whether provided for in Presidential guidance, additional statutes, or on the basis of an agency's own initiative.

Background

This paper reflects and supplements the author's oral contribution to the AFCO Workshop held on June 17, 2015, with a view to sharing information about key transparency, public consultation practices, and accountability mechanisms of the U.S. Executive Branch in developing regulations. U.S. regulatory procedures more generally include not only requirements set out in specific laws, but also those specified in important Presidential guidance that has evolved in the last thirty-five years. In American law schools, a semester long-course is typically devoted to teaching a basic introduction to U.S. administrative law. Rather than attempt to catalogue U.S. regulatory requirements, this contribution focuses on what might be described as "minimum" essential requirements of the U.S. Administrative Procedure Act with respect to rulemaking, to permit a greater understanding of the features of the statute that help ensure meaningful public participation and government accountability in rulemaking.

1. U.S. CONSTITUTIONAL FRAMEWORK FOR REGULATORY DEVELOPMENT

The United States Constitution reflects what might be considered a greater separation of the legislative and executive powers than in traditional parliamentary systems (See Figure 1). The U.S. Constitution gives Congress—the legislative branch of government—the authority to enact legislation. Although the President may sometimes recommend bills, only a Member of Congress can introduce legislation, and Congress has complete discretion concerning its legislative agenda.

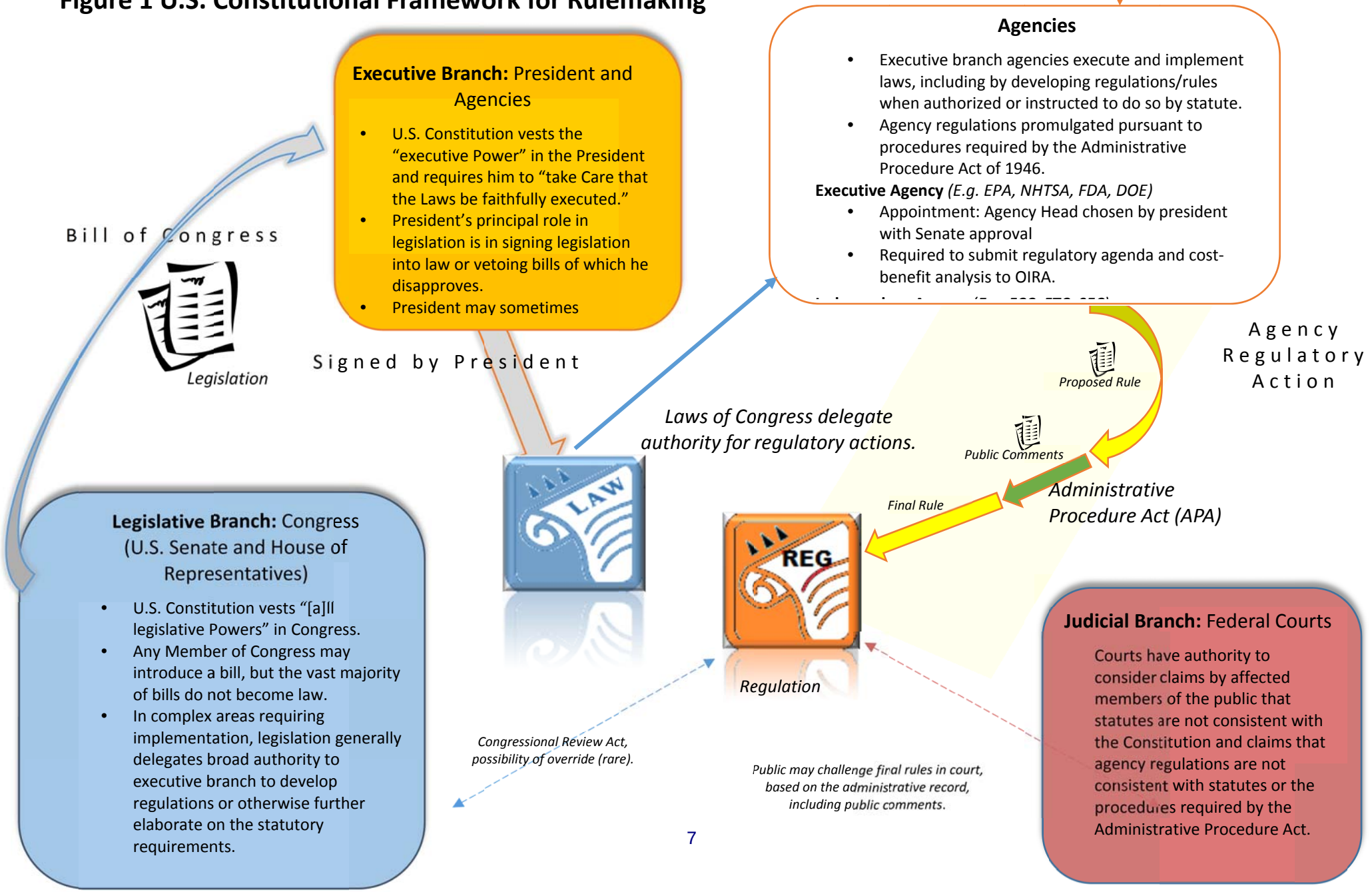
The President is directly elected and responsible for implementing laws passed by Congress. The Constitution vests "executive Power" in the President, and requires him to "take Care that the Laws be faithfully executed." The President's principal role in legislation is in signing a bill into law or vetoing bills of which he disapproves. Once Congress sends a bill to the President, and he signs it, the bill becomes law.

Congress is a bicameral legislature consisting of the U.S. House of Representatives and the U.S. Senate. Any Member of Congress may introduce a bill, but most bills do not become law. Congress members have direct accountability to their electorates, whether at the district level (U.S. House of Representatives) or state level (U.S. Senate).

Although the Constitution vests "[a]ll legislative Power" in the Congress, over the past century, in complex areas (such as food safety, transportation, and environmental protection), Congress has enacted statutes setting out general standards and broadly delegating authority to Executive Branch agencies to develop and issue regulations with more specific requirements.

Agency heads are appointed by the President, subject to the "advice and consent" of the Senate. However, other than top-level "political appointees," agencies are staffed by a permanent civil service, employees hired without consideration of political affiliation. In this context, the challenge for U.S. democracy has been to ensure that unelected administrative officials can be held as accountable to members of the public as elected officials. This challenge is the backdrop for the Administrative Procedure Act.

Figure 1 U.S. Constitutional Framework for Rulemaking



2. HISTORICAL CONTEXT OF THE PASSAGE OF THE ADMINISTRATIVE PROCEDURE ACT IN 1946

Contemporary U.S. administrative law developed out of the severe economic crisis of the 1930s. As later described by the U.S. Supreme Court, the Administrative Procedure Act "was framed against a background of rapid expansion of the administrative process as a check upon administrators whose zeal might otherwise have carried them to excesses not contemplated in legislation creating their offices."[1]

As the United States was dealing with the Great Depression, President Roosevelt introduced a series of policies known as the "New Deal." Consistent with those policies, Congress enacted legislation that expanded the authority of the federal Executive Branch by creating new regulatory agencies charged with significant responsibilities, such as stabilizing the economy, regulating markets, and providing financial security for individuals. The new measures greatly expanded the authority of a large number of skilled but unelected civil servants. This new "administrative state" raised questions about how the other two branches of government – the legislature and the judiciary – would hold the regulatory bureaucracy accountable for its actions; how interested stakeholders, whether in Washington or outside, would be able to participate in the regulatory process dominated by unelected officials; and about how to ensure fairness and transparency of the administrative process on a consistent, predictable basis.

At the end of the 1930s, the U.S. Attorney General (the official in charge of the U.S. Department of Justice) convened Committee on Administrative Procedure, made up of public officials and private citizens. That committee surveyed the major federal agencies to understand how each interacted with stakeholders and the broader public and to identify what today might be called "best practices." The committee met from 1938 to 1941, and its 1941 report and recommendations[2] ultimately led to the passage of the Administrative Procedure Act in 1946. The APA established a single set of uniform obligations—"minimum basic essentials" —on all federal agencies, whether called Executive Branch or "independent" agencies.

[1] *United States v. Morton Salt C*o., 338 U.S. 632, 644 (1950).

[2] Final Report of Attorney General's Committee on Administrative Procedure (1941), a*vailable at* http://archive.law.fsu.edu/library/admin/pdfdownload/apa1941.pdf

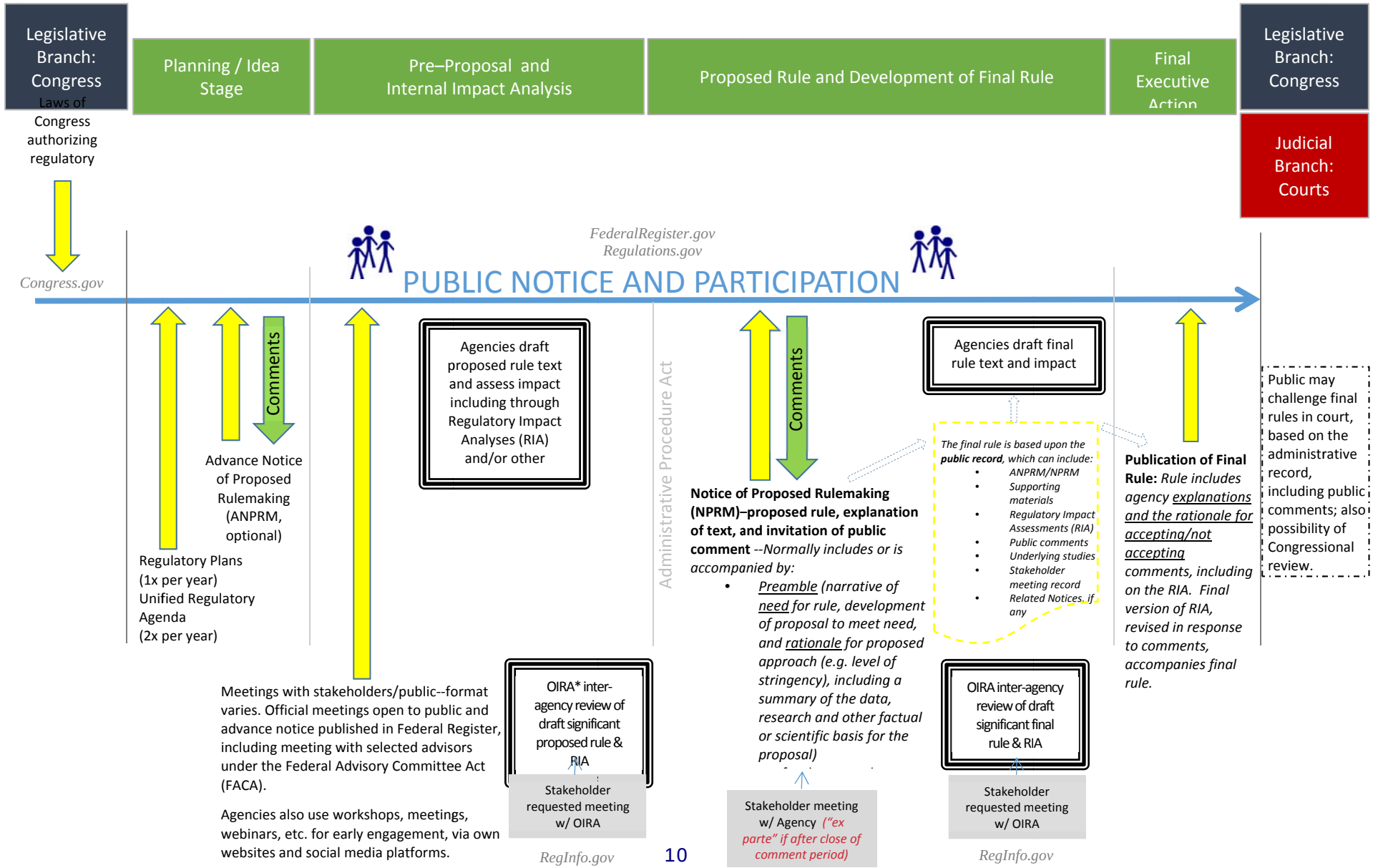
3. BASIC STRUCTURE OF THE APA

The APA for the first time required agencies to publish all their governing procedures and to allow any member of the public to petition the agency for a change or even a repeal of a regulation. But the most prominent reforms involved the procedures that apply to the development of rules.

As a matter of structure, the APA makes a fundamental distinction between two types of regulatory actions. The first kind are "orders," which determine rights and liabilities of individuals in respect of existing requirements. Orders usually are retrospective, and are the product of agency adjudication. The second kind involves "rules." Specifically, the APA defines "rule" as "an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of an agency." In short, a rule usually sets a standard for *future* conduct of persons, designed to implement, interpret, or prescribe law or policy for the future.[3]

[3] The form of APA rulemaking discussed in this paper is commonly known as informal notice and comment rulemaking that is conducted under 5 U.S.C. § 553. At the time of enactment of the APA, however, many agencies engaged in a formal rulemaking through an adversarial hearing like adjudication under 5 U.S.C. §§ 556-557. As agency rulemaking has evolved historically since enactment of the APA, most Federal agency rulemakings have gravitated towards use of the informal notice and comment rulemaking model outlined in this paper.

U.S. Executive Branch Regulatory Development: Public Notice, Input Opportunities, and Government Accountability



*Executive Office of the President, Office of Management and Budget, Office of Information and Regulatory Affairs

4. FUNDAMENTAL MINIMUM PUBLIC RIGHTS IN RULEMAKING

Figure 2 sets out the main features of public notice and participation opportunities in the U.S. rulemaking process as they have evolved today. As shown in the first part of the timeline, U.S. agencies engage in a variety of practices to provide notice of future activities to the public or otherwise encourage public input, before they draft the text of the rule.[4] However, after agencies have settled on a tentative single approach to a rule, the Administrative Procedure Act lays out fundamental requirements with respect to public participation. At the most critical moment, when the maximum information is available for stakeholders to review, agencies must provide the public with an opportunity to comment on the text of the rule or on the substance of the regulatory proposal[5] and other key information underlying the proposal. The APA also guarantees that agencies will consider public comments in developing the final rule. In effect, these requirements provide a baseline of "due process" with respect to public participation, evidence-based decision making, and accountability in rulemaking; they are supplemented by Presidential guidance, and often by specific statutes, such as the Clean Air Act or other laws, which may contain additional procedures to protect the public interest (see part 5, below).

4.1. Notice of Proposed Rulemaking (NPRM)

Once an agency has developed the content of a proposed regulation, the APA requires that the agency publish a proposed rule in the *Federal Register* in what is known as the Notice of Proposed Rulemaking (NPRM). (In keeping with evolving technology, agencies now also post proposed rules on the single U.S. Federal Government portal for Federal Register notices[6], regulations.gov, and on their own websites.) As a practical matter, the notice must provide the public—any interested person, whether or not a national of the United States—with an adequate opportunity to submit "written data, views or arguments" on the proposed rule. The APA requires agencies usually to hold proposed rules open for comment for a period that "affords interested persons a reasonable and meaningful opportunity to participate in the rulemaking process." In practice, this normally ranges from between 30 to 60 days to much longer, for more complicated or technical rulemakings.[7]

Under the APA, the agencies must provide the public with sufficient information about the proposal to fairly apprise interested parties of the subjects and issues involved, so that the public may present responsive data or arguments. Accordingly, the NPRM usually includes several essential pieces of information:

- the draft text of the proposed rule;
- a preamble explaining the need for the rule and the specific efforts made by the agencies to formulate the rule to meet that need; and
- a non-legalistic explanation of the rationale for the proposed approach, including a summary of the factual and/or scientific basis for the rule.

In keeping with evidence-based decision-making requirements, in addition to the proposed text of the regulation, the information on which the agency relies to support its proposal

[4] See APA, 5 U.S.C. §552(a)(1).
[5] See APA, 5 U.S.C. §553(b)(3).
[6] See APA, 5 U.S.C. §553(b).
[7] See APA, 5 U.S.C. §553(c).

must also be submitted for public comment. Thus, the public is also given notice and an opportunity to comment on any scientific or economic analysis relied upon, including any draft Regulatory Impact Assessment (which is required for regulations considered "economically significant").

From a policy perspective, the objectives of the NPRM are to give the public a chance to (1) provide the agency with *information* that will increase the agency's knowledge of the subject matter of the proposal (including for example, costs of implementation, alternative technologies, or practical or technical challenges concerning implementation or compliance with the proposed requirements) and (2) to *challenge the factual assumptions, analyses and tentative conclusions* underlying the agency's proposal and show in what respect they are in error.

In effect, the opportunity to comment on the NPRM makes it easier for those who operate far from Washington DC—including ordinary citizens, small businesses, government entities, as well as foreign companies—to have an impact in agency rulemaking. The underlying assumption of the APA is that, absent such procedures, some parties who would be affected by proposed regulations would be unlikely to participate in the regulatory process, unless they could hire consultants to do so.

The APA provided more flexibility to agencies under specific circumstances, allowing them to bypass notice and comment requirements for general statements of policy (which are not binding on either the Agency or the public); rules regarding military and foreign affairs; and rules relating to agency management, internal organization, procedure, practice, or personnel; or regarding public property, loans, grants, benefits or contracts. A reprieve is also provided for "interpretive rules," which allow agencies to explain ambiguous terms, and a seemingly broader exception, for "good cause," when notice and comment would be impracticable, unnecessary, or contrary to the public interest. However, this exception is construed narrowly; the courts have repeatedly struck down agencies' invocation of "good cause" to avoid notice and comment (recalling that the exception is "not an escape clause").[8]

4.2. Public Comments Considered and Analyzed

There are no restrictions on who may provide comment on a proposed agency regulation, whether within the United States or overseas, and there are no accreditation or other registration requirements. As a practical matter, all public comments are published as they are received, unless they contain "confidential" information, in which case a non-confidential version is posted.

The Final Rule must be a logical outgrowth of the full administrative record (which includes information from timely submitted comments), which is typically available in the public "docket." To ensure the integrity of the written comment process, agencies follow certain prudential principles during and after the notice and comment period. For example, to ensure equitable treatment for all potentially affected parties, and to avoid concerns about discriminatory treatment, agencies generally refrain from giving any third party details of pending or proposed rules that have not generally been given to the public. In addition, comments that are in effect part of the agency's administrative record must usually be publicly disclosed. To ensure this, agencies have procedures for handling communications that do not come in through the formal submission process. Thus, if someone gives an

[8] *E.g., Action on Smoking and Health v Civil Aeronautics Board*, 699 F.2d 1209, 1215-17 (D.C.Cir 1983).

agency a document outlining his recommendations regarding a proposed rule, the agency is expected to treat that document as a public comment and post it with the other public comments. For the same reasons, meetings or phone calls with individual stakeholders that provide substantive comments must be memorialized and placed in the administrative record. These actions are necessary because in order for the agency to rely on any information obtained through such a comment made outside the formal submission process in developing the final rule, it must be made part of the administrative record and made public.[9]

The APA legal framework ensures that obtaining public comment is not a mere box-checking exercise by the executive branch. Once the comments are submitted, regulators are required to *consider and analyze* any significant comments timely received from all interested stakeholders, from any source, without discrimination. This means that regulators may need to somehow clarify or even change the rule to address any substantive issues presented by the comments. If they do not do so, they must later explain the Agency's rationale for disagreeing with the comment or the rationale for how the issue was otherwise addressed, when they provide summarize and provide responses to significant comments at the time the final rule is published.

While reviewing what can often be thousands of comments may present a daunting challenge, the exercise is a technical one, and not approached as a referendum. As a practical matter, agencies have adopted fairly elaborate internal procedures to ensure that each comment of a substantive nature is examined and addressed. Each comment is considered on its own merits, in terms of the information or questions posed, rather than, for example, based on the importance or status of the author, or the number of people supporting it.

4.3. Issuance of Final Rule – Accountability

The Final Rule must usually be published at least 30 days before its effective date. The notice must include a statement of the "basis and purpose" of the rule, and, as noted above, the agency must provide elaborations of why the agency accepts or rejects each of the substantive comments received. The APA requires that the final rule be a logical outgrowth of the original proposal and the public comments, and that the final rule be rationally related to the available information in the administrative record, which includes timely received public comments (including any confidential information, and information criticizing the proposal), the underlying technical information on which the agency is relying to support the final rule, and other items considered in developing the final rule, such as any Regulatory Impact Assessment, underlying studies, and records of meetings with stakeholders.

4.4. Judicial Review

The U.S. Constitution vests the "Judicial Power" in the Supreme Court and in the lower courts created by Congress. Courts have authority to consider claims by affected members of the public that statutes are not consistent with the Constitution, and claims that agency regulations are not consistent with their enacting statutes or the procedures required by the Administrative Procedure Act or other applicable law. Specifically under the APA, after a final rule is published (along with the agencies' extensive explanations), affected parties

[9] Meetings also tend to be circumscribed by separate ethical rules prohibiting civil service employees from accepting a meal from outside stakeholders more than twice a year (and the value of the meal is limited to $20). Standards of Ethical Conduct for Employees of the Executive Branch, 5 C.F.R Part 2635.

can challenge the legality of a regulation in Court on the basis that it is "arbitrary, capricious, an abuse of discretion or otherwise not in accordance with law."[10] Although courts tend to defer to agencies' technical expertise (as the entities charged with implementation), many public interest groups, as well as private interests, have successfully challenged rules in which the Agency failed to consider or sufficiently address evidence in the record compiled during the rulemaking process.[11] If successful, public interest and industry groups may under some circumstances also be awarded attorneys' fees. There are no penalties other than judicial invalidation of the rule ("vacatur") and remand of the rule to the agency. Preliminary, non-final rules are not reviewable,

The U.S. Congress could, of course, also decide formally to override the Final Rule[12], or otherwise block implementation of a Final Rule, which does occur, but not frequently.

[10] 5 U.S.C. § 706(2)(A).
[11] *American Farm Bureau Federation v. U.S.E.P.A.*, -- F.3d --, 2015 WL 4069224, *8-*9 (3rd Cir., July 6, 2015) (upholding Clean Water Act rule).
[12] Congressional Review Act, 5 U.S.C. § 802(a).

5. SUPPLEMENTARY MECHANISMS

The core public outreach and accountability requirements of the APA have been supplemented by Presidential guidance, subsequent laws, statute-specific additional procedures, and practices undertaken by agencies on their own initiative.

The President may impose additional procedures that govern agency rulemaking through executive order, provided that they are consistent with the APA and other laws. In order to provide advanced notice of upcoming regulations, agencies describe their planned regulatory actions in the semiannual Unified Agenda of Federal Regulatory and Deregulatory Actions. In addition, the Regulatory Plan, which is published as part of the autumn edition of the Agenda, identifies each agency's regulatory priorities and contains additional detail about the most important significant regulatory actions expected to take place in the coming year.

To ensure adequate exploration of the effects of a possible rule on the U.S. economy, *Executive Order 12866 of October 4, 1993 (Regulatory Planning and Review)* establishes that significant regulations are subject to impact assessment and review by the Office of Information and Regulatory Affairs (OIRA), within the Executive Office of the President's Office of Management and Budget. The EO directs agencies to evaluate the costs and benefits of all significant regulatory proposals; those significant regulatory proposal with an expected "annual effect on the economy" of $100 million or more must conduct a more formal Regulatory Impact Assessment. *Executive Order 13563 of January 18, 2011 (Improving Regulation and Regulatory Review)* supplements Executive Order 12866 and directs agencies to take into account, *inter alia*, minimizing public burdens of regulations, and risks to public health, the environment, and public safety. (Some agencies also routinely analyze the costs and benefits of non-significant rules). In addition, the Regulatory Flexibility Act imposes additional analytic and consultation requirements if there is a substantial economic impact on a substantial number of small regulated entities, such as small and medium-sized business.[13] The Paperwork Reduction Act (PRA)[14] imposes procedural requirements on surveys and other types of "collection of information" by Federal agencies," including a requirement to provide an opportunity to comment on estimates of the time and cost burdens of compliance associated with the information collection, in order reduce paperwork burdens on the public and ensure the "practical utility" of the information collected.

As outlined in Figure 2, the APA imposes procedural requirements with respect to the development of a proposed rule, but does not restrict or constrain communication with the public prior to proposing a rule. Section 2 of *Executive Order 13563* directs agencies, where feasible and appropriate, to seek the views of those who are likely to be affected by rulemaking, even before issuing a notice of proposed rulemaking. This guidance emphasizes the importance of prior consultation with "those who are likely to benefit from and those who are potentially subject to such rulemaking."[15] One goal is to solicit ideas about alternatives, relevant costs and benefits (both quantitative and qualitative), and potential flexibilities.

[13] 5 U.S.C. § 601, *et seq.*.For further information, see RFA in a Nutshell: A Condensed Guide to the Regulatory Flexibility Act (2010), https://www.sba.gov/advocacy/rfa-nutshell-condensed-guide-regulatory-flexibility-act
[14] 44 U.S.C. § 3501, *et seq.*
[15] Executive Order 13563 § 2(c).

At the beginning of the regulatory development process, when an agency may be still looking at technical feasibility, for example, and before it has identified a particular approach to regulating, there may be a variety of ways that an agency undertakes fact-finding and outreach, in addition to informal conversations and interaction with interested persons. These include official meetings open to the public, consultation of advisory committees (see below), workshops, roundtables, webinars and other use of social media platforms, exchange of correspondence, appearances at trade association events, press releases, email alerts and other mechanisms. More formally, an agency might also publish in the Federal Register what is known as an "advance notice of proposed rulemaking," requesting stakeholders to provide written submissions with information such as technological feasibility or scientific data, relevant to choices between policy options to address the problem that has been identified. Agencies use this input to decide whether or not to proceed with the development of a tentative preferred option and the issuance of an NPRM.

In addition, agencies may solicit advice from advisory committees, which often comprise experts in a given field. The Federal Advisory Committee Act (FACA), adopted in 1972, aimed to require "sunshine" on federal agencies' solicitation of opinions from such groups. FACA was prompted by two concerns:[16] (1) the proliferation of advisory committees and (2) the concern that agency use of advisory committees made them more susceptible to undue influence by special interests or favored groups. It contains selection requirements to ensure balanced composition and avoid "regulatory capture," as well as transparency requirements. These include the requirement that any meetings be announced in the Federal Register 15 days or more in advance; that members of the public be allowed to attend committee meetings and submit written or oral comments for the committee's consideration; and that documents made available to, or prepared for, or by committee members be available to the public on request (subject to Freedom of Information Act exceptions).[17]

As a practical matter, agencies ordinarily use expert groups to gather expert advice on discrete issues (such as technical questions on the frontier of scientific knowledge), well before rulemaking–and the process governed by the APA–begins.

[16] General Services Administration, Federal Advisory Committee Act, http://www.gsa.gov/portal/content/100916
[17] For further information, see Federal Advisory Committee Act Brochure, http://www.gsa.gov/portal/content/101010

CONCLUSION

As set out above, under the APA, all federal agencies when developing a regulation must provide the public with sufficient information about a proposed rule to fairly apprise interested parties of the subjects and issues involved, so that they may present responsive data or arguments. Publishing the draft text and other essential information and making available any underlying studies enables members of the public to ground their comments on the specific solution proposed, and allows access to those far from the nation's capital. In the U.S. system for developing regulations, the possibility of scrutiny not only subsequently by the judiciary, and the Congress, but even earlier, by the public at large, tends to provide internal incentives—institutional but also individual—for agencies to genuinely account for the information and public views received during the rulemaking, and not to treat the process as a mere formality.

REFERENCES

- Administrative Procedure Act, 5 U.S.C. §§ 551—559 (2012), http://www.archives.gov/federal-register/laws/administrative-procedure/
- Federal Advisory Committee Act, 5 U.S.C. App. 2 § 1, http://www.gsa.gov/portal/content/100916
- Administrative Procedure Act, STAFF OF S. COMM. ON THE JUDICIARY, 79th Cong., Rep. on S. 7 (Comm. Print 1945)
- VANESSA K. BURROWS & TODD GARVEY, CONG. RESEARCH SERV., R41546, A BRIEF OVERVIEW OF RULEMAKING AND JUDICIAL REVIEW (2011).
- CURTIS W. COPELAND, CONG. RESEARCH SERV., RL32240, THE FEDERAL RULEMAKING PROCESS: AN OVERVIEW (2011).
- Exec. Order No. 12866, 58 Fed. Reg. 109 (1993), http://www.whitehouse.gov/OMB/inforeg/eo12866.pdf.
- Exec. Order No. 13563, 76 Fed. Reg. 14 (2011), http://www.whitehouse.gov/sites/default/files/omb/inforeg/eo12866/eo13563_01182011.pdf.
- Letter from the Office of the Chairman, Administrative Conference of the United States to Emily O'Reilly, European Ombudsman (Aug. 28, 2014) *available at* https://www.acus.gov/letter/office-chairman-comments-eu-ombudsman-federal-advisory-committee-act-faca
- Jeffrey S. Lubbers, A Guide to Federal Agency Rulemaking (5th ed., ABA 2012).
- Ronald M. Levin, *A Blackletter Statement of Federal Administrative Law, (Part Two: Informal Rulemaking)*, A.B.A. SECTION ON ADMIN. L. & REG. PRACTICE, 54 ADMIN. L. REV. 1, 30-36 (2002).
- Mark Seidenfeld, *A Table of Requirements for Federal Administrative Rulemaking*, 27 FLA. ST. L. REV. 533 (2000).
- TOM C. CLARK, U.S. DEP'T OF JUSTICE, ATTORNEY GENERAL'S MANUAL ON THE ADMINISTRATIVE PROCEDURE ACT (1947) *available at* http://archive.law.fsu.edu/library/admin/1947iii.html (last visited July 10, 2015).
- ICF International, The Reg Map (2003) *available at* https://www.icfi.com/insights/products-and-tools/reg-map (last visited July 10, 2015).

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