The Reg Map
Informal Rulemaking

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- **Agency Initiatives**
  - Agency initiatives for rulemaking are often driven by needs such as:
    - Agency priorities and plans
    - New scientific data
    - New technologies
    - Accidents

- **Required Reviews**
- **Statutory Mandates**
- **Recommendations from Other Agencies/External Groups/States/Federal Advisory Committees**
- **Lawsuits**
- **Petitions**
- OMB Prompt Letters

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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.

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### Specific Analyses for Steps Three and Seven

#### Regulatory Planning and Review (E.O. 12866)

- Would the rule have a $100 million annual impact, raise sensitive issues, and/or have significant impacts? **Yes** Prepare economic impact analysis.

#### Regulatory Flexibility Act (5 U.S.C. 601-612)

- Is a notice of proposed rulemaking required by the rule? **Yes** Prepare regulatory flexibility analysis.

- Does the rule contain a “collection of information” reporting, disclosure, or recordkeeping? **Yes** Prepare information collection clearance package for OMB review and approval, and prepare request for public comments.


- Does the rulemaking process include a proposed rule? **Yes** Prepare unfunded mandates analysis (unless an exclusion applies).

- Is the rule discriminatory that has federalism implications and imposes substantial or unanticipated direct compliance costs on State and local governments? **Yes** Prepare federalism summary impact statement.

- Is the rule discriminatory that has federalism implications and imposes substantial or unanticipated direct compliance costs on Indian tribal governments? **Yes** Prepare federalism summary impact statement.

- Is the rule discriminatory that has tribal implications and imposes substantial or unanticipated direct compliance costs on Indian tribal governments? **Yes** Prepare tribal summary impact statement.

- Is the rule categorically excluded from review? **No**

- Does the rule contain provisions for which the use of voluntary standards is applicable? **Yes** Adopt voluntary consensus standards or explain why not.

### 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.

### 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? **Yes** Prepare takings analysis.

### Protection of Children from Environmental Health Risks and Safety Risks (E.O. 13045)

- Is the rule categorically excluded from review? **No**

### Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use (E.O. 13211)

- Is the rule making a “covered regulatory action”? **Yes** Prepare analysis of the environmental health or safety effects on children.

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#### Federal Register Act (44 U.S.C. 1501-1511)

The Federal Register is a journal at 44 U.S.C. 1510 implemented at 1 CFR 5.1 that requires rules that have general applicability and legal effect to be published in the Code of Federal Regulations.