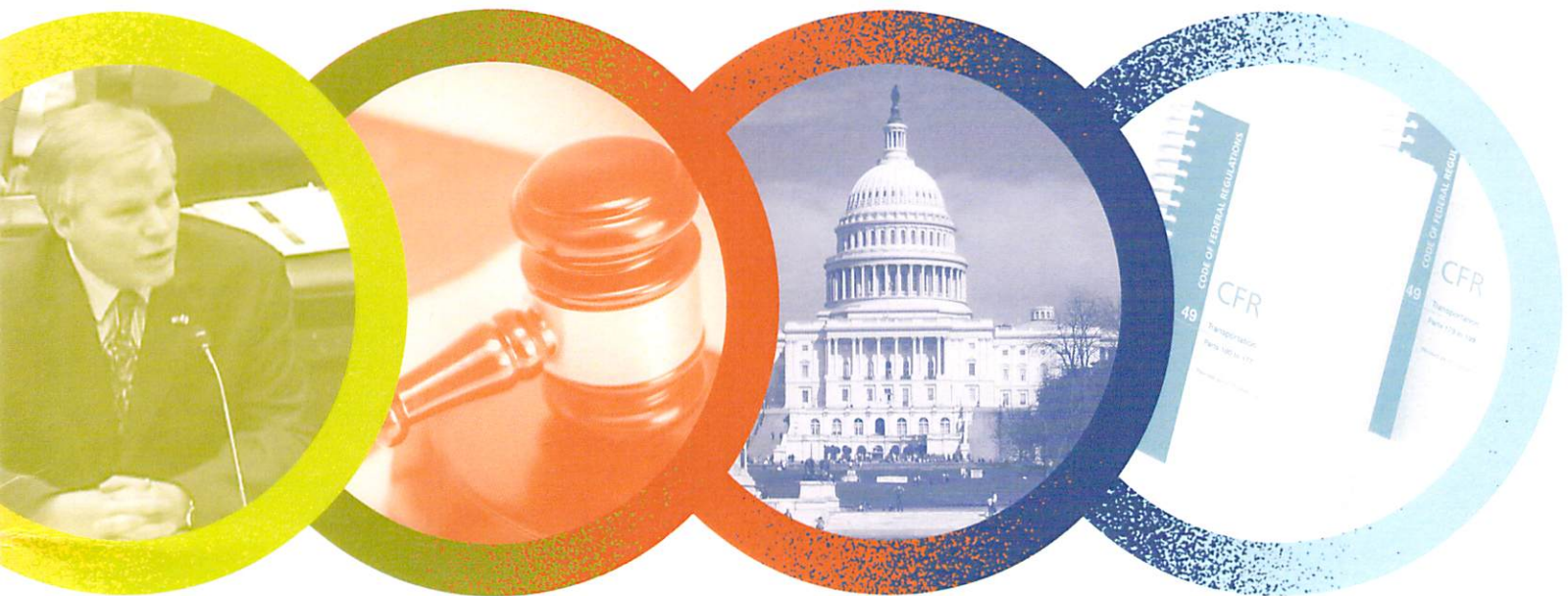


Guide to Pipeline Safety Rulemaking



- ▶ understanding
- ▶ participation
- ▶ pipeline safety

INTRODUCTION

With over 2.6 million miles of oil and gas pipelines in the United States, and booming domestic production with associated new pipeline development, local governments and citizen leaders are looking for pipeline information to inform their efforts. That information is in many different locations and is often frustratingly hard to find.

The federal pipeline safety statutes passed by Congress, while setting broad policy goals and a framework for regulation of pipelines nationwide, contain very few specific standards to which operators of pipelines must conform. The more specific rules found in state and federal regulatory codes are developed by agencies through a rulemaking process. This guide will provide a concerned member of the public with detailed information on the pipeline safety rulemaking process at the federal level, and enough background to find your own state's administrative procedural laws so you can ferret out the required process for state rulemaking as well. Our goal is for the reader to understand how the rulemaking process should work, and the points at which an individual, business, group, or local government can provide input into the process.



As in many technical fields, Congress has delegated authority or directed the Secretary of Transportation (Secretary) to enact regulations to implement the federal pipeline safety laws. Within the Department of Transportation, the regulation of pipelines falls to the Pipeline and Hazardous Materials Safety Administration (PHMSA) (pronounced fim'-zuh).

Congressional Actions

Every four years or so, Congress goes through a reauthorization process for the agency, where the committees with jurisdiction over pipelines (House Transportation and Infrastructure, House Energy and Commerce, and Senate Commerce, Science and Transportation) hold hearings, review PHMSA's recent efforts and determine the authorized funding amounts for the next four years, as well as whether or not to amend the pipeline safety laws and directly impose any new safety requirements or require any new studies or rulemaking activities from PHMSA. This reauthorization process is the most common time for Congress to make changes in the pipeline safety laws and provides an opportunity for members of the public to weigh in on these issues. Most commonly, Congress directs PHMSA to produce a study or rule on some aspect of pipelines, such as leak detection or reporting of certain conditions.



The process that Congress goes through during reauthorization is not always completely clear, but in general a subcommittee within each jurisdictional committee holds at least one hearing. These hearings are open to the public, but only invited witnesses are allowed to testify. There is no formal way for the public to comment, although comments can be sent to individual members of the committee or their staff. After the hearings each subcommittee will produce a draft bill that will include the changes that members of the subcommittee desire. There is then a "markup" of the draft bill, normally by the full committee, where amendments can be offered and voted on, and where the bill from the committee will be approved. It is normal for all three jurisdictional committees to produce different bills. Once each committee has produced its preferred bill, conferees from each committee meet to negotiate differences in the bills to produce a single final bill for the full House and Senate to consider. Sometimes there are differing bills passed by the House and Senate that need to be negotiated into a final bill that both pass, before it is sent to the President for signature.

A congressional mandate for a specific safety standard (rare) or a request that certain studies or rules be developed during the reauthorization process may be the quickest way to accomplish change in pipeline safety rules, but it is also the most difficult

for those without ongoing contacts within the jurisdictional committees to accomplish. Congress tends to move at its own pace with little public notice, so unless a person or organization has an ongoing relationship with one of the jurisdictional committee members or committee staff person it is difficult to track, let alone have much influence in this process.

PHMSA Actions

Many aspects of the rulemaking process for pipelines are identical to those for rules on any other subject. There are, however, a few aspects of the federal rulemaking process that are unique to pipeline safety, including a statutorily mandated risk assessment or cost/benefit analysis (CBA) for each regulation, as well as an evaluation of every proposed regulation by an advisory committee, and a requirement that the Secretary find that the benefits of each proposed rule justify its costs.

The general delegation of authority to the Secretary to promulgate pipeline safety rules is found in 49 U.S. Code §60102:

The Secretary shall prescribe minimum safety standards for pipeline transportation and for pipeline facilities.

That broad direction is followed by several pages of details on the subjects that the rules can cover, the factors to be considered in developing a new standard, and the processes that must be followed in addition to the general federal administrative procedural laws. Subsequent sections of the pipeline laws give the Secretary authority to develop regulations on a series of specific issues,

The Reg Map

Informal Rulemaking

Step One

Initiating Events

Agency Initiatives

- Agency process and plans
- Clear priority date
- Clear budget
- Clear authority

Required Reviews

Statutory Mandates

Recommendations from Other Agencies/External Groups/Staters/Federal Advisory Committees

Lawsuits

Petitions

OMB Prompt Letters

Step Two

Determination Whether a Rule is Needed

Administrative Procedure Act Provisions

Under the Administrative Procedure Act provisions that are included as part of the Freedom of Information Act at 5 U.S.C. 552, agencies are required to publish in the Federal Register:

- substantive rules of general applicability
- interpretive rules
- statements of general policy
- rules of procedure
- administrative action
- information concerning agency organization and methods of operation

Step Three

Preparation of Proposed Rule

Proposed Rule

A notice of proposed rulemaking, published in the Federal Register, must contain a request for public comment.

Administrative Procedure Act Provisions

Under the Administrative Procedure Act provisions at 5 U.S.C. 553, agencies may be established on either proposed rulemaking procedure, notice and comment rulemaking, or direct final rulemaking. The following are examples:

- Rule concerning agency management or personnel
- Rule concerning public security, safety, financial, benefits, or contracts
- Interpretive rules
- General statements of policy
- Rules of agency organization, procedure, or practice
- Housekeeping rules for which the agency determines that public input is not warranted
- Rules published on an emergency basis

Note: Even if an exemption applies under the Administrative Procedure Act provisions, other statutory authority or agency policy may require that proposed rulemaking procedures be followed.

Optional Supplementary Procedures to Help Prepare a Proposed Rule

Advance Notice of Proposed Rulemaking

An advance notice of proposed rulemaking requests information needed by developing a proposed rule.

Negotiated Rulemaking

Negotiated rulemaking is the procedure under the negotiated rulemaking act (5 U.S.C. 561-563) for bringing together representatives from all agencies and the various interests to negotiate the text of a proposed rule.

Step Four

OMB Review of Proposed Rule

OMB Review Under Executive Order 12866

OMB reviews only those rulemaking actions determined to be "significant."

Interagency agreement is exempt from OMB review.

Step Five

Publication of Proposed Rule

Administrative Procedure Act Provisions

The Administrative Procedure Act provisions at 5 U.S.C. 553 require proposed rules to be published in the Federal Register.

Step Six

Public Comments

Comments

Under the Administrative Procedure Act provisions at 5 U.S.C. 553, an agency must provide the opportunity to submit written comments for consideration by the agency.

As required by Public Law No. 101-508, agencies must provide the opportunity to submit written comments and make available to the public the comments and other material included in the rulemaking record under 5 U.S.C. 553.3.

Executive Order 12866 established 60 days as the standard for the comment period.

The holding of a public hearing or a hearing is required by statute or agency policy.

Step Seven

Preparation of Final Rule, Interim Final Rule, or Direct Final Rule

Final Rule

A final rule adds, changes, deletes, or amends regulatory text.

Interim Final Rule

An interim final rule adds, changes, or deletes regulatory text and contains a request for comment. The subsequent final rule may have changes to the text of the interim final rule.

Direct Final Rule

A direct final rule adds, changes, or deletes regulatory text and does not contain a request for comment. The subsequent final rule may have changes to the text of the interim final rule.

Step Eight

OMB Review of Final Rule, Interim Final Rule, or Direct Final Rule

OMB Review Under Executive Order 12866

OMB reviews only those rulemaking actions determined to be "significant."

Interagency agreement is exempt from OMB review.

Step Nine

Publication of Final Rule, Interim Final Rule, or Direct Final Rule

Congressional Review Act (5 U.S.C. 801-808)

An agency must submit to the House and the Senate a copy of the rule, along with supporting information, to both Houses of Congress and the General Accounting Office before the rule takes effect.

Major rules are subject to a defined effective date (with certain exceptions).

Action by Congress and the President could have an impact on the rule.

Administrative Procedure Act Provisions

Under the Administrative Procedure Act provisions that are included as part of the Freedom of Information Act at 5 U.S.C. 552, agencies are required to publish final rules, interim final rules, and direct final rules in the Federal Register.

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

The Federal Register Act at 44 U.S.C. 1510 implemented at 1 U.S.C. 101 requires rules that have general applicability and legal effect to be published in the Code of Federal Regulations.

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.

Specific Analyses for Steps Three and Seven

Regulatory Planning and Review (E.O. 12866)

Would the rule have a \$100 million annual estimated cost, unless there are 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** Prepare regulatory flexibility analysis.
 Would the rule "have a significant economic impact on a substantial number of small entities?" → **if yes** Prepare regulatory flexibility analysis.
Note: Large (over \$100 million) or small (under \$100 million) revenue rules (5 U.S.C. 603, 630).

Paperwork Reduction Act (44 U.S.C. 3501-3520)

Does the rule contain a "burden of information" reporting, disclosure, or recordkeeping? → **if yes** Prepare information collection impact 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** Prepare unfunded mandate analysis (type an exemption request).
 Does the rule include any federal mandate that may result in the expenditure of \$100 million or more (per year) by state, local, and tribal governments, in the aggregate, or by the private sector of \$100 million or more (per year) for a regulated entity? → **if yes** Prepare unfunded mandate analysis (type an exemption request).

Federalism (E.O. 13132)

Is the rule a discretionary rule that has federalism implications and imposes substantial (unfunded) direct costs on state, local, and tribal governments? → **if yes** Prepare federalism summary impact statement.
 Does the rule have federalism implications? → **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 (unfunded) direct compliance costs on Indian tribal governments? → **if yes** Prepare tribal summary impact statement.
 Does the rule have tribal implications and impose 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** Prepare environmental assessment or environmental impact statement, as appropriate.
 Does the rule constitute a major federal action that could significantly affect the quality of the human environment? → **if 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 appropriate? → **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 require private property use for the protection of law, health or safety? → **if yes** Prepare takings analysis.
 Is the rulemaking a proposed regulatory action that has taking 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 qualified regulatory process and principal 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 guidelines and requirements are contained in the Federal Register 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 propose 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.

(e.g., public awareness, operator qualifications, safety-related condition reporting, valves, risk management, etc.). The statute specifically prohibits the Secretary from prescribing the location or routing of a pipeline facility, 49 USC §60104(e), a congressional choice that leaves siting and routing decisions on intrastate natural gas lines and all hazardous liquid lines up to the individual states and local governments, the vast majority of which have no process or standards for making such decisions. You can read more about the siting and routing process starting on page 21 of our [Landowners' Guide to Pipeline Safety](#), available on our website or by contacting our office.

Federal Rulemaking

In addition to the general delegation of authority found in the statutes, PHMSA is bound by its own procedural rules when it considers adopting new safety rules. These procedures can be found at 49 CFR §190.301-.339 and describe the process to be followed by the agency in developing and adopting rules.

Steps of the Rulemaking Process

The map shown to the left is going to guide our basic description of the rulemaking process. If you have a specific question after that, please see the FAQ section immediately following. If you are reading the electronic version of this guide the graphic will open into a larger image when you click on it. A larger image of the map can be found at the back of the publication.

Steps 1 & 2: Initiation of Determination of Need

The first two steps shown on the graphic to the left usually happen before the public is aware that a rulemaking may be forthcoming. The determination of whether to write a rule, and then whether the rule is one that must be subject to notice and comment under the requirements of the Administrative Procedures Act (APA), are two decisions usually done without much public involvement. Occasionally, a lawsuit result will lead to an agency rulemaking, but otherwise, a decision to write a rule is usually the result of a statutory mandate from Congress or from the agency identifying a regulatory need and deciding to fill it. Once that decision is made, the APA sets out certain minimum procedures that must be followed by the agency to ensure that the rulemaking process provides for advance public notice of the rule and an opportunity to comment on it.

Step 3: Notice of Rulemaking

The third step, and the first one you would be likely to hear about in the context of federal pipeline rule making, is the production and publication of an “Advanced Notice of Proposed Rulemaking,” or ANPRM. Publication of an ANPRM is entirely optional. An agency may skip the ANPRM stage and begin the public process of its rule making with a Notice of Proposed Rulemaking (NPRM), which includes draft rule text and commentary. Although the name ANPRM implies a document that gives some indication of what rules the agency might be considering, PHMSA’s recent use of ANPRMs has been to broadly raise a subject, like “Safety of Gas Transmission Pipelines,” for example, and then ask a long series of questions, seeking both opinions about what should be considered in new regulations and what kinds of practices operators currently use and data they currently collect. It is virtually impossible to try to anticipate what the specific subject matter or content of a proposed rule from PHMSA might be based on the questions asked in an ANPRM.

Step 4: Office of Management & Budget Review

At this point we will leave the map momentarily, because the authorizing statute for PHMSA has a couple of requirements specific to PHMSA’s rulemaking, and they fall into the process at this point. Under PHMSA’s statute, a rule may only be proposed or issued by the Secretary “upon a reasoned determination that the benefits of the intended standard justify its costs.” 49 USC §60102(b)(5). In addition, all agencies, including PHMSA, must submit their proposals for “significant rules” (generally those having more than \$100 million of economic impact) to the Office of Management and Budget (OMB) for a cost/benefit analysis and review under a series of Executive Orders. The statutory requirement that applies to PHMSA rules is in addition to the OMB review required by the Executive Order (you can find the OMB review step for proposed regulations on the map at Step 4).



PHMSA’s implementation of these two requirements have often been combined into one cost/benefit analysis that is published at the time of a Notice of Proposed Rulemaking. Whether that is an appropriate mechanism for fulfilling these two apparently separate obligations is an unresolved legal issue.

Step 5: Proposed Rule Publication

After the OMB authorizes the publication of the proposed rule, PHMSA publishes the NPRM in the Federal Register. The Federal Register provides information on how to comment on the proposal, and comments can either be written and mailed to the appropriate agency address or submitted electronically through [regulations.gov](#). Published with the proposed rule are an environmental assessment to comply with the agency’s obligation under the National Environmental Policy Act (NEPA), and the cost/benefit analysis (CBA), frequently called a Regulatory Impact Analysis (RIA).

Step 6: Public Comment

After the NPRM is published, there is a comment period (the comment due date will be in the Federal Register and regulations.gov notice) of 60 days. Anyone can request an extension of this comment period, and these requests are frequently granted, usually for an additional 30 days. During the comment period, anyone interested can submit a comment on any aspect of the proposed rule. You can also find and read other parties' comments on regulations.gov in the relevant docket folder. Also during this period, the technical committee(s) are supposed to review the proposal, but review by the technical committees sometimes falls well outside the 90 days called for in the statute. Under the Pipeline Safety Act, there are two technical safety standards committees, one for rules related to natural gas pipeline standards, and one for rules relating to hazardous liquid pipeline safety standards. 49 USC §60115. Both committees review rules related to more general subjects that aren't specific to one type of pipeline. The statute sets out the composition and appointment process for the committees.

In theory, the committee(s) will review the proposed rule and the risk assessment or cost/benefit analysis prepared by the agency and issue a written report. Here is the way the statute envisions the review process at the committees:

49 USC §60102 (b)(4) reads:

(4)REVIEW.—(A) In general.—*The Secretary shall—*

(i) submit any risk assessment information prepared under paragraph (3) of this subsection to the Technical Pipeline Safety Standards Committee, the Technical Hazardous Liquid Pipeline Safety Standards Committee, or both, as appropriate; and

(ii) make that risk assessment information available to the general public.

(B)Peer review panels.—*The committees referred to in subparagraph (A) shall serve as peer review panels to review risk assessment information prepared under this section. Not later than 90 days after receiving risk assessment information for review pursuant to subparagraph (A), each committee that receives that risk assessment information shall prepare and submit to the Secretary a report that includes—*

(i) an evaluation of the merit of the data and methods used; and

(ii) any recommended options relating to that risk assessment information and the associated standard that the committee determines to be appropriate.

(C) Review by secretary.—*Not later than 90 days after receiving a report submitted by a committee under subparagraph (B), the Secretary—*

(i) shall review the report;

(ii) shall provide a written response to the committee that is the author of the report concerning all significant peer review comments and recommended alternatives contained in the report; and

(iii) may revise the risk assessment and the proposed standard before promulgating the final standard.

Step 7 & 8: Preparation of Final (or Interim) Rule & OMB Review

Once the comment period closes and the advisory committees have reviewed the proposals, the agency will review the comments and proposed rule and may make changes to the proposal before preparing a final rule. This process can take quite a long time. There is no deadline for agency action: in fact, there is no guarantee that a rulemaking will ever make it all the way to a published final rule. The final rule may include changes, additions or omissions from the proposed rule. At this point, the Office of Management and Budget will again review the rule, and it will not be published without OMB approval.

Step 9: Publish Final Rule

Publication of the final rule in the Federal Register and on regulations.gov will be accompanied by the agency's response to the comments on the proposed rule.

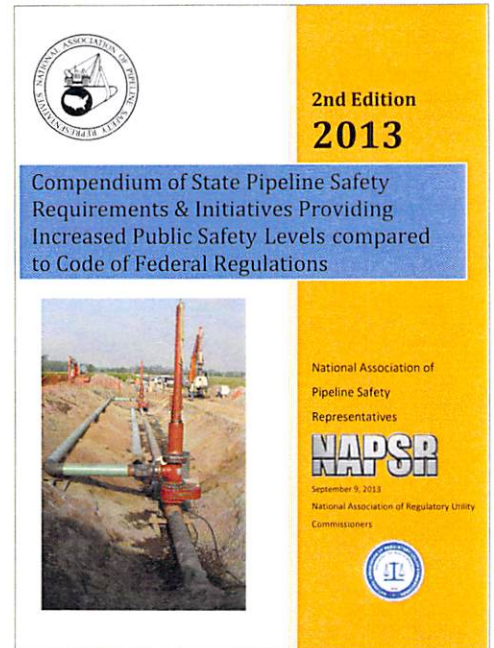
State and Local Government Pipeline Safety Rulemaking

Most states have some pipeline safety rules. Some states have rules only for intrastate gas lines, some for intrastate hazardous liquid lines as well. Most states follow a process similar to that of the federal government, where state legislatures create overarching statutes within their authority and then responsible state agencies create the specific rules using their rulemaking

procedures. Many state legislatures hold public hearings when they are considering changes to state statutes, which often allows anyone an opportunity to comment. State agencies normally have a process similar to PHMSA's for introducing proposed rules, taking comments, responding to comments, and issuing a final rule. Describing each state's process is beyond the scope of this guide, but you can find links to all of the states' statutes and pipeline safety rules in the Appendix to our Local Government Guide to Pipelines (<http://pstrust.org/wp-content/uploads/2013/10/PST-Govt-Guide-Pipelines-2014-web.pdf>).

The federal statute allows states with PHMSA certification to take on regulations of pipelines to enact pipeline safety regulations on intrastate lines that are more stringent than federal regulations, so long as they don't conflict. The state pipeline safety regulators produce a Compendium of State Pipeline Safety Requirements & Initiatives Providing Increased Public Safety Levels Compared to Code of Federal Regulations (<http://www.napsr.org/compendium>). That compendium lists over 1,300 areas where states have more stringent pipeline safety requirements than the federal government's minimum pipeline safety regulations.

Local government (cities, counties, townships, parishes) for the most part are preempted by federal or state laws from drafting rules that apply to pipeline safety (construction, operation, maintenance, testing of the pipe). Local governments can still pass rules that can increase pipeline safety by ensuring that development near pipelines is done in a safe manner, that facilities have necessary emergency response protocols, and that local emergency response agencies have adequate training, resources, and well-developed plans. Most local governments develop rules through ordinances and resolutions, which nearly always allow for public hearing and comments. If you are interested in more about local governments' authority and operations in this area please refer to our Local Government Guide to Pipelines (<http://pstrust.org/wp-content/uploads/2013/10/PST-Govt-Guide-Pipelines-2014-web.pdf>).



FREQUENTLY ASKED QUESTIONS

Where can I find out about PHMSA rulemakings that are underway?

All of PHMSA's proposed rules are published in the Federal Register and appear on <http://www.regulations.gov>, a website where nearly all federal agency rules are published and where you can directly submit comments. Each proposed rule gets a docket number, and that's the easiest way on regulations.gov to find the PHMSA proposal that you're interested in. If you don't know the docket number, you can type "PHMSA-yyyy" into the docket search bar (where yyyy is the 4 digit year the notice was first published), and that will get you a list of all of PHMSA's dockets for that year. PHMSA also publishes short descriptions of its proposals with links to the published notice from the Federal Register, as well as providing the docket number for the regulations.gov website. Those links are provided from the PHMSA website at <http://www.phmsa.dot.gov/pipeline/regs>. The Secretary also issues a monthly report on significant rulemakings. You can find the status and expected timing of the progress of rulemakings that are underway on the Secretary's website at <https://www.transportation.gov/regulations/report-on-significant-rulemakings>.



Can anyone ask PHMSA to start a rulemaking?

Well, yes, but... The PHMSA procedural rules allow "any interested person" to petition the PHMSA Administrator to "establish, amend, or repeal a substantive regulation," or to petition the Chief Counsel to "establish, amend or repeal" a procedural regulation. Unfortunately, it's not as simple as that. The regulations also list the required elements of a petition: a summary and explanation of the purpose of the request; the text of the change or new rule; a description of the interest of the petitioner; and information and arguments supporting the proposed change, including any known cases that illustrate the need. Perhaps the most challenging requirement is that the Administrator may ask the petitioner, where the information is "available" to the petitioner, to provide the costs and benefits to society or to identifiable groups, the potential effect on the distribution of powers between levels of government, the regulatory burden on small businesses, the recordkeeping requirements and the environmental and socioeconomic impacts. That is potentially a very large burden for an interested individual to carry.

The agency is not required to hold a hearing or take any comments on whether or not to grant the petition and undertake a rulemaking. We are only aware of a few times this petition process has been used, most often by organizations with significantly more resources to produce the kind of information required than an interested individual would have. If the petition is denied the agency need only provide written notification to the petitioner.

How do I comment on a PHMSA proposed rule? What happens to my comments?

The simplest way to comment on a PHMSA proposed rule is to do it directly on regulations.gov in the appropriate docket. There are instructions for how to use the website at <http://www.regulations.gov/#!help>. Once you click the "Comment Now!" button within a docket listing, you can use the window to directly type your comments onto the website, or you can upload a separate document containing your comments. Each proposed rule published in the Federal Register also includes a mailing address where you can mail your comments in writing if you prefer not to do it electronically. After the end of the comment period, PHMSA will include responses to those comments in its publication of a final rule, assuming it proceeds to the final rule stage.

How long does it take to finalize a rule?

There is no set amount of time in which an agency must complete a rulemaking. The agency must allow the comment period to expire, prepare a final rule, get it approved by OMB, prepare a set of responses to the filed comments, and have the rule and responses published in the Federal Register. In PHMSA's case, this stage also includes the review by the technical committee. (see below). Sometimes, an agency simply chooses not to finalize a rule, and either continues working on the issue or, sometimes, lets it drop. From the time of the publication of the NPRM, finalizing a rule can take several months. Congress sometimes includes deadlines for agency action in giving the Secretary direction to produce a rule on some topic, but there are typically no consequences if or when the agency fails to complete a rulemaking by a given deadline.

Are there public hearings on rules where I can go give my comments on the proposal?

There is no requirement for a public hearing on a rulemaking, but sometimes an agency might choose to have one. The most common way to provide your comments is in writing, either electronically on [regulations.gov](http://www.regulations.gov) or by regular mail to the agency address published in the rule notice. During technical committee meetings where a proposed rule is being reviewed, there will often be an opportunity for public comment on the committee's deliberations. Information about the committees and their meeting agendas can be found on PHMSA's website: <http://www.phmsa.dot.gov/pipeline/regs/technical-advisory-comm>

What are the technical committees and what is their role in rulemaking?

The Pipeline Safety Act establishes two technical committees, intended to advise PHMSA on issues related to the safety of gas and hazardous liquid pipelines, respectively. The committees were designed to be peer review panels for the risk assessments and cost/benefit analyses that PHMSA must produce before it proposes a new rule. The committees are to review each proposed rule and make a report to the Secretary on the "technical feasibility, reasonableness, cost-effectiveness and practicability of the proposed standard." 49 USC §60115(c). The statute also sets out the makeup of the committee: generally, it requires five members from industry, five from federal or state agencies and five from the public. PHMSA's website includes a page (<http://www.phmsa.dot.gov/pipeline/regs/technical-advisory-comm>) with the committee rosters, including short biographies of each member, agendas for the meetings of each committee and minutes of past meetings. The page also includes a copy of the application form that must be filled out by each applicant for a position on the committees.

The statute also requires that within 90 days after publication of a proposed rule and risk assessment prepared with the proposal, the relevant committee(s):

shall prepare and submit to the Secretary a report that includes - (i) an evaluation of the merit of the data and methods used; and (ii) any recommended options relating to that risk assessment information and the associated standard that the committee determines to be appropriate. 49 USC 60102 (b)(4)(B). The statutory section specific to the committees elaborates: (2) Not later than 90 days after receiving the proposed standard and supporting analyses, the appropriate committee shall prepare and submit to the Secretary a report on the technical feasibility, reasonableness, cost-effectiveness, and practicability of the proposed standard and include in the report recommended actions. The Secretary shall publish each report, including any recommended actions and minority views. The report if timely made is part of the proceeding for prescribing the standard. The Secretary is not bound by the conclusions of the committee. However, if the Secretary rejects the conclusions of the committee, the Secretary shall publish the reasons. (3) The Secretary may prescribe a standard after the end of the 90-day period.

49 USC §60115(c)(2).

In reality, the committee's "report" is the minutes of the committee meeting — no separate report is typically drafted. The committee typically considers a motion relating to the "technical feasibility, reasonableness, cost effectiveness and practicability of the proposed standards" to comply with the statute, but without a separate report, and typically with very little remaining time in the 90-day window, if any, for a minority report to be drafted after the committee decision. The committee may suggest proposed changes to the proposed rule for the Secretary's consideration.

What is the difference between a Notice of Proposed Rulemaking and an Advanced Notice of Proposed Rulemaking?

Typically, PHMSA uses an Advanced Notice of Proposed Rulemaking (ANPRM) to let industry, the public, state regulators and other stakeholders know the subjects that might be covered in an upcoming proposal. PHMSA also uses ANPRMs as information gathering tools, to get details of what kind of programs operators currently have, allowing PHMSA to better estimate whether a regulation is necessary and if so, how it might affect different operators or segments of the industry. Agencies are not required to issue an ANPRM — it is optional.

A Notice of Proposed Rulemaking (NPRM) must be published when an agency is proposing a new rule of general applicability. The text of the proposed rule must be published with the notice. Each notice must be published in the Federal Register, and then they are published online at [regulations.gov](http://www.regulations.gov), the website where you can also see background documents, see other comments and submit your own.

How do I know if PHMSA listened to my comments?

After a NPRM is published and comments are taken, PHMSA must respond to those comments in the publication of the final rule. The type of response and the level of detail in it varies widely: it can be anything from saying the comment related to issues beyond the scope of the rulemaking to a point-by-point response to someone's comment. Whatever the response, it will be in the publication of the NPRM if the comment was on the ANPRM, or in the publication of the final rule, if the comment was on the NPRM.

What is a “direct final rulemaking”?

PHMSA, like most agencies, has rules that it must follow for producing any new rules. For PHMSA, those rules are in 49 CFR Part 190, Subpart C. See 49 CFR §190.339. A direct final rulemaking is one that is essentially a shortcut to the rulemaking procedures. Under a direct rulemaking, the Administrator issues a direct, final rule without a proposed rulemaking beforehand. While comments are allowed within the allotted comment period, once the comment period has passed, the Administrator may publish a confirmation notice stating the date on which the rule will take effect. If an “adverse comment” was filed (and that term is narrowly defined in the regulations) the Administrator will withdraw the rulemaking in whole or in part. The adverse comment may then be incorporated into another direct final rule, or the agency may publish a regular NPRM. This significantly abbreviated process is intended to be used in limited situations: minor changes to rules, extension of compliance dates, incorporation by reference of new editions of industry standards, and other noncontroversial rules where the Administrator determines a direct rule is in the public interest and adverse comments are unlikely.

There are industry standards incorporated into the proposed rule. How can I review them as I’m preparing comments?

For better or worse, PHMSA has incorporated many industry standards into the pipeline safety regulations. Copies of each of those standards are available at the PHMSA offices, but if you don’t happen to be near Washington, DC, tracking down copies of them can be a bit more difficult. Many of the standards-setting organizations make the standards available online, typically in a read-only format, meaning you can’t download copies and you can’t print copies. If you’ve got either time or money, or sometimes both, you can always order a copy (either to download immediately or to get in the mail) of what you are interested in. That can be a very expensive proposition, depending on what you need to read.

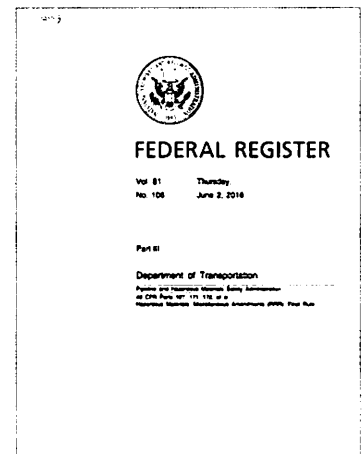
For industry standards that are being considered for incorporation into a new rule, PHMSA must make those available for review during the review period. In the NPRM, there should be a listing of those standards and an indication of how to obtain access to review them during the comment period. It would be advisable to get your request in early in the comment period, in case the method of obtaining access to those standards takes a while.

What if I don’t like the rule that is issued or I think it doesn’t meet the requirements of the law? Is there an appeal process?

There is an appeal process. First, within PHMSA, you can seek reconsideration from the Associate Administrator of any regulation within 30 days of its publication as a final rule in the Federal Register. The procedures for seeking reconsideration can be found in 49 CFR §190.335 and 190.337. There is a second appeal process under the federal Administrative Procedure Act (APA), 5 USC § 701-706. [And here’s the disclaimer: This is a very abbreviated and generalized description of that process. It is not intended as legal advice. If you are considering challenging an action of a regulatory agency you should seek counsel from a licensed attorney.] Without going into a great deal of detail (and there is a lot) about what you must show to be successful in challenging a rule under the APA, there’s a major hurdle that applies in most cases when challenging regulations. In order for a court to set aside a regulation, it must find the rule is:

- (A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;
- (B) contrary to constitutional right, power, privilege, or immunity;
- (C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right;
- (D) without observance of procedure required by law;

5 USC §706 (2)(A-D). Just because you think a regulation is a bad idea, goes too far or not far enough, that’s not good enough for a court to set it aside. You must be able to show that the agency didn’t follow the appropriate procedural rules in making the rule, or that the rule was somehow outside the agency’s authority in order to convince a court to hold it unlawful.



I hear about cost/benefit analysis being part of the rulemaking process. What is that, who does it, and how does it affect the process? How is the Office of Management and Budget involved? Why do they get involved with pipeline rules?

The federal pipeline safety statutes require the Secretary of Transportation to undertake a risk assessment, including a cost/benefit analysis (CBA), before promulgating any pipeline safety rule, including those identified as “minimum safety standards.” 49 USC 60102. There are three statutory exceptions to the required CBA: 1) a negotiated rulemaking, or other rulemaking including the adoption of industry standards that receives no significant adverse comment within 60 days; 2) based on a recommendation of ¾ of the technical standards committee(s); or (3) pursuant to the general “good cause” exception in the APA (5 USC 553(b)(3)(B)). 49 USC 60102 (b)(6). The risk assessment must “identify the costs and benefits associated with the proposed standard” and except where otherwise required by statute, the Secretary may propose or issue a standard only when he determines that the benefits justify its costs.

PHMSA adopted a framework in 1999 (http://phmsa.dot.gov/staticfiles/PHMSA/DownloadableFiles/Files/cba_rpt.pdf) to implement the cost/benefit analysis and review required of its technical committees. The framework outlines a process to be used by PHMSA in assessing regulatory proposals. Under the framework, benefits of regulations that save lives and avoid injuries are subjected to a discount rate, a concept that is receiving increasing criticism, since the underlying premise of a discount rate to benefits of this nature mean that the value of a life saved in the future is lower than the value of a life saved today.

The CBA requirement highlights the challenges PHMSA must meet to enact new regulations and PHMSA’s ability to strengthen pipeline safety regulations. Because the safety regulations are predominantly performance based, and not prescriptive, much of the basic data about the nation’s pipelines, data necessary for the assessment of the costs and benefits of changes to the regulatory system, is solely in the hands of the operators, and not PHMSA. PHMSA needs the information to do an adequate analysis for each proposed regulatory change, because absent a “reasoned determination” that the benefits of the proposal justify its cost, the Secretary can not issue any new regulation.

In addition to the provision of the Pipeline Safety Act requiring a risk assessment/CBA for each proposed rule, there is an Executive Order requiring every major rule to go through a Regulatory Impact Analysis (RIA) — another name for a CBA — and be reviewed by the Office of Management and Budget (OMB), a function of the Presidency. Once PHMSA has produced a proposed rule, it must go to OMB before it can be published. Once a final rule is drafted, it also must go through OMB before being published. (See Rulemaking Map).

The art of cost/benefit analyses is the subject of many, many, academic papers and policy arguments: the process, the values that can be used, how to account for information that is unavailable, whether a discount rate should be used and if so, what it should be. A discussion of any depth is beyond the scope of this guide.

Is there a way to be notified when PHMSA issues proposed rules?

Yes! If you sign up at <https://public.govdelivery.com/accounts/USDOTPHMSA/subscriber/new?> you will get notices from PHMSA on proposed rulemakings, advisory bulletins and other regulatory activities. When you know the docket number of a proposed rule, you can get notices from regulations.gov of all new documents filed in that docket, including other comments or supporting documents from the agency. Once you open the docket, there will be a “sign up for email alerts” link for you to follow. Signing up there will get you notifications at whatever frequency you choose.

I know that my state has pipeline safety rules, too. How do I find out about my state’s rule making process and proposed changes to those rules?

The chart on the next page gives the name of each state’s responsible agency and what types of pipelines they have jurisdiction over. You can find links to all of the states’ statutes and pipeline safety rules in the Appendix to our Local Government Guide to Pipelines. (<http://pstrust.org/wp-content/uploads/2013/10/PST-Govt-Guide-Pipelines-2014-web.pdf>)

Once you identify the agency that regulates pipelines in your state, you can contact that agency to find out how to be notified of proposed changes in their regulations. The same is true for agencies responsible for spill response planning regulations although not every state has spill planning requirements. Each state will have a set of rules governing rulemaking procedures for agencies of that state. The pipeline safety agency should be able to direct you to those rules as well.

State	Natural Gas		Hazardous Liquid		Responsible Agency
	Intrastate (1)	Interstate (2)	Intrastate (1)	Interstate (2)	
Alabama					Alabama Public Service Commission
Alaska					No State Program
Arizona					Arizona Corporation Commission
Arkansas					Arkansas Public Service Commission
California					California State Fire Marshal AND California Public Utilities Commission
Colorado					Colorado Public Utilities Commission
Connecticut					Department of Energy and Environmental Protection
Delaware					Delaware Public Service Commission
District of Columbia					District of Columbia Public Service Commission
Florida					Public Service Commission
Georgia					Georgia Public Service Commission
Hawaii					No State Program
Idaho					Idaho Public Utilities Commission
Illinois					Illinois Commerce Commission
Indiana					Indiana Utility Regulatory Commission
Iowa					Iowa Utilities Board
Kansas					Kansas Corporation Commission
Kentucky					Kentucky Public Service Commission
Louisiana					Louisiana Department of Natural Resources
Maine					Maine Public Utilities Commission
Maryland					Public Service Commission of Maryland
Massachusetts					Massachusetts Department of Public Utilities
Michigan					Michigan Public Service Commission
Minnesota					Department of Public Safety
Mississippi					Mississippi Public Service Commission
Missouri					Missouri Public Service Commission
Montana					Montana Public Service Commission
Nebraska					Nebraska State Fire Marshal
Nevada					Public Utilities Commission of Nevada
New Hampshire					New Hampshire Public Utilities Commission
New Jersey					New Jersey Board of Public Utilities
New Mexico					New Mexico Public Regulation Commission
New York					New York State Department of Public Service
North Carolina					North Carolina Utilities Commission
North Dakota					North Dakota Public Service Commission
Ohio					Ohio Public Utilities Commission

State	Natural Gas		Hazardous Liquid		Responsible Agency
	Intrastate (1)	Interstate (2)	Intrastate (1)	Interstate (2)	
Oklahoma					Oklahoma Corporation Commission
Oregon					Oregon Public Utilities Commission
Pennsylvania					Pennsylvania Public Utility Commission
Puerto Rico					Puerto Rico Public Service Commission
Rhode Island					Rhode Island Division of Public Utilities & Carriers
South Carolina					Office of Regulatory Staff of South Carolina
South Dakota					South Dakota Public Utilities Commission
Tennessee					Tennessee Regulatory Authority
Texas					Railroad Commission of Texas
Utah					Utah Department of Commerce, Division of Public Utilities
Vermont					Vermont Department of Public Service
Virginia					Virginia State Corporation Commission
Washington					Washington Utilities and Transportation Commission
West Virginia					Public Service Commission of West Virginia
Wisconsin					Wisconsin Public Service Commission
Wyoming					Wyoming Public Service Commission

(1) States with intrastate natural gas or hazardous liquid pipeline programs are “Certified” under Section 60105(a) Title 49 USC.

(2) States with interstate natural gas or hazardous liquid pipeline programs are “Acting as Interstate Agents” under Section 60106 Title 49 USC.

Source: PHMSA “Guidelines for States Participating in the Pipeline Safety Program” (Revised Dec. 2015) and NAPSR “Compendium of State Pipeline Safety Requirements & Initiatives Providing Increased Public Safety Levels Compared to Code of Federal Regulations” (2nd Edition 2013).

If I am interested in commenting on a rule proposed by PHMSA, but have questions that are not answered clearly in the information published in the Federal Register, is there any opportunity to ask questions to get better clarity regarding the proposed rule?

Previously, what was in the Federal Register and what you could glean from other people’s comments posted on the regulations.gov site were about all you could get. Fortunately, PHMSA has recently started to hold webinars during the comment period for major rules where they walk through the major sections in the proposed rule to explain the intent, and then answer questions aimed at clarifying that intent and how the proposed rule would work. These webinars, if provided, are posted on the PHMSA website, posted on the associated docket on regulations.gov, and notices are emailed to people who have signed up for such notifications as mentioned above.

It is also important to remember that proposed rules need to be written clearly so they are understandable and enforceable. If you have concerns, but you are not sure you understand what is being proposed, it is good to point out your concerns and the fact that as drafted it is hard to know if the proposed rule actually addresses your concerns. Your confusion alone is a good enough reason to comment.

How can a concerned citizen be most effective in a rulemaking process?

This is a hard question to answer because everyone has different levels of expertise, and connections to groups and elected officials. The main opportunities for someone to easily make a difference occur when Congress or a state legislature is considering pipeline safety, or when PHMSA or a state agency has issued some version of a rule proposal for comment. That is when the door for change is open, and when comments from citizens are most likely to help steer changes to pipeline safety regulations. The more specific to the proposed rule your comments can be the more chance there is that they will be effective. For example if you are concerned with leak detection on pipelines saying **“all pipelines leak, it’s not if, but when — please make sure better leak detection technology is required,”** is less effective than saying, **“PHMSA data shows that over 3.5 million gallons of hazardous liquids are spilled each year from pipelines, and yet there is still no clear standard in these rules for measuring or requiring leak detection effectiveness. Please ensure an enforceable leak detection standard on all new pipelines is included that requires detection of any leaks greater than 0.25% of throughput within 15 minutes.”**

Unless you have a strong technical background in areas associated with pipeline safety, or have strong connections to elected officials or agency personnel, your individual comments may not carry as much weight as if you work with a larger group to provide similar comments. A comment to a federal or state senator from an unknown John Doe will be less effective than that same type of comment coming from 20 John Does, or from the head of the Firefighter’s Union or local political party chairwoman. Use your contacts and enthusiasm to get others, perhaps with more clout, to comment also. Until recently when PHMSA opened up a rule for public comments, nearly all comments came from the pipeline industry complaining that the rules went too far or were too costly. While knowing what you are talking about technically is important, you can also demonstrate a clear public concern by sheer number of comments submitted on specific issues. In other words, do what you can, when you can. Any participation is better than remaining silent.

The Reg Map

Informal Rulemaking

You can download a pdf (745k) of this map at:
<http://pstrust.org/rulemaking-reg-map.pdf>

Step One

Initiating Events

Agency Initiatives

Agency initiatives for rulemaking originate from such things 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

Step Two

Determination Whether a Rule Is Needed

Administrative Procedure Act Provisions

Under the Administrative Procedure Act provisions that are included as part of the Freedom of Information Act at 5 U.S.C. 552, agencies are required to publish in the *Federal Register*:

- Substantive rules of general applicability
- Interpretive rules
- Statements of general policy
- Rules of procedure
- Information about forms
- Information concerning agency organization and methods of operation

Step Three

Preparation of Proposed Rule

Proposed Rule

A notice of proposed rulemaking proposes to add, change, or delete regulatory text and contains a request for public comments.

Administrative Procedure Act Provisions

Under the Administrative Procedure Act provisions at 5 U.S.C. 553, rules may be established only after proposed rulemaking procedures (steps three through six) have been followed, unless an exemption applies. The following are exempted:

- Rules concerning military or foreign affairs functions
- Rules concerning agency management or personnel
- Rules concerning public property, loans, grants, benefits, or contracts
- Interpretive rules
- General statements of policy
- Rules of agency organization, procedure, or practice
- Nonsignificant rules for which the agency determines that public input is not warranted
- Rules published on an emergency basis

Note: Even if an exemption applies under the Administrative Procedure Act provisions, other statutory authority or agency policy may require that proposed rulemaking procedures be followed.

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.

Step Four

OMB Review of Proposed Rule

OMB Review Under Executive Order 12866

OMB reviews only those rulemaking actions determined to be "significant."

Independent agencies are exempt from OMB review.

Step Five

Publication of Proposed Rule

Administrative Procedure Act Provisions

The Administrative Procedure Act provisions at 5 U.S.C. 553 require proposed rules to be published in the *Federal Register*.



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.
 Reproduced with permission.

Step Six

Public Comments

Comments

Under the Administrative Procedure Act provisions of 5 U.S.C. 553, an agency must provide the public the opportunity to submit written comments for consideration by the agency.

As required by Public Law No. 107-347, agencies must provide for submission of comments by electronic means and must make available online the comments and other materials included in the rulemaking docket under 5 U.S.C. 553 (c).

Executive Order 12866 established 60 days as the standard for the comment period.

The holding of a public hearing is discretionary unless required by statute or agency policy.

Step Seven

Preparation of Final Rule, Interim Final Rule, or Direct Final Rule

Final Rule

A final rule adds, changes, deletes, or affirms regulatory text.

Special Types of Final Rules

Interim Final Rule

An interim final rule adds, changes, or deletes regulatory text and contains a request for comments. The subsequent final rule may make changes to the text of the interim final rule.

Direct Final Rule

A direct final rule adds, changes, or deletes regulatory text at a specified future time, with a duty to withdraw the rule if the agency receives adverse comments within the period specified by the agency.

Step Eight

OMB Review of Final Rule, Interim Final Rule, or Direct Final Rule

OMB Review Under Executive Order 12866

OMB reviews only those rulemaking actions determined to be "significant."

Independent agencies are exempt from OMB review.

Step Nine

Publication of Final Rule, Interim Final Rule, or Direct Final Rule

Congressional Review Act (5 U.S.C. 801-808)

An agency must submit most final rules, interim final rules, and direct final rules, along with supporting information, to both houses of Congress and the General Accounting Office before they can take effect.

Major rules are subject to a delayed effective date (with certain exceptions).

Action by Congress and the President could have an impact on the rule.

Administrative Procedure Act Provisions

Under the Administrative Procedure Act provisions that are included as part of the Freedom of Information Act at 5 U.S.C. 552, agencies are required to publish final rules, interim final rules, and direct final rules in the *Federal Register*.

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

The Federal Register Act at 44 U.S.C. 1510 (implemented at 1 CFR 8.1) requires rules that have general applicability and legal effect to be published in the *Code of Federal Regulations*.

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.

The Reg Map - Informal Rulemaking - Continued

Specific Analyses for Steps Three and Seven

Regulatory Planning and Review (E.O. 12866)

Could 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.

Note: Under limited circumstances analyses also are required for certain interpretive rules involving internal revenue laws (5 U.S.C. 603, 604).

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.

You can download a pdf (745k) of this map at: <http://pstrust.org/rulemaking-reg-map.pdf>

*From origin to consumption
Agency rules govern the safety of
pipelines in your community*



Pipeline Safety
TRUST

Credible. Independent. In the public interest.

Pipeline Safety Trust
300 N. Commercial Street, Suite B
Bellingham, WA 98225
360-543-5686
pipelinesafetytrust.org