

The Importance of Transparency in Regulatory Reform

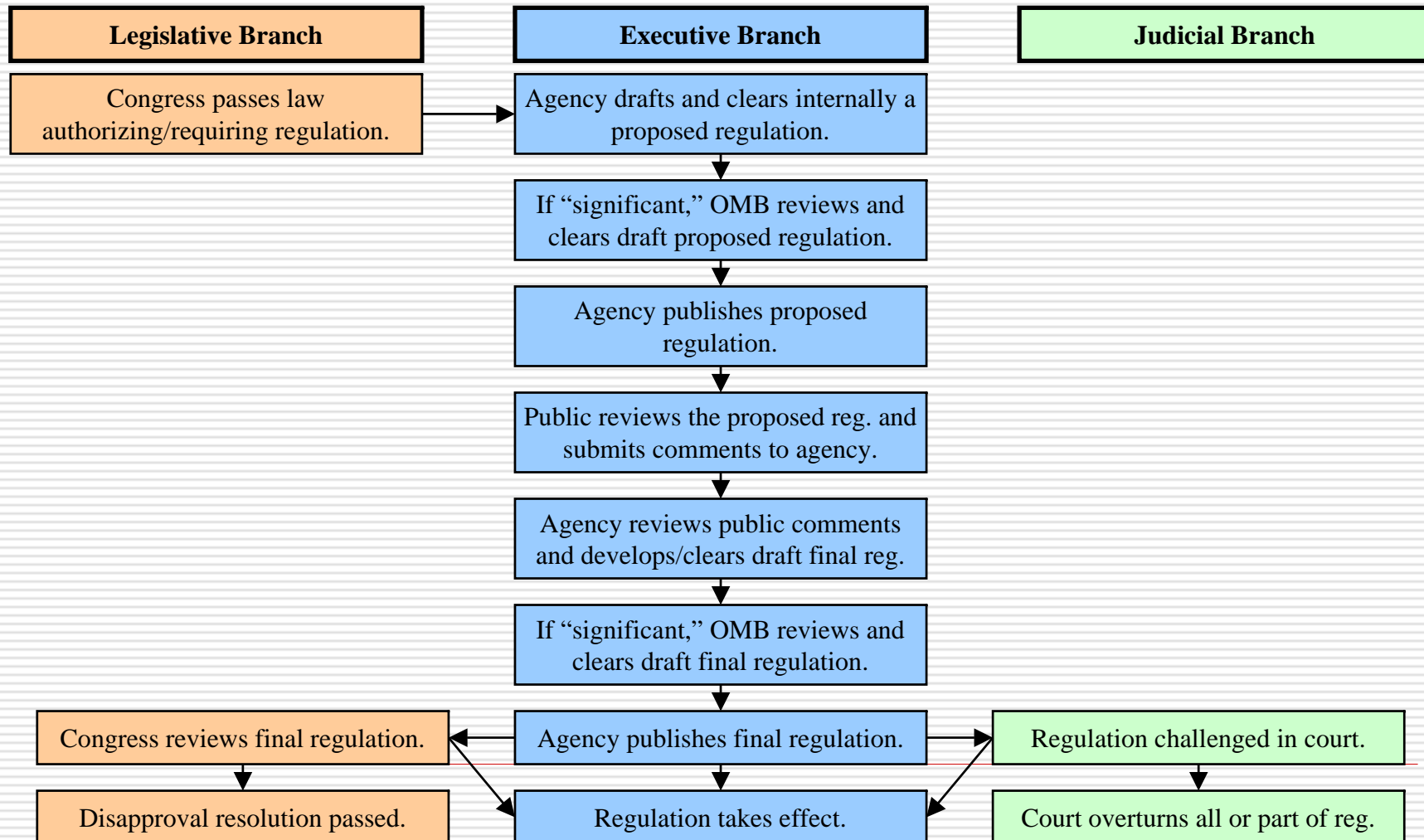
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Importance of Transparency

- Accountability
- Due Process
- Better regulations – achieve regulatory objective while maximizing net benefits
- Less likely to create trade barriers
- Higher levels of economic growth

U.S. Regulatory Process



Basics of Transparency in the U.S. Federal Regulatory System

- Administrative Procedure Act
 - The Act requires that agencies go through a “notice and comment” process open to all interested parties, both foreign and domestic.
 - Before agencies can issue a final regulation, they must respond to the comments, make sure that the final regulation follows logically from the proposal and the public record, and is not arbitrary or capricious.
 - The public record may be used by the courts in settling any challenge to the regulations brought by interested parties.

Basic Elements of Notice and Comment

- Publication of Proposed Regulation
- Comment Period
- Publication of Final Regulation

(1) Publication of Proposed Regulation

A notice of a proposed technical regulation (or conformity assessment procedure) is published in the U.S. official journal, the *Federal Register*.

(2) Comment Period

Comments are accepted.

- No restrictions on who may submit.
- Equal treatment of all comments received.
- Agency considers comments as it determines if and how to regulate.

(3) Publication of Final Regulation

A final technical regulation is published in the *Federal Register*.

- Comments received are addressed in the final regulation

Disclosure of Information Under Executive Order 12866

- ❑ The public can consult the website of the U.S. Office of Management and Budget (OMB) and learn each day which rules are under formal review at OMB and which have been cleared.
- ❑ OMB's website notes which outside groups have recently met with the agency on rules under review.
- ❑ All written information provided to OMB while a proposed regulation is under review is sent to the relevant agency and posted on the OMB website.
- ❑ Letters that OMB sends to agencies outlining its concerns with draft regulations that OMB sends back are posted on the OMB website.

Each branch of government has a role.

- ❑ Agencies demonstrate to OMB that their regulatory analysis is of high quality and supports a finding that the benefits of the regulation justify the costs and that the regulation is in compliance with the law.
- ❑ After OMB concludes its review of a regulation and it is published in its final form in the Federal Register, Congress reviews it under the Congressional Review Act.
- ❑ After a regulation goes into effect, affected parties can bring suit against the agency issuing the regulation to have the courts overturn the regulation or return it to the agency for additional work because the agency violated the APA's process requirements, the statute that authorized the regulation, or the U.S. Constitution.
- ❑ Under the Regulatory Right-to-Know Act, OMB must issue a report to Congress each year estimating the costs and benefits of regulations in the aggregate, by agency and agency program, and by regulation.

Role of USTR in the U.S. Regulatory Process

- ❑ When regulations are under OMB review, USTR has an opportunity to review and comment on international trade implications.
- ❑ Informal consultations may also take place outside of OMB process.
- ❑ Comments received in response to notifications and in the TBT Committee can inform those discussions.

References

- ❑ **Administrative Procedure Act:** www.archives.gov/federal_register/public_laws/acts.html#apa
- ❑ **Federal Rulemaking Flowchart:** <http://reginfo.gov/Regmap/index.html>
- ❑ **Executive Order 12866 as amended, Regulatory Planning and Review** (October 4, 1993): www.whitehouse.gov/omb/inforeg/eo12866/index_eo12866.html
- ❑ **Listing of regulations under Executive Order 12866 review:** www.whitehouse.gov/library/omb/OMBREGSP.htm
- ❑ **Listing of OIRA's meetings with outside parties on regulations under OMB review:** www.whitehouse.gov/omb/oira/meetings.html
- ❑ ***2006 Report to Congress on the Costs and Benefits of Federal Regulations*** (January 2007): http://www.whitehouse.gov/omb/inforeg/2006_cb/final_2006_cb_report.pdf
- ❑ **OMB guidance to agencies on Regulatory Analysis** (September 17, 2003): www.whitehouse.gov/omb/circulars/a004/a-4.pdf
- ❑ **Paperwork Reduction Act:** www.archives.gov/federal_register/public_laws/acts.html#pra

THANK YOU!

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