

*TheCapitol.Net's Executive Conference:*  
**Understanding the Regulatory Process**

**Sample Agenda – see [www.AdminProcess.com](http://www.AdminProcess.com) for schedule**  
Washington, DC

8:30 a.m.-12:30 p.m.

*Instructor: Assistant General Counsel for Regulatory Law, Federal Agency*

**Welcome**

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**8:30 I. Introduction**

- A. Agencies of the Executive Branch may take a variety of administrative actions.
- B. What is rulemaking?

**II. Basic Background**

- A. Administrative Procedure Act – Reasons for adoption and basic structure.
- B. Expansion of Federal regulatory power in the 1960s and 1970s.
- C. Checking reactions to Federal agency exercise of new regulatory powers.
- D. Basic scheme of notice and comment rulemaking procedures
- E. How agencies develop notices of proposed and final rulemaking.

**III. Notices of Proposed Rulemaking**

- A. Elements
- B. Supplementary Information Portion of the Preamble
- C. Public Input on Notices of Proposed Rulemaking

**IV. Public Hearings**

- A. Legislative-type hearing is the norm.
- B. Facilitated and Interactive Workshops are optional.

**V. Mid-Course Corrections for Rulemakings Gone Awry**

- A. Schedule additional public hearings outside of Washington.
- B. Repropose or publish notice reopening or extending the comment period.
- C. Initiate or acquiesce in one-time informal meetings with vocal constituency.

**VI. Notice of Final Rulemaking**

- A. Final regulation must be a “logical outgrowth” of the proposal.
- B. Preamble must respond to the relevant, “major issues” synthesized from the public comments.
- C. Preamble must reflect final NEPA, Paperwork Reduction Act, and Regulatory Flexibility Act.
- D. Action Memorandum and Concurrence Process (same as for proposed rule).
- E. OMB Clearance Under Executive Order 12866.

**VII. Judicial Review**

- A. 45 percent of reversals of final rules attributable to failure to explain basis for agency action or rejection of major comments in the preamble to the final rule.
- B. 20 percent of reversals of final rules attributable to erroneous statutory interpretations.
- C. 20 percent of reversals of final rules attributable to purely procedural error.

**VIII. Conclusion**

- A. Rulemaking is a system of procedures to channel and check the exercise of the power to make enforceable policy.
- B. The agency is obliged to involve the public and to respond to public input. Usually the agency has to balance different viewpoints and arrive at a policy that can command public support.
- C. Ultimately, the agency is subject to supervision by OMB and is accountable to the courts and to Congress.

**12:30 Complete Conference Evaluations and Conference Concludes**

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