



Highlights of [GAO-06-228T](#), a testimony before the Subcommittee on Commercial and Administrative Law, Committee on the Judiciary, House of Representatives

## Why GAO Did This Study

Federal regulation is one of the basic tools of government used to implement public policy. Agencies publish thousands of regulations each year to achieve goals such as ensuring that workplaces, air travel, and food are safe; that the nation's air, water, and land are not polluted; and that the appropriate amount of taxes are collected. Because regulations affect so many aspects of citizens' lives, it is crucial that rulemaking procedures and practices be effective and transparent.

GAO, at the request of Congress, has prepared over 60 reports and testimonies during the past decade that review aspects of federal rulemaking procedures and practices. This testimony summarizes some of the general findings and themes that have emerged from GAO's body of work on federal regulatory processes and procedures, including areas on which Congress might consider taking legislative action or sponsoring further study. GAO's prior reports and testimonies contain a variety of recommendations to improve various aspects of rulemaking procedures and practices.

[www.gao.gov/cgi-bin/getrpt?GAO-06-228T](http://www.gao.gov/cgi-bin/getrpt?GAO-06-228T).

To view the full product, including the scope and methodology, click on the link above. For more information, contact J. Christopher Mihm at (202) 512-6806 or [mihmj@gao.gov](mailto:mihmj@gao.gov).

# FEDERAL RULEMAKING

## Past Reviews and Emerging Trends Suggest Issues That Merit Congressional Attention

### What GAO Found

GAO's prior evaluations highlighted both benefits and weaknesses of rulemaking procedures and practices in areas such as (1) regulatory analysis and accountability requirements, (2) presidential and congressional oversight of agency rulemaking, and (3) notice and comment rulemaking procedures under the Administrative Procedure Act (APA).

GAO's reviews identified at least four overall benefits associated with existing regulatory analysis and accountability requirements: encouraging and facilitating greater public participation in rulemaking; improving the transparency of the rulemaking process; increasing the attention directed to rules; and increasing expectations regarding the analytical support for proposed rules. On the other hand, GAO identified at least four recurring reasons why such requirements have not been more effective: unclear key terms and definitions; limited scope and coverage; uneven implementation by agencies; and a predominant focus on just one part of the regulatory process.

With regard to executive branch and congressional oversight of agencies' rulemaking, GAO has noted that efforts to increase presidential influence and authority over the regulatory process, through mechanisms such as the Office of Management and Budget's reviews of agencies' rulemaking, have become more significant over the years. However, mechanisms intended to increase congressional influence, such as procedures for disapproval of regulations under the Congressional Review Act, appear to have been less able to influence changes in agencies' rules to date.

GAO's reviews of agencies' compliance with rulemaking requirements under APA pointed out that agencies often did not published notices of proposed rulemaking (to solicit public comments) before issuing final rules, including some major rules with an impact of \$100 million or more on the economy. APA provides exceptions to notice and comment requirements for "good cause" and other reasons, but GAO noted that agencies' explanations for use of such exceptions were sometimes unclear. Also, several analytical requirements for proposed rules do not apply if an agency does not publish a proposed rule. However, some of the growth in final rules without proposed rules appeared to reflect increased use of "direct final" and "interim final" procedures intended for noncontroversial and expedited rulemaking.

The findings and emerging issues reported in GAO's body of regulatory work suggested four areas on which Congress might consider taking action or studying further: (1) generally reexamining rulemaking structures and processes, (2) addressing previously identified weaknesses of existing statutory requirements, (3) promoting additional improvements in the transparency of agencies' rulemaking actions, and (4) opening a broader examination of how developments in information technology might affect the notice and comment rulemaking process.