



Do my comments really matter? Demystifying the Public Comment Process

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You've probably heard about submitting your opinion on a federal regulation or policy. Why should you take the time to do this? Do your comments really matter? Let's explore how the public comment process works and why your comments really can make a difference.

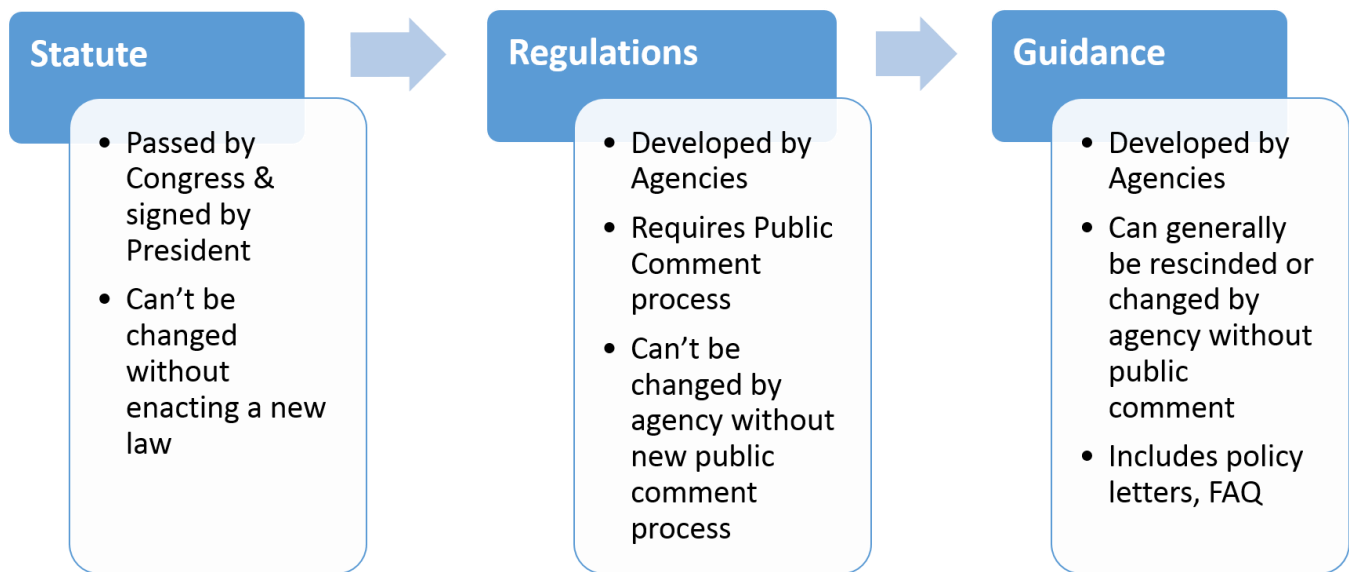
Why am I being asked to send comments?

Each time a federal agency wants to adopt or change regulations, it has to ask the public for input. It's actually required by federal law, the Administrative Procedures Act (APA). A federal agency writes its proposed regulations and then asks for public comments. The agency has to consider whether it should make any changes to its proposal based on the comments before finalizing the regulation. Whether an agency is proposing new regulations or changing older ones, it has to give the public a change to weigh in.

What are federal regulations?

Regulations are the way an agency publicly explains how it will interpret and implement a federal law.¹ Often, a new law doesn't provide the details about how a program should work but authorizes a federal agency to fill in details. For example, Congress might say "Every car should have seat belts." The agency would have to determine the deadlines for when car manufacturers have to include seat belts, how many seat belts, whether lap belts or shoulder belts are required, whether seat belts are needed in the back seat, etc. Regulations provide these kinds of details.

¹ A federal agency can also issue "subregulatory" guidance but guidance generally is not subject to a public comment process. Guidance can be a letter, answers to frequently asked questions, or other forms.



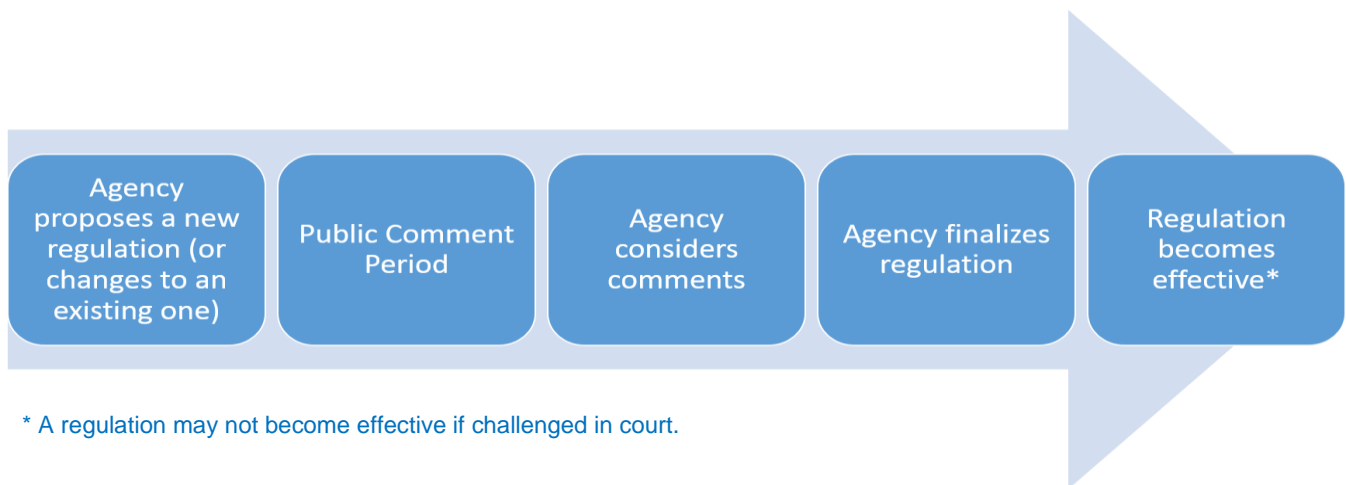
Sometimes an agency may want to change its interpretation of an existing law. This can happen if the agency can adequately explain why it is changing course, for example, when there is new evidence or data that impacts the way the law is implemented. In general, an agency can't just decide to change a regulation because it doesn't like the regulation or the underlying law, it has to have some rational justification. And it can't write a regulation that contradicts the underlying law.

Do my comments really matter?

Yes! The Administration has to consider all the comments submitted during a public comment period. It's the law! The agency really has to review all the comments. While it does not have to explain why it did (or did not) make changes suggested by the comments, it does need to address significant issues that commenters raise. The agency will also need to explain the types of comments it received and whether it made any changes to its proposed rule based on those comments. An agency can't just ignore comments because it doesn't like them.

What happens if the Administration finalizes an unpopular proposal?

Sometimes an agency may finalize a regulation even if commenters oppose the changes. This may result in court challenges. The agency then has to justify the changes it made to the rules even though it receives comments and data opposing the changes. All the comments submitted during the public process become part of the "administrative record" and are reviewed by the court to determine if the agency can make the changes it wants. If the court finds the agency wasn't justified, the court can prevent the agency from implementing the regulations. So your comments are important to support possible legal challenges.



* A regulation may not become effective if challenged in court.

When have comments made a difference?

As one example, the National Health Law Program has challenged decisions by HHS to allow three states to impose work requirements (and other harmful policies) in Medicaid. The public comments overwhelmingly opposed the proposals. Some commenters explained why the changes would harm them personally because the changes may cause them to lose Medicaid. Other commenters discussed studies and data that show work requirements don't work.

When we challenged HHS's decision in court, the judge specifically noted the opposition to the proposals in the public comments and decided that HHS did not consider the impact on people who would lose health coverage. The result is that the judge stopped work requirements in these three states. The comments really did make a difference!

Does it take a lot of time to write comments?

No! Your comments can be as short as a paragraph or as long as you have time to write. If you need help writing comments, some organizations provide a "comment portal" with bullet points or suggested language to submit your comments directly through that organization's website. Other organizations may offer "template" or draft comments that you can adapt.

What should my comments say?

You can discuss the personal experiences of you, your family and friends, or your work experience. Your comments can – but don't have to – include data from your organization, community, or state. You don't have to know all the details about a proposed regulation, all you really have to do is know how it will impact you or those you care about. You can also comment on just a part of a proposal.

Your opinion matters and your comments do make a difference!