

The Administrative Procedure Act

How ordinary people get a say in the federal rules that govern daily life.

3,000–4,500 FEDERAL RULES ARE FINALIZED EVERY YEAR. YOU VOTED ON NONE OF THEM.

You can comment on nearly all of them — free, without a lawyer, and the agency must answer the serious ones in writing. Start at [regulations.gov](https://www.regulations.gov) · [federalregister.gov](https://www.federalregister.gov) · [reginfo.gov](https://www.reginfo.gov)

Why this law exists

Federal agencies write binding rules, enforce them, and judge disputes about them. Nobody elects them. Congress delegated that power and in 1946 passed the **Administrative Procedure Act** (5 U.S.C. §§ 551–559) to keep it tethered to the public — requiring that it be exercised **in the open, on a record, with reasons**. Procedure substitutes for the ballot.

This is not a left or right question. A deregulatory administration and a regulatory one face identical obligations. The channel that lets you object today is the one your opponents will use when the government changes hands.

What § 553 requires

- **Publish notice** of the proposal, its legal basis, and its data.
- **Open a comment period** — usually 30 to 60 days.
- **Consider comments** and answer significant ones in the final rule.
- **Explain the reasoning** so a court can review it.

Under *State Farm* (1983) an agency acts **arbitrarily and capriciously** if it ignores an important aspect of the problem or reasons against the record — and an agency reversing a longstanding rule **must give reasons**, whether it is adding requirements or removing them. Under *logical outgrowth*, a final rule must be a foreseeable development of what was proposed.

Loper Bright (2024) ended *Chevron* deference. Courts now judge statutory meaning independently, so **showing that a rule conflicts with its authorizing statute is the strongest argument available to you** — stronger than at any point in forty years.

Where the process does not reach

§ 553 exempts rules on **grants, benefits, and contracts**; military and foreign affairs; and interpretive rules and policy statements. The **good cause** exception (§ 553(b)(3)(B)) allows skipping comment entirely — GAO found that among major rules issued without comment in 2003–2010, roughly three-quarters invoked it. Every recent administration has used these tools, and each has objected when its predecessor did.

Does commenting work? The honest answer.

Yes, but unevenly. Peer-reviewed research consistently finds comments affect final rules. It also finds that **business and organized commenters influence outcomes while individual commenters generally do not**, and that agencies revise most often on complex rules that are *not* politically prominent. The rules drawing the most attention are the least likely to move.

One agency official put it plainly: they read every comment, but without supporting data it isn't much use in the rulemaking process.

So build the kind that counts. Evidence beats preference. Fifty substantive comments beat five thousand form letters — identical submissions are typically counted once, and some are never posted.

And the record outlives the rule. In *Stewart v. Azar* (2018) and *Gresham v. Azar* (2019), courts vacated agency action because comments about who would lose coverage went unaddressed. **What you write may be read by a judge years later.**

TWO POWERS ALMOST NOBODY USES

Petition for rulemaking — 5 U.S.C. § 553(e). You have the right to ask an agency to **issue, amend, or repeal** a rule. You do not have to wait for the government to propose something. The agency must respond, and denials are reviewable. Most agencies post petition procedures on their websites. This is the difference between reacting and proposing.

Request an OIRA meeting — E.O. 12866. While a significant rule sits at the White House for review, **any member of the public may request a meeting about it**. Industry does this routinely; individuals almost never do. Meeting logs are public at [reginfo.gov](https://www.reginfo.gov) — so you can also see who else has been in the room.

Don't overlook your state. Every state has its own APA, state rules shape daily life just as much, and comment volume is a fraction of federal — so one person's voice carries far more weight.

WHAT TO DO — IN ORDER

1. See it coming.

- **Set a free alert** at [regulations.gov](https://www.regulations.gov) on a topic you know. Five minutes; it solves the biggest barrier.
- **Read the Unified Agenda** ([reginfo.gov](https://www.reginfo.gov)) — what agencies plan to propose, often a year ahead. The most underused public document in American government.

2. Check the statute first.

- Every rule names its authorizing statute. **Read it.** Statutes often impose duties the APA doesn't — to consult named experts, consult tribes, weigh specific factors, or avoid reducing existing protections.
- Compare the full statute against what the preamble quotes. Selective quotation is common and almost nobody checks.

3. Write so it counts.

- Cite the exact provision and page. Pick two or three issues, not twenty.
- Say who you are. Bring data. Propose an alternative. Answer the agency's *best* argument.
- **It's public, including your name.** Then come back for the final rule and check whether they answered.

The trade-off, stated honestly. A good comment takes hours you may not have, most comments do not change rules, and organized interests hold advantages you cannot match alone. Extended procedure genuinely does slow government down — that argument is serious, not a pretext. The question worth pressing is not which value wins in the abstract, but **who bears the cost of each choice, and whether the people who bear it had any say in how the balance was struck.**