

# A PRACTICAL GUIDE *FOR* RESISTING THE TRUMP DE-REGULATORY AGENDA

*Former agency staffers reveal best practices  
for “making agencies listen”*



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Save EPA - <http://www.saveepaalums.info/>  
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## ABOUT THIS GUIDE

This guide is a project of Save EPA, an all-volunteer organization based in Colorado and made up of former employees of the U.S. Environmental Protection Agency. We have expertise in environmental science, law and policy. We are using our collective expertise to educate and advocate about environmental science, environmental protections and the Trump Administration's assault on EPA and our public health.

As former staffers who helped develop, issue and enforce standards for clean air, water and land and a safe climate, we are gravely concerned that the Administration's attempt to broadly roll back regulations could deprive our country and planet of critically important protections for years to come. As this guide explains, putting standards and other protections in place entails a long, careful, information-laden process. Repealing protections that will need to be replaced will take years that we have do not have to waste.

We have written this guide to be useful in countering attempts to roll back public protections issued by any federal agency. EPA is responsible for protecting the public and environment from pollution, and other federal agencies are responsible for protecting workers, consumers, patients, students, and other important segments of our society. Together, federal agencies have been charged by Congress to work on behalf of the American people through laws that Congress has passed to help make our nation a safe, secure, fair and productive place to live, work, learn and play.

We were inspired to write this guide by the Indivisible Guide written by former congressional staffers to provide insight and advice about how to "make Congress listen" to concerns about the Trump Administration agenda (<https://www.indivisibleguide.com>). We reference the Indivisible Guide and follow some of its organization and phrasing, but we and our guide are independent of the Indivisible organization. We are wholly and solely responsible for the content of this guide.

**This is the second edition of our guide**, to be followed by later, improved editions as we get feedback. We are eager to hear your comments, questions and suggestions, and to learn about your experiences in using the guide and getting agencies to listen. Please email us at [saveepa.guide@gmail.com](mailto:saveepa.guide@gmail.com) - and please spread the word and this guide!

# INTRODUCTION

The Trump Administration is taking dead aim at regulations that protect people's lives, livelihoods and communities. The list of regulations under attack is long. It includes rules that keep banks from making risky bets using - and potentially losing -- customers' money, and rules that keep power plants and other facilities from spewing dangerous pollution that leads to illness, death and climate change. Also on the chopping block are rules that keep workers safe and our water clean. The Washington Post has compiled a more complete list available by clicking [trump-rolling-back-obama-rules](#).

Fortunately, no president can roll back regulations by fiat. The Trump Administration must go through the same process that's used for making regulations, and that process gives everyone the opportunity to participate. Regulated businesses are sure to participate, since they are directly affected and may save money if regulations are delayed, watered down or repealed. Public interest groups are likely to participate, too, but they can't be expected to save regulations all on their own. As members of the public that the regulations are designed to protect, we need to be loud and clear that the regulations are important to us. We can't afford to be silent while President Trump tries to take away our protections.

It's important to understand that the process of making or unmaking a regulation is not like an election. An agency must follow the laws and facts relevant to the regulation, and it must consider and respond to all the public comments it receives on a proposal to create, change or repeal a regulation before it makes its final decision.

Public comments can inform and even force the agency's thinking in several ways. A comment can provide information and make points that can or should change agency officials' minds. A comment can help illustrate the need for the rule or indicate a strong interest in the rule. While an agency must follow the relevant law and facts, it generally has some leeway to make the rule stronger or weaker. Public comments can help push the agency one way or the other.

The Trump Administration may not be persuaded by public comments that rely on facts, reason and concern for the greater good. But public comments can still have a potent effect by exposing problems. The "administrative record" that is created in the comment period may be used by a court to overturn an agency's decision to roll back a rule.

Courts look carefully at whether an agency's decision complies with the law, takes account of the relevant facts, responds rationally to public comments, and is well-

reasoned. Public comments play an important role in this review. Court challenges to agency decisions are generally limited to issues that have been raised in public comments so that the agency has a chance to consider them. But a good comment made by one person can be the basis for a court challenge brought by anyone, including a public interest group. Members of the public often have specific knowledge relevant to a rule (for example, about an affected community) that public interest groups do not, so providing that information in public comments can be important to effectively pushing back against rolling back a rule.

Public comments can also show that the regulation under attack has strong public support. Broad public and social media campaigns can help drive that point home. Trump Administration appointees may not care much about public opinion, but members of Congress do - or can be made to care the next time they're up for election. President Trump's de-regulatory agenda needs to be fought both as bad policy and as bad politics.

This guide provides information and tips for weighing in against rulemakings to roll back rules and for engaging in broader efforts to direct public outcry at agencies and members of Congress. Drawing on our experience as former agency staffers, we offer information and advice in this guide for making agencies listen, and for helping to create a rulemaking record to which a reviewing court will listen.

**For EPA rules, Save EPA is tracking when rollback proposals are open for comment and providing information helpful to commenting on the proposal.**

At Save EPA's website, <http://www.saveepaalums.info>, you will find a list of the EPA rollback actions open for comment and for each action --

- a brief description of the EPA rule being rolled back and the Trump Administration's proposal to delay, weaken or rescind the rule,
- suggestions for points you might want to make in comments on the proposed rollback,
- links to the EPA websites where you can submit your comments, and
- links to EPA and public interest group websites where you can find out more about the rule and get additional suggestions for points to make in comments opposing the rollback.

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## SECTION 1: DEBUNKING THE TRUMP ADMINISTRATION'S TALKING POINTS AGAINST REGULATIONS

President Trump wants to make regulation a dirty word. He and others in his administration make broad claims against regulation that have little or no basis in fact and ignore the public protections (and often, net cost savings) that regulations provide. Their negative talking points will be repeated over and over as they move to roll back regulations, so it's useful to debunk the main ones here. In resisting the Trump Administration's roll-back efforts, you may find it useful to debunk a few of these talking points yourself in comments to agencies.

### **CLAIM: “Regulations cost too much”**

Like laws, regulations are often put in place to prevent businesses and people from acting in ways that help themselves but harm others. Changing unsafe or otherwise risky products or practices can cost the regulated business or person money, but it saves the public money (not to mention pain and suffering) by avoiding harms, including illness, injuries, or even death. Preventing discrimination or unfair business practices has costs, too, but they protect our civil rights and provide more equal economic opportunities. In the environmental realm, regulations save the public money by making polluters pay to avoid or cleanup the pollution they create, instead of burdening taxpayers with these costs.

Regulations are designed to achieve their objectives at low or reasonable cost. Since the 1980s, Presidents have required federal agencies to estimate the costs of a regulation as part of the rulemaking process. For bigger ticket rules (those with annual costs of \$100 million or more), agencies must also conduct a cost-benefit analysis and consider alternative approaches. The economic experts at the White House Office of Management and Budget set a high bar for these analyses. Agencies are required to quantify the costs and benefits to the extent possible, and identify and weigh benefits that cannot be quantified. Agencies must also make their analyses available for public review and comment as part of the rulemaking process so the analyses can be improved before final decisions are made.

Many regulations targeted by the Trump Administration provide benefits that exceed - and for many environmental regulations, far exceed - their costs. Some rules, like the greenhouse gas/fuel economy standards for cars and trucks, even pay for themselves in a short period of time and go on to save consumers large amounts of money over the long term. Claims that regulations cost too much typically focus just on the costs to the regulated business or person, and ignore the benefits and savings

to other members of the public. Fair evaluation of a regulation requires looking at both costs and benefits to society as a whole.

**CLAIM: “Regulations cost jobs”**

Regulations generally have only a small impact on jobs compared to other economic factors. Job losses in industries like coal mining and manufacturing are largely the result of automation and price competition with lower-cost fuels and lower-wage countries. Some regulations are estimated to cause economic shifts large enough to result in loss of some jobs and creation of other jobs, such as regulations combatting pollution that have the effect of pushing the economy forward to newer, cleaner technologies such as wind and solar power. Regulations can drive creation of jobs needed for compliance, such as in industries that build equipment for reducing pollution or making cars safer. Some regulations safeguard existing jobs by protecting natural resources important to tourism, farming or fishing.<sup>1</sup> Other regulations make jobs safer and workplaces more fair. (For references on jobs impacts of regulation, see endnote <sup>2</sup>.)

To the extent a regulation has any negative impact on jobs, it is the result of a transparent effort to protect the public from well-documented, significant risks that Congress directed the regulating agency to address. No one argues with banning dangerous drugs even though jobs producing and distributing those drugs are lost in the process.

**CLAIM: “Regulations are imposed by unelected bureaucrats”**

Agencies can only issue regulations authorized by the laws Congress writes, and all members of Congress are elected. Laws generally specify what a regulation should accomplish and how. Congress also has the power to repeal regulations by amending laws or passing new legislation.

The top agency officials empowered by Congress to issue regulations are appointed by the President and can be fired by the President. They are also typically confirmed by the Senate. Since the 1980s, presidents have required that agencies submit their draft rules to the White House Office of Management and Budget for review. If White House officials, including the President, don't like a draft rule, they can and do ask the rule-writing agency to consider changing it. While agency heads are not elected officials, they take an oath to implement their duties in accordance with the law, and they are expected to advance the policy agenda of the President, the nation's top elected official.

**CLAIM: “States can take care of the problem”**

The purpose of federal regulation is to assure minimum protections across the country. Laws passed by Congress call on EPA, for example, to set national standards for controlling pollution to provide every American a basic level of protection. National standards help states protect the health and welfare of their residents when competing with one another for business, and provide businesses with a level playing field from one state to the next. Since many forms of pollution don't respect state boundaries, national standards or programs are also important for protecting the air we breathe, the water we drink, and the water bodies many states share, like the Chesapeake Bay and the Great Lakes.

Federal laws often call on states to play an important role in federal regulatory programs, making those programs a federal-state partnership. In the case of EPA's clean air program, for example, states develop and implement programs tailored to their circumstances for meeting and enforcing national standards within their borders. But EPA is ultimately responsible for seeing that those standards are met. Congress recognized that federal oversight and enforcement provide strong incentives for states to play their role and for regulated entities to meet their requirements. When they don't, the law directs EPA to step in to provide the protections that Congress sought for all Americans.

**CLAIM: “Regulation should focus only on the ‘basics’”**

This is generally code for withdrawing public protections that have been adopted to address emerging problems. A prime example is the Trump Administration's claim that EPA should focus on what Administration officials claim are the agency's “core” responsibilities for clean air, water and land, and not also combat the very serious problem of climate change. Putting aside the fact that climate change adversely affects air, water and land, federal environmental laws don't spell out or say to stop with the “basics” -- they call on EPA to follow scientific developments, identify emerging threats and take action to address them, not ignore them. This approach is typical of federal statutes calling for regulations to achieve specified goals like clean air and clean water. As circumstances changes, achieving those goals can require tackling new problems and taking additional measures.

Unfortunately, by the time a problem is fully manifest, it is often too late to prevent substantial harm. For this reason, public health and safety statutes often embody a “precautionary principle” authorizing agencies to address not only harms which are already present but those which scientific evidence indicates are likely to occur.

## SECTION 2: HOW IS A REGULATION MADE - OR UNMADE?

This section of the guide briefly explains how a rule is made, changed or repealed. Links at the end of this guide provide more information on the rulemaking process.

First let's remember why regulations matter. Congress makes the laws, but many laws rely on agencies to figure out the nuts and bolts of how to achieve the law's objectives. Agencies issue regulations that often define exactly what is required, who must follow the rules, and how compliance is determined. Many laws have little or no practical effect until implemented by regulations. In those cases, regulations determine how effective the law is in practice.

Agencies don't have a free hand in making or rolling back regulations. They must comply with the laws authorizing the regulation and governing the rulemaking process. Presidential orders tell them to consider costs and other impacts and give the White House and other agencies a chance to review draft regulations before the public sees a proposed rule. Over the years, agencies have also developed rulemaking practices beyond what is required, providing longer periods for public comment, additional opportunities for public input, and public access to top officials' calendars, to promote transparency, inclusiveness and responsiveness. For agencies, rulemaking is typically a long and arduous process. For the rest of us, it provides much of the information we need to understand what's at stake and opportunities to tell agencies where they've gone right or wrong - in other words, what matters to us!

Unfortunately, early indications are that the Trump Administration is looking for and taking shortcuts to roll back rules quickly and with little public input. One shortcut is simply delaying the date when a rule or its requirements take effect. The longer the delay, the longer it takes for the rule's protections to kick in. Under some limited circumstances, an agency may be able to unilaterally postpone the rule's effective date or compliance dates for a limited period of time, but as a general matter an agency must go through rulemaking to extend them. A federal court has already struck down an attempt by the Trump EPA to indefinitely delay a rule without first going through rulemaking to change the rule.

Another shortcut attempted by the Trump Administration is repealing a rule without replacing it, on the pretext that the agency is still thinking about how the rule should be replaced. It makes no sense to take away public protections before something as good or better is ready to take their place. Repeal without replacement risks permanent loss of protections.

## LEGAL REQUIREMENTS FOR THE CONTENT OF REGULATIONS

Agencies must follow Congress' directions in making, or unmaking, a regulation. Congress typically tells an agency when or under what circumstances a regulation should be written, what it should accomplish, and what the agency should consider in crafting it. If the agency doesn't follow Congress' directions, its decisions can be overturned by a court. What does this mean for a rulemaking to repeal or water down a rule? The agency can't repeal a rule that Congress has required, and it can't weaken a rule in a way that violates the underlying statute.

Agencies must also do a lot of homework to make, or unmake, a regulation. Federal law requires an agency to collect and analyze scientific, technical, economic and other information relevant to the rule, and make decisions that make sense in light of that information. If an agency fails to do either, its decisions can be overturned by a court. What does this mean for a rulemaking to repeal or water down a rule? An agency can't just say that it changed its mind - it must show that its new position is consistent with the available information as well as with the law authorizing or requiring the rule.

Agencies must also comply with several broadly applicable federal laws that tell agencies to craft regulations in ways that minimize paperwork<sup>3</sup> and reduce burden on small businesses,<sup>4</sup> states and local governments.<sup>5</sup> Agencies must also obey presidentially issued executive orders to analyze a draft regulation's costs and various other impacts.<sup>6</sup> These analyses, which are publicly available, can provide useful information for testing an agency's reasons for weakening or repealing a rule.

One tactic to watch out for is the Trump Administration changing cost-benefit analyses. In proposing to rescind EPA's Waters of the US rule, the Administration changed the cost-benefit analysis that had shown the rule's benefits significantly exceeding its costs. By removing some benefits (e.g., wetlands protection) from the equation, they are hiding the fact that rescinding the rule would result in a net loss for the public. Pointing out this kind of flawed decision-making can be really helpful in comments on a rulemaking.

## LEGAL REQUIREMENTS FOR THE PROCESS OF MAKING REGULATIONS

Agencies generally must follow a few basic steps to make, or unmake, a regulation. These process steps give every one of us a chance to learn about a regulation, tell agencies what we think about it, and make agencies consider and respond to our views.

**PROPOSING A REGULATION:** With few exceptions, an agency must give the public an opportunity to comment on a proposed regulation, or a proposal to change or repeal an existing regulation, *before* the agency makes a final decision. To accomplish this, the agency issues a “notice of proposed rulemaking” in the Federal Register, the official journal of the federal government and accessible online at <https://www.federalregister.gov>. The agency may also post the notice or a link to the notice on its own website.

A notice of proposed rulemaking is - or should be - a gold mine of information. The agency is required to describe what action is being proposed, and explain how, in its opinion, the proposed action is consistent with the relevant facts and law. The agency must also describe the factual basis for its proposed action. With a few exceptions to protect confidential information, all the information used by the agency should be available for public review in an electronic docket accessible through the Internet.

There are several ways to find a notice of proposed rulemaking in the Federal Register:

- If you have the rulemaking docket number, go to <https://www.regulations.gov/>, type the docket number into the “search” field, and look for the notice in the search results.
- Use an Internet search engine to search for a web page discussing the proposed rule on the agency’s web site. That web page typically will include a link to a PDF file containing the Federal Notice.
- Go to the Federal Register web site -- <https://www.federalregister.gov>. The advanced search engine on the site lets you narrow your search to relevant documents by selecting the type of document (e.g., proposed rule), the agency, the time period, etc.
- If it’s an EPA rule, go to <http://www.saveepaalums.info> where Save EPA provides a tracker of EPA rollback actions and information and links for submitting comments.

The Federal Register notice provides the electronic docket number for the rule. The docket can be accessed online by going to <http://www.regulations.gov/>, typing the docket number into the “search” field, and clicking on “search.”

ASKING FOR PUBLIC COMMENT: As part of the notice of proposed rulemaking, the agency lets the public know when, how and where to submit comments. Agencies generally must give the public at least 30 days from the date the proposal is published in the Federal Register to comment. Under very limited circumstances, agencies can shorten the time for public comment. Early indications suggest the Trump Administration may at times abuse or misuse this authority to severely cut back on the public’s opportunity to oppose a rule’s delay or repeal.

In some cases, an agency also holds a public hearing where anyone can make remarks. The notice of proposed rulemaking usually provides the date and location of any public hearing. Sometimes an agency holds a public hearing only if one is requested, and it describes in the notice when and how to submit a request. Anyone is entitled to request a hearing.

All written comments and public hearing statements are included in the docket for the rulemaking, which is usually available on line. Anyone can access the docket and read what has been submitted, and if the comment period is still open, submit comments that respond to other comments, if desired (for example, to correct mistakes or rebut arguments). The docket for the rulemaking becomes the “administrative record” on which the agency must base its decision and defend it in court should the final regulation be challenged.

Although not required, agencies may provide other opportunities for members of the public to tell them what they think about a proposed rule. Representatives of businesses, environmental advocacy or other interest groups often ask to meet with agency officials, and their requests for a meeting are often granted. When agency officials meet with representatives or other members of the public, they must document the date of the meeting, who attended, and the views that were aired in a memorandum or other submission to the docket for the rule. This ensures that all comments made to an agency are in the public rulemaking record.

ISSUING A FINAL RULE: The agency must consider all the public comments it receives in making final decisions about a rule, and respond to all significant comments in issuing its final rule. Significant comments are those that make substantive points, such as providing new information or making arguments for how and why the proposal should be changed.

Once the agency has decided on a final rule, it issues a notice of a final rule in the Federal Register. The notice must include an explanation of any changes made from the proposed rule in the final rule and the agency’s responses to all significant

comments. In addition to the Federal Register notice, the agency may prepare various technical and other documents to explain and support its decision and include those in the docket for the rule.

## **OTHER AGENCIES CAN COMMENT AND THE WHITE HOUSE HAS A LOT OF SWAY**

For agencies, the rulemaking steps described above are only part of the process. Executive orders add two rounds of “interagency review” so that White House and other federal agency officials have a chance to look at major draft proposed rules and draft final rules *before* they go public.<sup>7</sup> Important goals of “interagency review” are coordination of federal agency actions and consistency of those actions with the President’s policies, to the extent permitted by law.

The public does not have a defined role in the interagency review process, but experienced stakeholders know they can ask to meet with White House officials about a rule in interagency review. The Office of Information and Regulatory Affairs (OIRA) in the White House Office of Management and Budget is the gatekeeper of the interagency review process. OIRA usually meets with outside groups upon request and keeps a public log of those meetings. That log is accessible online at <https://www.reginfo.gov/public/do/eom12866Search>. OIRA officials generally don’t engage in discussions about the rule, but they do listen.

Getting OIRA’s ear can be useful. As a strictly legal matter, White House officials, including the President, are not authorized by most laws to make decisions about rules. But the agency heads who are authorized to make these decisions work for the President. OIRA and other White House officials are often important advisors to the President, so they can have considerable clout. Moreover, OIRA controls when the interagency review process begins and ends. That adds to the sway that the White House has over the rule’s outcome.

## SECTION 3: HOW CAN YOU ADD YOUR VOICE TO THE RULEMAKING PROCESS?

As we've described, the federal rulemaking process provides opportunities for the public to weigh in while a rule is being made, unmade or delayed. In this section, we offer suggestions on how to make your participation in that process more effective. In the next section, we suggest tactics outside the rulemaking process for opposing the Trump Administration's de-regulatory agenda.

It's worth saying again - your voice counts. It's important to tell the agency and other decision-makers what you believe about a regulatory rollback. We can't be silent and let narrow interest groups carry the day uncontested. We all have a stake in the protections under attack. And the more of us that comment, the more we make clear that there are political consequences for taking away our protections.

It's also worth saying that no regulation is perfect. In urging resistance to the Trump Administration's de-regulatory agenda, we are not saying that regulations should remain exactly as they are forever. But the Trump Administration has shown no interest in making regulations more effective or more efficient. They want the targeted regulations gone or significantly watered down. This guide recommends that we participate in de-regulatory rulemakings to show support for the important public protections under attack and to oppose sacrificing these protections instead of building on them.

### AVENUES FOR COMMENTING ON A PROPOSED RULE

#### COMMENT PERIODS AND PUBLIC HEARINGS

Except in rare circumstances, an agency provides a public comment period on a proposed rule during which anyone can submit comments. During the public comment period, the agency may also hold one or more public hearings at which anyone can make a statement.

These are important opportunities for being heard. Agencies are looking for information about the problem their proposed rule is supposed to solve, how well the proposed rule solves the problem, and whether the proposed rule can be improved. They also pay close attention to arguments about whether the proposed rule complies with the law. As we explain below, your comments can contribute to an agency's understanding of the problem being addressed and the solutions being proposed.

While agencies don't make decisions about a final rule based on how many people comment one way or another, the number of commenters supporting a rule (or opposing a roll back of a rule) does send an important signal about the level of public concern and support for a specific direction.

You generally have more than 30 days to prepare and submit comments. Most agencies post a proposed rule on their website the day it is signed. The official comment period begins on the date the proposal is published in the Federal Register, which often occurs several days or even weeks after the proposal is signed. By taking advantage of the web posting of the proposed rule, you can buy yourself additional time for commenting.

Submitting comments is easy to do. Near the front of every notice of proposed rulemaking is a section commonly titled "Dates" with information about when, how and where to submit your comments. Most agencies let you submit comments electronically. Once you find your way to the web address for an agency rulemaking (see pages 9-10 and Section 5 for help finding that address), submitting comments can be just a few clicks away.

Making a statement at a public hearing is also valuable. When members of the general public show up for a hearing, it sends another important signal to the agency about the level of public concern. A hearing is also an opportunity to speak directly to agency representatives, including managers and staff who are developing the rule. A hearing can be a rallying point for grassroots efforts and an opportunity to get press or other public attention. The same "Dates" section of the notice indicates where and when any hearing(s) will be held or how a hearing can be requested. If a hearing to roll back a regulation is being held near you, making a statement in support of the rule and the protections it provides is time well spent.

## *TIPS FOR EFFECTIVELY COMMUNICATING YOUR VIEWS*

You have the power to make an agency consider your views by submitting a comment or making a hearing statement or both. Every comment submitted during a public comment period or made as part of a public hearing statement becomes part of the record for the rule being made or unmade. By law, the agency must consider every comment, respond to all significant comments, and base its final decisions on the full rulemaking record.

If the agency fails to respond to a good point you've made – for example, a well-supported argument against rolling back a rule – the final rule may be vulnerable to a lawsuit by you or someone else, such as a public interest group. A court could require the agency to consider your point and determine whether to change the rule, and if the point is central enough to the rule, the court might even strike down (vacate) the rule. Since the agency is required to respond to significant comments when it issues the rule, you (and others) will be able to assess whether the agency has adequately responded to your comments.

Here are good rules of thumb for communicating your views so that their value is clear. Agency staff read all the public comments and are responsible for communicating them up the chain and responding to them. You want the agency to pay attention to what you have to say.

**Explain why you're commenting** - Say why you care about the regulation under attack. If you or someone you know is affected by the activity being regulated (for example, you or your child has asthma and are harmed by the pollution being released), explain that. Include any personal anecdotes that you're willing to share. Telling the agency that you have a personal stake in the rule helps bring home the need for the rule and raises the political stakes of rolling it back. Your account of how the regulated activity affects you may also help provide a legal basis for a lawsuit challenging an agency decision to delay, repeal or weaken the rule.

**If you have expertise, say so** - You don't have to be an expert to make a valid and valuable comment, but if you have expertise relevant to the regulation (for example, in health or child care, social work, safety, sanitation, teaching, banking, construction, law, or economics) or professional experience (for example, you are a farmer and the regulation will affect your farm), let the agency know that. A comment that draws on your expertise will have that much more credibility.

**Provide any information you have** - If you have information relevant to the rulemaking, include it and highlight it. Most EPA rules, for example, must be based on scientific and technical information; they aren't just expressions of policy preferences. Agency staff are on the lookout for new information and if you provide useful information, your comment will more surely get on their radar screens. Examples of new information might include:

- News reports about events in your community that relate to the regulation (for example, depending on the regulation, an unusual number of cancer cases, accidents at a workplace, a pollution spill or release).
- Other anecdotal information that has bearing on the need for the rule or its stringency or approach, especially if it can be tied to information showing a broader public impact. It is easy for an agency to downplay individual anecdotes but much harder to ignore information indicating broader impacts on the public.
- Science, safety or other relevant reports or studies that the agency hasn't considered in the rulemaking, or interpretations of reports or studies that the agency is ignoring or overlooking.
- Economic and/or engineering information that affects the feasibility, costs, or benefits of the proposal or alternatives.

**Be constructive** - If the notice proposing to water down or repeal a rule says there's something wrong with the rule, consider explaining why it's not a problem or how the problem might be addressed without sacrificing the public protection provided by the rule. For example, if the stated rationale for deregulating is to save jobs in an industry, you might suggest job training or economic development assistance for the communities that have a lot of workers in that industry. While the agency may not be able to provide that assistance itself, it may be able to enlist other agencies that can or ask Congress for help.

**Be civil** - How you present yourself and phrase your comments matters. Rude, discourteous comments and behavior reflect negatively on the commenter and his or her cause.

**Don't write a lot if less will do** - Longer comments are not necessarily better or more effective than short ones. What's important is to clearly say what you want to say and explain or support any claims you make.

**Stick to what you know** - You do not need to comment on everything in the proposal. Agencies often request comment on various issues, and those requests can signal that the agency needs more information about those issues or is still mulling how to address them. You should focus your comments on what you know and what concerns you the most.

### **Meet deadlines** -

- For written comments, make sure you submit them before the deadline listed in the rulemaking notice. Comment periods close at 11:59 EST on the date comments are due - don't cut it close. If your comments are late, the agency may choose to consider them but is not obliged to do so.
- For a public hearing, know your time limit and make sure your remarks will fit your allotted time. Hearing staff are likely to stop you at the time limit or shortly thereafter. The time limit (for example, 5 or 10 minutes per person) is often announced in the Federal Register notice for the rulemaking. While the time for your oral statement is limited, you can prepare a longer written statement and have that included in the rulemaking record.

The guides listed in the appendix have additional tips on public participation in rulemaking and additional information on the rulemaking process.

## **MEETINGS AND PHONE CALLS**

Less usual but potentially potent avenues for making your voice heard are calling or meeting with officials in the agency and/or the White House Office of Management and Budget (OMB). Experienced stakeholders make liberal use of these avenues. Representatives of potentially affected businesses and other well-established groups often ask for meetings with decision-makers and get them. They also call officials and sometimes their calls are taken. Meetings and phone calls that take place during the rulemaking are supposed to be on the record, meaning the agency is obliged to write a memorandum about any meeting or call and put it in the rulemaking docket.

Individual members of the public are unlikely to get a meeting or phone call with top officials, but that shouldn't stop you from asking. Contact information for agency officials is generally available on the agency's website. To ask for a meeting or phone call with officials at OMB's Office of Information and Regulatory Affairs, email [Mabel E. Echols@omb.eop.gov](mailto:Mabel.E.Echols@omb.eop.gov).

You may be able to increase your chances of meeting or speaking with agency or White House officials by asking your members of Congress (your state's two senators and your congressional district's member in the House of Representatives) for help. A primary job of your members of Congress (MoCs) is to help constituents navigate the bureaucracy. Businesses ask for this kind of help and so can you. Involving MoCs also alerts them to the rule and your concerns about it. You can use the occasion to ask your MoCs to raise similar concerns with agency officials themselves. The Indivisible Guide provides advice for how to contact your MoCs and get them to listen.

Another option is to call the contact person for the rule. That person's name, number and email address is provided in the "Contact" section of the notice of proposed rulemaking. The contact person is generally a staff person who is very familiar with the rulemaking. You can ask the contact person questions, tell them what you think, and ask for a meeting or phone call with agency managers or staff. A meeting or call can be a good way of collecting information that you can use in your comments.

Meetings and phone calls are not substitutes for public comments but they can be a good way of showing how much you (and others) care. Even if you don't get a meeting or phone call, the agency will register that you asked.

## **AMPLIFYING YOUR COMMENTS**

There is political power in numbers. The more people you enlist to push back on efforts to delay, weaken or repeal public protections, the stronger the signal you send that there is a political price to be paid by those taking or supporting such actions. Enlisting your MoCs, state and local officials, and others with political clout can also add to the political clout of your views. Here are several effective strategies for amplifying your comments:

- Ask other people you know and whose opinions you share to sign your comment, or to send their own comments. Let people know about this guide so they can make their comments more effective.
- If you're a member of a group that shares your view (a neighborhood association, professional association, or religious group, for example), see if the group would also like to comment.
- If you have an interesting or compelling story to tell, contact a relevant public interest group - you could be one of the real-world examples they'd like to showcase in their comments.
- You may be able to add political heft to your comments by asking your members of Congress to comment and/or make a public statement along the

same lines as your comments. Agencies pay close attention to what members of Congress say, particularly when the member holds positions on committees or in leadership that give them more clout with the agency. Use the Indivisible guide for how to make Congress - including your members - listen.

- Similarly, you may be able to enlist other elected officials (e.g., mayors), former agency officials or celebrities to submit comments or make statements. Other elected officials are likely to be susceptible to some of the tactics in the Indivisible guide, while you or other people you know may be able to reach out to current or former luminaries who can add their expertise and stature to comments against de-regulatory actions.

## SECTION 4: HOW CAN YOU HELP CREATE PUBLIC OUTCRY OUTSIDE THE RULEMAKING PROCESS?

The Trump Administration has so far shown a resistance to facts and reason, so the chance that public comments alone will change their minds is not great. Political activism can mobilize and energize opposition to a de-regulatory action. Several tactics that are of limited value in a normal rulemaking may be among the most effective tools for fighting President Trump's de-regulatory actions.

**Use of social media** can help generate the public outcry a de-regulatory action deserves. Facebook, Twitter and other platforms are good tools for getting out word that a rule is being rolled back, and to explain what is at stake. Use this tactic liberally.

**Conventional media** can be helpful, too. If you have a personal story that relates to the regulation, you might want to contact your local press and let them know your story. Op eds and letters to the editor are other good ways to get the word out. It is not easy to get a publication to publish an op ed or even a letter to the editor, but if you have a compelling personal story or relevant expertise, or if you represent a group, a newspaper or newsletter may be more likely to publish what you write. If not, you might consider encouraging someone to write who may be better able to get an op ed or letter to the editor published.

**Demonstrations** help raise awareness, build community and enthusiasm, and spread your message. Political leaders pay attention as well - especially if the demonstration gets press coverage.

**Mass letter-writing campaigns** are another method for communicating public outcry. Often an interest group tells you to “click here” and they will send “your comment” to the rule-writing agency or the White House. As comments on a rule, these campaigns have limited if any effect. Section 3 explains how to make your comments more effective than a mass letter-writing campaign. However, these campaigns can be important tools for resisting de-regulatory efforts. They help inform like-minded people and draw them into your cause, and generate press coverage that can help put pressure on government decision-makers.

**Enlisting your members of Congress** in resistance efforts outside the rulemaking process has the potential to be potent for the reasons mentioned

above. The Indivisible Guide, as also noted above, has a wealth of suggestions on how to make your members of Congress listen to your views and act on them. Even if they don't take the action you request, you will have put them on notice that they may face tough questions or criticism when they run for re-election.

**Enlisting other officials and celebrities** for campaigns outside the rulemaking process can draw a lot of attention to the need for resisting de-regulatory efforts.

## SECTION 5: NUTS AND BOLTS

So how do you find out which rules the Trump Administration is rolling back or delaying? How do you find the proposed de-regulatory action and the dates for the comment period?

**For EPA rules, Save EPA is tracking when rollback proposals are open for comment and providing information helpful to commenting on the proposal.**

At Save EPA's website, <http://www.saveepaalums.info>, you will find a list of the EPA rollback actions open for comment and for each action --

- a brief description of the EPA rule being rolled back and the Trump Administration's proposal to delay, weaken or rescind the rule,
- suggestions for points you might want to make in comments on the proposed rollback,
- links to the EPA websites where you can submit your comments, and
- links to EPA and public interest group websites where you can find out more about the rule and get additional suggestions for points to make in comments opposing the rollback.

For other agencies' rule, the organizations listed below are tracking many of the rollback actions being taken, and some provide links to the Federal Register websites where the rulemaking notices are posted. Those notices provide comment period and hearing dates as well as information about how to submit comments electronically or by mail.

- The Washington Post has a tracker for all de-regulatory actions being taken by the Trump Administration. It's available by clicking [trump-rolling-back-obama-rules](#). The tracker is updated periodically and uses Washington Post articles as source material. It does not include links to relevant agency web sites or to Federal Register notices, but it does provide information that could be used to find both of those things using an Internet search engine.
- The Sabin Center for Climate Change Law at Columbia Law School is tracking all climate change-related de-regulatory actions. Its tracker is available at <http://columbiaclimatelaw.com/resources/climate-deregulation-tracker/>, and does provide links to Federal Register notices of actions as they are posted.

- Harvard Law School’s Environmental Law Program is also preparing a detailed tracker of de-regulatory actions affecting environment, energy, public lands and natural resources programs, as well as related guidance from OMB and the Council on Environmental Quality. It plans to make its tracker publicly available online soon. We will update this guide with its web address when it is available.

You can also track actions yourself. You can start by checking an agency’s website for information on what rules are being “reviewed” and when you can comment on them. Often there will be a press release when a proposal is issued, and most agency websites make it easy to find press releases. You can also use an Internet search engine to find the agency and regulation of interest. Often Internet search engines work better than the search engines on agencies’ web sites, sad to say. If you don’t know exactly what rulemaking you are looking for but want to see what an agency is doing to rules by topic, Internet search engines can be helpful.

Agencies typically have a page that lists proposed rules that are open for comment, and some agencies also offer notifications that can help you track rules under development or existing rules being reviewed. See endnote<sup>8</sup> for hyperlinks to relevant pages for the Environmental Protection Agency, the Health and Human Services Department, the Occupational Safety and Health Administration, and the Securities and Exchange Commission.

Another option is to check the website of or join public interest groups in your areas of interest (for example, consumer product safety, environmental protection) that follow agency actions in those areas. The groups can do the monitoring for you. You can select a few priority rules on which to focus. Many groups provide their members with action alerts for major regulatory actions. Action alerts provide you with a heads-up when the group mobilizes to influence the rules that are the interest group’s priority. Often, they provide online forms with sample language, making it easy for you to submit comments and be heard. Please see Section 3 on how you can make your comments more effective than just a standardized or template comment.

Another valuable resource is the Federal Register web site, <http://www.federalregister.gov/>. There are different ways to use the site -

- A simple option is to click “browse” and select an agency of interest. The agency page includes, among other things, a list of recent significant actions, starting with the most recent.
- The agency page also allows you to subscribe via email or RSS feeds to receive notification of new Federal Register notices from that agency. To reduce the number of notifications, pick the “significant actions” option.

- Also on the Federal Register web site, the “sections” icon enables you to see a list and brief description of recently published Federal Register notices within certain areas of interest - environment, health and public welfare, world, money, and science and technology. Within each category, you can click on specific subtopics (e.g., endangered species) to see notices on that subtopic, starting with the most recent.
- The advanced search engine on the [FederalRegister.gov](http://FederalRegister.gov) lets you narrow your search to relevant documents by selecting the type of document (e.g., proposed rule), the agency, the time period, etc.
- The [Public Inspection web page on FederalRegister.gov](http://PublicInspectionwebpageonFederalRegister.gov) gives the public access to certain important or complex documents before they publish in the Federal Register.

## CONCLUSION

Although the Trump Administration has encountered problems advancing its agenda in Congress, it has more control over federal regulations, and it is moving quickly to roll back or delay important public protections. If we don’t resist, we could lose those protections. As individuals and together with friends, family members, colleagues and others, we need to make clear why the protections are important to us and why our members of Congress should care and push back. We can’t just complain about President Trump’s policies, we need to fight them. Please use this guide to do just that - and it’s good therapy! Here’s a quick summary of what you can do to help push back on the Trump Administration’s regulatory rollback:

- Participate in rulemakings to roll back or delay protections:
  - Comment on the proposed rule change
  - Testify at public hearings if there are any close to you
  - Request meetings or phone calls with agency staff, managers and/or White House officials
- Also use tactics outside the rulemaking process to increase the political stakes of deregulation:
  - Enlist your members of Congress
  - Use social and mainstream media campaigns
  - Participate in mass letter-writing campaign
  - Stage or participate in demonstrations or other group actions

- More generally, join in the public conversation about regulations and the protections they provide. If you hear or read something you know to be untrue, say or write something back, remaining civil but making clear that the public needs good information and fair analysis, not alternative facts and diatribes.

## APPENDIX: WHAT ARE OTHER HELPFUL MATERIALS?

Listed below are other useful guides for participating in rulemaking at the federal level and at the state level. These guides do not focus on de-regulatory actions, but they provide additional detail on some topics discussed in this guide.

### GENERAL GUIDES ON CITIZEN PARTICIPATION AND THE FEDERAL RULEMAKING PROCESS

Regulations.gov, “Tips for Submitting Effective Comments.” [https://www.regulations.gov/docs/Tips\\_For\\_Submitting\\_Effective\\_Comments.pdf](https://www.regulations.gov/docs/Tips_For_Submitting_Effective_Comments.pdf)

Office of the Federal Register, “A Guide to the Rulemaking Process.” [https://www.federalregister.gov/uploads/2011/01/the\\_rulemaking\\_process.pdf](https://www.federalregister.gov/uploads/2011/01/the_rulemaking_process.pdf)

Department of Health and Human Services, “How to Participate in the Rulemaking Process.” <https://www.hhs.gov/sites/default/files/regulations/rulemaking-tool-kit.pdf>

Environmental Law Institute, “A Citizen’s Guide to Influencing Agency Action.” <http://www.gotofirm.com/content/uploads/2012/11/CitizensGuide.pdf>

Center for Effective Government, “Notice and Comment Rulemaking.” <http://www.foreffectivegov.org/node/3463>

Congressional Research Service, “The Federal Rulemaking Process: An Overview,” Maeve P. Carey, Coordinator, Analyst in Government Organization and Management, June 17, 2013. <https://fas.org/sgp/crs/misc/RL32240.pdf>

### SPECIALIZED CITIZEN GUIDES - FEDERAL LEVEL

Environmental Law Institute, “A Citizen’s Guide to Using Federal Environmental Laws to Secure Environmental Justice.” <https://www.epa.gov/sites/production/files/2015-04/documents/citizen-guide-ej.pdf>

Environmental Protection Agency, “How Citizens Can Comment and Participate in the National Environmental Policy Act Process.” <https://www.epa.gov/nepa/how-citizens-can-comment-and-participate-national-environmental-policy-act-process>

### STATE GUIDES FOR CITIZEN PARTICIPATION (not a comprehensive list; your state may have one, too)

Alabama Department of Environmental Management, “Guide for Citizen Participation: How to make your voice heard on community environmental issues.” <http://www.adem.alabama.gov/moreInfo/pubs/citizensguide.pdf>

Indiana Department of Environmental Management, “Citizens’ Guide to IDEM: An Introduction to IDEM’s Procedures for Issuing Environmental Permits, Overseeing Cleanups, Preparing Environmental Reports and Plans, and Writing Environmental Rules,” March 2014, Draft update prepared for posting on December 12, 2014. [http://www.in.gov/idem/files/citizens\\_guide.pdf](http://www.in.gov/idem/files/citizens_guide.pdf)

Michigan Department of Environmental Quality, “A Citizen’s Guide to Participation in Michigan’s Air Pollution Control Program,” April 2007. [http://www.michigan.gov/documents/deq/deq-ess-caap-citizensguidetomiairpollutioncontrol\\_195548\\_7.pdf](http://www.michigan.gov/documents/deq/deq-ess-caap-citizensguidetomiairpollutioncontrol_195548_7.pdf)

Ohio Environmental Protection Agency, “Guide to Rule-making,” November 2015. <http://epa.ohio.gov/portals/33/rules/guide.pdf>

## ENDNOTES

<sup>1</sup> [https://www.washingtonpost.com/graphics/2017/business/environment/florida-reef/?utm\\_term=.6d8f11b268c5](https://www.washingtonpost.com/graphics/2017/business/environment/florida-reef/?utm_term=.6d8f11b268c5)

<sup>2</sup> Examples of articles and studies on job impacts of regulation:

- Hafstead, Marc and Robertson C. Williams III, “How Do Environmental Policies Affect Employment?”, Resources (Resources for the Future’s online magazine), Issue 190, Fall 2015. See <http://www.rff.org/research/publications/how-do-environmental-policies-affect-employment>
- Semuels, Alana, “Do Regulations Really Kill Jobs?” The Atlantic, January 19, 2017. See <http://www.theatlantic.com/business/archive/2017/01/regulations-jobs/513563/>
- Irons, John, and Shapiro, Isaac, “Regulation, employment and the economy: Fears of job loss are overblown,” Economic Policy Institute, Policy Paper #305, April 12, 2011. See [http://www.epi.org/publication/regulation\\_employment\\_and\\_the\\_economy\\_fears\\_of\\_job\\_loss\\_are\\_overblown/](http://www.epi.org/publication/regulation_employment_and_the_economy_fears_of_job_loss_are_overblown/)
- Morgenstern, R. D., W. A. Pizer, and J. S. Shih. 2002, *Jobs versus the Environment: An Industry-Level Perspective*. Journal of Environmental Economics and Management 43(3):412-436. See <http://www.rff.org/files/sharepoint/WorkImages/Download/RFF-DP-99-01>
- Elmendorf, Douglas W., Director of Congressional Budget Office, “Policies for Increasing Economic Growth and Employment in 2012 and 2013,” Testimony before Budget Committee of U.S. Senate, November 15, 2011, pp. 45-46. See <https://www.cbo.gov/publication/42717?index=12437>

For examples of job impacts of some individual regulations, see for example:

- U.S. Environmental Protection Agency, “Regulatory Impact Analysis for the Final Mercury and Air Toxics Standards,” EPA-452/R-11-011, chapter 6, December 2011. See <https://www.epa.gov/sites/production/files/2015-11/documents/matsriafinal.pdf>.
- Bivens, Josh, “The ‘toxics rule’ and jobs: The job-creation potential of the EPA’s new rule on toxic power-plant emissions,” Environmental Policy Institute, Issue Brief #325, February 7, 2012. See <http://www.epi.org/publication/ib325-epa-toxics-rule-job-creation/>
- U.S. Occupational Safety and Health Administration, “OSHA Fact Sheet - OSHA’s Proposed Crystalline Silica Rule: Overview,” August 2013. See [https://www.osha.gov/silica/factsheets/OSHA\\_FS-3683\\_Silica\\_Overview.html](https://www.osha.gov/silica/factsheets/OSHA_FS-3683_Silica_Overview.html)
- U.S. Department of Labor, “Fact Sheet: Final Rule to Update the Regulations Defining Delimiting the Exemption for Executive, Administrative, and Professional Employees,” May 2016. See <https://www.dol.gov/whd/overtime/final2016/overtime-factsheet.htm>
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<sup>3</sup> Paperwork Reduction Act.

<sup>4</sup> Regulatory Flexibility Act as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 601 et seq.

<sup>5</sup> Unfunded Mandates Reform Act of 1995.

<sup>6</sup> E.g., E.O. 12866, Regulatory Planning and Review; E.O. 13563, Improving Regulation and Regulatory Review; E.O. 13132, Federalism; E.O. 13175, Consultation and Coordination with Indian Tribal Governments; E.O. 13045, Protection of Children From Environmental Health Risks and Safety Risks; E.O. 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use; E.O. 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations.

<sup>7</sup> Executive Order 12866, which governs interagency review, provides for some transparency. It requires OIRA to place in a public docket any written comments received from other agencies during the interagency review process. It also requires agencies to identify for the public all the changes made to a proposed or final rule that were made at the suggestion or recommendation of OIRA. Some statutes add further transparency requirements. In the case of the Clean Air Act, for example, the draft rules submitted for interagency review and written comments from OIRA and other agencies must be submitted to the docket for the rulemaking.

<sup>8</sup> Links to some agency web pages for finding rules open for comment:

- The **Environmental Protection Agency (EPA)** has a page advising the public how to stay abreast of regulatory developments -- <https://www.epa.gov/laws-regulations/get-involved-epa-regulations>. The agency suggests use of its Regulatory Development and Retrospective Review Tracker (Reg DaRRT). The tracker provides monthly (and in some cases daily) updates on EPA's [priority rulemakings](#) that are under development as well as updates on EPA's [retrospective reviews of existing regulations](#) under Trump Executive Order 13777 and a 2011 executive order. Reg DaRRT posts a profile on a priority rulemaking when EPA begins work on it, which is sometimes months or even years before publication of a proposed rule. Reg DaRRT offers notifications (in the form of [RSS feeds](#)) to keep you up to date, and also lists upcoming [public meetings](#) related to priority rulemakings. If a rule isn't on Reg DaRRT, you can still get twice yearly updates in EPA's [Regulatory Agenda](#).
- The **Department of Health and Human Services (HHS)** has a web page that shows all current rulemakings open for comment: <https://www.hhs.gov/regulations/comment-on-open-rules/index.html>. Another page has information on reviews of existing rules: <https://www.hhs.gov/open/retrospective-review/index.html?language=en>.
- The **Occupational Health and Safety Administration (OSHA)** has a regulations web page with links to rulemakings open for comment and lookbacks at existing regulations: <https://www.osha.gov/law-regs.html>.
- The **Securities and Exchange Commission (SEC)** has a page on how to comment that includes a link to rulemakings open for comment: <https://www.sec.gov/rules/submitcomments.htm>. The SEC also offers notifications (in the form of an RSS feed) of SEC proposed rules: <https://www.sec.gov/rss/rules/proposed.xml>