

## **TREO Rulemaking Guide**

### **Appendix G - Guidance to the Public on Submitting Public Comments**

#### **Tips for Providing Public Comments in Agency Rulemakings**

In Texas, the Administrative Procedure Act (APA) sets up a process for agencies to adopt administrative rules. Under this process, any person can provide comments on a proposed rule before it is adopted. This document provides tips for writing effective public comments in an administrative rulemaking.

#### **Why Public Comments are Important.**

The Texas Legislature entrusts agencies with rulemaking authority to help regulators solve problems, set standards, and create programs for the benefit of Texans.

Texas agencies are staffed with experienced subject matter experts, but informed public comments fill in knowledge gaps and help agency decisionmakers to:

- understand how proposed rules will affect specific industries, activities, and people;
- spot unintended consequences of the proposed rules;
- identify alternative approaches to addressing the goals of the rulemaking; and
- align the rules with the needs and values of Texas.

Public comments can provide information and feedback on:

- unique situations the agency may not have considered.
- whether the agency is heading in the right direction.
- specific technical knowledge, data or other resources.
- first-hand information and personal experience of Texans.
- perspectives from outside of the agency.

Public input ensures a well-rounded evaluation of the issue and ensures that rulemaking aligns with the values and experience of Texans.

#### **Preparation for Submitting Public Comments.**

Below are some suggestions for preparing to submit public comments. These steps occur before you start writing your comments.

- Review the statute.
  - Texas agencies are given rulemaking authority by the Texas Legislature and are required to follow the statutes when writing rules.
  - Reading the statute that the agency is implementing will help commenters focus on issues that are within the agency's control.

- Review the notice of the proposed rulemaking for substantive information.
  - The agency notice of proposed rulemaking will identify the statute that is being implemented. The notice will also identify any legislative bills being implemented.
  - The notice of the proposed rulemaking should provide an explanation and justification for the rule changes; a summary of each rule section being added, amended, or repealed; and information about anticipated costs or benefits of the proposed rules.
  - The notice of the proposed rulemaking will show the specific changes being made to the rule text (language being added, amended, or repealed).
- Consider the issue or problem the proposed rule is trying to address.
  - Research the issue.
  - What knowledge and perspectives are agency staff likely to have? What might they not know if they do not have first-hand experience with an issue?
  - Who might the rule effect or what effects might there be that may be hidden from regulators?
  - Consider what actions are within the agency's power and what they are allowed to do? What action is the agency required to take? Does the agency have any flexibility?
- Review the notice of the proposed rulemaking for procedural issues and instructions.
  - The notice will provide specific instructions for submitting public comments, including any deadlines.
  - Pay attention to prompts by the agency, such as questions or requests for specific information.

### **Tips for Submitting Public Comments.**

To make sure that the agency fully understands and considers each comment submitted, below are some tips for submitting public comments.

NOTE: These tips are intended to serve as guidance; they should not be considered legal advice. Following these tips does not guarantee that the agency will agree with your comment.

Point to a specific rule section and specify your concerns or support.

- Identify the specific rule section on which you are commenting. Be specific about your concerns with or support for the rule section.
- General comments that “the proposed rules are too prescriptive” or that the commenter “does not like the proposed rules,” may be valid comments, but these comments do not tell the agency what specific rules are causing concern.
- Point to the specific proposed rule section and explain why the commenter thinks the proposed rule is too prescriptive or specifically why the commenter does not like the proposed rule.
- Be specific with your concerns. The use of the term “burdensome” on its own is not as helpful as a specific description of the burdens that will be imposed by the proposed rules.

Example:

- Vague: The proposed rules will be burdensome.
- Specific: The reporting deadline in the proposed rules will require hiring outside consultants.
- Discuss how the specific rule section will specifically affect you. Simply stating that you support or oppose a rule is not as persuasive as explaining how the rule would positively or negatively affect your specific situation.

Suggest specific alternative language or solutions.

- Offer specific alternatives to the proposed rule. Provide specific language or solutions when possible.
- If a commenter thinks a proposed rule is too prescriptive, but does not offer any specific suggestions or language, the agency may not be sure how the commenter would like for the proposed rule to be changed to be less prescriptive.
- Use specific examples to illustrate concerns. The examples can be real or hypothetical, but the examples help make the concern concrete for the agency.
- Offer recommendations and alternatives that also improve the proposed rule. Providing multiple options may help an agency reduce the burdens while still accomplishing its policy goals.

Example:

- Primary recommendation: Change the proposed rule to switch from monthly reporting to annual reporting.

- Alternative recommendation: If the monthly reporting requirement in the proposed rule cannot be changed, then move the deadline back a week each month to align with standard billing practices.

#### Cite your sources

- If you are suggesting changes to proposed requirements, provide sources supporting your comments and research. These sources of information can be federal requirements, requirements in other states, national association recommendations, industry standards, requirements for staff in similar settings, etc.
- For example, a proposed rule would require facility staff to have 50 hours of annual training, but a commenter would like to suggest 30 hours. If a commenter suggests that a requirement be reduced, the comment is stronger if it includes a research source as validation for the suggestion.

#### Comment on rules with which you agree

- State if you agree with the proposed rules (in whole or part), especially if there may be competing interests.
- A proposed rule may be revised because 20 commenters asked for a change, but what if 100 potential commenters liked the proposed rule and chose not to submit a comment?
- Particularly for situations in which stakeholders may disagree, commenting on your support for a proposed rule may provide a valuable counterweight to other commenters who request a change.

#### Use the following writing and organizational tips.

- Use clear and concise language.
- Clearly identify the issues and rule sections on which you are commenting.
- Offer specific suggestions on the proposed rules.
- Do not feel the need to comment on everything.
- Phrase your comments as statements, not as questions.
- Stay within the scope of the proposed rules. Do not offer comments on rules that are not open for public comment.
- Organize your comments by rule section using the sequence of the proposed rules. If your comments are long or you have comments on multiple proposed rules, use headings and subheadings.

- Avoid dense blocks of text. As a general rule, shorter is better: short words, short sentences, and short paragraphs. This helps the reader quickly identify your objectives.
- For groups and associations: Introduce yourself and your organization; explain what your interest is in the rulemaking; if possible, provide narrative experiences of your members that are relevant to the rulemaking; and highlight any crucial policy takeaways.

### **Public Hearings.**

Under the APA, an agency must hold a public hearing to accept verbal comments on a proposed rule if the hearing is requested by at least 25 persons, a governmental subdivision or agency, or an association with at least 25 members. In most cases, providing written comments on a proposed rule is recommended, because it reduces travel expenses, helps agency staff organize and review the comments, and allows commenters to make their full arguments without the pressure of timed public speaking.

If you would like to request a public hearing on a rulemaking, you should contact the agency first to learn about its policies for public hearings on proposed rules.

### **Other Methods for Submitting Public Comments.**

Depending on the agency, an agency may have other opportunities for providing public comments, such as at advisory board meetings or governing board meetings. You should contact the agency first to learn its policies for accepting public comments on proposed rules.

### **Final Thought.**

The agency adopting the rule is required to summarize the public comments it receives and provide reasoning for submissions and proposals made in public comments that the agency disagrees with. Following the tips above will assist the agency to fully understand and consider each comment submitted.

***Disclaimer: This document is intended to serve as guidance. It should not be considered legal advice.***