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No (Public) Comment: HHS Rescinds Policy on Public Participation in Rulemaking

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The Department of Health and Human Services (HHS) recently rescinded its policy dating back to 1971 to now allow its agencies and offices to quickly alter certain rules and regulations without public notice and comment. The Nixon-era policy had waived the statutory exemption from procedural rulemaking requirements for rules and regulations relating to public property, loans, grants, benefits, or contracts. HHS' new [Policy on Adhering to the Text of the Administrative Procedure Act \(APA\)](#) will enable such regulatory changes as well as matters relating to agency management or personnel to proceed without public participation via notice and comment rulemaking.

The timing of HHS' abandonment of its own policy of more than 50 years is noteworthy given the Trump Administration's recent efforts to curtail federal spending and, among other things, change how federal contracts and grants are administered. Indeed, HHS specifically references the ability to quickly adapt to legal and policy mandates among the reasons for its policy change. This change could portend swift rulemaking by HHS to execute presidential directives, including those set forth in recent [Executive Orders](#), as long those rules pertain to agency management or personnel or to public property, loans, grants, benefits, or contracts.

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HHS' new policy rescinds its prior longstanding policy known as the "Richardson Waiver." Adopted in 1971, the Richardson Waiver was a policy statement that applied APA procedural rulemaking requirements to rules and regulations relating to public property, loans, grants, benefits, or contracts despite the fact that the APA includes an exception to its typical notice and comment requirements for such matters. The Richardson Waiver also established a policy that "good cause" exceptions to the public participation procedures of the APA "should be used sparingly, as for example in emergencies and in instances where public participation would be useless or wasteful because proposed amendments to regulations cover minor technical matters."

The new Policy on Adhering to the Text of the APA gives HHS' agencies and offices discretion to choose whether or not to apply notice and comment procedures to matters relating to agency management or personnel or to public property, loans, grants, benefits, or contracts. Further, it directs that "the good cause exception should be used in appropriate circumstances in accordance with the requirements of the APA."

In its new policy, HHS interprets the text of the APA to mean that it is "necessary and appropriate" not to use notice and comment procedures for matters that the statute exempts from such procedures. Additionally, it is now HHS' view that sparing use of the good cause exception is "contrary to the clear text of the APA." The Richardson Waiver reasoned that the "public benefit from such participation should outweigh any administrative inconvenience or delay." However, under its new policy, HHS reasons that imposing notice and comment requirements beyond what the APA strictly requires imposes costs that are contrary to efficient operations and impede HHS' "flexibility to adapt quickly to legal and policy mandates."

HHS has yet to issue any new rules since this new policy became effective on March 3, 2025. However, stakeholders, such as government contractors, should monitor how HHS uses its new expedited rulemaking policy because HHS can now change certain rules and regulations very quickly, including those relating to government contracts. Without the opportunity to offer public comments, it may be necessary for stakeholders adversely affected by rulemaking subject to this new policy to challenge such actions through litigation or lobbying Congress to pass laws that supersede such rules.

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