

By empowering industry interests, better public access to environmental agencies can lead to less stringent environmental regulations

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Public participation has become an important part of how US government agencies make decisions about their regulations. In new research, [Neal D. Woods](#) assesses the effects of increasing public access to decision makers in environmental agencies on environmental compliance costs. He also examines how public access to elected political officials who review environmental regulations affect these costs. He finds that when agency rule-makers are more open to public participation, then their environmental regulation is much less stringent. Access to reviewing political officials, on the other hand, leads to higher regulatory compliance costs when states have a stronger organized environmental movement, and lower costs when organized manufacturing groups are stronger.



Government regulation is a central feature of the modern industrial state. Regulations governing the workplace, the environment, the economy, and virtually every other aspect of life are put forward by administrative agencies. This extensive level of policymaking by unelected bureaucrats inevitably raises questions about the democratic accountability of agency decisionmaking. Many observers advocate public involvement in the process of formulating rules and regulations as a solution to these accountability issues.

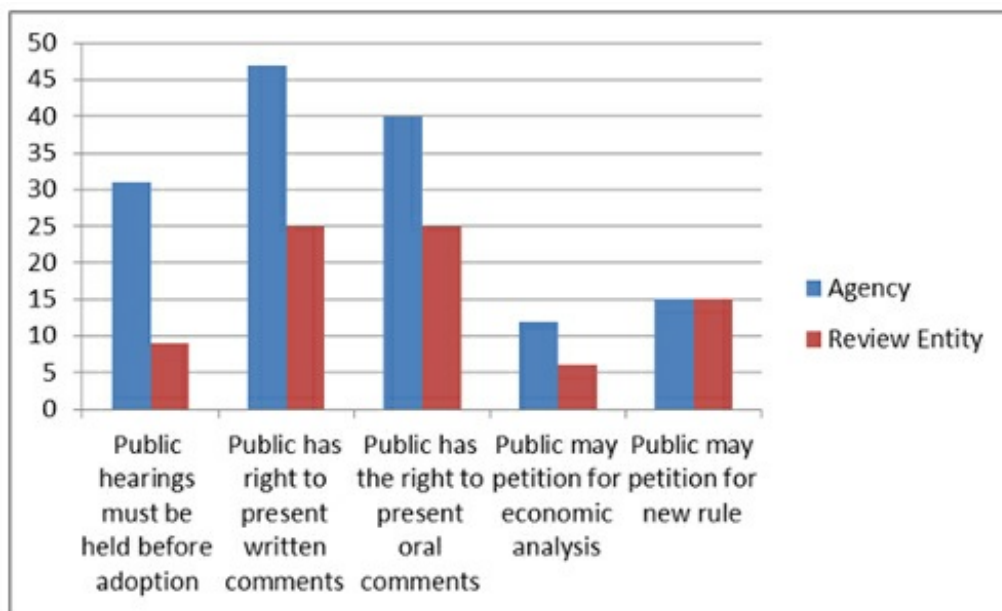
Although procedural requirements designed to foster public participation are usually discussed in terms of fair process, they may also have a substantial effect on public policy outcomes. This effect, however, is not well understood. In fact, depending on the literature one consults, one could conclude that these procedures (1) [enhance regulatory stringency by fostering access by previously underrepresented groups](#), (2) [reduce regulatory stringency by institutionalizing access by regulated industries](#), (3) [could either increase or decrease stringency depending on the relative strength of organized interests in the agency's external environment](#), or (4) [have no effect](#).

My recent research assesses the policy consequences of a variety of procedural mechanisms designed to promote “regulatory democracy” by broadening public participation in administrative rulemaking in the American states.

While there is little variation in the public participation mechanisms available at the US national level, we can see a great deal of diversity across the states. Important differences include whether citizens have the right to present oral and written comments during the rulemaking process, the amount and type of public notification required, and whether citizens may petition for amendment or repeal of an administrative rule after it has been promulgated. Such procedures may impact the amount and type of participation in regulatory decision-making.

To illustrate these differences, Figure 1 shows the number of American states that employ certain public access requirements. The blue bars indicate the number of state environmental agencies that are required to provide citizens with these access opportunities. Additionally, in many states political officials such as the governor, attorney general, or legislature have formal processes that allow them to review agency regulations and modify or veto them before they go into effect. The red bars indicate the number of states that require the relevant form of public access to these reviewing entities.

Figure 1- Number of American states employing various public access procedures



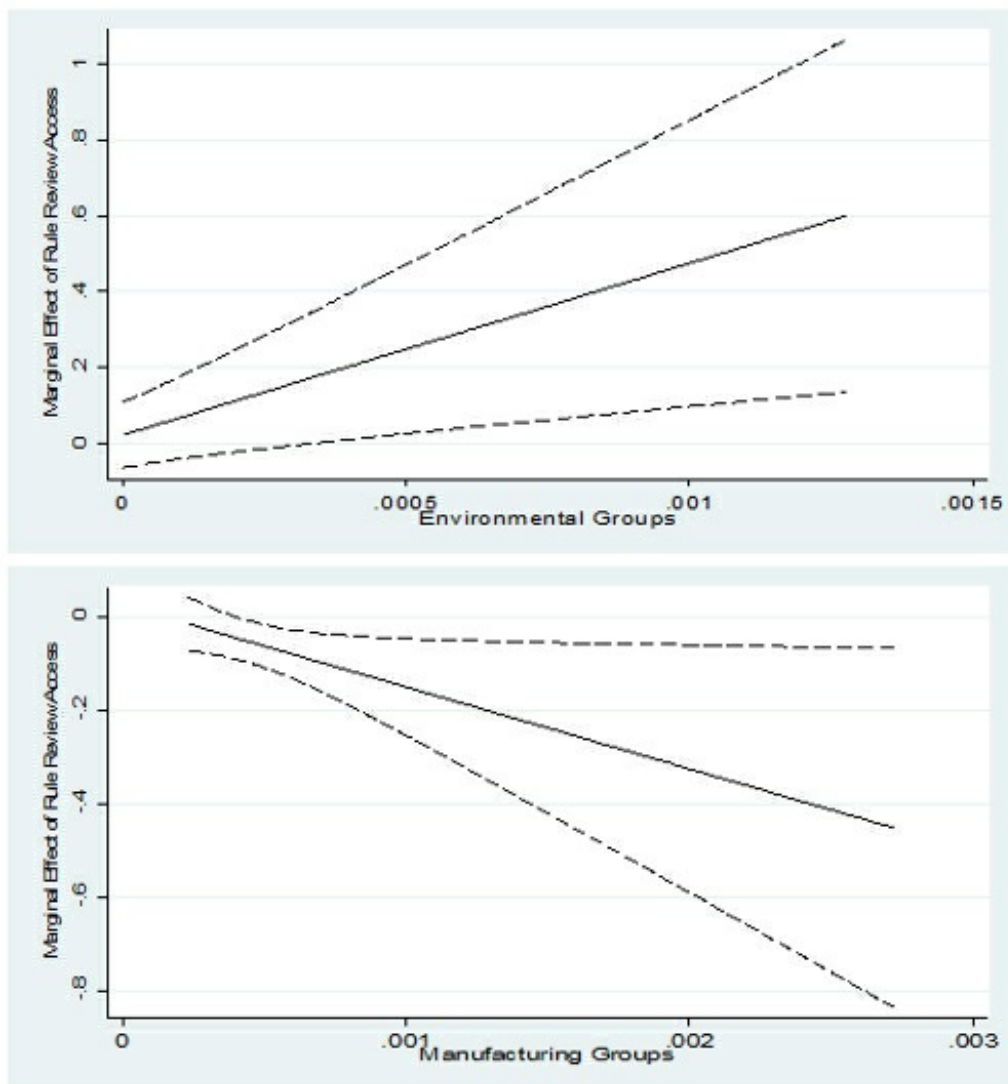
My analyses assess the effects of public access requirements such as these on the private costs of environmental compliance, which represents the economic burden imposed by environmental regulation on industry. The results suggest that openness requirements that provide private parties with direct access to agency rulemaking systematically serve to decrease these environmental compliance costs. This effect is evident for public access both to the agencies promulgating environmental regulations and to external entities reviewing these regulations. Thus, in the environmental arena increased openness to public participation appears to result in significantly less stringent regulation.

These findings argue against the view that environmental administrators are effectively buffered from outside influence by their technical expertise and administrative professionalism, suggesting that they, like elected political officials, are responsive to participation by affected interests. Although this finding may come as a surprise to some readers, it is consistent with recent research on the rulemaking process. Observers have noted that [regulated interests often dominate comment submissions during rulemaking proceedings](#). Moreover, recent research suggests that changes in agency rules are made [more often](#) and have greater impact when made in response to comments from business interests than from other external participants in the rulemaking process. My findings buttress these previous studies, indicating that increasing the openness of the rulemaking process may lead to significantly weaker overall levels of regulation.

Although increased public access to both agency decision-makers and reviewing political officials leads to decreased environmental compliance costs, the two are not alike in every respect. For environmental agencies public participation requirements are associated with reduced regulatory stringency regardless of the strength of environmental or industry groups, a result that is consistent with the view that regulatory agencies may tend to get “captured” by regulated interests.

For political officials, however, the effect of regulatory openness follows a somewhat different pattern. Greater public access to rule review proceedings is associated with increased regulatory compliance costs in states characterized by a stronger organized environmental movement, and is associated with decreased costs in states with stronger organized manufacturing groups (as measured by the number of each of these groups registered to lobby in the state). Figure 2 illustrates these effects.

Figure 2 – Marginal effect of rule review access on environmental compliance costs, by interest group strength



The upward sloping line in the upper panel indicates that rule review access procedures are associated with higher regulatory compliance costs as environmental interest group strength increases. In the lower panel we see the opposite pattern, with rule review access having an increasingly negative effect as levels of manufacturing group strength increase. These findings suggest that, in contrast to the agencies themselves, political officials respond to the relative strength of both environmental and industry interest groups when reviewing agency regulations. On average, however, industry tends to have stronger organized representation than the environmental movement, thus generally leading to weaker regulation.

Although different in this respect, the end result of increased access to both regulators and political officials is weaker regulation. If future research finds similar results to hold in other political contexts, the implication is that the general trend towards increased openness in rulemaking proceedings that has been evident in federal, state, and local governments over the past four decades may have served to decrease the stringency of regulation by further empowering industry interests. This is almost certainly not the result that most proponents of “regulatory democracy” are looking for.

These results highlight how seemingly neutral administrative procedures can affect policy outcomes. Numerous other procedural requirements, from consultation requirements to policy analysis procedures, have been imposed on agencies in an effort to make them more responsive, efficient, or equitable. My results suggest that these requirements may have significant—and perhaps unanticipated—policy consequences as well.

This article was based on *“Regulatory Democracy Reconsidered: The Policy Impact of Public Participation Requirements”* which appeared in the *Journal of Public Administration Research and Theory*.

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