



ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

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Notice-and-Comment Rulemaking

What is a rule?

Federal agencies routinely issue rules to implement and interpret statutes, explain how they will exercise their discretion, and describe their procedures and organization.

Many rules are published in the *Federal Register* and the *Code of Federal Regulations* (see [IIB-001](#)).

How do agencies make rules?

Federal law sets out the processes agencies must follow when they formulate, amend, or repeal rules. The exact process agencies use for a particular rulemaking can depend on factors such as the subject matter of the rule, the rule's intended legal effect, or the statute that the rule will implement.

Most prominent among these processes is "notice-and-comment rule-making." The Administrative Procedure Act (APA) describes the basic steps for this process ([5 U.S.C. § 553](#)), which are described to the right. The APA also describes several exceptions to this process, which are beyond the scope of this Bulletin.

Executive orders and other Presidential directives also specify requirements for agency rulemaking, including for rules issued through notice-and-comment rulemaking. For more information, see [Rulemaking Requirements from the Executive Office of the President](#) in ACUS's *Federal Administrative Procedure Sourcebook*.

Agencies can also supplement the basic notice-and-comment rulemaking process as appropriate, for example by holding public meetings or soliciting public input before formally proposing a rule. ACUS addressed several options in:

- Rec. 2020-1, [Rules on Rulemaking](#)
- Rec. 2018-7, [Public Engagement in Rulemaking](#)

What steps must agencies take when they conduct notice-and-comment rulemaking?

1 Agency Issues Notice of Proposed Rulemaking (NPRM)

The agency initiates the notice-and-comment rulemaking process by publishing an NPRM in the *Federal Register* (see [IIB-001](#)). The NPRM must describe the proposed rule, the legal authority for the rule, and opportunities for public participation. Many agencies also use their websites, social media, and other means to notify the public of rulemakings (see ACUS Recs. [2013-5](#), [2011-8](#)).

2 Agency Provides Opportunity for Public Comment

The agency must provide the public an opportunity to participate in the rulemaking through electronic or paper submission of written comments. Public comment periods often last at least 30–60 days from publication of the NPRM (see ACUS Rec. [2011-2](#)). Many agencies have also adopted additional methods to engage with and elicit input from the public (see ACUS Rec. [2018-7](#)). Agencies make comments, along with the NPRM and supporting materials, publicly available in an online docket (see ACUS Rec. [2013-4](#), [IIB-005](#)).

3 Agency Considers Comments and Develops Final Rule

After the comment period, the agency must consider all relevant, timely-submitted comments. If it decides to issue a final rule, the agency develops the regulatory text along with a preamble explaining the rule's basis and purpose and responding to all significant issues raised in the comments.

4 Agency Publishes Final Rule

The agency concludes the rulemaking by publishing the final rule and preamble in the *Federal Register* (see [IIB-001](#)). The notice must specify the rule's effective date, which must be at least 30 days after publication in the *Federal Register* (and at least 60 days after publication for "major" rules, as defined in the Congressional Review Act, [5 U.S.C. § 801](#)).

Additional Resources

ACUS Federal Administrative Procedure Sourcebook: [Administrative Procedure Act](#) and [Rulemaking Requirements from the Executive Office of the President](#)
OMB: [Office of Information and Regulatory Affairs \(OIRA\)](#) and [OIRA Reg Map](#)
[Regulations.gov](#): [Learn](#)
ACUS Rec. [2020-1](#), Rules on Rulemaking
ACUS Rec. [2018-7](#), Public Engagement in Rulemaking
ACUS Rec. [2013-5](#), Social Media in Rulemaking
ACUS Rec. [2013-4](#), Administrative Record in Informal Rulemaking
ACUS Rec. [2011-8](#), Agency Innovations in E-Rulemaking
ACUS Rec. [2011-2](#), Rulemaking Comments
ACUS Rec. [2011-1](#), Legal Considerations in e-Rulemaking