



Virtual Public Engagement in Agency Rulemaking

Committee on Rulemaking

Draft Recommendation for Committee | April 4, 2023

Preamble forthcoming. The preamble will address the following topics (not necessarily in these words):

- Agencies' efforts in increasing public engagement might not fit squarely within the scope of notice-and-comment rulemaking, but some best practices regarding virtual public engagement can and should be applied to the rulemaking process. Agencies are generally required to give interested persons an opportunity to participate in rulemakings, typically through submission of written comments or, in some cases, through other forms of public engagement. The Administrative Conference has recommended that agencies consider additional methods for engaging with the public during the rulemaking process, including by undertaking targeted outreach in addition to holding meetings with groups that might not otherwise submit comments. Traditionally, public engagement efforts have often involved in-person meetings. But many agencies have developed new techniques for optimizing public engagement through virtual platforms in recent years, particularly in response to the COVID-19 pandemic.
- Effective public engagement in the rulemaking process requires public outreach and education to overcome barriers to participation, which may include geographical constraints, resource limitations, and language or other barriers. Past ACUS recommendations have focused on ways to use technology to improve submissions of written comments and raise awareness of ongoing rulemakings. This Recommendation focuses on ways agencies can use technology to facilitate public input beyond submission of written comments.



- Considerations for developing best practices include: in what instances an opportunity for oral presentation would be useful; how an agency determines whether to hold virtual, hybrid, or purely in-person sessions; how notice is provided and what it includes; whether and how an oral presentation record is maintained; and what departmental coordination might be necessary to execute virtual public engagement sessions.

RECOMMENDATION

Virtual Public Engagement Planning

- 1 1. Each agency that engages in rulemaking should use internet-based videoconferencing
2 software as a way to broaden engagement with interested persons in a cost-effective way.
- 3 2. Each agency should ensure that its policies regarding informal communications between
4 agency personnel and individual members of the public related to a rulemaking
5 (described in Recommendation 2014-4, *“Ex Parte” Communications in Informal*
6 *Rulemaking*) are updated to cover communications that take place virtually.
- 7 3. As part of its overall policy for public engagement in rulemaking (described in
8 Recommendation 2018-7, *Public Engagement in Rulemaking*), each agency should
9 explain how it intends to use internet-based videoconferencing to engage with the public.
- 10 4. Each agency should prepare, disseminate, and publish guidance both internally and
11 publicly on how it runs virtual meetings and ensure employees are trained on that
12 guidance.
- 13 5. When an agency plans to hold a public rulemaking engagement—that is, a rulemaking-
14 related meeting, hearing, listening session, or other live event that is open to the general
15 public—it should allow for interested persons to observe the engagement remotely and,
16 when feasible, provide input and ask questions remotely.
- 17 6. When an agency decides to hold a public rulemaking engagement, rulemaking personnel
18 should collaborate with personnel who oversee communications, public affairs, public
19 engagement, and other relevant activities for the agency to ensure the engagement
20 reaches the targeted audience and produces effective participation from interested



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21 persons, including groups that are affected by the rulemaking and have otherwise been
22 underrepresented in the agency's administrative process.

Notice

- 23 7. An agency should, as applicable, include the following information in the public notices
24 for a public rulemaking engagement with a virtual or remote component:
- 25 a. The date and time of the engagement, at the beginning of the notice;
 - 26 b. Options for remote attendance including direct links to the internet-based
27 videoconferencing event or a registration page and the dial-in number for the
28 meeting, at the beginning of the notice;
 - 29 c. A plain-language summary of the rulemaking and description of the engagement's
30 purpose and agenda and the nature of the public input, if any, the agency is
31 seeking to obtain through the engagement;
 - 32 d. A link to any materials associated with the engagement, such as an agenda, a
33 program, speakers' biographies, a draft rule, or questions for participants (such as
34 to the webpage described in Recommendation 10);
 - 35 e. Information about opportunities for members of the public to speak during the
36 engagement, including any directions for requesting to speak and any moderation
37 policies, such as limits on the time for speaking;
 - 38 f. The availability of closed captioning, language interpretation, and
39 telecommunications relay services and access instructions;
 - 40 g. The availability of a recording, a transcript, a summary, or minutes and its
41 location; and
 - 42 h. Contact information for a person who can answer questions about the engagement
43 or arrange accommodations.
- 44 8. The Office of the Federal Register (OFR) should update the Document Drafting
45 Handbook to provide agencies guidance on drafting *Federal Register* notices for public
46 rulemaking engagements with virtual or remote components that include the information
47 described in Recommendation 6.



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- 48 9. OFR should update FederalRegister.gov to include in the “Document Details” sidebar for
49 each notice for public rulemaking engagement a link to a specific agency webpage where
50 interested persons can learn more about the engagement.
- 51 10. To encourage remote participation in a public rulemaking engagement, the agency should
52 create a dedicated webpage for the engagement that includes the information described in
53 Recommendation 6. The webpage should include, as applicable, a link to the internet-
54 based videoconferencing event or its registration page; a link to the *Federal Register*
55 notice; any materials associated with the engagement; a livestream of the engagement
56 while it is ongoing; and, after the engagement has ended, any recording, transcript,
57 summary, or minutes.

Managing Virtual Public Engagements

- 58 11. Each agency should allow interested persons to access a public rulemaking engagement
59 remotely at any time while it is ongoing and should not require members of the public to
60 register by a certain date or time to observe the engagement remotely.
- 61 12. To manage participant expectations, an agency should communicate to prospective
62 participants at the beginning of the event:
- 63 a. The purpose and goal of the engagement;
 - 64 b. The moderation policies, including speaking time limits and whether or why
65 the agency can or cannot respond to oral statements made by participants;
 - 66 c. The management of the public speaking queue;
 - 67 d. Whether the chat function, if using an internet-based videoconferencing
68 platform, will be disabled or monitored and, if monitored, whether the chat
69 will be included in the record;
 - 70 e. How participants can access the rulemaking materials throughout the meeting;
71 and
 - 72 f. Whether the event will be recorded or transcribed and where it will be made
73 available.



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74 13. Each agency should ensure it has adequate support to run public rulemaking
75 engagements, including their virtual and other remote components. Adequate support
76 might include technological or troubleshooting assistance, a third-party moderating
77 service, or a sufficient number of staff members available.

Recordings and Transcripts

78 14. Each agency should record or transcribe any public rulemaking engagement that takes
79 place after it publishes a notice of proposed rulemaking (NPRM). When an agency holds
80 a public rulemaking engagement before publishing an NPRM, or when no NPRM is
81 required, it should record, transcribe, summarize, or prepare meeting minutes of the
82 engagement unless doing so would adversely affect the willingness of public participants
83 to provide input or ask questions.

84 15. Each agency should make any recording, transcript, summary, or minutes of a public
85 rulemaking engagement available in any public docket associated with the rulemaking
86 and on the webpage described in Recommendation 9, and should do so in a timely
87 manner.