



STATEMENT OF PRINCIPLES FOR PUBLIC ENGAGEMENT IN AGENCY RULEMAKING

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES
OFFICE OF THE CHAIR

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Federal agencies issue rules to implement, interpret, and prescribe the laws and policies they administer and to describe their organization, procedure, and practice requirements.¹ Public engagement—defined as “activities by [an] agency to elicit input from the public”²—is an integral part of agency rulemaking. As the Administrative Conference of the United States (ACUS) has recognized: “By providing opportunities for public input and dialogue, agencies can obtain more comprehensive information, enhance the legitimacy and accountability of their decisions, and increase public support for their rules.”³

Several statutes set forth the basic framework for public engagement in agency rulemaking. Most notably, the Administrative Procedure Act (APA) generally requires that agencies engage with the public through the notice-and-comment process. Under this process, before an agency issues, amends, or repeals a rule, an agency provides notice of its proposal and “give[s] interested persons an opportunity to participate in the rulemaking through submission of written data, views, or arguments.”⁴

Agencies are not required to use this process for all rules. Under the APA, for example, notice-and-comment rulemaking is not required for interpretive rules or general statements of policy (together called “guidance documents”) or for rules of agency organization, procedure, or practice. There can also be “good cause” for agencies to forgo notice-and-comment rulemaking in certain circumstances. Many other statutes set forth alternative or supplemental requirements for specific types of rules.

These laws establish only the minimum procedural requirements for agencies. Policymakers have learned a great deal about the value of public engagement since 1946, when the APA was enacted. Drawing on this experience, Congress has devised additional methods for agencies to engage with the public, for example under the Federal Advisory Committee Act and the Negotiated Rulemaking Act. Many presidents have adopted additional requirements to improve the effectiveness of public engagement, particularly with members of communities that have been historically underrepresented in agency rulemakings, and the Office of Information and Regulatory Affairs has issued guidance implementing presidential directives.⁵ Agencies are also free to adopt additional practices as appropriate, and many have done so.

Congress established ACUS, in part, to “promote more effective public participation . . . in the rulemaking process.”⁶ ACUS has adopted dozens of recommendations, listed in the Appendix, to help agencies efficiently, equitably, and effectively provide opportunities for public input and

¹ 5 U.S.C. § 551.

² Admin. Conf. of the U.S., Recommendation 2018-7, *Public Engagement in Agency Rulemaking*, 84 Fed. Reg. 2146 (Feb. 6, 2019).

³ *Id.*

⁴ 5 U.S.C. § 553.

⁵ A list of rulemaking requirements from the Executive Office of the President is available in the *Federal Administrative Procedure Sourcebook*, which is published jointly by ACUS and the American Bar Association’s Section of Administrative Law and Regulatory Practice. The *Sourcebook* is available at <https://sourcebook.acus.gov>.

⁶ 5 U.S.C. § 591(2).

dialogue when they issue, amend, and repeal rules. These recommendations identify principles and best practices for effective public engagement. They also recognize that there is no single approach to public engagement that will work for every agency in every rulemaking. To engage with the public efficiently, equitably, and effectively, agencies must consider a range of factors, including the complexity of a rule, the impact of a rule, the people likely to be affected by a rule, and available resources.⁷

The ACUS Office of the Chair prepared this Statement of Principles to concisely describe principles and best practices identified in recommendations adopted by ACUS. The Office of the Chair will update this Statement from time to time as ACUS adopts new recommendations that address public participation in agency rulemaking.

⁷ Recommendation 2018-7, *supra* note 2, ¶ 3.

STATEMENT OF PRINCIPLES

PLANNING FOR PUBLIC ENGAGEMENT

1 Because the public may have valuable information concerning the impact and effectiveness of agency rules, agencies should engage broadly with the public in their rulemaking processes—including during regulatory planning and prioritization, notice-and-comment rulemaking, and retrospective review—even when they are not required to do so by law.¹

2 Agencies should develop general policies for public engagement in their rulemakings and make those policies publicly available.² An agency's general policies should address:

- a. Its goals and purposes in engaging the public;
- b. The types of individuals or organizations with whom it seeks to engage and the methods for communicating with them and encouraging them to participate;
- c. How such individuals and organizations can participate in the rulemaking process;
- d. The agency personnel or offices to whom members of the public can direct questions related to the rulemaking process;
- e. The types of information it seeks from public engagement;
- f. How the information from public engagement will inform the rulemaking process or be used;
- g. When public engagement should occur;
- h. The range of available methods for public engagement, such as those listed in Principle 13;
- i. Records and other information, such as upcoming opportunities for public engagement, it will include in the public rulemaking docket and on the agency's website;
- j. How it will handle nongovernmental *ex parte* communications (i.e., written or oral communications regarding the substance of an anticipated or ongoing rulemaking between agency personnel and people outside the agency that are not placed in the public rulemaking docket at the time they occur);
- k. Practices for managing comments received during the notice-and-comment process, including mass, computer-generated, and falsely attributed comments; comments

that include personal or confidential commercial information; and comments received after the comment period has ended; and

- l.* Plans to periodically evaluate the effectiveness of public engagement policies.

3 Agencies should use their general policies to inform public engagement for specific rulemakings. Planning should take place as early as possible during a rulemaking.³

4 Effective planning for public engagement can require collaboration among many different people, including multiple offices within an agency, including program offices, legal offices, and offices that oversee communications, public engagement, and public affairs. Personnel with public engagement training and experience can be especially helpful in developing general public engagement policies and public engagement plans for specific rulemakings. Personnel at other agencies may also have useful information about best practices for public engagement. Agencies should, therefore, also consider sharing their public participation policies, data, and other information about the effectiveness of their public engagement outreach with other agencies.⁴

5 Agencies should train employees to understand and apply recognized best practices in public engagement, including the use of technologies that may broaden public participation or help them manage public comments—including mass, computer-generated, and falsely attributed comments—more effectively.⁵

6 Agencies should develop resources that educate the public on the rulemaking process, describe the role of public participation, provide guidance on submitting effective comments, clarify how the agency will consider public input provided outside the notice-and-comment process, and provide easy access to ongoing rulemakings.⁶

7 Agencies should periodically evaluate the effectiveness of their public engagement policies, including by soliciting feedback and suggestions for improvement from the public, and update them as needed.⁷

THE PUBLIC WITH WHOM TO ENGAGE

8 Agencies should engage with a wide range of people interested in or affected by their rulemakings, including experts and members of communities that historically have been underrepresented in agency rulemakings, and be deliberate and proactive in their outreach.⁸

WHEN TO ENGAGE WITH THE PUBLIC

9 Agencies should engage with the public throughout the rulemaking process, not just during the notice-and-comment process. Public engagement is especially valuable during the early stages of the rulemaking process, before an agency has developed a proposed rule, and public engagement should generally occur as early as feasible in the rulemaking process. Agencies should engage with the public to identify problems, set regulatory priorities, and consider regulatory alternatives.⁹

10 Public engagement can also help agencies assess adopted rules and decide whether to revisit them. Agencies should consider opportunities to solicit input from the public on the impact and effectiveness of adopted rules, for example as part of retrospective review, post-promulgation comment processes (especially when there was no pre-promulgation opportunity for public participation), and through more informal engagement methods.¹⁰

HOW TO ENGAGE WITH THE PUBLIC

11 Agencies should ensure that all people and groups interested in or affected by their rulemakings are aware of opportunities for public participation and can meaningfully access and effectively participate in them. They should consider economic, geographic, linguistic, educational, technological, and other barriers to effective participation that interested and affected parties, including members of historically underrepresented groups, may face.¹¹

12 Agencies should manage the notice-and-comment process so that interested persons can effectively participate in agency rulemakings and so that agencies can obtain comprehensive information and conduct their rulemakings efficiently. For example, agencies should generally use a comment period of at least 30 days and at least 60 days for “significant regulatory actions” as defined in Executive Order 12,866.¹²

13

In addition to the notice-and-comment process, agencies may use many different methods to engage with the public depending on their needs.¹³ Each has its benefits and costs. Agencies should consider a broad range of methods for public engagement, including:

- a. Formalizing a process for members of the public to petition for the issuance, amendment, or repeal of a rule under 5 U.S.C. § 553(e);
- b. Hosting internet and social media forums;
- c. Using focus groups;
- d. Issuing requests for information and advance notices of proposed rulemaking;
- e. Meeting with and conducting targeted outreach to interested and affected parties, consistent with laws and policies on ex parte communications;
- f. Using ombuds;
- g. Using advisory committees, including those tasked with conducting negotiated rulemaking;
- h. Holding public meetings, hearings, and listening sessions (and including opportunities for remote participation) with interested and affected parties; and
- i. Providing supplemental opportunities for members of the public to reply to comments submitted during the notice-and-comment process.

14

When agencies provide opportunities for public participation, they should notify interested and affected parties about those opportunities using media that are likely to reach them. In addition to providing notice in the *Federal Register*, agencies should:

- a. Create dedicated webpages that include key information about rulemaking initiatives and engagements;
- b. Use social media and email alerts to notify interested and affected parties about opportunities for public participation; and
- c. Work with relevant state and local governments and intermediary organizations (e.g., trade associations, professional associations, community organizations, advocacy groups) that can help provide effective notice to interested persons.¹⁴

15

Agencies should provide information about rulemaking initiatives so that interested and affected parties, including members of historically underrepresented groups, can understand them. Agencies should:

- a.* Write rulemaking documents in terms that the relevant audience can understand;
- b.* Provide plain-language summaries of rules;
- c.* Identify issues under consideration so that non-specialists can understand them;
- d.* Use audiovisual materials or other media to supplement more traditional written information, when appropriate; and
- e.* Provide relevant information in languages other than English, when appropriate.¹⁵

16

Interested and affected parties can participate most effectively in a rulemaking when they can review records and information that may inform the agency's decision-making process. During the notice-and-comment process, in particular, agencies should maintain an online rulemaking docket that allows the public to review:

- a.* Notices pertaining to the rulemaking;
- b.* Comments received in response to a notice of proposed rulemaking;
- c.* Ex parte communications after a notice of proposed rulemaking has been issued;
- d.* Intragovernmental communications which contain material factual information (as opposed to indications of government policy);
- e.* Transcripts or recordings, if any, of oral presentations made during the rulemaking;
- f.* Reports or recommendations of any relevant advisory committees;
- g.* Other materials required by law to be considered or made public in connection with the rulemaking; and
- h.* Any other materials considered by the agency during the rulemaking.¹⁶

ENDNOTES & APPENDIX

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- ¹ Recommendations 2018-7, ¶¶ 6–8; 2017-6, ¶ 3; 2014-5, ¶ 13; 80-3, ¶ 3; 76-3, ¶ 1; 71-6, ¶ A; *see e.g.*, Recommendations 2022-2, ¶¶ 4, 6; 2021-3, ¶¶ 3–4; 2020-1, ¶ 5; 2019-3, ¶ 6; 2018-7, ¶¶ 2, 5, 8(a); 2017-6, ¶ 3; 2017-2, ¶ 1; 2014-5, ¶¶ 5, 13; 2013-4 ¶ 2; 2012-7, ¶ 6; 2012-5, ¶ 3(b); 2012-4, ¶ 1(a); 2010-1, ¶ 5; 95-3, ¶ IV(A); 91-1, ¶¶ 7–8; 87-1, ¶ 1(c); 84-5, ¶¶ 3, 4; 84-1, ¶ B(4).
- ² Recommendations 2023-2, ¶¶ 1–7, 11, 13–14; 2022-2, ¶¶ 6, 13–19, 22(d); 2021-3, ¶¶ 2–7; 2021-2, ¶ 5; 2021-1, ¶ 11; 2020-2, ¶¶ 1–2, 4; 2020-1, ¶¶ 1–5; 2019-3, ¶¶ 1(b)(i), 11; 2018-7, ¶¶ 1–2, 3(i), 9; 2017-6, ¶¶ 1, 3; 2014-6, ¶ 1; 2014-4, ¶¶ 2–3; 2013-5, ¶ 3; 2013-4, ¶ 2; 2011-8, ¶¶ 2, 4; 2011-2, ¶¶ 1, 3; 2010-1, ¶ 7; 95-3, ¶ IV(A); 93-4, ¶ V; 89-7, ¶ 3(c); 86-6, ¶¶ 1–2; 84-5, ¶¶ 3–4; 84-1, ¶ B(2); 80-3, ¶ 3; 76-3, ¶ 1; 71-6, ¶ E; 71-3; 68-5, ¶ A(2).
- ³ Recommendations 2022-2, ¶¶ 2, 3, 7; 2018-7, ¶ 7; 2013-5, ¶ 3(a).
- ⁴ Recommendations 2023-2, ¶ 5; 2022-2, ¶¶ 22–23; 2021-3, ¶ 8; 2021-1, ¶¶ 15, 17; 2018-7, ¶ 4; 2017-6, ¶ 1; 2013-5, ¶ 4; 2012-5, ¶¶ 1–2; 2012-4, ¶¶ 7–8.
- ⁵ Recommendations 2023-2, ¶¶ 1, 3–4, 7, 10, 12; 2022-2, ¶¶ 10–11, 13–16, 20, 22; 2021-1, ¶¶ 11, 14, 16; 2018-7, ¶¶ 4, 9; 2017-3, ¶ 4; 2014-4, ¶¶ 14–16; 2013-5, ¶¶ 1–3; 2012-4, ¶¶ 2, 8; 2011-8, ¶¶ 1–3; 2011-7, ¶ 10; 2011-2, ¶ 3; 2011-1, ¶¶ 1, 4–5; 90-5, ¶ 1; 88-10, ¶ H; 72-1, ¶ A(1).
- ⁶ Recommendations 2023-2, ¶ 3; 2021-3, ¶ 3; 2021-1, ¶ 11; 2020-1, ¶¶ 2, 4; 2018-7, ¶¶ 7, 9; 2014-4, ¶¶ 1–2; 2013-5, ¶¶ 2–4, 6, 17.
- ⁷ Recommendations 2022-2, ¶¶ 6, 22(d); 2020-1, ¶ 2(f); 2017-6, ¶¶ 1, 3; 2017-3, ¶ 7.
- ⁸ Recommendations 2023-2, ¶¶ 1, 5; 2022-2, ¶ 7(c); 2021-3, ¶ 3; 2021-2, ¶¶ 5, 9; 2020-1, ¶ 4; 2018-7, ¶¶ 3, 7–8; 2016-5, ¶ 15; 2013-5, ¶¶ 2–3; 2012-4, ¶ 7; 2011-8, ¶ 6; 2010-1, ¶¶ 5–6; 90-2, ¶ 6; 84-5, ¶¶ 3, 4; 71-6, ¶¶ A, E; 68-5, ¶ A(1)–(2).
- ⁹ Recommendations 2023-2, ¶ 7; 2021-3, ¶¶ 1–3; 2021-2, ¶¶ 5, 9; 2018-7, ¶¶ 2, 5, 6(a), 8(a); 2017-2, ¶¶ 1–2; 2014-4, ¶ 4; 2014-5, ¶¶ 5, 13; 2013-5, ¶¶ 1, 3, 6; 2012-4, ¶¶ 1, 4; 95-3, ¶ III–IV(A); 93-5, ¶ III(A); 93-4, ¶ (V)(F); 87-1, ¶ 1(c)(1)–(2); 85-5, ¶ 3; 85-2, ¶ 5(c); 84-1, ¶ 4; 82-4, ¶¶ 1, 4, 7; 80-3, ¶ 3.
- ¹⁰ Recommendations 2021-2, ¶ 9; 2019-1, ¶¶ 2, 4, 8–10, 13–14; 2017-6, ¶ 3; 2017-5, ¶¶ 2, 7(e), 8–11; 2016-5, ¶ 1; 2014-4, ¶¶ 6, 8–10; 2013-5, ¶¶ 5, 10; 2011-2, ¶¶ 5–6; 95-4, ¶¶ I(B)(3), II(D); 92-2, ¶¶ II(A)–(B); 90-2, ¶ A(3); 83-2, ¶¶ 1, 2; 80-6, ¶ 2; 76-5, ¶¶ 1–2; 76-3, ¶ 1.
- ¹¹ Recommendations 2023-2, ¶¶ 1, 5; 2022-2, ¶¶ 1–3, 5, 7, 19; 2021-3, ¶ 3; 2021-2, ¶¶ 5, 9; 2018-7, ¶¶ 3(e)–(f), 7, 9; 2017-3, ¶¶ 1–2; 2013-5, ¶¶ 2–3; 2013-3, ¶ 9; 2012-4, ¶ 7; 2011-8, ¶ 6; 90-2, ¶ 6; 68-5, ¶ A(1).
- ¹² Recommendation 2011-2, ¶ 2.

¹³ Recommendations 2021-3 ¶ 2; 2022-2, ¶¶ 14–19; 2021-2, ¶¶ 5, 9; 2017-6, ¶ 3; 2016-5, ¶¶ 1(a), 15; 2014-6, ¶¶ 1–3, 6–9; 2014-4, ¶¶ 6, 10; 2013-5, ¶¶ 5, 10, 17; 2011-2, ¶ 6; 90-2, ¶ A(1), (3); 86-6, ¶¶ 1–2; 76-3, ¶ 1; 68-5, ¶ A(1)–(2). For examples of factors agencies should consider, see 2021-3, ¶ 1; 2018-7, ¶ 6(b); 2017-2, ¶ 2; 2013-5, ¶¶ 2–3, 6; 82-4, ¶¶ 4(c), 7.

¹⁴ Recommendations 2023-2, ¶¶ 1, 4–5, 7; 2022-2, ¶¶ 8, 10–11, 13–18, 21; 2021-2, ¶ 6; 2020-1, ¶ 3; 2018-7, ¶ 9; 2013-5, ¶¶ 1–3, 5; 2011-8, ¶¶ 1–3; 2011-7, ¶ 10; 2010-1, ¶ 7; 84-5, ¶¶ 3–4; 84-1, ¶ 3; 76-3, ¶ 1; 71-6, ¶ E.

¹⁵ Recommendations 2018-7, ¶¶ 3(f), 7, 8(a)(v), 9; 2017-3, ¶¶ 1, 6–7; 2013-5, ¶¶ 3, 12.

¹⁶ Recommendations 2023-2, ¶¶ 6–7, 13–14; 2020-1, ¶ 2(d); 2014-4, ¶¶ 5, 7, 9; 2013-4, ¶ 2; 2011-2, ¶ 3; 93-4, ¶ V(E); 77-3, ¶¶ 2–3; 76-3, ¶ 1(c).

APPENDIX

68-5, *Representation of the Poor in Agency Rulemaking of Direct Consequence to Them*
71-3, *Articulation of Agency Policies*
71-6, *Public Participation in Administrative Hearings*
72-1, *Broadcast of Agency Proceedings*
76-3, *Procedures in Addition to Notice and the Opportunity for Comment in Informal Rulemaking*
76-5, *Interpretive Rules of General Applicability and Statements of General Policy*
77-3, *Ex Parte Communications in Informal Rulemaking Proceedings*
80-3, *Interpretation and Implementation of the Federal Advisory Committee Act*
82-4, *Procedures for Negotiating Proposed Regulations*
83-2, *The “Good Cause” Exemption from APA Rulemaking Requirements*
84-1, *Public Regulation of Siting of Industrial Development Projects*
84-5, *Preemption of State Regulation by Federal Agencies*
85-2, *Agency Procedures for Performing Regulatory Analysis of Rules*
85-5, *Procedures for Negotiating Proposed Regulations*
86-6, *Petitions for Rulemaking*
87-1, *Priority Setting and Management of Rulemaking by the Occupational Safety and Health Administration*
88-10, *Federal Agency Use of Computers in Acquiring and Releasing Information*
89-7, *Federal Regulation of Biotechnology*
90-2, *The Ombudsman in Federal Agencies*
90-5, *Federal Agency Electronic Records Management and Archives*
91-1, *Federal Agency Cooperation with Foreign Government Regulators*
92-2, *Agency Policy Statements*
93-4, *Improving the Environment for Agency Rulemaking*
93-5, *Procedures for Regulation of Pesticides*
95-3, *Review of Existing Agency Regulations*
95-4, *Procedures for Noncontroversial and Expedited Rulemaking*
2010-1, *Agency Procedures for Considering Preemption of State Law*
2011-1, *Legal Considerations in e-Rulemaking*
2011-2, *Rulemaking Comments*
2011-7, *The Federal Advisory Committee Act – Issues and Proposed Reforms*
2011-8, *Agency Innovations in e-Rulemaking*
2012-4, *Paperwork Reduction Act*
2012-5, *Improving Coordination of Related Agency Responsibilities*
2012-7, *Agency Use of Third Party Programs to Assess Regulatory Compliance*
2013-3, *Science in the Administrative Process*
2013-4, *The Administrative Record in Informal Rulemaking*
2013-5, *Social Media in Rulemaking*
2014-4, *“Ex Parte” Communications in Informal Rulemaking*
2014-5, *Retrospective Review of Agency Rules*
2014-6, *Petitions for Rulemaking*
2016-5, *The Use of Ombuds in Federal Agencies*
2017-2, *Negotiated Rulemaking and Other Options for Public Engagement*
2017-3, *Plain Language in Regulatory Drafting*

2017-5, *Agency Guidance Through Policy Statements*
2017-6, *Learning from Regulatory Experience*
2018-7, *Public Engagement in Agency Rulemaking*
2019-1, *Agency Guidance Through Interpretive Rules*
2019-3, *Public Availability of Agency Guidance Documents*
2020-1, *Rules on Rulemakings*
2020-2, *Protected Materials in Public Rulemaking Dockets*
2021-1, *Managing Mass, Computer-Generated, and False Comments*
2021-2, *Periodic Retrospective Review*
2021-3, *Early Input on Regulatory Alternatives*
2022-2, *Improving Notice of Regulatory Changes*
2023-2, *Virtual Public Engagement in Agency Rulemaking*