



ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

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Information Interchange Bulletin No. 031

Petitions for Rulemaking

What is a petition for rulemaking?

A petition for rulemaking is a request from an interested person to a federal agency to issue, amend, or repeal a rule. A “rule” includes an agency regulation, interpretive rule, or policy statement.

What requirements apply to petitions for rulemaking?

The Administrative Procedure Act (APA) requires agencies to give interested persons the right to petition for rulemaking ([5 U.S.C. § 553\(e\)](#)). Agencies must respond to petitions “within a reasonable time” and give petitioners “prompt notice” when a petition is denied in whole or in part, along with “a brief statement of the grounds for denial” ([5 U.S.C. § 555\(b\) and \(e\)](#)). Other statutes (such as the Clean Air Act) may contain their own specific petition requirements.

Judicial review of agency action on petitions for rulemaking is available under the APA. Under [5 U.S.C. § 706](#), courts may compel agency action on a petition if the action is unreasonably delayed, and courts may review agency denials of petitions under the arbitrary or capricious standard. However, the scope of such review is limited and deferential. See [Massachusetts v. EPA](#), 549 U.S. 497, 527-528 (2007).

[Executive Order 14094](#), *Modernizing Regulatory Review*, directs executive departments and agencies to (1) clarify opportunities for interested persons to petition for rulemaking under [§ 553\(e\)](#); (2) endeavor to respond to such petitions; and (3) maintain, subject to available resources, a log of such petitions received, and share with the Administrator of the Office of Information and Regulatory Affairs, upon request, information on the status of petitions. [EO 14094](#) draws heavily on prior ACUS recommendations on this topic, which are discussed in more detail in the section to the right.

What best practices should agencies use for addressing petitions for rulemaking?

The APA does not require agencies to use specific procedures for receiving, processing, and responding to petitions. ACUS Recommendations [2014-6](#) and [86-6](#) provide best practices for agencies to use to improve the petition process. This section summarizes key recommendations from [Recommendation 2014-6](#).

Agency Policy on Petitions

Each agency that has rulemaking authority should have procedures explaining how the agency receives, processes, and responds to petitions under the APA, including what information should be included with petitions and how the agency will coordinate consideration of petitions with other activities.

Receiving and Processing Petitions

Agencies should accept electronic submission of petitions and should designate a particular person or office to receive and distribute petitions.

Communicating with Petitioners

Agencies should encourage and facilitate communication between agency personnel and petitioners, both prior to submission and while petitions are pending disposition. Agencies should provide a way for petitioners and other interested persons to learn the status of previously filed petitions, including through use of online dockets.

Soliciting Public Comment on Petitions

Agencies should consider inviting public comment on petitions for rulemaking. Inviting public comment may be particularly appropriate when the petition addresses a question of policy or of general interest, or where evaluating a petition may require the agency to consider information that it does not have or where the information is in dispute or is incomplete.

Responding to Petitions

Agencies should docket each decision with the petition to which it responds. If an agency denies a petition, where feasible and appropriate, it should provide a reasoned explanation for the denial. Agencies should not reflexively cite only resource constraints or competing priorities. Agencies must respond to petitions within a reasonable time, and agencies should adopt target timelines for responding and provide explanations for delays in responding to petitions.

Providing Information on Petitions

Agencies should maintain a summary log or report listing all petitions, the date each was received, and the date of disposition or target timeline for disposition. The log or report should be made publicly available on the agency’s website and be updated at least semi-annually.

Using Electronic Tools to Improve the Petitioning Process

Agencies should use available online platforms, including their websites and [Regulations.gov](#), to implement these recommendations.

Additional Resources

ACUS [Rec. 2014-6](#), *Petitions for Rulemaking*

ACUS [Rec. 86-6](#), *Petitions for Rulemaking*

Jason A. Schwartz and Richard L. Revesz, [Petitions for Rulemaking](#) (2014)

Maeve Carey, Cong. Rsch. Serv., [Petitions for Rulemaking: An Overview](#) (2020)