

# GETTING *ACTION*

How to Petition Government  
and Get Results

*By Harry Snyder  
with Carl Oshiro & Ruth Holton*

A P U B L I C A T I O N O F C O N S U M E R S U N I O N

*Second Edition*

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San Francisco, California 94103-2566

Library of Congress Control Number: 2002114400  
ISBN Number: 0-9726000-0-0

To order additional copies of *Getting Action*,  
please send a check made payable to  
Consumers Union for \$15 (shipping and handling included) to:  
Consumers Union, West Coast Regional Office,  
1535 Mission Street, San Francisco, California 94103-2566.

Produced by Public Media Center, San Francisco

Cover photo by Sharon Beals, San Francisco

Printed on recycled paper



## **ACKNOWLEDGMENTS**

Thanks to Irwin Landau for making this book more readable and useable by his skillful editing. The successful advocacy of Doug Heller, Rosemary Shahan, Jamie Court, Public Advocates, The Foundation for Taxpayer and Consumer Rights, Joe Ditre, Julie D'Angelo, and Jim Schultz give exciting examples of what can be accomplished by filing a petition. This book benefited from the strategic advocacy guidance contributed by Janice Forsythe, Robert Fellmeth, the Advocacy Institute, and the Center for Public Interest Law. We thank Michael McCauley for assisting with his media expertise. Skillful research by Liz Dunlap and Naomi Meyer provides readers with accurate and useful references. Special thanks to Katherine Wright, who saved us from many, hopefully all, of our writing pratfalls. Evaluz Barrameda put all of the drafts, edits, additions, exhibits, charts, worksheets, checklists, quotes, and examples into a cohesive draft. Thanks to Annamarie Simmons for appearing on our cover. Ultimately, this work was produced by the creative and diligent efforts of Timothy Feder and the staff of Public Media Center.

Finally, this second edition is based on the original handbook, which was produced with funding from the U.S. Office of Consumers' Education to promote public participation in government decision making.



# Contents

- 6 **INTRODUCTION**
- 7 How to Use the Handbook

## *Part 1*

- 9 **AN OVERVIEW OF THE PETITIONING PROCESS**
- 9 Regulatory Agencies
- 10 Chart of the Petitioning Process
- 11 Service Agencies
- 11 Support Agencies
- 11 Administrative Agencies' Processes
- 11 Nongovernmental or Private Agencies and Organizations
- 14 Getting Action
- 14 How to Petition Federal Agencies
- 15 How to Petition State Agencies
- 15 How to Petition Local Agencies
- 16 When There Is No Process
- 16 How to Petition Private Organizations
- 17 Some Rules of Thumb

## *Part 2*

- 19 **IS A PETITION THE RIGHT WAY TO GO?**
- 19 Research the Problem
- 19 Research the Law
- 20 Research the Agency
- 20 Research the Solution
- 21 Consider the Alternatives
- 23 If You Decide to Petition

## *Part 3*

- 25 **THE PETITION CAMPAIGN—LAYING THE GROUNDWORK**
- 25 Research the Problem
- 27 Research the Law
- 27 How to Find the Law
- 28 How to Understand the Law
- 29 Research the Agency
- 30 How Do Things Really Work?
- 31 Staff: The Power Behind the Throne
- 31 Finding Solutions

- 31 What Actions Should You Seek?
- 32 Research the Solution
- 32 Build a Coalition
- 33 Successful Coalition Components

*Part 4*

**35 HOW TO WRITE A PETITION**

- 35 Frame the Issue
- 36 Watch Your style
- 36 The Petition Format
- 38 Petitioners
- 39 Legal Authority
- 39 Relief
- 39 Conclusion
- 40 Exhibits
- 40 The Final Step—A Cover Letter
- 40 Delivery of the Petition

*Part 5*

**43 SPREAD THE WORD—BUILDING PUBLIC SUPPORT**

- 44 How to Write a News Release
- 45 How to Hold a News Conference

*Part 6*

**49 WHAT TO DO AFTER YOU FILE**

- 49 While Waiting for an Answer
- 50 When the Answer Is Yes
- 50 How to Make Your Case
- 50 Before Public Hearings
- 52 At the Hearing
- 53 After the Hearing
- 53 After the Public Comment Period
- 53 If the Petition Is Granted
- 54 If the Petition Is Denied
- 55 Possible Next Steps

*Part 7*

**57 PETITIONER'S KIT**

- 57 Quick-Reference Checklist

*Part 8*

**65 APPENDIX**

- 65 How to Learn About Specific Agencies' Petitioning Procedures
- 65 Federal Procedures
- 67 State Procedures
- 68 Government Agencies
- 71 Tools for Public Access
- 75 Sample Petition Letter
- 76 Sample Request for Public Records
- 78 Sample Media Advisory
- 79 Sample Petition
- 81 List of References
- 84 Model Petitioning Law
- 85 State Petitioning Laws
- 88 Worksheets for Writing the Petition
- 104 Index



## Introduction

THE FEDERAL AND STATE constitutions guarantee every person the right to petition government for the redress of grievances. We most often think of redressing our grievances through only two of the three branches of government. Through the judicial branch we can file lawsuits. Through the legislative branch we can lobby for new laws. But petitioning the administrative agencies that carry out the work of the executive branch is almost always a less difficult and less expensive approach than a lawsuit, and less political than legislation. In almost every case, petitioning is quicker, is a better use of resources, and is a more effective way of organizing broad support and community engagement.

But how, exactly, do we petition those relatively obscure branches of government that most directly affect our daily lives—the federal, state, and local administrative agencies? Administrative agencies put into effect the many laws that touch all aspects of our lives. They oversee the quality of the water we drink; they enforce safety standards in our workplace; they set the standards for the quality of the food we buy; they decide what chemicals the agricultural industry can use; they prevent discrimination in housing; they protect consumers from dangerous products. The administrative branch of

government is also responsible for the delivery of such essential services as public health, welfare benefits, and police and fire protection.

Businesses and professional groups regulated by administrative agencies know all too well how to petition agencies to soften the impact of the laws that govern their conduct. Ordinary people who want to make government work for them should also know how to petition federal, state, and local agencies.

The petitioning process described here can also be used to hold nongovernmental organizations accountable. The analysis, strategies, and tactics laid out can be applied equally to organizations as diverse as the World Bank, Amtrak, the United Way, and even foundations. This handbook focuses on governmental agencies, but don't overlook other applications if the solution lies within another type of organization. The petitioning process is a tool for organizing people's concerns into a cohesive plan of action.

*Getting Action: How to Petition Government and Get Results* offers every person, and the public interest groups that work on their behalf, a practical guide. Petitioning can be a straightforward, fast, and effective process, without the cost and delay of court proceedings or the political maneuverings of the legislative process. You can petition an

administrative agency without the aid of an attorney. Hearings held in response to petitions are generally informal proceedings with a minimum of technical procedural rules. And, once a petition is filed, the entire process can be completed within 60 to 180 days.

Most importantly, administrative petitioning can work for you. Here is how petitions have been used to successfully attack specific problems:

### **Using public assets for public health**

Consumers Union and a coalition of health care and seniors' groups petitioned the California Department of Corporations to ensure that the public assets of a nonprofit health maintenance organization would be dedicated to health care charities when the nonprofit converted to a for-profit company. The petition led the Department of Corporations to regulate future health care company conversions and to establish two health foundations with assets of over \$4 billion.

### **Recalling unsafe vehicles**

Consumers for Auto Reliability and Safety (formerly known as Motor Voters) petitioned the National Highway Traffic Safety Administration to recall Peugeot 405 cars with defective automatic restraint systems. The petition was granted, a recall notice went out to owners, and Peugeot was required to fix the defect.

### **Protecting patients in managed care**

Maine Consumers for Affordable Health Care petitioned the Maine Bureau of Medical Services to establish standards for access to care, complaint and grievance procedures, enrollment and disenrollment rights, and eligibility. The petition resulted in improved health care rights.

### **Limiting pesticide use in developing nations**

TransAfrica, an international group, formed a coalition representing over 200 civil

society organizations, most from developing countries, to petition the World Bank to limit loans for the purchase and use of pesticides. The petition was delivered to the World Bank despite the fact that no legal authority mandated the World Bank to accept a petition. The petition resulted in the adoption of new regulations to limit the Bank's funding of pesticide purchases, and to protect workers, the environment, and consumers.

## **HOW TO USE THE HANDBOOK**

Consumers Union has developed considerable expertise in petitioning regulatory agencies. The purpose of *Getting Action* is to share this experience with others. This handbook walks you through the procedures by which individuals and organizations at the federal, state, and local levels may solve major public problems through the effective use of the administrative petitioning process.

This handbook consists of eight parts. Part 1 describes the administrative petitioning process and provides an overview of how to go about petitioning a government agency. Part 2 is written to help you decide whether you want to use a petition to solve the problem you face. If you are primarily interested in acquiring information about how to do the research needed to prepare a petition, you may stop at the end of Part 2 and skip to the background materials contained in the Appendix.

Readers who are interested in petitioning an agency to solve a specific problem should continue on through Parts 3 through 7. They show you what to do at each step of the petitioning process and include a Quick-Reference Checklist of tasks, as well as worksheets and a sample petition.

Part 8 of the book is the Appendix. It provides additional specific guidance about how to learn about the petitioning procedures used by the federal, state, or local government agencies you want to petition for action.



## PART 1

# An Overview of the Petitioning Process

*To supervise our increasingly complex society, state legislatures and the U.S. Congress, as well as county boards of supervisors and city councils, have created units of government called administrative agencies. These agencies are given a name, official powers, a budget, and, most importantly, a mission. Agencies may be directed to protect consumers, to clean up the environment, to safeguard children, or to secure other goals that promote the health and welfare of the public.*

ADMINISTRATIVE AGENCIES can be divided into three categories, depending on their major purpose:

### REGULATORY AGENCIES

■ **Business standards agencies** are responsible for regulating a specific business or industry to protect the public interest. For example, the U.S. Food and Drug Administration is a regulatory agency.

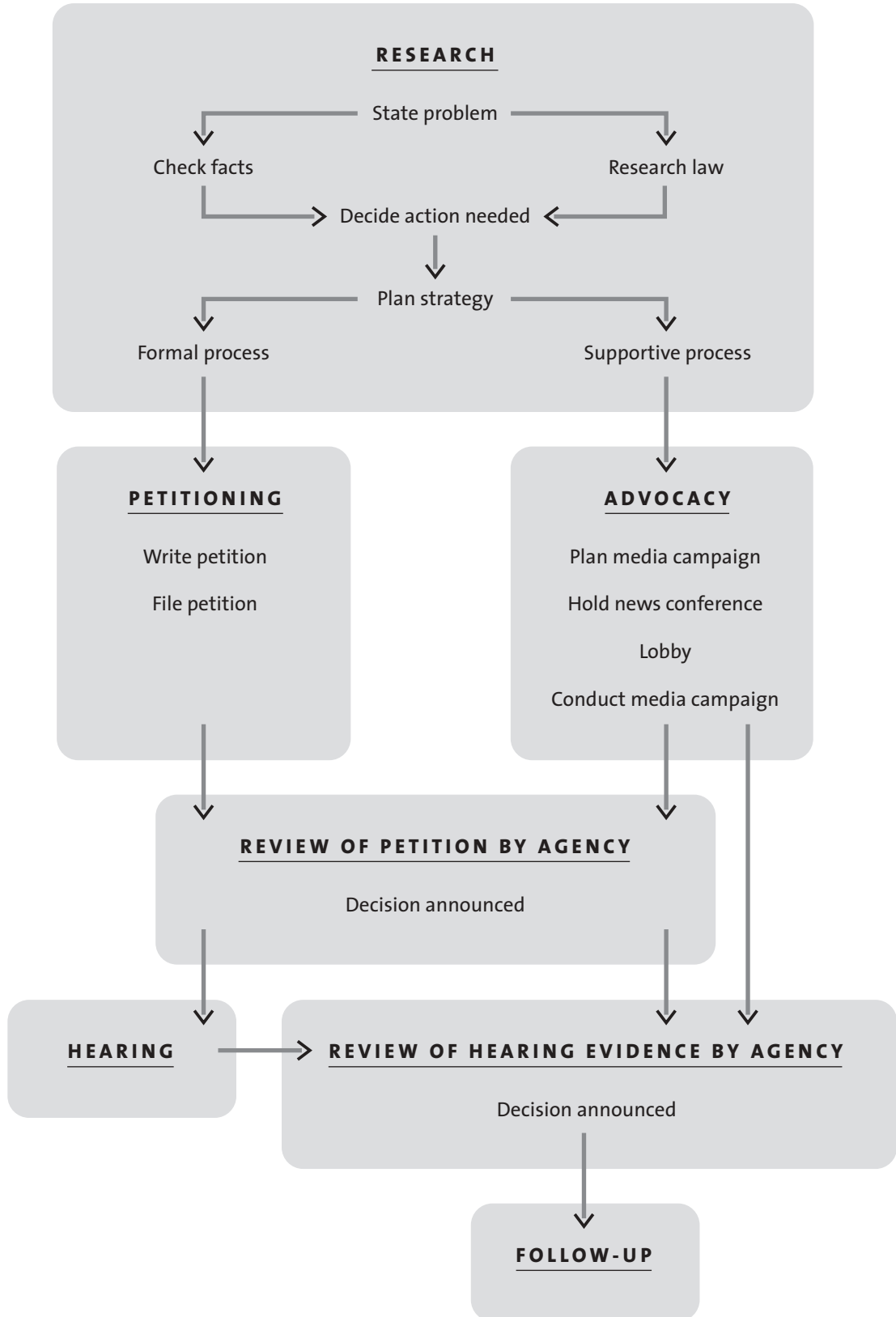
■ **Ratemaking agencies** regulate the price of certain goods and services, such as the telephone, gas and electricity, and transportation companies, and dairy products. For example, state public utility commissions are ratemaking agencies, as are the U.S. Department of Food and Agriculture and the Federal Energy Regulatory Commission.

■ **Licensing agencies** set and maintain standards for entry into a business or occupation; many also enforce professional standards and decide disciplinary matters involving licensees. Medical boards, funeral boards, and cosmetology boards, for example, are licensing agencies. Many states have a long list of such boards. Some boards are completely independent; others fall under the jurisdiction of other state departments. In California, for example, many boards are part of the Department of Consumer Affairs.

■ **Permitting agencies** generally require businesses or industries to preserve the quality of the environment. They set minimum standards for construction projects, waste-disposal plants, the agricultural use of pesticides, and other projects with an environmental impact. City and county planning commissions are local permitting agencies.



**CHART OF THE PETITIONING PROCESS**



## SERVICE AGENCIES

■ **Social welfare and entitlement agencies**, as their names suggest, oversee public benefits programs. They include social service departments, health and welfare agencies, and housing departments.

## SUPPORT AGENCIES

■ **Government operations agencies** serve to keep government functioning; they involve purchasing, personnel, property management, etc.

While many agencies are part of the executive branch and fall under the authority of the president, state governor, or mayor, agencies can also be independent bodies. Generally, independent agencies are known as boards or commissions and are headed by a multimember body appointed by the executive or legislative branch or by both branches together. The U.S. Federal Trade Commission is one such independent agency. Many states also have agencies headed by elected officials, such as insurance commissioners.

Administrative agencies carry out their missions mainly through four processes: rulemaking, adjudication, licensing and permitting, and ratemaking. Some agencies, such as school, municipal utility, and hospital boards, also provide services directly to the community.

## NONGOVERNMENTAL OR PRIVATE AGENCIES AND ORGANIZATIONS

Organizations not connected to government can also be petitioned to make changes in their operations or procedures. These organizations are not bound by any legal requirement that they respond or act as you wish. But, by taking all the steps described in this book, you stand a good chance of moving forward your agenda for change. Documented facts, an organized coal-

tion of interested groups, a reasonable solution, and, if possible, media attention will almost always elicit a response from the organization you focus on.

## ADMINISTRATIVE AGENCIES' PROCESSES

■ **Rulemaking** is the process by which agencies establish, change, or eliminate rules and regulations—the operational details of the laws passed by the legislative branch.

Rules and regulations are used either to prevent persons and businesses from behaving in ways that harm the public, or to provide government services in an efficient and equitable manner. For example, an agency can restrict the amounts and types of chemicals farmers can use, or prevent the sale of unsafe or unreliable drugs and medical devices. Agencies also establish rules and regulations to require positive behavior, such as pretesting drugs and medical devices before they are made available to the public.

Most rules and regulations are proposed by the agency or by the profession, trade, or constituency regulated or affected by that agency. The important thing to remember, however, is that any person may propose a new regulation, or a change to or the elimination of an existing regulation. By following the steps described in this book, you can exercise your right to petition local, state, or federal agencies, if you feel a change needs to be made.

Before a proposed rule can be adopted, agency officials must notify the public and provide an opportunity for people to comment. Generally, a regulation is formally adopted when it is approved by the head of an agency or by the members of its board of directors; it usually becomes effective 30 days after the approval. In emergency situations, the process can be speeded up to address an extraordinary problem or opportunity.

■ **Adjudication** is the process by which agencies determine whether a person or a firm has violated a rule or a law and, if so, what disciplinary action should be taken. Some agencies have the power to issue cease-and-desist orders, to impose fines, or to revoke, suspend, or modify licenses or permits to operate. Usually, such proceedings are similar to court procedures and decisions.

Any person can ask an agency to enforce a rule or a law. Requests for enforcement can be an effective tool to hold industry or business accountable for a specific action.

■ **Licensing and permitting** is the process by which an agency grants a business or individual permission to engage in a particular occupation, operate in a certain manner, or do business in a certain jurisdiction. Agencies are often required to post public notices of an application for a license or permit and to provide for public comment. Public participation in the process can effectively shape the activity of a licensed business or require some public benefit in return for granting a license or permit.

■ **Ratemaking** is the process by which an administrative body determines the rate companies can charge for certain goods and services, such as gas and electricity, cable and telephone services, and transportation. Public participation is permitted in ratemaking proceedings. Because there are specific, unique standards for participation, this guide does not cover the steps necessary to participate in ratemaking proceedings. If you are interested in ratemaking procedures, the best sources of

information are state consumer-utility watchdog organizations, utility regulatory agencies, and, in some cases, ratepayer protection divisions within the agency. There are also national organizations whose mission is to help protect the public in rate-making proceedings; see page 83 for a list of these organizations.

No matter how agencies operate, they are all guided by procedural rules and regulations. If the agency's procedures are not fair, if they do not give the public a reasonable

chance to make their case, you can petition the agency to change, eliminate, or add to their procedures. Regulations for standards, public proceedings, and notice of filings and hearings, for a Water Board or a Board of Medical Quality, for example, all can be impacted by a petition.

Sometimes, the solution to a problem requires the agency to provide a direct service to the public. For example, the agency may be petitioned to hire bilingual employees for state hospitals, to subsidize rent or

utility expenses for persons on fixed incomes, or to inform patients of their legal rights. Once again, any person can request new kinds of agency services.

Individuals and organizations most commonly influence administrative actions through written or oral comments during the rulemaking process. It is less common for individuals and organizations to file an official request, known as a petition, to adopt a new rule or modify or repeal an existing rule. Yet a petition is a very effective advocacy tool, even if the petition is ultimately rejected.

*"We petition the Nuclear Regulatory Commission not because we expect the agency to take action, but it's part of a broader campaign. It's a way to focus organizational and media attention and is one step toward pointing out the flaws in nuclear safety regulation."*

Bill Magavern, Public Citizen.

Often it is necessary to petition a government agency to exercise its responsibilities before a lawsuit can be brought. Even without a lawsuit, denial of a petition can ultimately lead to a good solution, as demonstrated in the following three examples:

- The attempt by realtors to fix their fees at 6% and claim they were set by state law was a recognized problem. A petition to the Department of Real Estate to require disclosure that fees and commissions are negotiable was denied. The refusal of the authorized agency to take action led to the introduction and swift passage of a law requiring the necessary disclosure. The petition process had provided the research, organizing of support, and media attention that were the basis for legislative action.

- Environmental and consumer groups petitioned the U.S. Food and Drug Administration to ban the use of lindane, a neuro-toxin, in products used to control head lice. The FDA denied the ban, but ordered stronger, clearer warning labels on products containing lindane.

- In September 1986, United States Senator Timothy Wirth filed a petition with the National Highway Traffic Safety Agency (NHTSA). The petition asked that NHTSA begin proceedings to: (1) start rulemaking proceedings to establish federal motor vehicle rollover standards, (2) open an investigation to determine which utility vehicles on the road did not meet the proposed rollover stan-

dard, (3) obtain stability and rollover information for all cars sold in the U.S. and make that information available to the public, and (4) warn the owners of the vehicles that were most likely to roll over.

In December 1987, NHTSA denied the petition for several reasons, primarily that NHTSA disagreed with the studies Senator Wirth relied on and that NHTSA had its own studies under way. But, the agency did agree with Senator Wirth that owners needed information about utility vehicles' handling characteristics and safety. In the same notice denying the petition, NHTSA announced that it had published a consumer information

brochure on utility vehicle safety and steps that consumers should take to avoid rollovers. At the time, it looked like Senator Wirth's petition did elicit a response from the agency, because NHTSA published a new brochure, but that ultimately Senator Wirth did not attain his main goal, a new rollover safety standard. But the evidence was clear that vehicle rollovers were a serious problem, and so the fight was continued. In 2001, NHTSA denied a petition to adopt a rollover safety standard based on real-life dynamic testing. But, the agency did adopt a standard based on stability factors similar to those in the petition they denied in 1987.

This is an excellent example of how a petition that contains a clear identification of a problem, uses sound investigation and facts, and is pursued in a broad coalition with strategic persistence will eventually result in change for the better.

***“Any person may propose a new rule or a regulatory change to a federal or state agency. Not many consumer advocates are aware of this ability, and the rulemaking process is underused by those who could best benefit from it!”***

Center for Public Interest  
Law Advocacy Training Seminar,  
course materials, sec. 4, p. 9

## GETTING ACTION

This book is a practical step-by-step guide on how to solve a problem by using a petition. Many of the steps we describe also apply to participation in adjudication and licensing processes, and to official requests that an agency provide direct services. The same process can be used to encourage non-governmental agencies and private organizations to solve problems they can affect. The key is to clarify your goals and to keep at it.

The federal government and all 50 states give the public the right to petition administrative agencies. Anyone can petition virtually any government official, agency, board, department, or other unit of government at any level. However, some agencies, such as worker's compensation and unemployment commissions and departments of taxation, may be exempted from the petitioning process.

A petition should explain the problem and describe how the public is being harmed. It should discuss why the agency is responsible for correcting the situation and propose the actions that the agency should take. A petition should be written in a simple, straightforward style, especially if it involves complex or technical facts. It should avoid jargon and sensational or accusatory language. You want to be seen as serious about working with the government to solve an important problem. No special form is necessary. However, the format discussed later (see *How to Write a Petition*, page 35) should serve as a useful guide. Filing a petition simply means delivering it to the agency being petitioned.

Although a single person or group can file a petition, it is better to file as a group of individuals or as a group of organizations. Agency officials will pay more serious attention to a petition that appears to have broad public support.

## HOW TO PETITION FEDERAL AGENCIES

The Federal Administrative Procedures Act (APA) establishes the right to petition federal agencies and requires agencies to give prompt notice of denial and a brief statement of the grounds of denial.

"Each agency shall give an interested person the right to petition for the issuance, amendment, or repeal of a rule," the law says.

"Prompt notice shall be given of the denial in whole or in part...The notice shall be accompanied by a brief statement of the grounds for denial." 5 USC Sec. 553(e) and 555(e).

The specifics of the petition process have been left up to individual agencies to adopt. Some simply state their responsibilities and provide an address. Some, however, have adopted detailed procedures. The Food and Drug Administration, for example, specifies the format of the petition, the type of information to include, and the issues to address. (See Appendix, pages 65–71, for information on how to find the petition rules for a specific federal agency.)

In some cases, the statutes establishing the agency or one of its programs include detailed petitioning provisions and also specify a time period within which the agency is required to start the rulemaking process. For example, the Toxic Substance Control Act (15 USC 2601, et seq.) requires the U.S. Environmental Protection Agency to grant or deny petitions within 90 days. Note, however, that the law does not require the agency to take any action within 90 days, but merely to commence the rulemaking process.

If a federal agency decides to begin the rulemaking process on a petition, the agency will file a notice of the proposed regulation in the *Federal Register*. It will provide a period for public comment. And it may hold a public hearing. There are generally several layers of internal agency review, so action in response to a petition can take a very long time, espe-

cially if it proposes a major change. Even if an agency approves a new rule or a rule change, the rule cannot take effect until it is reviewed by Congress, through the General Accounting Office,<sup>1</sup> and by the Office of Management and Budget.<sup>2</sup> But, from start to finish, the time and effort it takes to petition a federal agency pale in comparison to the resources required for litigation or to enact a law.

## HOW TO PETITION STATE AGENCIES

All 50 states, either in their state constitution or by statute, give residents or citizens the right to petition. See pages 85–87 for references by state. Some state laws, like those in Arizona and Idaho, for example, are fairly specific about the process. But most are as vague as the federal law, leaving it up to individual state agencies to adopt specific procedures. A few states, such as Indiana and Mississippi, have only constitutional guarantees regarding the right to petition.

It is important to check the state petitioning statute and the relevant agency regulations before filing a petition. Some state statutes may have unusual requirements. Tennessee and Wisconsin, for example, require that a petition be filed by a minimum of five individuals.

In 31 states and Guam, agencies generally have 30 to 90 days to respond to the petition, while other states require their agencies to respond within a “reasonable” or “practicable,” but unspecified, period. In Illinois and Oklahoma, if the agency does not respond within 30 days, then the petition is considered to have been denied.

Thirty-three states also require an agency that denies a petition to state why. If an agency ignores or denies a petition, petitioners may file a lawsuit challenging the agency’s refusal to take the requested action.

If a state agency accepts a petition, it does not necessarily mean that it will take the

action you request. Most state laws require public notice of the proposed regulatory change and a public comment period (generally 30 to 90 days) before the agency can officially adopt the regulation. Agencies generally ask for written comments, but the law may also require the agency to hold a public hearing. In some states, such as California, the petitioner may compel the agency to hold a public hearing (Cal. Gov. Code § 11346.8(a)). In the Appendix, starting on page 65, the way to research the agencies’ processes will be explained. In addition, it is always wise to check with the agency to find out what happens after it accepts a petition.

In some states, another governmental body must review a rule or rule change after an agency adopts it. In Hawaii, for example, the governor may veto any new regulation or rule change. In Pennsylvania, an Independent Review Commission reviews all regulations; in Maryland, a legislative committee reviews proposed rules. Make sure you check on whether there are additional review procedures in your state.

Once the agency has adopted the proposed regulation, you need to monitor the way it’s put into effect. If the agency’s action doesn’t solve the original problem, you may need to take additional steps.

## HOW TO PETITION LOCAL AGENCIES

As the federal government gives more authority to states to resolve problems, the

***“Filing a petition is an official action that requires an official response—that is why it is such an effective tool. Letters disappear and never get answered. Meeting requests get lost or are put off. But petitions can’t disappear. They force an official response.”***

Jamie Court, Consumers for Quality Care, CA

states in turn are passing the buck to cities and counties. Local advocacy has thus become even more important. City and county departments promulgate rules and regulations, and you may well petition them first to solve a local problem. To find out if there is a specific procedure, call the general counsel's office of the relevant department or agency, or call the county or city's general counsel. The process may be as informal as sending a letter saying that you are petitioning the agency.

### WHEN THERE IS NO PROCESS

Even if there is no established procedure, you still have the right to petition a local agency. Use the same format that you would use to write a petition to be filed with a state or federal agency. Make it look official; and make it substantive. The agency will then most likely treat it as an official petition. Just as important, the press will treat it seriously. Media coverage of the filing of a petition will make the general public, as well as agency officials, aware of the problem, the groups that are trying to solve the problem, the responsibility of the agency, and the requested solution. Public awareness will be focused if you can clearly describe the problem or what's at stake for the public. Defining the problem, plus calling public attention to the event of filing a petition, provide the "hook" that will move your issue forward. Public awareness creates pressure on the agency, whether governmental or private, to take the petition seriously.

For example, in California, Consumers Union and 24 other community organizations petitioned the Department of Corporations (DOC) to promulgate and implement regulations governing the conversion of a nonprofit health maintenance organization into a for-profit business. The petition was written in a legal format.

Although the DOC had no specific procedure to petition for rulemaking, these groups titled their request an "Administrative Petition" and presented the case just as they would for any other petition. In response, the DOC began formal proceedings, including public hearings, for the approval of the transaction. The result of the hearing was the creation of two private foundations, endowed with over \$4 billion, dedicated to addressing health needs in California.

### HOW TO PETITION PRIVATE ORGANIZATIONS

If you are faced with needing a private organization to solve a problem, a petition can be equally effective. The same instructions described above, under **When there is no process**, should be followed.

Your research needs to be thorough. You need to clearly identify the *facts* that demonstrate the problem you want to solve. Give examples of experiences people have had. Describe why the corporation, nongovernmental agency, foundation, or hospital, for example, has the ability to solve the problem.

Be substantive rather than inflammatory. If you have a serious problem, the facts will be more persuasive than name-calling or rhetorical flourishes. Organize the largest, most diverse and impressive coalition possible and consider how to use the media to apply additional pressure.

Sometimes, a petition sent with a cover letter requesting a meeting, but without any media coverage, may be best. If you know that the organization doesn't want to be helpful, a news conference or demonstration may be necessary. It is always best to be able to show that you have been unsuccessful in any other attempts to work with the organization and have been forced to take public action by petitioning.

## SOME RULES OF THUMB

■ Before filing a petition, find out what the agency's petitioning procedures are. If an agency has specific procedures, follow them. Otherwise, the agency can deny the petition simply because you failed to follow established procedure. The Appendix provides detailed information on how to research an agency's petitioning process.

■ The petition should always describe the nature of the problem you want to resolve, the language of the proposed regulation, and your or your group's interest in the matter. It is important also to cite the specific law that gives the agency the authority to take the requested action. If you cannot find a specific law, you can state why the agency is the one

best suited to address the problem, why action must be taken, and why there is a threat to the health and safety of the public.

The most basic function of government is to protect the public health and safety. This duty is stated in almost every, if not every, government constitution, charter, or authorizing law. A mandate to protect the public health and safety can be a catch-all requirement to call for government action.

Note that the criteria for filing complaints about or requests for enforcement of an existing rule may differ from the criteria for petitioning for rulemaking. Research the right procedure for the action you are pursuing. If there isn't a separate procedure for complaints or enforcement, then use the procedures for petitioning for rulemaking.

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<sup>1</sup>This review is required by the Small Business Regulatory Enforcement Act of 1996. For an excellent summary, see "Recent Developments Regulatory Reform & the 104th Congress," *Administrative Law Review*, Vol. 49, n. 1, 1997.

<sup>2</sup>OMB review has been required by various Executive Orders since the 1970s and the Paperwork Reduction Act of 1995. Generally, regulations by independent agencies like the Federal Trade Commission, the Federal Elections Commission, and the Federal Communications Commission are exempt from OMB review requirements.





## PART 2

# Is a Petition the Right Way to Go?

*Before filing a petition, you need to make sure that a new regulation or the enforcement of an existing regulation will actually solve the problem you want to address. Is the problem within the jurisdiction of the agency, or does the solution require some other type of action—a new law perhaps, or a suit against those who caused the problem?*

### RESEARCH THE PROBLEM

HERE ARE THE QUESTIONS you need to answer:

- Who does the problem hurt? Just a few people or a large number of people? What if you learned, as Consumers Union did, not long ago, that an insurance agent was misleading seniors into buying unnecessary supplemental Medigap policies? Is the agent's own dishonesty at play? Is he following company policy? Or is this a practice common in the industry?
- Will exposure of the problem automatically lead to its solution, or does it require government intervention? Exposure of a rogue insurance agent—through complaints to the company, publicity aimed at his customers, or a lawsuit aimed at the agent—may effectively stop the harm. But if the company encourages its agents to scare senior citizens, and if the industry condones

the practice, then government should intervene to protect seniors.

The answers to these questions may come from a number of sources: newspapers, government officials, the people involved, and experts in the field, to name a few.

If the problem affects a large number of people who cannot protect themselves without some form of governmental intervention, then the petition process can be a very effective tool. If the problem affects only a few individuals, then it is probably more of a private concern better dealt with through some private action, such as a lawsuit against the parties responsible for the problem.

### RESEARCH THE LAW

The basic questions your legal research should address are:

- Do any laws or regulations relate to the

issue, and, if so, what do they say about the problem?

- Do the laws or regulations require or prohibit the behavior that concerns you?
- Is there an administrative agency responsible for enforcing the law, and, if so, what can the agency do?

In California, for example, that agent who was scaring seniors into buying unnecessary Medigap insurance may have violated laws against fraudulent advertising—laws enforced by both the attorney general’s office and the Department of Insurance.

You do not need to retain an attorney to assist you with legal research. In most cases, all the information you need is in the county law library, where the librarians are used to helping people who are not lawyers. There are also other ways to learn what the law says and whether there are relevant regulations. You might, for example, call a nonprofit organization that works in that field, or the staff of a legislative committee responsible for that area. Once you find out which agency oversees the problem, you can call the agency’s legal office for specific information about the law and relevant regulations.

### RESEARCH THE AGENCY

You’ve researched the problem, you know the law, now you need to find out more about the agency that has jurisdiction over the problem area. The questions you need to answer are:

- Does the agency have the power to solve your problem, either by enforcing existing regulations, by adopting new regulations, or by some other means?
- How has the agency handled similar problems in the past? Is the agency doing anything about the current problem? If so, is the agency making the situation better, or worse?
- Does the agency protect the public inter-

est, or does it defend and protect the industry it is supposed to regulate?

■ How does the agency make its decisions? Who is responsible for the area you are interested in? Do final decisions rest with a single individual, or several people? Will the responsible persons sympathize with a request for rulemaking? It is helpful to find out which elected officials hold the agency accountable.

To find out, talk with the agency’s officials themselves and with people who have had experience dealing with the agency.

### RESEARCH THE SOLUTION

Match the actions you take to the solutions you want. The questions to answer are:

- Is this an isolated problem? If so, agency sanctions against the perpetrators may solve it. Is it a widespread or continuing problem? If so, you may need to seek a change in the law or new regulations.
- Are there appropriate enforcement mechanisms? If not, you may need to encourage the agency to adopt them.
- Are there actions the agency should take in the future to better monitor the industry causing the problem?
- Is there any agency responsible for providing the services you are seeking?

You are most likely to get action on a problem if you propose a solution that is well thought out, that fits the problem, and that is not overly broad.

For example, the solution Consumers Union proposed to the Medigap insurance problem discussed earlier was twofold. First, it requested, in an official complaint, that both the attorney general and the insurance commissioner penalize the firms engaged in the deceptive action. Second, it requested, in a petition, that the insurance commissioner adopt a Senior Citizens Bill of Rights that

guaranteed to protect seniors from such practices in the future.

## CONSIDER THE ALTERNATIVES

After completing the research, consider what steps to take. Should you petition the agency for a rule, or for enforcement? Should you file a lawsuit demanding that the agency enforce existing rules? Should you seek legislative support? Should you add your own concerns to an existing rulemaking proceeding, or intervene in a licensing proceeding?

Note that these alternatives are not mutually exclusive. Indeed, courts look on lawsuits more favorably if the litigants have petitioned the administrative agency to take corrective action before filing the lawsuit. A member of the legislature is more likely to draft a bill or hold hearings if the agency has failed to take an appropriate action you've requested. Furthermore, the process of petitioning can focus community and governmental attention on the problem.

### Lawsuits

A lawsuit aims to obtain a court order that forces agency officials to solve the problem. For example, the Pure Food Campaign filed a successful lawsuit against the U.S. Department of Agriculture to force it to require labels on meat, advising consumers about how to cook and handle it safely. Unlike petitions, a lawsuit requires the participation of attorneys, which can be costly; and a lawsuit can take a long time to achieve results. In addition, a court will be reluctant to do more than order the person sued to comply with existing law. With a petition, an agency can explore a number of solutions and select the one it considers best.

### Legislative support

Though it's sometimes necessary to seek a change in the law, the legislative process is long and chancy. But friendly legislators can

help in other ways. A legislator who cares about your issue, for example, might be persuaded to hold an oversight or investigative hearing on the agency's activities. The hearing allows you to air your concerns in a public forum and forces agency officials to account for their actions or inaction. It also creates an opportunity for publicity, which can generate additional pressure on the agency to take action. When Consumers Union raised concerns about Medigap insurance, for example, the California Assembly's Committee on Aging held an oversight hearing on the problem.

The legislators and aides who sit on or staff the committee responsible for the public policy area you are concerned with may also have valuable insights into the relevant agency. Perhaps they can tell you who in the agency to approach and how best to get the agency to take action. They may even be willing to call the agency on your behalf or accompany you to meetings with agency officials. Agency officials are much more likely to take your concerns seriously if they believe that failing to do so might antagonize a legislator. Legislators are, after all, in a position to vote against the agency's budget requests and legislative proposals.

### Community organizing

Community organizing is another possible avenue to solving the problem. But don't underestimate the time and effort required to motivate and organize others to take action on their own behalf. You will need to seek publicity, organize many community meetings, and work with existing networks. The goal is to communicate your analysis to all those who should be concerned about the problem; to engage them in reviewing your analysis and crafting a solution; and to show them how the group's effort can bring about that solution.

*"If you can solve your problem in an easier way, do it! Take the easiest route possible."*

Judith Bell,  
Consumers Union

Once the community's attention is focused on the problem, political action in the form of media events, telephone calls, letters to and meetings with government officials may persuade the agency to take action.

It was through an orchestrated community organizing campaign that the residents of Mendocino County, California, effectively stopped the Department of Transportation, known as Caltrans, from spraying toxic chemicals on roadside vegetation. A little-known statute required Caltrans to meet with any resident who objected to spraying next to his or her property and attempt to work out a solution. When activists discovered this statute, they encouraged close to 100 individuals along one stretch of road to write letters to Caltrans invoking their right to discuss the matter with the department. Rather than meet with all the residents, Caltrans stopped the spraying.

### **Participation in an existing rulemaking proceeding**

When an agency is already considering a regulation that might address your area of concern, you can participate in the proceeding. At both the federal and state levels, agencies must publish proposed regulations and provide for a public comment period. You go about writing comments in much the same way you write a petition. You should research the subject and document your position. You can propose an alternative course of action, if you wish. In order to gain support for your position, you can organize like-minded groups and individuals to send in public

comments, and you can let the press know about your comments.

### **Intervention in a licensing or permit process**

If you want to stop, limit, or place conditions on an activity by a regulated entity, become involved in the agency's licensing or permit process. Frequently, agencies are required to post a public notice that a permit or license has been applied for and also provide for a public comment period. The steps necessary

to intervene in a licensing/permit process are very similar to those in the petitioning process: gathering clear documentation supporting your position, organizing like-minded groups and individuals to send in well-researched public comments, presenting focused solutions, and getting your message out to the media.

Several advocacy groups have used intervention to great effect. In California, Pesticide Watch effectively intervened in the issuance of permits by the Department of Agriculture for

restricted pesticide use. In Maine, when a nonprofit HMO wanted to convert to private status, Maine Consumers for Affordable Health Care successfully intervened in the licensing proceeding and won the guarantee that the HMO's assets were public and would be used to ensure access to affordable health care for all Maine residents. Subsequently, the organization won passage of legislation defining how the public assets should be spent.

To get the most out of the petitioning process, you need to approach it like a campaign. Petitions provide a goal around which

***“Sometimes the review and appeal process does not give the desired results by actual changes made to the permit. Yet all the attention that is drawn to the grower and his operation can lead him to restrict his pesticide use in an attempt to divert unwanted attention.”***

*How to Use the Restricted Permit Process to Stop the Use of Dangerous Pesticides in Your Community,*  
Pesticide Watch

organizations can mobilize, they give the media a peg on which to hang a story, and they focus policy makers on a problem you want them to solve.

If you build a campaign around your petition, you may enjoy substantial success even if the petition itself does not bring about the change you want. You will have educated the public, established yourself in the eyes of the media as a credible authority on the issue, and organized a coalition that can continue to work together on the problem in the future. These results can create the impetus for future action by the agency or legislative branch, if you continue to press for action and show that you are not going to go away.

Many campaigns have gotten off the ground by filing a petition.

### **IF YOU DECIDE TO PETITION**

The following chapters provide a step-by-step guide for a petition campaign, divided into four parts. Part 3, *The Petition Campaign—Laying the Groundwork*, focuses on the necessary preliminary research and coalition building; Part 4, *How to Write the Petition*, provides the basic petition format; Part 5, *Spread the Word—Building Public Support*, explains the best media strategies; and Part 6, *What to Do After You File*, focuses on the appropriate follow-through.

***“It is very difficult for the media to write about something that isn’t news. When you take an official action, it makes it news.”***

Virginia Ellis,  
reporter, *Los Angeles Times*



## PART 3

# The Petition Campaign— Laying the Groundwork

*Having decided to petition an agency, you must accurately document the facts to be effective. You need to thoroughly research the problem, the law, the agency you want to impact, potential supporters and opponents, and the solution. The information gained by this process will be the foundation of your petition.*

### RESEARCH THE PROBLEM

WHEN RESEARCHING the problem, you need to find out the facts of the current situation, the history of the problem, and the reasons why it has not been resolved.

An effective petition will present in a clear and compelling manner the answers to the following questions:

- Who is being hurt by the current situation and how are they being hurt?
- Can the injured persons take independent steps to solve the problem or do they need government action?
- If left unattended, will the problem get better or worse? If worse, how so?

To design an effective campaign strategy, you should also know the following:

- If the problem is long-standing, why has it not been resolved?

- Who is benefiting from the situation?
- What are the politics of the situation?

### Be aware

The politics of the problem will influence the way agency officials respond to your petition. They do not turn a blind eye to the opinions and political interests of elected officials. You should remain aware of the politics of the situation throughout the petition campaign.

### Where to find the information

There are dozens of sources of information for answers to these questions:

- **Books, newspapers, and periodicals**

Read the available literature on the problem and its history, not only to know everything you can but to identify those who are considered authorities in the field. The best publications index is an on-line service known as

“Search Bank,” available in every library. Also do a search of law review articles; they sometimes reveal how the laws you are concerned about have been implemented.

■ **The Internet** A search of the World Wide Web may uncover information about your problem and links to organizations working on the same issue. Always make sure that the source of the information is credible. If you don’t have access to the Internet, you can enlist the help of your local library. (See Appendix pages 67–68 on how to search the Internet.)

■ **Government reports and documents** Your petition will take on increased credibility if it includes information from government sources. A credible petition makes it difficult

for the agency to deny that a problem exists. All federal, state, and local agencies collect data and prepare reports on the activities of those they are charged with regulating. Some of the reports and documents you will want are easily accessible. However, you may have to file a Freedom of Information Act (FOIA) request or Public Records Act request to get the more controversial materials. These acts give the public the right to government information. Under the FOIA, any person may request a federal agency to

make its records available. State and local Public Records Acts make most other government records available. The agency can refuse the request only if the information falls within a narrow category of exemptions. (See Appendix pages 71–72 for information on the FOIA and how to file a request.)

Most states have laws or regulations similar

to the FOIA. In California, for example, a similar state law is known as the Public Records Act. To find your state’s equivalent to the FOIA law, follow the same procedures, outlined in the Appendix on pages 67–68, as you would to find the petitioning statute and look for the keywords *public information*, *public records*, and *freedom of information* in the index.

In California, the Center for Public Interest Law published a damning report on the failure of the state’s Board of Medical Quality Assurance to discipline physicians. The report, *Physician Discipline in California: A Code Blue Emergency*, relied almost exclusively on medical board documents requested under California’s Public Records Act; it was virtually impossible for the board to deny the charges. The report generated extensive media coverage and led to new laws and regulations that greatly improved the effectiveness of the medical board.

■ **Organizations and individuals** It is extremely important to learn the views of other organizations and individuals interested in the subject of your petition. You’ll want to talk with like-minded organizations and individuals, not only to get the benefit of their experience, but also to enlist their support. You should also find out the position of potential opponents, not only to better understand their perspective, but also to help you incorporate effective arguments against their position into your petition and your media materials.

To identify the experts in the field, look at the sources quoted in newspaper and magazine articles related to the subject. To find state advocacy organizations, contact relevant national advocacy groups; they generally work with, or at least know, the state groups in the field. (See Appendix page 83 for information on how to find advocacy groups.) Other excellent sources of information are legislative and agency staff members who work in the policy

*“Public Record Act requests of local and state agencies are extremely important tools for advocates: no information is more credible when critiquing a regulatory policy of an agency than documents which come from the agency itself.”*

Center for Public Interest Law  
1995 Advocacy Training Seminar  
course materials, sec. 4, p. 2

area. A review of relevant published policy papers can also identify important sources of information.

When you interview individuals, make sure you are prepared with a list of questions and a list of any reports, studies, or other documents you would like from them. Gain a good grasp of the subject before you interview people likely to be unsympathetic, to avoid being misled or discouraged.

When interviewing someone who is likely to be unsympathetic, or whose views you do not know, be diplomatic and phrase questions in a neutral fashion. Do not ask questions in a way that will get the answer you want. You need to know all sides of your issue. And, you will get more and better information if you avoid antagonism.

Take notes during an interview. Don't rely on your memory; easily forgotten comments sometimes turn out to be important leads. If you want to quote in your petition or in a news release something that is said in conversation, ask for permission to do so. Always ask for leads to other sources of information, and make sure confidentiality is respected if it is requested.

## RESEARCH THE LAW

After you understand the facts thoroughly, you need to research the law and any pertinent agency regulations. The questions to answer are:

- What behavior does the law require, or prohibit?
- What's the history behind the law?
- What agency, if any, is responsible for implementing, enforcing, and overseeing the law?
- What statutory powers does the agency have to perform its duties?
- Does the agency have to follow any particular procedures before it exercises its power?

If you have not done legal research before,

you may want to retain an attorney with some experience in administrative law to assist you. There are also ways to get inexpensive or free legal assistance. Some law schools have legal clinics, and many have internship programs. The local bar association may have a directory of attorneys who are available for pro bono (free) work. Legal aid and legal services attorneys may provide help if the problem affects low-income communities.

Don't worry if you can't hire an attorney. It's not that difficult to research the law yourself, even if it's a little intimidating at first. In most cases, all the information you need is in the county law library, where the librarians are used to helping people who are not lawyers.

### Time Saver

Before you go to a law library, try to contact experts in the field who will be able to tell you what the law says, where you can find it, and whether or not there are also relevant regulations. For example, you could call a nonprofit organization that works in that field, the staff member of a legislative committee responsible for that area, or the legal office of the agency responsible for overseeing that problem area.

## HOW TO FIND THE LAW

### Federal laws and regulations

*United States Code Annotated* (USCA) compiles all federal laws. There's a separate index for each subject area, such as Agriculture, Public Health and Welfare, etc. The annotations list cases, law review articles, and other sources that interpret or cite the code section. The *U.S. Code* is also available on the Web, but without annotations, at: [www.access.gpo.gov/uscode/uscmain.html](http://www.access.gpo.gov/uscode/uscmain.html), [uscode.house.gov/usc.htm](http://uscode.house.gov/usc.htm), and [www4.law.cornell.edu/uscode/](http://www4.law.cornell.edu/uscode/).

The *Code of Federal Regulations* (CFR) compiles all federal regulations. To find specific regulations, look in the general index, the volume titled *CFR Index*. Once you've found what you are looking for in the index, follow



the same procedures outlined in the Appendix on page 65 for finding the procedures for petitioning a federal agency. The CFR is available on the Web at [www.access.gpo.gov/ecfr](http://www.access.gpo.gov/ecfr).

*U.S. Code Congressional and Administrative News* provides the legislative history of federal laws. This is an excellent source for the text of the law itself, all the reports by the Congressional committees, and the votes at every stage of the legislative process. To start your search for the information, you just need to know the year in which the law was passed.

### State laws and regulations

All state laws can be found in the state's *Annotated Code*. To find laws pertaining to the subject matter you are concerned with, first check the index of the relevant volume (subjects are usually divided into separate volumes). Once you've found what you are looking for in the index, follow the same procedures outlined on pages 67–68 of the Appendix for finding the procedures for petitioning a state agency.

All state regulations can be found in the state's *Code of Regulation* or, in some states, in the *Administrative Code*. Almost every state's laws and regulations are also available on the Web; a good place to start is [www.findlaw.com/11stategov](http://www.findlaw.com/11stategov).

Finding the history of state laws can be difficult. The easiest way to find the history is to call the agency or the office of the legislator who sponsored the bill, if he or she is still in office. You might also consult with your State Archives to find out what legislative materials they keep. It is often possible to get the original bill's file, which is a great source of information.

### Research Tip

State and federal code books are kept up-to-date by the the periodic publication of supplements, which are kept in a pocket at the back of each bound volume. Be sure to review

the supplements to make sure you have the most recent version of the law. These supplements will also alert you to any new legal cases that you might want to check.

### HOW TO UNDERSTAND THE LAW

After you have located the relevant statute or regulation, check to see whether it is preceded by a Definitions section. Often a title or chapter will begin by defining words or terms used in the law. Read these definitions before proceeding to the relevant sections.

A regulation or statute can be difficult to read if you are not used to “legalese.” Don't despair. To understand the language, read it carefully line by line, pronoun by pronoun, punctuation mark by punctuation mark, and pay close attention to the qualifying clauses—for example, “if a manufacturer follows the procedures in section (a), then the product is exempt from further inspection requirements.” Always look carefully at “and” and “or.” If a regulation says “car manufacturers must notify consumers about recalls in writing and by telephone,” it means they are required to do both. If it says, “car manufacturers must notify consumers about recalls through public announcements, phone calls or in writing,” it means they need to notify consumers in only one of the three listed ways.

When you are trying to understand the law, it is also important to look for related court decisions, law review articles, and other legal publications about the subject matter or the specific statute. One of the best sources of information about additional resources is in the same federal or state *Annotated Code* in which you found the law. At the end of each law are cross-references to other relevant statutes, law review articles, other legal publications, attorney general's opinions, and court cases.

Court cases can help you gain an understanding of the law because they provide information on how judges have previously interpreted the law. All court cases are listed

by their name, followed by a code, known as the “cite.” The cite refers to the court that made the decision, the publication in which it can be found, and the date on which it was issued. Once you know the code, cites are easy to decipher. Take, for example: *Public Citizen v. Heckler*, 602 F. Supp. 611 (D.D.C. 1985). The 602 refers to the volume number; F. Supp. means the *Federal Supplement*; 611 refers to the page number; D.D.C. refers to the District Court for the District of Columbia; and 1985 is the year in which the case was decided. Similarly, for state court cases, *Serrano v. Priest*, 5 Cal.3d 584 (1971) breaks down as follows: 5 Cal.3d refers to volume 5 of the *California Reporter*, 3rd edition; 584 refers to the page number; and 1971 is the year in which the case was decided. When, as here, no court is indicated, that means the decision is that of the highest court in the jurisdiction—in this case, the California Supreme Court.

Other useful sources are law review articles. They can provide insight into the history of the law and possible controversies over interpretation. Law review articles also can provide good leads to other sources of information and experts in the field.

## RESEARCH THE AGENCY

The first step is to identify the agency responsible for your problem. You don’t want to go to all the trouble of filing a petition with an agency only to find out that the problem doesn’t fall under that agency’s jurisdiction. Sometimes the responsible agency can be fairly obvious, but other times, especially when the agency is part of a larger department, responsibility for the problem may not be clear. The easiest way to find the right agency is simply to ask people and organizations who work in the relevant policy area. But to make sure, call the general counsel’s office of the agency.

Find out as much as you can about the

agency’s attitude toward your problem and its receptiveness to suggestions from the general public. Also find out how decisions are made and by whom. You may not even have to file a petition if you learn that a key agency official already supports your idea, or you might file it with considerably less fanfare than if you were expecting a hostile reception.

Once again, the best sources of information are those in the field who have dealt with the agency and legislative staff members familiar with the agency. Legislative staff will also be able to steer you to potential allies within the agency.

### What’s the agency’s attitude?

To find out the agency’s attitude toward your problem, here are questions you should try to answer:

- What was the nature of the problem before the agency was given responsibility for it?
- What, if anything, has the agency done about the problem?
- Has the agency’s approach to the problem changed, and, if so, why?
- What is the agency doing about the problem now?
- Are the agency’s activities making things better, or worse?
- Have elected officials or the media indicated an interest in the problem?
- Do agency officials have a history of working for the organization now causing the problem?

If the agency has never done anything about the problem, find out why. Perhaps the agency was not even aware that the problem existed. To assess the agency’s efforts, it helps to find out what similar agencies in other states are doing about the problem.

The answers to the previous questions can be found in government reports and from talking with experts in the field and with agency officials themselves. If you are working on a state issue, you might gather useful

information from a federal agency in the same policy arena. Particularly useful are federal reports about what is happening in the policy area at the state level.

### HOW DO THINGS REALLY WORK?

Once you know about the agency's attitude toward your problem, it is time to figure out how the agency *really* works, not just how it says it works. Here are some questions to answer about an agency's decision-making process.

- Who will make the decision on the subject you are concerned about?
- Is it an appointed official, or an elected one? If appointed, by whom?
- What is that official's background?
- What are his or her views on the subject?
- Who does the official report to within the agency and within the executive branch?
- Are there constituents outside of government that influence the official?

There are two types of agencies, those that are headed by a single individual and those that are headed by a multimember body. Individuals are usually appointed by the executive branch (the legislative branch may have *advise and consent* authority over the appointment). In many states, however, the heads of certain types of agencies are elected officials, such as the secretary of state, attorney general, treasurer, and, in some cases, insurance commissioner.

Agencies led by multimember bodies are frequently called commissions or boards, and generally operate independently of the executive branch. Members of boards and commis-

sions may be appointed by the executive branch, the legislative branch, or both. In some cases members of boards and commissions are elected. In California, for example, members of the tax board are elected.

Your petition strategy may depend on whether the agency heads are elected or appointed. If the official is elected, you will want to get organizations from that official's district to be part of your coalition. Elected officials are more likely to be sensitive to outside pressures than appointed officials are. If

the official is appointed, you may be able to solicit the support of those responsible for the appointment. (Of course, if those responsible for the appointment oppose your solution, they will probably let their appointee know.)

Most agencies are organized as a bottom-heavy pyramid. At the top is the board or the individual head. At the next level are those who

head divisions within the agency. If the agency is not independent, the division heads may also be appointed. At the federal level, the appointment would be made by the president; at the state level, it would be made by the governor. Beneath the division heads are civil servants with a variety of responsibilities.

Despite the common structure, the decision-making process can vary widely from one agency to another. In some agencies, lower-level staff will research all the issues, but the decisions rest with the agency head. In other agencies, lower-level officials will actually make policy decisions that are usually approved by the head of the agency.

***“Persistence and a knowledge of the workings of the agency to which the petition is addressed are essential elements of success in the petition process.”***

James T. O'Reilly, administrative law professor, in *Administrative Rulemaking*, p. 327 (1983)

#### **Research Tip**

A good source of information about elected federal officials and elected officials in many

states are the disclosure forms that these officials must file detailing their outside income, property holdings, and investments. These records can tip you to any conflict of interest the official may have. If officials are elected, check their campaign records. You may find that they received contributions from the source of the problem or from businesses that might be adversely affected by your proposed solution.

### **STAFF: THE POWER BEHIND THE THRONE**

While you are learning about an agency, ask your sources about the agency's staff members. Policy and legal staff are actually the source of most new regulations. In most cases, an agency's staff has a lot of influence on its decision makers, particularly on multi-member governing boards. Board members, usually part-time officials, generally rely heavily on the expertise of the staff. Even when agencies are directed by full-time administrators, upper-level legal and policy staff members largely determine an agency's positions. Your level of success may well depend on their support.

#### **Important Tip**

Always treat an agency's staff members politely and respectfully, even when you and they disagree. Listen to their concerns; they will be transmitting those same concerns to their superiors. If you can work with key staff members, you may be able to convince them to reevaluate a position. You never know when some courtesy will make it easier for them to listen to you with an open or supportive mind.

### **FINDING SOLUTIONS**

It is important to determine what action, or actions, will actually fix the problem you

have identified. For example, when community organizations in California sought to ensure that the public assets of a nonprofit HMO would be dedicated to public health care after the HMO converted to a for-profit corporation, they identified two actions they wanted the state to take: force the HMO to turn over the full value of its assets, and establish rules to govern future HMO conversions. Once you know what you want to accomplish, you can identify which agency to seek action from.

An administrative agency can take an action only if the action is consistent with its purposes and only if the legislative branch has given it the power to take such an action. So make sure that the agency you are petitioning has the authority to take the actions you are seeking.

### **WHAT ACTIONS SHOULD YOU SEEK?**

Generally, the actions you want to seek will fall into three categories: rulemaking, adjudication, and the provision of direct service. In some cases, you may want to file petitions for several actions. For example, Consumers Union, in its complaint against the deceptive sale of Medigap insurance policies in California, filed both an administrative petition and a complaint that included a request for direct action.

#### **Rulemaking**

Here you request the agency to adopt a new law or regulation, or to repeal or modify an existing law or regulation. To make a request for rulemaking, you would file an administrative petition.

#### **Adjudication**

Here you request that the agency enforce a law or regulation, to revoke a license or permit, for example, or to impose fines or issue a cease and desist order. Before requesting an

enforcement action, make sure you know what enforcement action the agency can take. You may first need to petition for a regulation establishing graduated sanctions, especially in cases where the only available enforcement action might be too drastic. In some states, for example, the only enforcement action that can be taken against Medicaid managed care providers is to end the contract. But what then happens to the people covered by the provider?<sup>1</sup>

To make an adjudication request, you would file an official complaint. A complaint is no different from a petition; it just has a different title.

### Direct service

Here you request that the agency provide a new service to the public. For example, Consumers Union, in its Medigap complaint, requested that the attorney general and the insurance commissioner inform senior citizens about the deceptive marketing of Medigap insurance.

Don't feel constrained by these categories. You can ask an agency to do anything, as long as you can show that the action falls within the authority of the agency. For example, an Ohio coalition of consumer groups and labor unions filed a petition before the Ohio Department of Insurance asking that the department review the sale of a nonprofit health insurance provider to a for-profit hospital chain. The coalition also requested that the department release critical documentation and hold public hearings before making a decision about the legality of the sale. There was no procedure on the books that authorized the actions they requested, but they made sense and the agency had sufficient authority to take the actions requested.

### RESEARCH THE SOLUTION

Once again, experts in the field will be key to your research efforts. You will also want to find

out what other states have done about the problem and whether those actions have been effective. If another state or a federal agency has a particularly innovative approach to the problem, you may want to adopt it as the model. The more you can rely on demonstrated methods, the easier it will be to argue your case. The media is also more likely to cover your petition if you can use concrete examples to show that your solution works. If your solution involves government spending, have your own credible estimate of the dollars required and an answer to the question of where the money will come from.

### Tips for Success

- As you research your solution, always keep potential allies in mind. Don't make final decisions until you have given potential coalition partners a chance to contribute. Make them part of the process and they will be much more likely to help with the work needed for a successful petition campaign.

- Solicit suggestions from the agency's staff. If you can incorporate at least some of what they suggest, they will appreciate the fact that you took their advice and may well help lobby behind the scenes for your proposed changes.

- If you know that the person who heads the agency or a member of the board supports particular approaches, try to include those approaches in your request.

- Don't ignore proposals from the opposition. If you can add elements of their proposal to your own, it will make it harder for them to oppose your solution.

### BUILD A COALITION

While a single individual or organization can file a petition, the likelihood of success is far greater if the petition is filed by a coalition of groups and individuals. In building a coalition, try to reach out to politically diverse groups; the broader the political rep-

resentation, the more powerful the effect. It is much harder for an agency to dismiss a petition that is supported by a wide range of organizations, particularly if those organizations aren't often on the same side.

**Remember:** This is a campaign. Your audience is not just the agency; it's also the media and the general public. If you have a very large, diverse group, it will demonstrate to the media (especially editorial boards) and the public that there is a broad consensus on the problem and the solution.

## SUCCESSFUL COALITION COMPONENTS

It is important to include in your coalition organizations and individuals considered knowledgeable in the field. Agencies will take your petition more seriously if you clearly have a history of action and experience in the area.

The success of a coalition is dependent on several factors:

- All parties must have the same bottom-line goal, a plan to achieve it, and a united front. The strategy for the campaign must be spelled out and agreed upon.
- There needs to be a clear understanding of what the coalition needs to function:
  - Leadership with the time, skills, experience, resources, and coalition support to do the job.
  - A clear understanding of each coalition member's level of participation. Can an organization only sign on, send a letter

*“If the goal can be achieved by either a complaint or a petition, consider doing both. The petition can deal with the broader issues and the complaint can address a specific problem.”*

Professor John F. Banzhaf III, founder, Action on Smoking and Health

of support or supply resources—or can it participate fully?

- A commitment to full, thorough communications.
  - Defined decision-making authority with fast-track capability.
  - Agreement on the style of the campaign (in-your-face, diplomatic, high media visibility).
- The sharing of credit

- must also be spelled out.
- Work divided according to each member organization's strength, resources, capacity, experience in organizing, research, use of the media, negotiating skills, and leadership. Work is delegated and groups are accountable for their part in the whole effort.
  - All members must be in for the long haul and support everyone else's interests, until the job is done. No selling out or side deals.
  - The coalition members must present a united front, and choose designated speaker representatives who have decision-making authority.
  - All successes will be celebrated and acknowledged by all members.

Ideally, you want supporters to sign on as co-petitioners. But if a coalition partner does not want to join as a co-petitioner, a letter of support or testimony at a public hearing should be welcome. Coalition members need to be concerned about the organizational needs and capacities of all supporters and not expect that every group can join on as a front-line participant in the campaign.

A strong coalition makes the work easier, more exciting, and more likely to succeed.

<sup>1</sup>Community Catalyst in Boston has developed model rules on enforcement in Medicaid managed care, which are available to groups that need to change their state's enforcement procedures in this area.



## PART 4

# How to Write a Petition

*Experience has shown that you improve your chances of success if you follow a few basic suggestions in preparing your petition. This will help you present the facts, the law, and your arguments and solutions in a professional, clear, and persuasive manner and help you make your case more effectively.*

A BRIEF AND SIMPLE PETITION can succeed just as well as a long and complex one.

■ In 1987, the consumer protection organization Motor Voters sent a one-page letter petitioning the National Highway Traffic Safety Administration (NHTSA) to require car manufacturers to include information in owner manuals about the NHTSA's auto-safety hotline and its defect investigation and recall procedures. The petition described the problem briefly, proposed language for a regulation, and stated the agency's responsibility. The NHTSA granted the petition, and after the first year calls to the hotline had increased by 60 percent. (See Appendix page 75.)

■ Consumers Union, along with 24 other groups, successfully petitioned the California Department of Corporations to require a nonprofit HMO that had

converted to a for-profit organization to transfer an amount equal to its assets to public charities. As a result, two foundations worth a total of \$4 billion were established to help improve health care in California. The petition was only eight pages long.

### FRAME THE ISSUE

Your petition should define the problem in a way that is understandable not only to the agency but to the media and the public. For example, in California, the Children's Advocacy Institute (CAI) framed a fight to strengthen the licensing system intended to protect the health and safety of children in childcare. To dramatize the problem, CAI showed that laws and regulations requiring immunizations, nutrition, and inspections in

***“A lot of times people think a petition has to be elaborate, but if it is a good concept, the petition itself can be very simple.”***

Rosemary Shahan,  
Consumers for Auto  
Reliability and Safety

dog kennels were more stringent than in child care settings.

### WATCH YOUR STYLE

Use language that is objective and even-handed. Sensationalism, exaggeration, and excessive rhetoric tend to undermine your credibility. Let the facts speak for themselves. The more complex the issue, the more you should strive for a simple, straightforward style. Use short sentences and short paragraphs. Break the petition into distinct sections. Use active verbs where possible, and keep adjectives and adverbs to a minimum. (For example, the following statement contains passive verbs: “Children’s health has been adversely affected by budget cuts because funding for both outreach and direct services has been reduced.” Using active verbs will make the sentence flow better: “Budget cuts, which reduced both outreach and direct services, have affected children’s health adversely.”) It’s much easier for agency officials to review a clear, precise petition than a long-winded, jargon-filled document.

While your petition is directed at the agency, it is also an event that allows newspaper and television reporters to cover the problem you are trying to address. A short summary that states the key facts—who, what, when, where, how, and why—will help reporters quickly understand the purpose of the petitioners. A well-crafted introduction to the petition can serve as a summary for reporters.

A court may eventually review the administrative action an agency takes as a result of your petition, to determine whether the agency’s officials did what the law requires. To establish the best possible record for judicial review, your petition should clearly show how the law requires the agency to take the action you request. It should also demonstrate why

*“The bottom line is to find a way to draw a line in the sand that helps others identify what issues are at stake.”*

Center for Public Interest Law  
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alternative actions or no action at all would be contrary to the law.

### THE PETITION FORMAT

All petitions should include the following:

- An introduction.
- A statement of facts about the problem.
- Identification of the parties submitting the petition.
- The legal authority for agency action.
- The solution sought.
- The conclusion.
- Supporting exhibits.

This format can also be used when filing complaints or intervening in licensing and permitting procedures.

#### The introduction

The introduction should summarize the key facts. It should briefly identify who the petitioners are; the problem that you are seeking to address; the action requested of the agency; and why the action is necessary to protect the public interest.

#### For example

“This petition brought by concerned nonprofit organizations challenges the actions taken by the Department of Corporations regarding the conversion of Blue Cross of California, a nonprofit Health Maintenance Organization (HMO), into a for-profit organization. In January 1993, Blue Cross of California (Blue Cross) completed a corporate transaction transferring approximately 90% of its assets, substantially all of its managed care business, into a for-profit company named Wellpoint, now the largest for-profit managed health care company in California, and retaining the remaining 10% in the nonprofit shell.



“Nonprofit corporations in California must dedicate their assets to the public benefit. California law requires that when a nonprofit HMO converts into a for-profit entity, it must transfer an amount equal to its full value to charitable purposes. Blue Cross claims that this law does not apply to it because it ‘restructured’ rather than converted its assets. Prior leadership at the Department of Corporations accepted this interpretation, approving the ‘restructured’ entity and obtaining only general commitments to health care charitable purposes. Current Department leadership has called for the transfer of some assets generated by the Wellpoint transaction to an independent foundation. Petitioners believe that an amount equal to all of Blue Cross’s \$2.5 billion in assets is owed to health care charities in California. In this petition they seek relief from the Department restoring these assets to their public purpose. Additionally, petitioners seek appropriate regulation and process so that future conversions will be properly monitored.”

**Statement of facts**

The statement of facts should discuss three points: the current situation, why it is harmful to the public, and why it is the responsibility of the agency to take action. Here are examples of each:

**The current situation**

“There is an increasing trend in the state of

nonprofit HMOs converting to for-profit businesses. When the nonprofit decides to convert, an application is filed with the Department of Corporations. The Department reviews the proposed conversion and makes a valuation of the company’s assets. This value is used as the basis for the company’s charitable obligation. The HMOs are then required by law and by their articles of incorporation to turn this value over to an independent entity, which is required to apply those resources to purposes that are in line with the purposes for which the original nonprofit was incorporated. The Department has overseen a number of these transactions, but has refused to adopt regulations necessary to govern this approval process.”

**How and why the current situation is harmful to the public**

If appropriate, this is an excellent place to use graphs and charts. Not only do they help give a better picture of the problem, but they also give reporters good illustrations to use in their stories.

“In many cases questions have been raised as to the valuation and the adequacy of the amount of assets dedicated to charity. Previous objections by Consumers Union have resulted in reevaluation of the fair market value of the HMO, which resulted in more funds dedicated to the public interest. In other cases, the Department accepted valua-

## HMOs Undervalued at Time of Conversion

Health Organization	Amount to Charity at Time of Conversion	Public Offering Value	Subsequent Value
Family Health Plan (Fountain Valley, CA)	\$38,457,000 (1984)	\$135,628,000 (1986)	\$745,684,000 (1993)
Inland Health Care (Loma Linda, CA)	\$663,000 (1985)	\$37,500,000 (1986)	N/A
Pacific Care Health System (Cypress, CA)	\$360,000 (1984)	\$45,300,505 (1985)	\$6,936,460,000 (1993)

Source: *Chronicle of Philanthropy*, “Charities Win, Lose in Health Shuffle,” June 14, 1994

tions that later proved to be grossly understated. Market value of these HMOs proved to be dramatically higher than estimated at the time of the conversion. These under-valuations resulted in the loss of hundreds of millions of dollars that should have been directed to charitable purposes.”

### **Why is it the agency’s responsibility to take action?**

“Petitioners contend that more rigorous regulation and oversight of these conversions, as well as a public process with meaningful input, could have restored huge amounts of badly needed resources to the public interest.”

- If you have relevant information from agency sources, include it in your statement of facts. Data from government sources adds credibility to your petition and makes it harder for the agency to deny that a problem exists.

- If you learned during your research that the agency will need certain information to assess the merits of the petition, make sure you include it. For example, federal agencies must provide the Office of Management and Budget with a cost-benefit analysis as part of the regulation-approval process. So the statement of facts in a petition to a federal agency should include facts about costs and benefits.

## **PETITIONERS**

After the statement of facts, identify the petitioners and explain their interest in the action being sought. If the petitioner is an organization, briefly describe what the organization does. For example:

“Consumers Union of U.S., Inc. is a nonprofit organization that publishes *Consumer Reports* magazine and is dedicated to providing consumers with information, education, and counsel about goods, services, health, and personal finance; and to initiating and cooperating with individual and group efforts to maintain and enhance the quality of life for consumers.”

If the petitioner is an individual, state the person’s name and explain how he or she is affected by the problem.

For the benefit of reporters, put the names of the best-known individuals and organizations at the top of your list. You want the media to see quickly that the problem has attracted the attention of prominent

***“To the extent the petitioner submits a petition which includes substantial supporting data, asks for a rule of a specific content, and otherwise clearly focuses the issues for decision by the agency, the reviewing court should expect a detailed response from the agency. As a result of the detailed petition and response, the court will be in a better position for identifying and reviewing alleged errors committed by the agency.”***

William V. Luneburg, “Petitioning Federal Agencies for Rulemaking: An Overview of Administrative and Judicial Practice and Some Recommendations,” *Wisconsin Law Review*, Vol. 1, p. 47, 1988

individuals and key organizations. Also, attempt to interest a broad array of organizations and individuals in joining as petitioners. A large number of interest groups and prominent names make the petition more newsworthy and require an agency to pay attention.

## LEGAL AUTHORITY

First, you should identify the statute that gives you the right to petition. (For a list of the state statutes see pages 85–87; for federal petitions see pages 65–66.) For example:

“This petition is filed pursuant to the California Constitution, which guarantees the public the right to petition the government for redress of grievances. Cal. Const. Art. 1 3. Additionally, this petition is filed pursuant to California Government Code 11347 et seq. This provision mandates a speedy response or a public hearing. Cal. Gov. Code 11347.1.”

Second, you should identify the laws that give the agency the authority to take the action you are requesting. You should not only list the laws, but also, for the benefit of reporters or others who may read the petition, either quote from the law or summarize it. For example:

“Cal. Revenue and Taxation Code 23701(f) provides that certain organizations that provide a benefit to the public may be exempt from requirements to pay certain state taxes. In exchange for the public financial support, tax-exempt organizations must promise to give back their wealth, if they choose to become for-profit corporations. To qualify for this tax exemption, organizations must include in their articles of incorporation a dedication provision which states that, if and when they choose to convert to for-profit status, they will transfer an amount equal to their assets to the sort of charitable purposes for which they were formed. Cal. Health & Safety Code 1399.72(c).”

## RELIEF

This section should list the corrective action that you want the agency to take. For example:

“Petitioners believe that 100% of the value of the Wellpoint stock is owed to the public

of California, to be dedicated toward the same charitable purposes for which Blue Cross of California was incorporated. Therefore, petitioners request that the Department order Blue Cross to divest itself of assets in this amount immediately. The resources should be placed in an independent nonprofit foundation dedicated to the health care needs of Californians, with special emphasis on underserved and low-income populations.”

If you want the agency to adopt regulations, describe them. It is also a good idea to draft a set of proposed regulations and attach it to the petition as an exhibit. That way you can be sure that the agency understands exactly what you are requesting. For example:

“That the Department promulgate, with full notice and comment as provided in the California Administrative Code, and implement, regulations that govern the conversion or restructuring process and that address the above issues for the future; that these regulations include procedures for valuing these entities that are rigorous and provide for public scrutiny including but not limited to: public notice, disinterested evaluators, public records...”

## CONCLUSION

In conclusion, urge the agency to take prompt action. The conclusion should be followed by the signatures of the petitioners or their representatives. For example:

“Petitioners urge that the Director immediately take the remedial and preventive measures set forth in this petition.

Dated: January 1, 1995

Respectfully submitted by the following co-petitioners:

Maryann O’Sullivan, Project Attorney  
 Jeanne Finberg, Senior Staff Attorney/Policy Analyst  
 Harry Snyder, Co-Director  
 Attorneys for Consumers Union of U.S., Inc.”

### **Technical Tip**

Put on the front page and the last page the name of the person you want the agency to contact, his or her address, phone number, fax number, and e-mail address.

### **EXHIBITS**

Use exhibits to illustrate critical facts in the petition. Exhibits can include letters, newspaper articles, reports, photographs, even objects. Graphs and charts are always excellent ways to present complex information or technical data. If your research has uncovered studies and surveys that support your claim, include them.

For example, if you petition an agency to regulate a hazardous product, exhibits might include examples of injuries resulting from use of the product, newspaper articles about the harm caused by the product, or studies describing the use of the product. But use restraint. The exhibits themselves should be credible; and they should not be so numerous as to become tedious.

### **Technical Tip**

Even if it is obvious, each exhibit should have a descriptive title. For example, “Levels of Toxic Substances in State Waterways.” Each exhibit should also be labeled (Exhibit A, B, C., etc.) so that you can refer to it in the body of the petition.

### **THE FINAL STEP—A COVER LETTER**

Attach a cover letter to your petition addressed to the head (or heads, if it is a multimember body) of the agency. The letter

*"The more the petitioner can give to the agency, the better. Anticipate what the agency will have to go through so that you can provide them with the information they will need."*

Jeffrey S. Lubbers,  
administrative law  
expert<sup>1</sup>

should briefly explain the reasons for the petition, but without rhetoric or sensational language. And it should urge the agency to take prompt action. Since you may want to quote from the letter in a news release, try for brief, clean language that states the problem. The letter helps create a newsworthy event. A news release might begin: “In a letter delivered today to the insurance commissioner, Consumers Union urged the commissioner to: [quote from letter].”

When the petition and cover letter have been written and typed in final form, file them with the appropriate agency. Filing simply means delivering the documents to the agency.

### **DELIVERY OF THE PETITION**

Unless the agency has specifically assigned someone to receive petitions, you should deliver the documents to the head of the agency. Consult an up-to-date government directory to find out his or her name and address, or call the agency. Deliver the petition personally if you can. Otherwise, use registered mail, which will provide you with a signed receipt upon delivery.

Agency officials generally dislike surprises. If they're caught off guard by questions from the press, for example, there's a risk of public embarrassment; they may appear unprepared to deal with a problem, even though it falls within the agency's jurisdiction. Feeling challenged and surprised, they may take an unnecessarily hostile position. To avoid this reaction you may want to give the agency's officials a courtesy telephone call to inform them that you will be filing a petition. If you

plan to contact the media, let the agency's officials know that reporters may call them about the petition. Make the courtesy call in the afternoon, the day before you actually file the petition. This allows the agency to be prepared but does not allow it the time to launch its own attack on your petition.

The agency's officials may attempt to dissuade you from immediately filing your petition. For example, they may request that you

meet with them before you go ahead. They may also ask for an advance copy of the petition and your news release. Providing advance copies can prevent the agency from claiming it has not had time to review your request and may encourage a positive response, as long as you don't give the agency too much lead time to formulate a counterattack. Before making the telephone call, decide how you will respond to such requests.

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<sup>1</sup>Jeffrey S. Lubbers is a former staff member of the Administrative Conference of the United States and is currently a fellow in Law and Government at American University's Washington College of Law.



## PART 5

# Spread the Word— Building Public Support

*The media can perform an important role in the administrative petitioning process. Through the news media, you can inform the public about the problem you are trying to address and mobilize public support.*

**MEDIA COVERAGE RARELY OCCURS** automatically, newsworthy though your petition may be. In most cases, news stories come about because petitioners have worked hard to reach and educate reporters.

Start your media campaign with a list of all the newspapers, magazines, and radio and television news programs you think might cover the subject. The list should include:

- daily newspapers (city and suburban)
- weekly newspapers and shoppers
- magazines (local, national, and specialty)
- college and university newspapers
- alternative newspapers
- television stations (network, cable, local, and public)
- radio stations (network, local, public, and foreign language)
- news wire services

In making your list, consider the audience reached by the various media. Evaluate both the size of the audience (as measured by cir-

ulation or media ratings) and its potential influence (will that publication or broadcast reach decision makers in the state capital, individuals affected by the petition, potential allies?). Television news generally reaches a larger audience than either newspapers or magazines, but printed articles tend to reach a more interested and perhaps more influential audience. Also, newspaper stories can be cut out, copied, and used many times for future organizing activities.

Consider the type of coverage you would like to receive. News stories vary in length from a straight news story of several lines or paragraphs to an in-depth report of several pages. A critical factor in deciding what type of coverage to seek is the complexity of the issues raised by your petition. While simple issues may be competently presented as a straight news story, complex issues may require in-depth coverage. You will be more likely to receive such coverage if you brief interested reporters well beforehand, so they have time to do their own research. Make

sure reporters chosen for advance briefing understand that they may not release the news of your petition until it is filed. (Any news release or other materials for reporters should carry a “release date”—a prominent line on the pages stating, “For release on January 1, 2000, at 6:00 A.M.”) Another way to get coverage is to ask the newspaper to write an editorial or to publish an op-ed piece you write.

Finally, consider how hard or easy it will be to get coverage in a particular medium. It is usually easy to obtain local newspaper or radio coverage; local television coverage may be somewhat more difficult; national television or magazine coverage is the most difficult to generate.

Once you have completed your media list, decide how you will go about reaching reporters. You can reach them through news releases, news conferences, or personal interviews. A news release mailed out widely is the easiest way to reach a large number of publications and broadcast outlets, but stories resulting from press releases are likely to be brief. A news conference is likely to result in deeper coverage, since reporters have an opportunity to ask questions, but fewer newspapers and broadcast outlets will be able to attend a news conference. Interviews with individual reporters will result in the most detailed coverage—but in the fewest outlets.

Whatever method you select, you should develop a concise news “peg” for reporters to hang the story on. The peg is the fact or collection of facts that makes the story of current interest to the public—a \$1.5 billion overcharge to homebuyers, for example, or advertising in classrooms that illustrates the commercial exploitation of schoolchildren.

Some common news pegs that may help make your petition more newsworthy are: new announcement (your petition is unprecedented or ground breaking); trends (a new trend is emerging); dramatic human interest (find a compelling personal anecdote to help illustrate the problem you are addressing);

controversy (highlight corruption or corporate greed); anniversaries (time your release to coincide with an important date or relevant holiday).

News releases and news conferences are the most common methods of getting information to reporters. Over time, a standard set of procedures has been established for these methods.

## HOW TO WRITE A NEWS RELEASE

News<sup>1</sup> releases should be typewritten, double-spaced, on 8½ x 11” paper. They should be short—one to two pages in length. The top of the first page should carry the notice “For Further Information Contact:” followed by the name and telephone number of the person or persons selected to answer questions from reporters. The top of the page should also indicate the date and time of release. For example, “For Immediate Release” or “For Release on Tuesday, October 2, 1979, 8:00 A.M.” Immediately below the contact person and release time, begin the text with a headline that sums up the gist of your petition in a compelling way. You may include a subhead with additional critical information about the petition—for example, “Consumer Groups Petition Education Officials to Seek Ban on Box Top Gimmick.”

The news release should be written in the third person and the first paragraph should succinctly state all the critical facts: who, what, where, when, and why. For example:

“Today, Consumers Union, the nonprofit publisher of *Consumer Reports*, charged 19 firms with using phony government agencies and bogus senior citizens’ organizations to sell health insurance to elderly consumers. The charges came in a 14-page complaint sent to California Attorney General John Van de Kamp and State Insurance Commissioner Roxani Gillespie.”

Build the second paragraph around a quote from the coalition’s principal spokesperson.

While the factual information in the press release should be presented in a straightforward, unemotional style, the quote should be dramatic—designed to grab the reader’s attention and to provoke questions from reporters. Use the first quote to define the problem your petition seeks to address.

“Insurance companies and their agents are involved in a massive mail campaign to panic senior citizens into spending hundreds of dollars for policies that they may not need,” said Carl K. Oshiro, attorney for Consumers Union. “It’s time that state officials stop this scam.”

The subsequent paragraphs should explain the issues in more detail and provide additional background information to support your story. Use examples to illustrate the situations your petition will address, to put a human face on what might otherwise be just another problem in governance. For example:

“Among the abuses uncovered by the committee were the sale of overlapping or duplicative policies to seniors. Recently, a 79-year-old Santa Cruz woman was sold more than nine overlapping policies amounting to \$6,500 a year in premiums. Another elderly couple in Santa Rosa was sold nearly \$13,000 in overlapping premiums.”

Use additional quotes to advocate a position or comment on a set of facts in a way the reporters cannot do themselves. Thus:

“They are like wolves in sheeps’ clothing,” said Oshiro. “They may look like a government agency or seniors’ organization, but they’re an insurance company out for your money. The Department of Insurance must take legal action to end this deceptive practice.”

If you are working with a coalition, it is a good idea to have quotes from several different coalition members.

At the end of the news release, provide the names and phone numbers of officials at the agency you are petitioning. That helps the reporter get reaction to your announcement and add depth to the report. You should also ask individuals who have been harmed if

they are willing to speak with reporters. Reporters want to use interviews with “real people” to make their stories more compelling.

### Tips

- If the news release is more than one page long, write “OVER” at the center of the bottom of each page. At the end of the release write “END,” centered at the bottom of the page.

- Ask someone who doesn’t know the issue to read the news release, to make sure you have explained the purpose of the petition in an interesting and understandable way.

- Avoid using technical terms or jargon. If you must use unfamiliar terms—in a press release about insurance, for example—explain the terms in plain language.

- Make sure every fact, down to the last number, is accurate. Inaccuracies not only open you to political attack, but harm your credibility with reporters.

In addition to the petition and the cover letter, attach a list of the members of your coalition and a one- or two-sentence summary of what each member does. You may also want to attach statements by coalition members on their organization’s letterhead.

## HOW TO HOLD A NEWS CONFERENCE

Reserve news conferences for subjects of unusual significance and of a complexity difficult to cover in a news release, or for announcements that may have visual appeal for television. Unless the subject is significant, reporters won’t attend. And unless the subject is complex, a news release does the job more efficiently and economically. Used carefully, however, news conferences can maximize your coverage.

If you plan to hold a news conference, select a location convenient for reporters.



Reporters are less likely to travel to someplace remote or hard to find. Choose a space big enough to accommodate all the reporters you expect but not so large as to make the gathering appear insignificant. The area should have enough electrical outlets for cameras, lighting, and recording equipment. Also, it should be quiet enough so that speakers can be easily heard.

Sometimes, you might want to go to reporters rather than bring them to you. If, for example, you want the press corps at the state capitol to cover the event, hold the press conference in the capitol building itself, or nearby. (State capitols frequently have press-rooms that a friendly legislator or staff member can reserve for you.) Sometimes, it's effective to hold the press conference just outside the agency you are petitioning. Or you might hold it at a site that symbolizes the problem, to provide an interesting visual for television.

To alert reporters about your news conference, send out a news advisory to your media list a few days before your event. Your news advisory should provide the basic who, what, where, why, and when information that will hopefully convince reporters to attend your event.

If you plan a news release as well as a press conference, be sure the release includes the time and place of the conference. Otherwise, invite reporters through an "editor's advisory" that explains what the conference is about and when and where it will be held. Mail copies of the release or advisory, two to four days before the news conference, to the

news or assignment editors of local television and radio stations, to the city desks of local newspapers, to the wire services, and to specific reporters you think might be interested in covering the story. See the Media Advisory on page 78 for an example.

Generally, the best days for press conferences are Tuesdays and Wednesdays. For

maximum coverage, schedule the press conference in the morning, between 10:00 and 11:00 A.M. Don't schedule press conferences around lunchtime or later than 3:00 P.M. If you specifically want coverage in a certain paper or on a certain TV station, call and find out what time is best for them.

The day before the conference, call everyone to whom you sent materials. Make sure that they received the materials and find out whether they are planning to attend. Make a brief pitch explaining why your event is newsworthy and why they

should attend. These calls should give you a good idea of what the turnout will be and also serve as an opportunity to arrange separate interviews with reporters who are unable to attend.

On the day of the news conference, arrange the area so there is a table in front of the spokespersons. The table should be big enough and sturdy enough to hold microphones, tape recorders, and other media equipment. There should also be an ample supply of chairs for the reporters, as well as extra news releases, copies of the petition, and other informative materials. Station

***"When you schedule a press conference, you have to consider that someone with no knowledge of the subject has to write something on deadline. They are given the assignment at 2 o'clock, they start writing at 3 o'clock and have to turn it in at 4 o'clock. You also have to understand that they are going to call the other side for a reaction and need time to do that."***

Virginia Ellis, reporter,  
*Los Angeles Times*

someone at the door who will see to it that all the reporters sign in and indicate the media outlet they work for and their phone/fax number and e-mail address. Remember that if you hold the news conference, anyone, even opponents and agency personnel, can attend.

The news conference should begin on time or a few minutes late. Never begin early. One or two spokespersons should open the conference by introducing themselves and giving a brief statement. This statement should clearly yet concisely explain the petition and the reasons behind it. After the statement, give reporters an opportunity to ask questions of the spokespersons. Be certain to state that you are taking questions from the working press *only*. If you think questioners are not reporters you may ask them to identify themselves and their employer. Once the questions become repetitive, or interest seems to wane, a spokesperson should formally end the news conference by thanking the reporters for attending and indicating whether someone will be available to answer questions after the news conference is over.

After the news conference, check the sign-in list and contact reporters who were expected but did not attend. It is a good practice to follow up even with reporters who attended, to ask what the other side is saying. This gives you a chance to rebut or correct what opponents have said. You can also use the sign-in list to monitor coverage after the conference.

If a reporter does a particularly good job on your story, you might want to thank him or her for the coverage. However, if you find that you received little or no coverage, you shouldn't automatically blame the reporter. In addition to the reporter's sense of what is newsworthy, a number of other factors determine whether and how a story is covered. On some occasions, other news may limit or eliminate the space scheduled for your story, or a reporter may be reassigned to another story with a higher priority. In other

instances, an editor may reduce the size of the story or delete it entirely.

There are some special considerations to remember when working with the electronic media. First, television and radio news is typically headline news. Most stories aired are those that can easily be reduced to 15- or 30-second spots. One way to accommodate this limitation is to include at the beginning of your statement a 30-second summary written specifically for television and radio. Second, to receive television coverage a story must be visually interesting. Using visual aids such as pictures, graphs, models, or props is one way to add "interest" to a news conference. If your news conference will feature compelling visuals, make a note of that in your news advisory and bring this to the attention of TV stations you contact when pitching your event.

To prepare for a news conference, write out your statement word for word. Go over the statement until you are thoroughly familiar with it. Finally, prepare an outline of the statement to refer to at the news conference. You want to cover all your points, but without reading from a prepared text. If there's more than one spokesperson, they should coordinate statements so that each person covers distinct parts of your message. If there's a coalition, its leaders should sit or stand behind the spokesperson, who should introduce them.

Give some thought to the kinds of questions reporters might ask and to the points you would like to make in response. Here are some questions you should expect, and possible answers:

"How do you think the state will respond to your petition?"

**Possible answer:** "We think that we have made a good case and we expect the agency to act responsibly by..."

"Why hasn't something been done about this before?"

**Possible answer:** “It was only recently that the problem became so large that it could no longer be ignored.”

“Isn’t this a problem that could be solved without the help of government?”

**Possible answer:** “In the past, we have tried to solve these problems without government intervention, but were unsuccessful because...”

“Do you really think that what you’re asking for will solve the problem people are facing?”

**Possible answer:** “If the agency’s officials take the action we have requested, people will no longer have to...”

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<sup>1</sup>“News” and “press” are used interchangeably here, e.g., “news release,” “press release.” Both terms are commonly used.



## PART 6

# What to Do After You File

*Filing your petition is the culmination of your research, organizing, coalition building, solution crafting, and writing. Filing launches your official request for change. But your work is not over. It is essential to recognize your accomplishment and immediately begin to follow through with the next steps.*

MOST STATE LAWS require agencies to respond to your petition—either to start the regulatory process or to deny the petition—within a specified or a “reasonable” time. Most federal agencies have no deadline. If any agency fails to respond in the required time period or in a reasonable time, say, 60 days—you may want to file a lawsuit to force the agency to respond.<sup>1</sup>

### **WHILE WAITING FOR AN ANSWER**

Don't just sit back and wait for the agency to respond. Build public support and provide the agency's staff members with any help they may need to move the petition forward.

#### **Build public support**

During this time, build on any press coverage of your petition to suggest editorials and op-ed pieces in favor of the proposal. Take advantage of the attention your petition has focused on an issue to seek the support of

officials who can encourage the agency to accept your petition.

#### **Work with the agency's staff**

Find out who is dealing with your petition at the agency and offer any assistance the staff might need in finding facts. Because decision makers often give great weight to the views of their staff members, your success may well depend on whether or not the staff supports your position. So try to establish a good working relationship with staff members. If you work well with the staff, you will be able to find out what agency officials think about the petition, what the opposition has in rebuttal to the petition, who will make the decision, and what it's likely to be.

Note, however, that some states prohibit persons from making contact with an agency's officials after a petition has been filed. These restrictions are intended to prevent bias and undue influence in the decision-making process. Ask the agency's staff or the state attorney general's office whether your state has

such a prohibition before you file your petition. You will also want to read the law for yourself.

### WHEN THE ANSWER IS YES

When an agency says it will accept your petition, that doesn't mean it will take the actions you request. It generally means only that the agency will start the rulemaking process. The process varies from agency to agency. Generally, however, the process includes a public comment period and a public hearing, followed by further consideration within the agency, before a final decision is made. Make sure you ask the agency staff about its rulemaking procedures and about how to have all your facts and arguments considered.

### HOW TO MAKE YOUR CASE

Before an agency can act on a petition, it generally must give the public adequate notice and an opportunity to comment. Often the agency will publish "proposed rules" in order to focus comments on what it is considering. The notice period allowed for public comment generally ranges from 30 to 90 days. At the federal level all notices are published in the *Federal Register*. Some states have a state equivalent; in others, agencies put out press releases and send notices to interested parties.

You can expect those who oppose your proposals to express their opposition in letters to the agency. So you need to make sure your supporters send the agency letters as well—the more, the better.

### BEFORE PUBLIC HEARINGS

If the issue is a significant one, or if it generates a lot of interest, the agency will probably hold a public hearing. In some states, such as California, you can request a public hearing. Public hearings give you an excellent forum to air your views, respond to the criticism of the opposition, and correct any misperceptions. The hearings also provide an excellent press opportunity. To get the most out of a public hearing, you need to take the following steps:

#### Find out the format

Hearing procedures vary from state to state and agency to agency. Find out who will preside at the hearing. Will it be the agency's head or a commission member? Will oral testimony be allowed, and, if so, what are the time limits? Will witnesses be questioned?

How will witnesses be scheduled? Will the agency receive posthearing comments?

If you do not like the format, propose changes. For example, if you believe the hearing officer is opposed to your position, ask the agency to select an impartial officer. If a time limit on testimony will restrict your presentation, see if the agency will give you more time. In the interest of fairness, try to get the agency to alternate between supporting and opposing witnesses. If the

agency schedules witnesses in advance of the hearing date, try to testify as early as possible, preferably first or second. Early witnesses tend to get the full attention of the presiding officers and the media in attendance.

#### Line up witnesses

You will want to have two or three witnesses who can speak articulately and author-

***“Courts can't force an agency to grant a petition, but they can ensure that there are no unreasonable delays or denials.”***

William V. Luneburg,  
administrative law  
professor, in *Petitioning  
Federal Agencies for  
Rulemaking*, p. 8.

itatively about the problem and answer any technical questions. Expert witnesses such as professors, doctors, scientists, etc., are particularly helpful. You should also try to get as many additional witnesses as you are allowed, even if only for one-minute statements of support. The additional witnesses help demonstrate the breadth of your public support. All your witnesses should be chosen because they have the ability to make a positive impression on the agency and the public.

### **Prepare your testimony**

Your testimony should present the case as clearly, persuasively, and comprehensively as possible. It should describe the current problem and show how it is hurting the public. It should also point out that the agency has the authority to take the corrective action requested and explain why that action will be effective.

While preparing your testimony, be sure to check to see if there have been any significant changes in the facts, the law, or government policy since you filed the petition. You would quickly lose credibility if you testified to something that was no longer the case. Also, try to respond to all the arguments raised in opposition to your case. Substantiate critical facts and key legal principles by identifying your sources. If the facts are particularly complex, you might also want to prepare graphs, charts, or diagrams to illustrate your points. If you have previously submitted materials, refer to them in your testimony.

If your testimony is long, prepare a summary for yourself. Read the summary alone, and submit the full testimony for the record. Take enough copies of your testimony for the presiding officials, staff, reporters in attendance, and other people who might want it.

### **Coordinate with supporters / co-workers / other coalition members**

It is essential that you decide which speaker is best at giving what kind of testimony—for instance, legal, factual, or analytical. Try to

avoid unnecessarily repeating each other's testimony. Be sure you agree on the main points and your message. Also, be prepared for questions, such as, "Would your problems be solved by the following approach...?" The agency might try to find out if you will settle for less than you have asked for in your petition. Decide what you will do and, perhaps, where your bottom line is. Or, agree to ask for time to consult with others in the coalition.

### **Marshal support**

In addition to the witnesses you enlist, try to get as many supporters as possible to attend the hearings.

The mere presence of a large group of interested citizens observing the proceedings can make a great impression on the agency's officials.

If you know that an agency's staff person supports your point of view, see if he or she will suggest to the presiding officials questions that will help you bolster your case and questions that highlight weaknesses in the opposition's case. If it is a multimember body and you know a member is supportive, you should, if permitted, encourage the member beforehand to ask the opposition hard questions. You might ask if it would help the member if you drafted sample questions to give him or her an idea of what would be helpful to get on the record.

### **Inform the media**

Several days before the hearing, put out a news advisory informing reporters about when and where it will be held. The advisory should include a brief statement of the facts behind the petition; the groups filing the petition; the actions you are requesting of the agency; and why the actions are necessary to protect the public interest. Follow up the

*"Ideally, your witnesses should be able to tell a compelling story, one that cries out for remedy."*

Center for Public Interest Law  
1995 Advocacy Training  
Seminar course materials,  
sec. 4, p. 11

advisory with a phone call to those reporters who covered your press conference. They are the ones most likely to provide additional coverage.

### **AT THE HEARING**

Get to the hearing early. Bring materials and either hand them to reporters or place them on a press release table, if one has been provided. Bring plenty of copies and hold some back to be sure all reporters get a copy. Sit in the front row, where you can see and be seen by the agency's officials. Check with them to see if there have been any last-minute changes and introduce yourself to any reporters. If possible, it is helpful to schedule or hold an impromptu press conference just before the hearing and just outside the hearing room. The reporters will be there and you can help them frame the way they will write about your petition. You may need to rebut the opposition's arguments during your testimony and, if allowed, send in posthearing comments. So take detailed notes during the hearing and get copies of the opposition's testimony and any materials they bring.

#### **Testify concisely**

When it is your turn to testify, distribute copies of your testimony to the hearing officer or presiding officials, the agency's staff, and the recorder, if there is one. Begin your testimony by introducing yourself and thanking the agency for the opportunity to testify. Keep your testimony brief. Do not drone though pages of details; simply summarize and submit the full testimony for the record. Speak clearly. Refrain from dramatic gestures. Do not raise your voice.

During your testimony, you may want to expand on a point or respond to a particular question or criticism raised earlier. If you are not comfortable interrupting your prepared testimony with spur-of-the-moment comments, you may want to respond by saying, "I'll answer that as soon as I finish my pre-

pared testimony." Then wait until you have finished your prepared remarks and introduce additional comments by saying, "I would also like to take this opportunity to respond to earlier remarks."

In some cases you may find that you need to correct an earlier statement made by a witness who supports your position. Try to avoid contradicting an ally. A good approach is to say, "I would like to clarify a point mentioned by..." To avoid this problem, try to meet with all your supporters to coordinate your testimony and agree on your message. If necessary, discuss what fallback positions you should take, if any.

#### **Answer questions directly**

Don't be intimidated by questions. They are generally asked to clarify statements you made in your testimony, or to solicit your views on issues beyond the scope of your testimony. In many instances, there won't be any questions.

When you are asked a question, answer directly; don't ramble. If appropriate, use the question as an opportunity to make additional points in support of your proposal. But, always start by first answering the question asked. And, where possible, start your answer with a clear declarative phrase, for instance, "Yes, I agree, and..." or "No, because..." If you don't know the answer, *don't fake it!* Admit that you don't know or don't have an opinion. If you are asked for specific information, say that you will get back to the questioner on the matter—and then be sure to do so.

#### **Respond to hostile questions calmly**

If you encounter a presiding official or staff person who is bent on embarrassing and discrediting you, keep your composure. Don't let the questioner put words in your mouth. Look out for questions such as, "Did you say...?" or "Is it your position that...?" Stick to your position and bolster it with documented facts and legal authority. If your answer is interrupted by another unrelated

question, politely say that you need to finish answering the first question before addressing the second one.

Don't be intimidated or discouraged by harsh questioning. Such interrogation is generally ineffective and makes the reporters present more sympathetic to your case. Moreover, when the hearing officer or the agency's staff exhibit such hostility or bias that it interferes with the presentation of evidence, a reviewing court may impose legal sanctions on the agency or overturn its decision.

### AFTER THE HEARING

Agencies may or may not allow posthearing comments. If they do, take advantage of the opportunity to answer any questions raised at the public hearing and to rebut opposing arguments. You may also use posthearing comments to bring recent developments to the agency's attention.

Your posthearing comments should:

- Review the facts raised in your petition and testimony.
- Review the arguments raised by the opposition.
- Explain why the opposition's arguments are faulty. They may be faulty because they are contrary to the law or the facts; because they are illogical or inconsistent; or because they contradict other opposing testimony.
- Discuss how recent developments in the law, the facts, or government policy strengthen your case and weaken that of your opponents.
- Include any items that you promised in your testimony.

Testimony and posthearing comments, including exhibits, are formal mechanisms for communicating with the agency's officials. They form the official record for an agency's decision. Where permitted, you

should also use informal contacts with the agency's staff and officials to encourage them to grant the petition. If other members of your coalition have a good relationship with the agency's officials, ask them to speak to the officials about the petition. Informal lobbying efforts are important to the success of the petition and should be maintained through all stages of the petitioning process.

### AFTER THE PUBLIC COMMENT PERIOD

After the close of the public comment period, stay in contact with the agency's staff and officials. Ask about the progress of their deliberations, and make yourself available to answer any questions. Monitor the agency's actions and those of your opponents, who will be lobbying the agency just as hard for their position.

**Remember:** Several layers of internal agency review may prolong the process, especially if you are requesting a major change. In addition, other agencies may also need to review the proposal.<sup>2</sup>

### IF THE PETITION IS GRANTED

Congratulations—you made it! If the agency announces that it will take some or all of the actions you have requested, you can celebrate and thank all your co-workers and supporters. Also, congratulate the agency's staff and give praise for a job well done. Then get back to work to make sure your proposal gets over any additional hurdles and is implemented properly.

If your petition results in a new regulation, in many states the agency must submit the new regulation and a record of the proceedings to another agency for review before putting the regulation into effect. In California, for example, the Office of Administrative Law



must review all regulations. It can reject rules that do not comply with prescribed standards.

Many states also require a grace period of 10 to 30 days between the time the rule is filed and the time it becomes effective. This grace period allows the agency's officials time to correct any errors they may have made and gives persons affected by the new regulations time to adjust to them. Check to make sure that the agency complies with all the filing and other requirements. Stay in contact with its officials during the grace period to make sure they don't back away from their decision.

### **Spread the news**

You should issue a press release announcing the agency's action and praising the agency for it. Also let the press know when the new regulation goes into effect.

### **Thank the agency**

Send a brief thank-you note, along with the press release, to the appropriate staff members and to the heads of the agency. They will appreciate your recognition, since their work is generally thankless.

### **Watch the opposition**

If the actions you secured were controversial and opposed by powerful interests, you need to pay careful attention to possible attempts to unravel your victory. Opponents may file a lawsuit, or ask the legislature to pass a law undoing the agency's action. In either case, you need to think about how to respond. Do you have the time, money, and expertise to participate in a lawsuit? (If yours is an issue that affects people with low incomes, you may be able to find free legal assistance through your local legal services program. In addition, many state and local bar associations offer pro bono—that is, free—assistance programs. See Appendix pages 81–83 for some useful Web sites.) Can you mount a lobbying campaign against a bill? Is the agency going to defend its action vigorously?

### **Monitor enforcement**

Now that you've come this far, it is important that you make sure the agency actually implements its decision. After the action has had a chance to work, check to see whether it has solved or alleviated the original problem. If not, you may need to seek another remedy.

## **IF THE PETITION IS DENIED**

Don't be discouraged if your petition is denied. Your efforts have by no means been wasted. If nothing else, you have at least alerted the media and policy makers to the problem and built a coalition. And you may have laid the groundwork for future action by the agency or the legislature. For example:

Consumers for Auto Reliability and Safety (CARS) filed a petition with the National Highway Traffic Safety Administration (NHTSA) to require automobile manufacturers to provide the mechanisms necessary for passengers to adjust the height of lap/shoulder belts so that they fit properly. The petition was widely supported by safety organizations, insurance companies, seniors' groups, and parents. It was opposed by the auto industry, which complained that the regulation would be too costly. The NHTSA sided with the industry and denied the petition, stating that the proposed regulation did not meet the agency's cost-benefit analysis—the mechanisms would cost an estimated \$2 each. But after the agency's rejection, CARS and its coalition partners convinced Congress to adopt the requirement as part of an Omnibus Transportation Bill. "The petition focused everyone on the problem and the ease of the solution. It served as the catalyst for Congressional action," said Rosemary Shahan, of Consumers for Auto Reliability and Safety.

## POSSIBLE NEXT STEPS

If the agency denies the petition and you want to continue to pursue the matter, there are several steps you can take. You can petition the agency again. You can sue. Or you can take your case to the legislature. And, you can continue to document new examples of the problem and use the media to continue public awareness of the problem.

### Another petition

Even if the agency denies your petition, you can prepare and file a second petition. You should consider petitioning the agency again if the facts, or the law, or government policy changes so significantly that the agency's officials need to reconsider their position. Suppose, for example, that the agency denied the petition because it did not have the legal authority to take the action requested, but the legislature later passed a law giving the agency that authority. A second petition would then be appropriate. Some states, including California, have special procedures for re-petitioning. As another example, if harm is caused that would have been prevented if the agency had granted the petition, you have good reason to go back and say, "Now you have to act to protect the public from repeated harm."

### Going to court

Judicial review of the agency's action is the most effective check against the illegal exercise of administrative authority. If you sue asking for judicial review, the court will examine the agency's action with the following questions in mind: Did the agency exceed its legal authority? Did it correctly interpret and apply the relevant laws? Did it understand and evaluate the evidence reasonably? Were its proceedings fair and consistent with legal requirements? Although courts may review almost any aspect of an agency's operation, they are generally reluctant to impose

their own views as long as the agency can support the action it took based on evidence in the record of the proceeding.

Courts will scrutinize the agency's actions more closely if: the legislature has not given the agency broad powers of discretion; the agency has a history of, or a reputation for, arbitrary actions, or abusing or exceeding its authority; the issues involved do not require any particular expertise possessed by the agency; the hearing procedures used by the agency were biased or prejudiced; or the agency's actions affect some constitutionally protected right.

Keep in mind that litigation is frequently a long and uncertain process. Lawsuits can last several years before the trial and all the appeals are completed. Before you decide to file a suit, you need to consider whether the chances of success justify the expense and whether success in the lawsuit will further your overall mission. If you win your case, you may be entitled to recover your attorney's fees and court costs from the agency.

### Legislative action

If your proposal has broad public support and if the agency's refusal to act is contrary to some clearly stated public policy, you may succeed with the legislature even if you failed with the agency. In addition to passing bills, the legislature can hold hearings on the matter or conduct an investigation into the agency's activities. In some states, special legislative committees have the power to review the agency's rules and regulations.

Before you seek support in the legislature, you should consider the following questions: What do you want the legislature to do? Can you afford to mount an effective lobbying campaign? What are your chances of success? Don't forget that the opposition was successful at the agency level and they will fight in the legislature to preserve their victory. And, in most cases, they will have more resources and be better connected than you.

**Ballot measure**

Some states, cities, and counties provide for citizens to gather a certain number of signatures and place a proposed regulation, in the form of a law, on the ballot. In some cases, elected representatives can vote to place a

proposal on the ballot. In either case, you should explore this possibility, if you feel your proposal has strong public support. See Appendix page 83 for more information on using the ballot box.

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<sup>1</sup>See the state chart on pages 85–87.

<sup>2</sup>See pages 65–66 on petitioning federal agencies.



## PART 7

# Petitioner's Kit

### QUICK-REFERENCE CHECKLIST

*The Quick-Reference Checklist provides a summary of the actions you should take at each stage of the petitioning process. Keep it in front of you as you plan, and use it as a check to make sure you have not overlooked anything important. If you are unclear about items in the checklist, review the sections of the handbook that discuss those items.*

	WORKSHEETS ON PAGE	EXAMPLES ON PAGE	DISCUSSED ON PAGE
<b>STARTING OUT</b>			
<b>1. What is the problem you are concerned about?</b>	88		19
Who is being hurt?			
How are they being hurt and how much?			
Who is benefiting at present?			
How are they benefiting and how much?			
<b>2. Is the problem one of public concern?</b>	88		19
Does it affect a lot of people? AND			
Are they unable to avoid harm? AND			
Is the problem likely to persist or worsen?			
<b>3. What does the law have to say about the problem?</b>	89–91		19–20
What behavior does the law require or prohibit?			
What are the reasons behind these requirements/prohibitions?			
Which agencies (if any) are responsible for overseeing the problem?			
What procedures must the agencies follow to exercise their power?			

	WORKSHEETS ON PAGE	EXAMPLES ON PAGE	DISCUSSED ON PAGE
<b>4. What have the agencies done to solve/alleviate/worsen the problem?</b>	91–92		20
What was the nature of the problem before the agency was formed?			
What did the agency do about it?			
Has the agency’s approach changed over time, and, if so, why?			
What actions are being taken now?			
Are these actions making things better, or worse?			
If no actions are being taken, why?			
What actions are being taken in other states?			
<b>5. How are decisions made within the agencies?</b>	91–92		20
Who makes the decision on the subject you are interested in?			
What is the person’s background?			
What are that person’s views on the subject?			
Who is the decision maker accountable to within government?			
What constituencies outside of government does the decision maker respond to?			
<b>6. What actions should agencies take to solve/alleviate the problem?</b>	92–93		
<b>Should the agency:</b>			
Prohibit certain harmful activity?			
Require certain beneficial activity?			
Provide a certain service directly to the public?			
Investigate a certain area?			
<b>Before going on, determine whether:</b>			21–23
Petitioning is still the best route to solving problems			
You have the time, money, people, and expertise to keep going			
You have the commitment to see things through to the end			
It is likely that the petition will make a significant change for the better			

*Review your answers to the previous questions in Nos. 1 through 6 and decide whether you want to go forward with a petition.*

## HOW TO PUT TOGETHER AN ADMINISTRATIVE PETITION

<b>1. Do you have an Introduction?</b> Does it briefly and concisely identify:	36–37	36
The petitioners?		
The agency being petitioned?		
The facts giving rise to the petition?		
The actions you would like to see taken? AND		
The reason why the action is necessary to protect the public interest?		
<b>2. Do you have a statement of facts?</b> Does it:	37	37
Explain the current state of affairs?		
Say how and why the public is being hurt?		
Say why it’s the agency’s duty to act? AND		
State what action needs to be taken?		

	WORKSHEETS ON PAGE	EXAMPLES ON PAGE	DISCUSSED ON PAGE
<b>3. Do you have a Petitioners section?</b> Does it: Identify each person or group petitioning? AND State why each petitioner is affected by the problem?		38	38
<b>4. Do you have a Legal Authority section?</b> Does it: Identify the law that gives you the right to petition? AND Identify the laws that give the agency the authority to take the requested actions? AND Quote or summarize relevant portions of the authorizing statutes?		39	39
<b>5. Do you have a Relief section?</b> Does it: List all corrective actions you are requesting that the agency take?		39	39
<b>6. Do you have a Conclusion?</b> Does it: Include a statement urging the agency to take action? AND Include signatures of the petitioners or their representatives?		39	39
<b>7. Have you attached exhibits that support your petition?</b> Do they: Highlight and illustrate critical facts? AND Does each have a title and label?  Can you find other documents (maps, charts, newspaper articles, etc.) that will support your petition? Do you have too many exhibits?			40
<b>8. Overall, is your petition persuasive?</b> Is it clear to an outsider? Does it make the problem seem urgent? Do the solutions you propose seem reasonable and responsible? Have you avoided sensational or rhetorical language?		36	36
<b>9. Have you prepared a cover letter?</b> Is it addressed to the head of the agency? Does it briefly explain the reasons for the petition? Does it urge the agency head to take prompt action?			40
<b>10. Can you get others to join in your petitioning effort?</b> Would they: Join as co-petitioners? Send the agency a letter supporting the petition? Make phone calls, help with expenses, show up at news conferences and hearings?	93	32–33	38

	WORKSHEETS ON PAGE	EXAMPLES ON PAGE	DISCUSSED ON PAGE
<b>LAUNCHING YOUR PETITION</b>			
<b>1. How are you filing the petition?</b>			40
By personally delivering a copy to the head of the agency?			
By using registered mail or some other delivery service that assures you a signed receipt?			
<b>2. Are you planning to give the agency's officials a courtesy call before you file?</b>			40-41
<b>3. Have you prepared a media contact list?</b>	94-96		43
Are the audiences reached by the listed media likely to be:			
Affected by the problem?			
Interested in your petition?			
Influential in the agency's decision?			
<b>4. How will you reach the media you have selected?</b>	96		43-44
Can the issues be readily explained in a brief news release?			
Is it desirable to afford reporters an opportunity to ask questions?			
Is the topic so complex that lengthy personal interviews are needed?			
<b>5. Is your news release in the correct format?</b>	96		44-45
Is it typed, double-spaced, on 8 1/2 x 11" paper?			
Have you held it to no more than one to two pages?			
Have you included the name and telephone number of the person designated as the contact?			
Have you stated the release date and time?			
Does the title summarize the purpose of the petition?			
Is it written in the third person?			
Have you included all critical facts in the first paragraph?			
Does it include a quote from a spokesperson or expert?			
<b>6. Is your news release accurate and unambiguous?</b>			44-45
Are all opinions, as opposed to facts, attributed to someone, preferably in quotes?			
Have you checked all information to ensure that it is absolutely accurate and unlikely to be misinterpreted?			
Is the story clear, straightforward, and nontechnical?			
Does it avoid excess rhetoric?			
<b>7. If you are holding a news conference, have you given adequate notice to the media?</b>	92	47-48, 78	45-48
Did you send a news release or media advisory two or more days in advance?			
Did you make a follow-up call 24 hours before the conference?			

	WORKSHEETS ON PAGE	EXAMPLES ON PAGE	DISCUSSED ON PAGE
<b>8. Did you select a good location for the news conference?</b>			46
Is the location convenient for reporters?			
Is it large enough to accommodate everybody?			
Are there enough electrical outlets for use of the media's equipment?			
<b>9. Have you taken care of all the physical arrangements?</b>			46-47
Is there a table for the speaker(s)?			
Are there enough chairs for the number of reporters expected?			
Do you have plenty of spare copies of:			
news releases?			
the petition?			
any additional informative materials?			
Is there a sign-up list and a person assigned to look after it?			
Does that person know what to do?			
<b>10. Do(es) the spokesperson(s) know what is expected?</b>			47
Is the opening statement brief but complete?			
Are questions to be invited immediately after the opening statement(s)?			
Is someone assigned to thank the reporters for attending?			
Have you provided an opportunity for later questions?			
<b>11. Have you arranged for follow-up after the news conference?</b>			47
Is someone assigned to call any reporter who was expected but did not attend?			
Is someone assigned to thank any reporter who gave good coverage?			
<b>12. Scheduling</b>			46-47
Are you sure you won't be upstaged by other events?			
Is the day and time you selected good for media coverage?			

## NOW THAT YOU HAVE FILED THE PETITION

<b>1. Are you checking with the responsible agency person, to encourage action?</b>	94	49-50
Has the petition been reviewed?		
What does she/he think about it?		
What are the problem areas?		
What is the opposition doing?		
Who else will review the petition?		
When can a decision be expected?		



	WORKSHEETS ON PAGE	EXAMPLES ON PAGE	DISCUSSED ON PAGE
<b>2. Are you keeping on top of events?</b>	96		49–50
Are you renewing contact with the agency every few days?			
Are you making yourself plainly available for questions?			
Are you monitoring the actions of the agency?			
Are you monitoring the actions of your opponents?			
Are you building public support for the petition?			

## IF THE AGENCY SCHEDULES THE MATTER FOR A HEARING

<b>1. Should you seek changes in the format of the hearing?</b>	97		50
Who will preside?			
Will oral testimony be permitted? And if so, will time limits be placed on witnesses?			
Can witnesses be questioned?			
How will witnesses be scheduled?			
Will posthearing comments be permitted?			
If the arrangements are not satisfactory, can you press for:			
replacing a biased or hostile hearing officer?			
seeking extra time for witnesses?			
alternating witnesses, pro and con?			
being heard early in the proceedings?			
<b>2. Do you need to change or supplement your petition?</b>	98		51
Does it still seem clear, persuasive, comprehensive?			
Have there been any new developments?			
Are there changes in the facts, the law, or governmental policy to be considered?			
Can you bolster your arguments at any point where you expect trouble?			
<b>3. Does your planned testimony give maximum support to your petition?</b>	97–99		51
Does your testimony explain the current state of affairs?			
Does it discuss how and why the public is being hurt?			
Does it state why the agency is responsible for taking corrective action?			
Does it discuss the corrective action needed?			
Does it substantiate facts and legal principles by citing sources?			
Is it free of complex statements, long-windedness, sensationalism, and rhetoric?			
If facts are complex, can you illustrate your points with display-size graphs, charts, and diagrams?			

	WORKSHEETS ON PAGE	EXAMPLES ON PAGE	DISCUSSED ON PAGE
<b>4. Have you selected witnesses who will give maximum support to your petition?</b>	99		50–51
If the time allowed for each witness to testify is brief, can you split the testimony among several witnesses?			
Do your witnesses speak well in public?			
Are they knowledgeable about the issues?			
Do they have the credentials (degrees, positions, training, experience) to give weight to their testimony?			
Do they have the appearance and bearing to make a good impression on the agency?			
Do they have the capacity to attract the attention of the media?			
<b>5. Have you done all possible to attract public support?</b>	99		51
Have you searched out interested persons and groups?			
Have you briefed them on the issues?			
Have you urged them to make their interest plain by:			
presenting oral testimony?			
submitting written comments?			
attending the hearing?			
Have you kept media coverage alive with a news release about the hearing and the facts of your petition?			
Have you prepared extra copies of the news release for distribution at the hearing?			
Have you prepared extra copies of your testimony, including graphics, for distribution at the hearing?			
<b>6. If posthearing comments are allowed, are you presenting a complete case?</b>	99–101		53
Have you reviewed the facts in your petition and testimony?			
Have you reviewed the arguments raised by your opponents?			
Have you discussed how the opposing arguments are faulty?			
Have you discussed how any recent developments add to your case and/or detract from your opponents' case?			
Have you included all the items you promised to produce?			
<b>7. Are you maintaining contact with agency officials?</b>			53
Are you monitoring the progress of their deliberations?			
Are you making yourself available for questions?			
Are you keeping your supporters up to date on the progress of the petition?			

	WORKSHEETS ON PAGE	EXAMPLES ON PAGE	DISCUSSED ON PAGE
<b>IF THE AGENCY GRANTS THE PETITION</b>			
<b>1. Have you taken steps to solidify the agency's decision?</b>	101–102		53–54
Is the agency complying with all legal requirements?			
Has the agency's decision been announced to the news media?			
Is the agency actually implementing its decision?			
<b>2. Have your opponents shifted the fight to another forum?</b>			54
Have they filed a lawsuit to stop the agency from taking action? OR			
Have they gone to the legislature for a law that would prevent the agency from taking action?			
<b>3. If so, should you participate in the ensuing struggle?</b>			54
Do you have the resources to intervene in a lawsuit or to lobby against a bill?			
Can the agency be counted on to competently defend itself?			
Are you likely to win, if you intervene?			
What are the consequences, if your adversaries win?			
<b>4. Has the petitioning effort either solved or alleviated the original problem?</b>	101		54
<b>IF THE AGENCY DENIES THE PETITION</b>			
<b>1. Are agency officials likely to respond differently to a second petition?</b>	102		54–55
Has there been a significant change in:			
the facts?			
the laws? OR			
government policy?			
<b>2. Can you bring a successful court action against the agency's officials?</b>	102		55
Do you have the resources to initiate and maintain an effective court action?			
Do you have a reasonable chance of winning, taking into account the strengths and weaknesses of your case, the status of the law, the resources of your opponents, and the inclination of the courts and judges who will be making the decision?			
Will success in the lawsuit further your overall mission?			
<b>3. Can you get help from the state legislature, board of supervisors, city council?</b>	102		55–56
Will a new law, resolution, or legislative hearing help to solve the problem?			
Do you have the resources to stage an effective lobbying campaign?			
Do you have a reasonable chance of succeeding, taking into account the issues involved, your likely supporters and opponents, and the course that a bill, resolution, or request must chart before becoming effective?			



## PART 8

# Appendix

### HOW TO LEARN ABOUT SPECIFIC AGENCIES' PETITIONING PROCEDURES

THE FEDERAL and state constitutions and laws that provide for citizen's petitions frequently do not specify the steps required to file a petition. Those details are left up to the individual agencies. Some agencies have issued specific instructions about what a petition should include, how to file it, and when to expect a decision. Others state only that a petition can be filed.

**Before filing a petition, find out whether or not the agency has a specific procedure.** If there are no specific requirements, follow the guide provided by our sample petition on pages 79–80.

### FEDERAL PROCEDURES

The regulations promulgated by every federal agency can be found in *The Code of Federal Regulations (CFR)*, which is available in any law library and on the Internet. Unfortunately, the CFRs for individual agencies lack their own index. To find the petitioning regulations for a specific agency, you need to look in a separate volume, titled *CFR Index*. All departments and agencies are listed alphabetically. Under each department or

agency listing there is an index of topics. The petitioning process can generally be found under “administrative regulations,” “administrative practices and procedures,” or “rule-making.” The Food and Drug Administration’s (FDA) petitioning regulations, for example, are listed under, “administrative practices and procedures,” while the Occupational Safety and Health Administration’s (OSHA) petitioning regulations are listed under “Rules of procedure for promulgating, modifying, or revoking occupational safety or health standards.”


The procedure for filing a complaint or a request for enforcement may differ from the procedure for filing a petition. Keywords to check for are: “complaint procedures” and “enforcement.”

As with any type of research, **be creative with keywords** and make sure you look through the whole index for the relevant agency.

### What do all the numbers mean?

So now that you've found the cite for the regulation in the index, how do you find the regulation? For example, the cite for the Food and Drug Administration's petitioning regulations refers you to 21 CFR 10. The 21 CFR means volume number 21 of *The Code of Federal Regulations*; the 10 refers to the part

of the volume where the subject can be found. On the binder of every CFR volume is the volume number and the parts in that volume. So in this case you would look for volume 21, parts 1 to 99. When you turn to part 10, you'll find a subindex, which will refer you to the specific section. This subindex for the FDA lists "citizen petition" under 10.30, so you then simply look for §10.30.

 **Research shortcut:** If you have the phone number for the agency, call its general counsel's office (the agency's attorneys) and ask if the agency has a petitioning procedure. The phone number and Web site for every department and agency are listed in the *U.S. Government Manual* published by the General Printing Office. This manual should be avail-

able in the reference section of any library and is on the Web at [www.access.gpo.gov/nara/nara001.html](http://www.access.gpo.gov/nara/nara001.html). Another excellent reference is the *Federal Yellow Book*, which lists phone numbers, e-mail addresses, and Web sites.

**Important:** When you file your petition, cite the petitioning law, regulation, or constitutional provision that gives you the authority to file the petition. For example, if you are petitioning the FDA, make sure you state in the petition that it is being filed pursuant to 21 CFR 10.30. If the agency you are concerned about does not have a specific regulation, then cite the Administrative Procedures Act: "This petition is being filed pursuant to the Administrative Procedures Act (5 USCS § 553 (e))."

## 21 CFR 10.30

### § 10.30 Citizen petition.

(a) This section applies to any petition submitted by a person (including a person who is not a citizen of the United States) except to the extent that other sections of this chapter apply different requirements to a particular matter.

(b) A petition (including any attachments) must be submitted in accordance with § 10.20 and in the following form:  
(Date)

Dockets Management Branch,  
Food and Drug Administration,  
Department of Health and  
Human Services, rm. 1-23,  
12420 Parklawn Dr.,  
Rockville, MD 20857.

#### Citizen petition

The undersigned submits this petition under \_\_\_ (relevant

statutory sections, if known) of the \_\_\_ (Federal Food, Drug, and Cosmetic Act, or the Public Health Service Act, or any other statutory provision for which authority has been delegated to the Commissioner of Food and Drugs under 21 CFR 5.10) to request the Commissioner of Food and Drugs to \_\_\_ (issue, amend, or revoke a regulation or order, or take or refrain from taking any other form of administrative action).

#### A. Action requested

((1) If the petition requests the commissioner to issue, amend, or revoke a regulation, use the exact wording of the existing regulation (if any) and of the proposed regulation or amendment requested.)

((2) If the petition requests the commissioner to issue, amend,

or revoke an order, copy the exact wording of the citation to the existing order (if any) and the exact wording requested for the proposed order.)

((3) If the petition requests the commissioner to take or refrain from taking any other form of administrative action, cite the specific action or relief requested.)

#### B. Statement of grounds

(A full statement, in a well-organized format, of the factual and legal grounds on which the petitioner relies, including all relevant information and views on which the petitioner relies, as well as representative information known to the petitioner that is unfavorable to the petitioner's position.)

## STATE PROCEDURES

The current state petitioning laws are listed on pages 85–87. However, states often amend their annotated codes, so it is important to check the state law before proceeding.

In general, state laws can be found in a state’s revised *Code of Statutes*. Most states have administrative procedure laws that set general guidelines about how to petition a state agency—generally referred to as “requesting the promulgation (or adoption), repeal, or amendment of a rule.” Start by looking up certain keywords in the state’s *Annotated Code Index*. Useful search words for petitioning statutes include: “Petition,” “Administrative Procedure,” and “Rules and Regulations.” States that have specific Administrative Procedure laws will often have a subheading for “Petition” under the more general guidelines of “Administrative Procedure.” In states that have only constitutional guarantees, you are more likely to find the provision under the keyword “Petition.”

### Example: California

If you look up “Administrative Procedure” in the *California Annotated Code Index*, you will find several subheadings, one of which is “Petitions.” Petitions has four subheadings. One of these subheadings is “Adoption, Amendment, or Repeal.” This is what you’re looking for. The index points you to Gov. 11340.6 and 11340.7.

**What do those numbers mean?** Gov. is the prefix that indicates that the law is in the *Government Code*. Each prefix denotes specific sections of a state’s code. Many states only use “Rev.,” which stands for Revised Code. Others use “Gen.,” which stands for General Statutes. Big states, like California, which has a large body of state law, divide their law into sections. For example, “Const.” stands for Constitution; “Gov.” stands for the Government Code; and “Veh.” stands for the Vehicle Code.

The number that follows the prefix stands for the particular section of the code. Sections are always in numerical order, hence 11340.7 will follow 11340.6. Our particular citation tells us that we should find the statute that deals with petitioning and administrative procedure in *California Government Code*, Sections 11340.6 and 11340.7.

### Research Tip

Don’t forget to check the pocket part.

If you cannot find the specific citation in the codebook, look in the pocket part, which is inserted in the back of each code book. The pocket part contains the most recent amendments, repeals, and revisions to state laws. Even if you find the statute in the code book, it is **critical to check the pocket part** to see if the statute has been revised.

*How do I find whether there are different guidelines for each specific agency within a state?*

To find out whether a state agency has special guidelines for petitioning, check the state agency’s index in the *Annotated Code Index*. Use the same keywords (Petition, Administrative Procedure, Regulation) that you used for the general search. Follow the same process you used in the original search to find if there was an applicable regulation for a specific agency. Don’t worry if you can’t find one. Many state agencies, just like federal agencies, lack specific procedures. The fastest way to find an agency’s procedures is to call its **general counsel’s office**.

### Research Shortcut

The phone number for each state agency can be found in the *State Yellow Book*, which is available at many public libraries.

**Internet research:** Another research tool is the Web. Most states have home pages that can be reached using the two-letter postal abbreviation. For example, the home page for Alaska is [www.state.ak.us](http://www.state.ak.us), while the home page for Wyoming is [www.state.wy.us](http://www.state.wy.us).

Although they vary in breadth, sophistication, and user friendliness, a state's Web pages can be useful as a starting point. Many states' home pages have Keyword Search mechanisms. To find a state's petitioning statute, punch in the same keywords you used in your General Index Search. When searching the Web, it is best to use combinations of words to narrow your search, separating them with a conjunction, such as "and." For example, if you are searching the Internet for the petitioning statute in the *Nebraska Revised Statutes*, you would use "petition and administrative and procedure" to make sure that your search request includes all your keywords and not just one or two of them.

**Important:** Don't forget, when you file your petition, to cite the petitioning statute, regulation, or constitutional provision that gives you the authority to file the petition. For example, in California, make sure you state in the petition that it is being filed pursuant to Gov. Code § 11340.6 et. seq. (from the Latin *et sequentes*, et seq. means "and the following sections").

## GOVERNMENT AGENCIES

*This section provides additional information about government agencies. It briefly describes how these agencies affect food, housing, medical care, and other critical areas.*

There are basically three types of government agencies: regulatory, service, and support.

Regulatory agencies have the power to determine what shall or shall not be done in particular situations. These agencies may also have the power to take legal action, impose fines, or take other punitive action against violators.

Service agencies devote themselves primarily to delivering essential services to the community. For example, state transportation

departments are responsible for the construction and maintenance of state highway systems; state welfare programs provide financial, medical, and other forms of assistance to poor, disabled, and elderly persons.

Finally, support agencies exist primarily to serve the rest of state government. These agencies may perform housekeeping functions such as the management and maintenance of state property, personnel matters, and the purchase of supplies. They may also conduct research and provide state government with economic, financial, budgetary, and demographic information.

Within each state, there are dozens of administrative agencies, each with particular missions to perform. The following sections briefly describe how state administrative agencies are involved in certain critical areas.

*Note: The names and specific powers of these agencies vary from state to state.*

### Food quality

The quality, cost, and availability of food are matters of critical concern to all members of the public. As food and food products make their way from the farm to the family table, they come under the control of a number of state agencies. Generally, the most important agencies are the Departments of Agriculture and Health.

In many states, the Department of Agriculture is one of the oldest agencies in state government. It oversees food production and is responsible for protecting the quality and availability of food. The department's activities may include: conducting programs to protect livestock and poultry against disease, controlling the use of pesticides and agricultural chemicals, setting minimum milk prices and regulating the processing and handling of milk. In addition, through marketing order boards, Agriculture Departments conduct research, advertise agricultural products, and set grading and packing standards for various farm products.

State Departments of Health regulate other

aspects of the food industry. These departments may have the authority to confiscate or embargo adulterated, misbranded, or falsely advertised food products. They may also monitor the effectiveness of local health agencies in enforcing retail food laws and regulations.

At the federal level, the counterparts to state Agriculture and Health Departments are the U.S. Department of Agriculture (USDA) and the Food and Drug Administration (FDA).

### **Health care**

In many states, responsibility for health care services is shared by a number of agencies. In each state, there are a number of boards or bureaus that are responsible for licensing and supervising health care professionals. Typically, these agencies administer examinations, develop rules for the profession, and discipline those who violate the rules. There is usually one board or bureau for each major professional group, e.g., the Board of Dental Examiners (for dentists), the Board of Pharmacy (for pharmacists), etc.

The state may also provide a number of health services directly to the public. It may conduct treatment programs for persons who are mentally ill or developmentally disabled. It may conduct programs for the prevention, treatment, and rehabilitation of alcoholism and drug abuse. The state may also provide subsidies to low-income persons for medical services. These programs may be administered by a number of separate agencies or by a single agency.

The counterparts at the federal level are various agencies under the Department of Health, Education, and Welfare (HEW).

### **Housing**

Over the past decade, sharp increases in the cost of housing have made it extremely difficult for many people to obtain decent, safe, and sanitary housing. For those living on low or fixed incomes, the housing problem is particularly acute.

In response to this problem, some states

have created Housing Finance Agencies, whose purpose is to encourage the construction of housing for low- and middle-income persons. These agencies may accomplish this purpose by providing low-interest loans to qualified developers, or by facilitating federal grant applications by local governments.

Most states also have an agency that is responsible for establishing minimum standards for all types of housing in the state.

The counterpart at the federal level is the Department of Housing and Urban Development (HUD).

### **Utilities and energy**

Since the 1974 energy crisis, there has been increasing public concern about the cost and availability of energy in the United States. Generally, state utilities commissions are responsible for overseeing the firms that provide natural gas and electricity to the public. These commissions also oversee telephone and water services, as well as intrastate trucking, and bus and airline operations. Among their most important functions is setting the rates these firms can charge consumers. (Although state utilities commissions are often exempt from the administrative petitioning process, they may provide an analogous "complaint" procedure.)

In some states, the energy crisis prompted the creation of a new administrative agency responsible for developing conservation measures and conducting research into the state's energy needs. The new energy agencies may also have the authority to approve or disapprove sites for new power plants.

The counterparts at the federal level are: Department of Energy (DOE), with primary responsibility for energy regulation and development; Federal Communications Commission (FCC), for interstate communications; Interstate Commerce Commission (ICC), for interstate transportation; Civil Aeronautics Board (CAB); and Federal Aviation Administration (FAA), for air transportation.



**Education**

Public education is a major commitment for most states, consuming as much as 25% of the total state budget. Responsibility for elementary and secondary education is shared between state and local agencies. The State Board, or Department, of Education is responsible for developing broad policy guidelines, which are refined and implemented at the local level.

Higher education is usually the responsibility of state universities, colleges, and junior colleges. Generally, each of these systems is governed by a board of trustees.

On the federal level, education programs are administered by the Department of Health, Education, and Welfare (HEW).

**Natural resources**

State administrative agencies play an important role in protecting our air, water, forests, wildlife, and other natural resources. The oldest resource agencies are typically the Forestry, Parks, and Fish and Game Departments. In addition, some states have special lands commissions, which are responsible for managing and developing all resources on state-owned lands.

The counterparts at the federal level are the Environmental Protection Agency (EPA); U.S. Department of Agriculture (USDA), which oversees national forests; and the Department of Interior, responsible for wildlife, national parks, and mineral and other resources.

**Jobs**

Several state administrative agencies are responsible for protecting the interests of working men and women. In recent years, states have created fair-employment agencies that are responsible for enforcing equal employment laws. To this end, these agencies usually receive and investigate complaints of discriminatory practices and generally have the power to hold hearings, issue rulings, and to obtain court orders to enforce their decisions.

As more is learned about the hazards of various industrial materials and processes, there is increasing concern about the safety of workers and other persons on the job site. Departments of Industrial Relations are responsible for protecting the health and safety of workers. Typically, these departments set standards for industries to follow and enforce these standards through a program of on-site inspections and penalties for violations.

When a worker is injured or laid off, another state agency usually takes over. In most states, injured or unemployed workers who meet certain minimum qualifications are entitled to draw certain benefits. In addition to administering these programs, state labor or employment departments may also assist workers in securing rehabilitation services and/or employment opportunities.

The counterparts at the federal level are: Department of Labor (DOL), Occupational Safety and Health Administration (OSHA), Equal Employment Opportunity Commission (EEOC), and the National Labor Relations Board (NLRB).

**Welfare**

Providing financial assistance to low-income persons is a responsibility shared by federal, state, and local governments. State Departments of Social Services are usually responsible for overseeing state and local welfare programs. These programs work in conjunction with federally administered programs such as Food Stamps and Aid to the Aged, Blind, and Disabled.

The counterparts at the federal level are: Social Security Administration (Temporary Aid for Needy Families, Supplemental Security Income); U.S. Department of Agriculture (Food Stamps); Administration on Aging (National Nutrition Program for the Elderly); and Office of Child Development (Head Start).

## Consumer protection

Many states have assumed an active role in protecting consumers from deceptive business practices and from dangerous or unreliable products and services. Generally, the State Attorney General's Office and/or Department of Consumer Affairs has broad authority for protecting the interests of consumers. The attorney general, for instance, can prosecute firms for violations of state consumer protection laws, while the Department of Consumer Affairs polices advertising practices and conducts consumer education programs.

Most states also have a number of agencies that oversee certain businesses. Typically, one or more state agencies will supervise financial institutions such as banks, savings and loans, and insurance companies. These agencies are responsible for ensuring that these businesses operate in a fair and financially sound manner.

Other state agencies, known as occupational licensing boards, are responsible for overseeing various trades and professions—e.g., accountants, automobile mechanics, funeral directors, building contractors, dry cleaners, real estate sales agents, etc. The theory behind occupational licensing is that certain professions are so sensitive that their practitioners should be licensed by the state and should be made to conform to explicit standards of conduct. Persons who desire to practice in these areas are required to attain a minimum level of competency and are subject to discipline for incompetent, negligent, or other conduct detrimental to the consuming public.

The federal agencies with primary responsibility in the area of consumer protection are: Department of Justice (DOJ); Federal Trade Commission (FTC); Consumer Product Safety Commission (CPSC); Food and Drug Administration (FDA); and National Highway Traffic Safety Administration (NHTSA).

## TOOLS FOR PUBLIC ACCESS

*This section provides information about the public's right to obtain information from government agencies and to participate in agencies' processes by means other than petitioning. (For Agencies' Processes see page 11.)*

Petitioning is but one way to gain access to an administrative agency. In addition, there are a number of procedures that complement the petitioning process. Some of these procedures, such as securing information through the Freedom of Information Act, give the public access to government information. Other procedures help to facilitate actual participation in an agency's decision making.

### The Freedom of information Act

The Freedom of Information Act (FOIA), 5 USC § 552, gives the public the right to information that is in the hands of the federal government. Under this law, any person may request that a federal agency make its records available to him or her. Officials of the agency are required to respond to such requests according to a strict timetable. The law states that officials must determine within 20 working days whether to comply with the request and immediately notify the person seeking the information.

An agency's officials may avoid disclosing requested information only if the information falls within one of nine exempt categories. These categories are:

- (1) national defense or foreign policy matters that are specifically classified by executive order;
- (2) internal personnel rules and practices of an agency;
- (3) matters specifically exempt from disclosure by other laws—e.g., social security and tax files;
- (4) trade secrets and confidential commercial

- or financial information obtained from any person;
- (5) interagency or intraagency memos or letters;
  - (6) personnel, medical, or other files that, if disclosed, would clearly be an unwarranted invasion of personal privacy;
  - (7) investigatory files compiled for law enforcement purposes;
  - (8) examination, operating, or condition reports;
  - (9) geological or geophysical information concerning wells.

The following procedure should be used to secure government records under the Freedom of Information Act:

- (1) Submit a letter of request to the agency that describes the information you are seeking and conforms to the agency's published rules. Although the letter should be clear in describing the information, an agency cannot deny a request on some technical mistake in identification.
- (2) The agency's officials must make a decision on your request within 20 working days. Some agencies allow certain requests to receive faster processing under a multitrack system, so you should check the agency's regulations to see if your request is eligible.
- (3) If the agency denies your request, there is generally an appeal process within the agency. The agency must respond to an appeal within 20 working days.
- (4) If the appeal is denied, you may sue the agency in Federal District Court, where FOIA cases must be given priority in scheduling.
- (5) In court, the agency must prove that the information you requested falls into an exempt category. The judge may inspect the records to decide if the information is indeed exempt.

- (6) If the judge finds that the information is not exempt, he or she will order the agency to release the information. If a record contains both exempt and nonexempt information, the judge may order the release of only the nonexempt information.
- (7) The judge has the power to order the agency to pay you your attorney's fees if you prevail.

The Department of Justice lists the principal FOIA contacts at each federal agency on its Web site, [www.usdoj.gov/04foia/foiacontacts.htm](http://www.usdoj.gov/04foia/foiacontacts.htm). You can also call the DOJ's Office of Information and Privacy, where advisors are available to respond to FOIA-related inquiries, at (202) 514-3642 (514-FOIA).

### **The Federal Privacy Act**

The Federal Privacy Act provides a series of safeguards against the misuse of personal information by the federal government. The law requires every federal agency to reveal the existence and characteristics of all personal information systems it maintains. If an agency has information about a person, that person is entitled, in most instances, to inspect and correct the information.

The law also controls the transfer of personal information by federal agencies. Agencies are required to account for all transfers and make the accountings available to individuals.

### **The federal Government in the Sunshine Act**

The Government in the Sunshine Act requires most federal agencies to open their meetings to the public. The law requires agencies' officials to give the public adequate notice of their meetings and permit interested persons to attend.

Any person may challenge the closing of an agency's meeting or any other violation of the Sunshine Act by filing a lawsuit against the

agency. In such a case, the agency must prove that the meeting in question fell under an exempt category provided for by the Sunshine Act. These categories roughly approximate those of the Freedom of Information Act.

### **State and local agencies' records**

The Freedom of Information Act, Federal Privacy Act, and Sunshine Act apply only to federal agencies. However, many states have enacted laws that give the public similar access to state agencies. State Public Records Acts permit the public to secure information held by state and local agencies. Like the FOIA, the state laws require that requested information must be disclosed unless it falls within an exempt category.

State privacy laws permit the inspection and correction of personal records in the hands of state agencies. State Open Meetings Acts require, with some exceptions, that meetings of state and local agencies be open to the public.

### **Intervention in agency proceedings**

Agencies often initiate regulatory proceedings that have far-reaching effects. Intervention is the process by which interested persons and groups may inject themselves into the proceedings and participate as full parties. For example, if a state utility commission commences a proceeding to consider an increase in gas and electric rates, a group of utility consumers might intervene in the proceedings.

The courts have recognized the right of interested persons to intervene in agency proceedings. Although an agency's officials may determine how consumer or community representatives are to participate in its proceedings, they cannot completely exclude these persons. In light of these decisions, some state agencies have established procedures that specifically provide for public intervention.

### **Public members on state boards and bureaus**

State occupational licensing boards have been the target of extreme criticism in many states. Consumers, minority groups, and some industry members believe that these boards often act to protect the interests of the regulated professions, rather than those of the public at large. Of particular concern are licensing standards that lessen competition by keeping competent persons out of the profession and the failure of the boards to take disciplinary action against members of the profession who are incompetent or otherwise unfit to practice.

The composition of the boards has been perceived as a major reason for the problems. Until recently, state licensing boards were made up almost exclusively of industry practitioners. Persons who make their living from the activity they are responsible for regulating are likely to put their interests ahead of those of the consuming public. These persons may be hesitant about disciplining a fellow member of the profession. They may have personal or professional contacts with the person being disciplined and also wish to avoid setting a precedent under which they themselves may someday be punished.

Recognizing this problem, several states have passed laws requiring a number of "public" members on most occupational licensing boards. California, for example, requires a majority of public members on all its boards except the Board of Accountancy and the health care boards; even here, one-third of the board must be public members. These board members have a special responsibility in that they are appointed to protect and represent the interests of the public at large.

Although legislation requiring public board members is highly important, it is clearly not a substitute for other forms of public participation. Ideally, there should be ongoing contact between public board members and the public they are appointed to represent. The

contact may be through informal communication or formal petitions and intervention. This ongoing contact can magnify the effectiveness of both the public and the public board members in influencing governmental decisions.

### **Funding for public participation**

Cost, in many instances, remains the major barrier to full public participation. The expense of conducting research, preparing documents, or serving as a public board member can prevent many persons and groups from participating to the degree they would otherwise.

Recognizing the value and necessity of public participation, the federal government, in the early '70s, took some significant steps to provide financial assistance to persons and groups interested in participating in federal rulemaking proceedings. The Federal Trade Commission, Environmental Protection Agency, Department of Agriculture, and Food and Drug Administration are but some of the agencies that began funding public participation. The FTC, for instance, provided funds for attorneys, experts, studies, surveys, and travel and administrative costs. (For more

information on the FTC's reimbursement program, consult *A Consumer's Guide to the Federal Trade Commission*, Washington, D.C.: Paul H. Douglas Consumer Research Center, 1977, pages 23–26, 38–44.) Unfortunately, these programs have languished for lack of funding. The FDA's program for consumer representation on the agency's advisory panels was also started in the '70s. Fortunately, this program has been continued and has resulted in a more inclusive decision-making process for the FDA.

As mentioned above, in a few states, some agencies provide funding for the participation of public interest groups in agency proceedings. In general, intervenor programs are intended to fund persons or groups whose participation will contribute to a full and fair determination of the issues involved in the proceeding, and who would be unable to participate without program funds. When there is an intervenor program in place, the agency will reimburse a person or group that makes a "substantial contribution" to the agency's decision-making process. Check to see if the agency you intend to petition has a program that could fund the petition-related work of your organization.

## MOTOR VOTERS

P.O. BOX 3163  
FALLS CHURCH, VA 22043  
(703) 448-0002

May 26, 1987

Ms. Diane Steed, Administrator  
National Highway Traffic Safety Administration  
Room 5220, 400 Seventh Street, S.W.  
Washington, D.C. 20590

### PETITION

Dear Ms. Steed:

Motor Voters hereby petitions the National Highway Traffic Safety Administration to require passenger vehicle manufacturers to include information about NHTSA in owners' manuals, beginning with the 1988 model year.

We suggest the following language: "If your car has a safety defect, notify the National Highway Traffic Safety Administration (NHTSA). You may either call 800-424-9393 (366-0123 in Washington, D.C.) or write Auto Safety Hotline, NHTSA, 400 Seventh St., Washington, D.C. 20590. NHTSA has the authority to investigate safety defects, and may order a recall. It does not provide direct assistance to individual consumers."


Including a notice about NHTSA in owners' manuals is a cost-beneficial approach to improving consumer reporting of safety defects. Because such notice is uniform and brief, the burden it imposes upon manufacturers is minimal.

While we recognize that not all consumers consult their owners' manual, many others do, particularly when they are experiencing problems with the product. Manufacturers, state and local government agencies and private consumer groups already refer consumers to their owners' manuals for information about their rights and steps for complaint resolution.

In order to fulfill its mandate, NHTSA relies upon consumers to report defects. Providing notice in owners' manuals will help alleviate the somewhat haphazard nature of current defect reporting. By encouraging more consistent reporting, such notice will improve NHTSA's ability to identify safety defects sooner, and will provide a wider data base, independent of media coverage.

We urge you to expeditiously grant our petition.

Sincerely,

  
Rosemary Dunlap  
President



## University of San Diego

Center for Public Interest Law

Robert C. Fellmeth, Director

September 14, 1994

Ms. Sherry Mehl  
Acupuncture Committee  
1424 Howe Avenue, Suite 37  
Sacramento, CA 95825-3233

Dear Ms. Mehl:

Pursuant to the California Public Records Act, Government Code section 6250 et seq., the Center for Public Interest Law (hereinafter "Center") hereby requests copies of the following documents:

1. Copies of documents distributed to Committee members regarding the Status of 1994, 1995 and Ongoing Examinations (Item 11 on May 25, 1994 meeting agenda).
2. Copy of documents distributed to Committee members regarding Update on Enforcement and License Status Report (Item 13 on May 25, 1994 meeting agenda).
3. Copies of documents distributed to Committee members regarding the Discussion of Special Consultants for Enforcement Issues (Item 14 on May 25, 1994 meeting agenda).
4. Copy of the 15-day notice of modification to proposed section 1399.489 regarding Continuing Education and Fees (Item 1 on June 29, 1994 meeting agenda).
5. Copy of the August 16-17, 1994 Committee meeting minutes.
6. Copies of all documents distributed to Committee members regarding the 1994 Examination Update Status of "Request for Proposal" (RFP) for 1995 Exam and Occupational Analysis; Discussion Regarding "Special Accommodations" (Item 9a on August 17, 1994 meeting agenda).
7. Copy of the DCA legal opinion regarding Acupuncture Treatment by Dentists and Podiatrists (Item 9c on August 17, 1994 meeting agenda).

5998 Alcalá Park, San Diego, California 92110-2492 619/260-4806  
926 J Street, Suite 709, Sacramento, California 95814 916/444-3875

Reply to: ☐ San Diego Office • ☐ Sacramento Office

Ms. Sherry Mehl  
September 14, 1994  
Page Two

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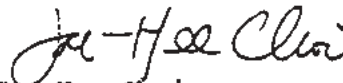
8. Copies of all documents regarding the Division of Investigation Transfer and regarding the Toll-Free Number and Language Capabilities (Item 9d on August 17, 1994 meeting agenda).

In accordance with Section 6257, the Center is willing and able to pay for reasonable copying costs not waived by the Committee.

In addition, we request that you place the Center for Public Interest Law on your list of people who receive full agenda packets prior to each Committee meeting. CPIL used to be on your list and we received the packets when the Committee members received them. This procedure appears easier than a quarterly Public Records Act request and response.

Consistent with section 6256, we expect to hear from you within ten days. If you have any questions concerning the scope of our Public Records Act request, please contact Julie D'Angelo or Jae-Hee Choi at (619) 260-4806.

Sincerely,



Jae-Hee Choi  
Student Intern





1750 OCEAN PARK BOULEVARD, #200, SANTA MONICA, CA 90405-4938  
 TEL: 310-392-0522 • FAX: 310-392-8874 • NET: CONSUMERWATCHDOG.ORG

January 14, 2001

## Media Advisory

Contact: Doug Heller (310) 392-0522 ext. 309

### Consumer Group Introduces the Quack-o-Meter

#### Daily Updates Will Track Insurance Industry's Attempt to Corrupt the Office of the Insurance Commissioner

The Foundation for Taxpayer and Consumer Rights (FTCR) will unveil the Quack-o-Meter, a visual measurement of insurance industry campaign contributions to candidates for California Insurance Commissioner at a Monday morning news conference in the Capitol.

FTCR Executive Director Jamie Court will also discuss potential conflicts of interest in the race for Insurance Commissioner. Former Commissioner Quackenbush resigned after a series of exposes revealed the corruptive influence of insurance industry contributors to Quackenbush's political funds. During his first campaign for Insurance Commissioner in 1994, Chuck Quackenbush raised \$2.5 million from the insurance industry during the primary and general election combined.

FTCR will update contributions to the candidates on a daily basis or as they are reported to the Secretary of State, and fax the Quack-o-Meter to the news media as well as make it available to subscribers to FTCR information bulletins. The more insurance company money received by a candidate, the more he will look like Quackenbush on the Quack-o-Meter. To date, the only candidate to raise industry money, Tom Calderon, has raised \$799,324 from insurance industry sources.

**WHAT:** News Conference to unveil the Quack-o-Meter

**WHO:** Jamie Court, Executive Director, Foundation for Taxpayer and Consumer Rights

**WHEN:** 10:00 am Monday, January 14, 2001

**WHERE:** Capitol Rotunda, Main Floor  
 State Capitol

**VISUAL:** Blown-up version of the QUACK-O-METER

Type in name of responding agency

(Type in names of	)	ADMINISTRATIVE PETITION
petitioners)	)	TO (Insert descriptive
_____ ,	)	_____
	)	title)
	)	_____
	)	
Petitioners.	)	
_____	)	

INTRODUCTION

Petitioners, \_\_\_\_\_ (Insert names of petitioners)

\_\_\_\_\_, request that the \_\_\_\_\_ (Insert name of petitioned agency)

\_\_\_\_\_ take immediate and effective action to

(Briefly describe the purpose of the petition — i.e., “To end the industry-wide

fixing of real estate brokers’ commissions.”)

Presently, \_\_\_\_\_ (Summarize current state of affairs)

\_\_\_\_\_

\_\_\_\_\_

These actions are hurting \_\_\_\_\_ (Briefly describe who is being hurt by the current

state of affairs and how)

\_\_\_\_\_

\_\_\_\_\_

The \_\_\_\_\_ (Insert name of petitioned agency) \_\_\_\_\_ is under a legal duty to

(Briefly summarize the agency’s responsibility, eg., “Oversee and control the

activities of the real estate industry.”)

Petitioners request that the agency fulfill this responsibility by taking the following

actions:

- 1) \_\_\_\_\_ (List corrective actions requested)
- 2) \_\_\_\_\_
- 3) \_\_\_\_\_

STATEMENT OF FACTS

\_\_\_\_\_ (Explain the current situation in greater detail. For an example of

a detailed explanation, see page 37.)

\_\_\_\_\_

\_\_\_\_\_

### PETITIONERS

(Insert name of petitioner) \_\_\_\_\_, is a nonprofit organization that is dedicated to (Describe the purpose of the organization) \_\_\_\_\_.

To this end, (Petitioner's name) \_\_\_\_\_ is active in (Describe the organization's activities) \_\_\_\_\_.

(OR) (Insert name of petitioner) \_\_\_\_\_ is a citizen of the state of \_\_\_\_\_.

She is directly affected by the current state of affairs because (Describe how the petitioner is affected) \_\_\_\_\_.

### AUTHORITY

The right to petition state agencies is contained in (Insert the code and section number of state petitioning law, e.g., "Government code Section 11426, et seq.") \_\_\_\_\_, which provides that any interested person may petition a state agency requesting the adoption, amendment, or repeal of a rule or regulation.

The agency's authority to take the actions requested in this petition derives from (Insert the statute, court decision, or other appropriate legal authority) \_\_\_\_\_, which gives the agency the power to (Quote or summarize relevant portions of the statute or decision) \_\_\_\_\_.

(Insert additional authority, if any) \_\_\_\_\_ further provides that the agency (shall or may) (Quote or summarize relevant portions of the statute or decision) \_\_\_\_\_.

### RELIEF REQUESTED

Petitioners request that the (Insert the agency's name) \_\_\_\_\_ take the following actions:

- 1) (List corrective actions requested) \_\_\_\_\_
- 2) \_\_\_\_\_
- 3) \_\_\_\_\_

### CONCLUSION

In view of the seriousness of the present problem, petitioners urge that the (Insert the agency's name) \_\_\_\_\_ immediately take the actions set forth in this petition.

DATED: (Insert date of filing) \_\_\_\_\_.

Respectfully submitted,  
(Insert petitioner's name, if an individual, or petitioner's representative, if an organization)

By: (Signature) \_\_\_\_\_

Petitioner

## LIST OF REFERENCES

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Pew Charitable Trust  
<http://news.gilbert.org/clickthru/redir/4351/17697/rms>

US Blue Pages, "Your online guide to the US Government":  
<http://www.usbluepages.gov/>

E-The People  
<http://www.e-thepeople.com/>

**Almost every senator and congressman has a Web site and/or an e-mail address:**

Senate: <http://www.senate.gov>; a complete list of contacts can be found here:  
<http://www.senate.gov/contacting/index.cfm>

Senate committee links:  
<http://www.senate.gov/committees/index.cfm>

House of Representatives:  
<http://www.house.gov>

**Links to individual representative's sites:**

<http://www.house.gov/house/MemberWWW.html>

The House committee links can be found here (and most committees have e-mail capabilities):  
<http://www.house.gov/house/CommitteeWWW.html>

To contact the president and vice president:  
<http://www.whitehouse.gov/contact>  
<http://www.firstgov.gov/>  
<http://www.governmentguide.com/main.adp>

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### Researching Specific Areas

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*A Citizen's Guide to the Federal Budget, Fiscal Year 2002*. Washington, D.C.: Executive Office of the President, Office of Management and Budget, 2001. [www.whitehouse.gov/omb/budget/fy2002/guide.html](http://www.whitehouse.gov/omb/budget/fy2002/guide.html).

*A Citizen's Guide to Habitat Conservation Plans*. New York, NY: National Audubon Society, 1997. [www.audubon.org/campaign/esa/hcp-guide.html](http://www.audubon.org/campaign/esa/hcp-guide.html).

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*A Citizen's Guide to the World Trade Organization: Everything You Need to Know to Fight for Fair Trade*. Washington, D.C.: Public Citizen, 1999. [www.citizen.org/publications/release.cfm?ID=5154](http://www.citizen.org/publications/release.cfm?ID=5154).

*A Consumer's Guide to the Federal Trade Commission*, Washington, D.C.: Paul H. Douglas Consumer Research Center, 1977, pages 23–26, 38–44.

Community Catalyst  
30 Winter Street, 10th Floor  
Boston, MA 02108  
Phone: (617) 338-6035  
[www.communitycatalyst.org](http://www.communitycatalyst.org)

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National Association of State Utility Consumer Advocates  
 8300 Colesville Road, Suite 101,  
 Silver Spring, MD 20910  
 Phone: (301) 589-6313  
 Fax: (301) 589-6380  
 e-mail: [nasuca@nasuca.org](mailto:nasuca@nasuca.org).

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 1101 Vermont, N.W., Suite 200  
 Washington, DC 20005  
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[www.naruc.org](http://www.naruc.org).

National Consumer Law Center, Inc.  
 77 Summer Street, 10th Floor  
 Boston, MA 02110-1006;  
 Phone: (617) 542-8010;  
 Fax: (617) 542-8028  
[www.consumerlaw.org](http://www.consumerlaw.org).

### Ballot Measures

Shultz, Jim. *The Initiative Cook Book*, The Democracy Center/Advocacy Institute West, 1996.

**MODEL PETITIONING LAW****Section 1.** Petition; right to petition; contents

Any interested person may petition a state agency requesting the adoption, amendment, or repeal of a regulation or other action. Such petition shall state clearly and concisely:

- (a) the substance or nature of the regulation, amendment, repeal, or other action requested;
- (b) the reason for the request;
- (c) reference to the authority of the state agency to take the action(s) requested.

**Section 2.** Agency's duty to respond to petitions

- (a) Upon receipt of a petition under Section 1, a state agency shall notify the petitioner in writing that it has received the petition and then shall within 30 days:

- i) schedule the matter for hearing as prescribed in this article; or
  - ii) deny the petition in writing, stating why the agency has reached such a decision on the merits of the petition.
- (b) A state agency may grant or deny such petition in part, and may grant such other relief or take such other action as it may determine to be warranted by the petition and shall notify the petitioner in writing of such action and the reasons therefor.
  - (c) A petitioner may compel an agency to respond to his or her petition as required in this section by bringing an action in the Superior Court. A petitioner who prevails in such an action shall be entitled to recover attorney's fees and other costs.

## STATE PETITIONING LAWS

State	Agency Required to Respond Within	Check with Agency for Procedure	Legal Reference
<b>Alabama</b>	60 days		Alabama Code § 41-22-8 (rulemaking) Constitution — Art. I, §25 (general)
<b>Alaska</b>	30 days		Alaska Statutes §§ 44.62.220, 44.62.230 (rulemaking) Constitution — Art. I, § 6 (general)
<b>Arizona</b>	60 days		Arizona Revised Statutes § 41-1033 (rulemaking) Constitution Art. II, § 5 (general)
<b>Arkansas</b>			Constitution — Art. II, § 4 (general); (there are also references to petitions for specific purposes in a variety of contexts throughout the code and regulations)
<b>California</b>	30 days		California Government Code §§ 11340.6, 11340.7 (rulemaking); Constitution — Art. I, § 3 (general)
<b>Colorado</b>	Within the agency's discretion, but "when an agency undertakes rulemaking on any matter, all related petitions...shall be considered and acted upon in the same proceeding."	✓	Colorado Revised Statutes 24-4-103(7) (rulemaking) Constitution — Art. II, § 24 (general)
<b>Connecticut</b>	30 days		Connecticut General Statutes 4-174 (rulemaking) Constitution Art. I, § 14 (general)
<b>Delaware</b>	next regular meeting		Delaware Code Title 29, § 10114 (rulemaking) Constitution — Art. I, § 16 (general)
<b>District of Columbia</b>	"...each independent agency shall prescribe by rule the form of such petitions, and the procedure for their submission, consideration, and disposition."	✓	District of Columbia Code § 2-505(b) (rulemaking)
<b>Florida</b>	30 days		Florida Statutes ch. 120.54(7) (rulemaking) Constitution — Art. I, § 5 (general)
<b>Georgia</b>	30 days		Georgia Code § 50-13-9 (rulemaking) Constitution — Sec. 1, para. IX (general)
<b>Hawaii</b>	30 days		Hawaii Revised Statutes § 91-6 (rulemaking) Constitution — Art. I, § 4 (general)
<b>Idaho</b>	28 days		Idaho Code § 67-5230 (rulemaking) Constitution — Art. I, § 10 (general)
<b>Illinois</b>	If rulemaking is not initiated within 30 days, then request is deemed to have been denied.	✓	Illinois Revised Statutes ch. 5, para. 100/5-145(b) (rulemaking) Constitution — Art. I, § 5 (general)
<b>Indiana</b>			Constitution — Art. I, §31 (right to petition the General Assembly)
<b>Iowa</b>	60 days		Iowa Code § 17A.7 (rulemaking) Constitution — Art. I, § 20 (general)



State	Agency Required to Respond Within	Check with Agency for Procedure	Legal Reference
<b>Kansas</b>	90 days, when practicable	✓	Kansas Statutes § 77-511 (adjudication) Constitution — Bill of Rights, § 3 (general)
<b>Kentucky</b>			Constitution — Sec. 1, para. 6 (general)
<b>Louisiana</b>	90 days		Louisiana Revised Statutes § 49-953(C) Constitution — Art. 1, § 9 (general)
<b>Maine</b>	60 days; if petition is submitted by 150 or more registered voters, the agency shall initiate appropriate rulemaking proceedings	✓	Maine Revised Statutes, tit. 5, § 8055 (rulemaking) Constitution — Art. I, § 15 (general)
<b>Maryland</b>	60 days		Maryland Code, State Gov't § 10-123 (rulemaking) Constitution — Declaration of Rights, Art. XIII (general)
<b>Massachusetts</b>	prescribed by agency regulation	✓	Massachusetts General Laws, ch. 30A, § 4 (rulemaking) Constitution — Part 1, Art. XIX (right to petition legislative body)
<b>Michigan</b>	90 days		Michigan Compiled Laws § 24.238 [M.S.A. 3.560(138)] (rulemaking); Constitution — Art. I, § 3 (general)
<b>Minnesota</b>	60 days		Minnesota Statutes § 14.09 (rulemaking)
<b>Mississippi</b>			Constitution — Art. III, § 11 (general)
<b>Missouri</b>		✓	Missouri Revised Statutes § 536.041 (rulemaking) Constitution — Art. I, § 9 (general)
<b>Montana</b>	60 days		Montana Code § 2-4-315 (rulemaking) Constitution — Art. III, § 6 (general)
<b>Nebraska</b>	60 days		Nebraska Revised Statutes § 84-907.08 (rulemaking) Constitution — Art. I, § 19 (general)
<b>Nevada</b>	30 days	✓	Nevada Revised Statutes § 233B.100 (rulemaking) Constitution — Art. I, § 10 (right to petition the legislature)
<b>New Hampshire</b>	30 days		New Hampshire Revised Statutes § 541-A:4 (rulemaking) Constitution — Bill of Rights, § 32 (right to petition the legislative body)
<b>New Jersey</b>	60 days	✓	New Jersey Revised Statutes § 52:14B-4(f) (rulemaking) Constitution — Art. I, § 18 (general)
<b>New Mexico</b>	30 days		New Mexico Statutes § 12-8-7 (rulemaking)
<b>New York</b>			Constitution — Art. I, § 9.1 (general)
<b>North Carolina</b>	30 days	✓	North Carolina General Statutes § 150B-20 (rulemaking) Constitution — Art. I, § 12 (right to petition the General Assembly)
<b>North Dakota</b>		✓	North Dakota Century Code § 28-32-16 (for reconsideration, amendment or repeal of a rule) Constitution — Art. I, § 5 (general)
<b>Ohio</b>			Constitution — Art. I, § 3 (right to petition the General Assembly)

State	Agency Required to Respond Within	Check with Agency for Procedure	Legal Reference
<b>Oklahoma</b>	A reasonable time; but if not within 30 days, then the petition is considered denied		Oklahoma Statutes § 75-305 (rulemaking) Constitution — § 11-3 (general)
<b>Oregon</b>	30 days		Oregon Revised Statutes § 183.390 (rulemaking) Constitution — Art. I, § 26 (right to petition the legislature)
<b>Pennsylvania</b>			Constitution — Art. I, § 20 (general)
<b>Rhode Island</b>	30 days		General Laws § 42-35-6 (rulemaking) Constitution— Art. I, § 21 (general)
<b>South Carolina</b>	30 days		South Carolina Code of Laws § 1-23-126 (rulemaking) Constitution — Art. I, § 2 (general)
<b>South Dakota</b>	30 days		South Dakota Codified Laws § 1-26-13 (rulemaking) Constitution — Art. 6, § 4 (general)
<b>Tennessee</b>	“...as promptly as is consistent with the orderly dispatch of business...”		Tennessee Code § 4–5-201 (rulemaking) Constitution — Art. I, § 23 (general)
<b>Texas</b>	60 days		Texas Government Code § 2001.021 (rulemaking) Constitution — Art. I, § 27 (general)
<b>Utah</b>	30 days	✓	Utah Code § 63-46a-12 (rulemaking) Constitution — Art. I, § 1 (general)
<b>Vermont</b>	30 days		Vermont Statutes tit. 3 § 806 (rulemaking) Constitution — Chap. 1, Art. 20 (right to petition the legislature)
<b>Virginia</b>	180 days		Virginia Code § 2.2-4007(A) (rulemaking) Constitution — Art. I, § 12 (general)
<b>Washington</b>	60 days		Washington Revised Code § 34.05.330 (rulemaking) Constitution — Art. I, § 4 (general)
<b>West Virginia</b>			West Virginia Code § 22-12-12 (rulemaking on issues arising under the Groundwater Protection Act) Constitution — Art. III, § 16 (general)
<b>Wisconsin</b>	Reasonable time		Wisconsin Statutes § 227.12 (rulemaking) Constitution — Art. I, § 4 (general)
<b>Wyoming</b>	As soon as practicable	✓	Wyoming Statutes § 16-3-106 (rulemaking) Constitution — Art. I, § 21 (general)
<b>American Samoa</b>			American Samoa Code § 4.1006 (rulemaking) Constitution — Art. I, § 1 (general)
<b>Guam</b>	60 days	✓	Guam Government Code § 9307 (rulemaking) 48 USC § 1421b and § 1423k (general)
<b>Puerto Rico</b>			Constitution — Art. II, § 4 (general)
<b>Virgin Islands</b>			48 USC § 1561 (general)

## WORKSHEETS FOR WRITING THE PETITION

*The worksheets outline tasks that will help to organize your research, writing, and decision making. By using the space provided to record your answers, you will have a convenient summary of your findings. The worksheets should be used with the Quick-Reference Checklist, pages 57–64. Suggested wording for parts of the petition may be found in the sample petition form, pages 79–80.*

### Researching the Problem

1. The following persons are being hurt by the current situation:

a.

Because

b.

Because

c.

Because

2. The persons listed in No. 1 are able/are unable to protect themselves because:

3. The following persons are benefiting from the current situation:

a.

Because

b.

Because

c.

Because

4. If left unattended, the problem is likely to (get worse/stay the same/get better) because:

## Researching the Law

*Note: Proper referencing is absolutely critical in legal research. Be sure that each statement you make in this part is followed by a code section or some other legal authority that supports the statement.*

1. The law requires that:

a.

Code Section

b.

Code Section

c.

Code Section

d.

Code Section

e.

Code Section

2. The law requires these actions because:

a.

Code Section

b.

Code Section

c.

Code Section

d.

Code Section

e.

Code Section

3. The law prohibits:

a.

Code Section

b.

Code Section

c.

Code Section

d.

Code Section

4. The law prohibits these actions because:

a.

Code Section

b.

Code Section

c.

Code Section

d.

Code Section

e.

Code Section

5. The agencies responsible for implementing, overseeing, or enforcing the laws above are:

a.

Code Section

b.

Code Section

c.

Code Section

d.

Code Section

e.

Code Section

6. The powers given to the agencies listed in No. 5 are:

Agencies:

Powers:

Code Section or other legal reference:

Any special steps that the agency must take to use this power:

## **Investigating the Administrative Agency**

1. Before the agency was formed, the problem was:

2. To solve the problem, the agency (list actions taken by the agency):

a.

b.

c.

d.

e.

3. These actions have (improved/worsened/not affected) the situation in that:
4. If we petition the agency, the decision will be made by:
5. He/she is accountable to:
6. His/her background is:
7. His/her views on the subject are:
8. He/she will respond to the following constituencies:
9. Taking Nos. 5–8 into account, I think he/she will be (sympathetic/neutral/indifferent/unsympathetic/hostile) to our petition because:

### **Developing Solutions**

1. The agency could solve or alleviate the problem by:
  - a. prohibiting persons from:

- 1.
- 2.
- 3.
- 4.

- b. permitting persons to:

- 1.
- 2.
- 3.
- 4.

- c. requiring persons to:

- 1.
- 2.
- 3.
- 4.

- d. taking disciplinary action against:

1.

2.

3.

4.

e. performing the following services:

1.

2.

3.

4.

f. also taking the following actions:

1.

2.

3.

4.

### **Inviting Others to Support Your Efforts**

1. The following persons/groups are likely to be interested in supporting our petition:

a.

Because

b.

Because

c.

Because

d.

Because

e.

Because

2. The person(s) who will be responsible for contacting the above persons/groups and asking for their support is:

a.

b.

c.

d.

e.



## Filing the Petition

*Note: The information collected on your worksheet is the basis of your petition. A petition should normally include all the sections included in the Quick-Reference Checklist, pages 57–64. Keep the checklist before you as you write. When you are done, review the checklist to ensure that no vital part has been left out of your petition. Suggested wording for parts of the petition may be found in the sample petition form, pages 79–80.*

1. We will file the petition on:
  
2. The person who will be responsible for filing the petition is:

## The News Media

1. We need to reach the following persons because they are affected by the problem and need to be aware of the issues and what can be done:
  - a.
  - b.
  - c.
  - d.
  - e.
  - f.
  - g.
  
2. We also need to reach the following persons because they are likely to be influential in the agency's decision:
  - a.
  - b.
  - c.
  - d.
  - e.
  
3. The media that will reach the persons listed above are:
  - a. Newspapers (daily, weekly, student, foreign language, neighborhood, etc.):
    - 1.
    - 2.
    - 3.
    - 4.
    - 5.
    - 6.
    - 7.
    - 8.
    - 9.
    - 10.

b. Radio stations (network, local, foreign language, university, public, etc.):

- 1.
- 2.
- 3.
- 4.
- 5.
- 6.
- 7.
- 8.
- 9.
- 10.

c. Television stations (network, local, cable, foreign language, public, etc.):

- 1.
- 2.
- 3.
- 4.
- 5.
- 6.
- 7.
- 8.
- 9.
- 10.

d. Magazines (weekly, monthly, specialty):

- 1.
- 2.
- 3.
- 4.
- 5.
- 6.
- 7.
- 8.

e. Wire services:

1. Associated Press
2. Local Wire Service
- 3.
- 4.
- 5.

f. Other:

- 1.
- 2.
- 3.
4. Rank the previous media outlets in order of importance/effectiveness.
5. Our media contact person will be:
6. The theme(s) we will emphasize to the media is (are):
  - a.
  - b.
  - c.
7. To explain the issue to reporters we will use (check one or more):  
 News release  
 News conference  
 Other \_\_\_\_\_
8. We will issue our news release/hold our news conference  
on \_\_\_\_\_  
at \_\_\_\_\_

*Note: The information collected on your worksheet is the basis of your news release or press conference. Consult the checklist on pages 60–61. Keep the checklist before you as you plan. Periodically, review the checklist to ensure that you have not forgotten anything.*

### **Now That You Have Filed Your Petition**

1. The person who is responsible for keeping in touch with the agency's officials is:
2. We will also monitor the agency's actions by:
3. The person who is responsible for keeping our supporters up to date on the progress of the petition is:

---

## **If the Agency Schedules the Matter for a Hearing: Find Out What Format the Hearing Will Take**

1. The hearing arrangements are (satisfactory/unsatisfactory) because:

2. If the arrangements are unsatisfactory, the actions we should take are:

a.

b.

c.

d.

## **Prepare Your Testimony**

1. In preparing our testimony we should:

a. Bolster the following points

1.

2.

3.

4.

5.

6.

b. State the changes needed in the facts, the law, or government policy:

1.

2.

3.

4.

5.

6.

c. Respond to opposing arguments as follows:

Opposing argument:

Our response:

Opposing argument:

Our response:

Opposing argument:

Our response:

*Note: The information collected on your worksheets is the basis of your written testimony. At this point, consult the checklist on pages 62–63. Keep the checklist before you as you write your testimony. When you are done, review the checklist to ensure that nothing has been left out.*

2. At the hearing, our witnesses will be:

Witness:

Testifying that:

3. Our media contact person will be:

4. The person responsible for taking notes and obtaining copies of testimony is:

### **Marshal Support**

1. We will ask the following persons/groups to support our effort by testifying at or attending the hearing.

- a.
- b.
- c.
- d.
- e.
- f.
- g.
- h.
- i.

2. The person(s) responsible for contacting the persons/groups listed above is (are):

### **Posthearing Comments**

1. The arguments raised in opposition are:

- a.

b.

c.

d.

2. They are faulty because:

a.

b.

c.

d.

3. Recent developments adding to our case are:

a.

b.

c.

d.

4. Items we promised to supply the agency are:

a.

b.

c.

d.

### **If the Agency Grants the Petition**

1. Before the agency's decision becomes effective (list actions that must occur before the decision is effective:

a.

b.

c.

d.

e.

2. We will issue a news release/hold a news conference

on \_\_\_\_\_

at \_\_\_\_\_ A.M./P.M.

3. This decision will solve/alleviate the original problem by:



4. To solve the entire problem, we should:

### **If the Agency Denies the Petition**

1. We should/should not re-petition the agency because:

2. We should/should not pursue a court action against the agency because:

3. We should/should not go to the legislature, board of supervisors, city council for a bill, resolution, or hearings because:

4. We should/should not try to pass a ballot measure because:

# Index

## A

actions. *See* agency actions; media campaigns; petitioning; researching; timing

adjudication proceedings, 11-12, 31-32

Administrative Procedures Act (APA), 14, 66

advocacy groups  
locating, 26-27

agencies  
administrative, defined, 9  
build a coalition, 32  
books about, 82  
decision-making process within, 30  
exempt from petitioning process, 14  
governance of, 11  
identifying responsibilities of, 29, 38  
petitioning procedures required by, 65-68  
procedural rules and regulations, 12  
purposes of, 6, 9, 11  
research checklist, 57-64  
researching, 20, 29  
research worksheets, 88-93  
types of, 68  
types of processes used by, 11-12  
*See also* agency services  
*See also* federal agencies  
*See also* independent agencies  
*See also* local agencies  
*See also* nongovernmental or private agencies  
*See also* state agencies

agency actions  
defining requests for, 31-32, 57-58  
describing, in petitions, 39  
justifying requests for, 17, 38  
justifying requests for federal, 65-66  
justifying requests for state, 68  
questions to research, 20  
worksheet for developing, 92-93  
*See also* petitioning  
*See also* public participation in agency proceedings

agency services, 12, 13-14, 32, 68

agency staff  
checklist for communicating with, 63  
communicating with after public hearings, 53  
finding allies among, 29  
informing of petition filing, 40-41  
interacting with, 31, 32  
obtaining information from, 26-27  
providing with questions for public hearings, 51

responsibilities of, 30  
thank-you notes to, 54  
working with, 49-50

attorneys. *See* lawyers

authority section of petition, 39, 80

automobile safety examples  
defective automatic restraint systems, 7  
owners' manual info about NHTSA, 35, 75  
seat belt fit, 54  
vehicle rollovers, 13

## B

ballot measures, 56, 83

bills, federal or state, 28

Blue Cross of California example, 36-38, 39

boards, 11  
board members, 31, 73-74

books, 81-83  
*See also* government documents  
*See also* law books

business licensing. *See* licensing proceedings

## C

*California Annotated Code Index*, 67

California Department of Agriculture, intervention example, 22

California Department of Corporations, petitioned, 7, 16

California Department of Real Estate, 13

California Department of Transportation, (Caltrans) organizing example, 22

California Public Records Act, 26

car safety examples. *See* automobile safety examples

Center for Public Interest Law, 26, 76

Chart of the petitioning process, 10

charts and graphs, use of, 37, 40

Children's Advocacy Institute (CAI)  
petitioning example, 35-36

citations  
*California Annotated Code Index*, 67  
*CFR (Code of Federal Regulations) Index*, 65-66  
court cases, 28-29

city agencies. *See* local agencies

coalitions. *See also* community organizing  
building and working with, 32-33  
conditions for successful, 33

news releases by, 45  
preparing to speak at public hearings, 51  
worksheet, 93

*Code of Federal Regulations (CFR) and Index*, 27-28, 65, 66

codes. *See* laws

commissions and commissioners, 11

community organizing  
as alternative to petitioning, 21-22  
books about, 83  
*See also* coalitions

complaints  
difference from petitions, 17  
format, 36-38  
use with petitions, 33

conclusion section of petition, 39, 80

Congress members. *See* Senators and Congress members

consumer protection agencies, 70-71  
books by and about, 82  
*See also* health and safety

Consumers for Auto Reliability and Safety (CARS) petitioning examples, 7, 54-55  
*See also* Motor Voters

Consumers Union  
organizational description, 38  
petitioning examples, 7, 20, 31, 35, 36-38, 39

contact persons  
on news releases, 44  
on petitions, 40, 99

corporations, books about researching, 82

county agencies. *See* local agencies

court decisions  
concerning agency actions, 55, 64  
relationship with laws, 28-29  
writing petitions to influence, 35, 36  
*See also* adjudication proceedings

cover letter for petition, 40-41

## D

departments. *See* names of specific California and Ohio departments

## E

media advisory, 46

education agencies, 70

elected officials. *See* federal elected officials; legislators and legislative staff

electronic media, working with, 47

- employment agencies, 70  
 energy agencies. *See* utility and energy agencies  
 environmental (natural resources)  
   agencies, 70  
 environmental protection  
   books about, 82  
   pesticide loans example, 7  
 et. seq. in code citations, 68  
 exhibits, labeling, 40  
 experts  
   finding, 26, 32  
   legal, 27  
   as witnesses at public hearings, 51  
   worksheet for identifying, 99
- F**  
 Federal Administrative Procedures Act (APA), 14, 66  
 federal agencies  
   consumer protection, 70-71  
   education, 70  
   employment, 70  
   food quality, 69  
   health care, 69  
   housing, 69  
   how to petition, 14-15, 65-66  
   intervention in proceedings of, 74  
   natural resources, 70  
   utility and energy, 69  
   welfare, 70  
 federal elected officials, 30-31, 66, 81, 82  
 Federal Privacy Act, 72  
 federal reports. *See* government documents  
 Federal Trade Commission (FTC)  
   reimbursement program, 74  
 Federal Yellow Book, 66  
 food quality agencies, 68-69. *See also* U.S. Food and Drug Administration (FDA)  
 foundations. *See* private organizations  
 framing of issues, 35-36  
 Freedom of Information Act (FOIA), 26, 71-72  
   books about, 82  
 FTC (Federal Trade Commission)  
   reimbursement program, 74
- G**  
 Gen. prefix, 67  
 General Accounting Office, 15  
 Gov. prefix, 67  
 Government in the Sunshine Acts, 72-73  
 governmental decision-making. *See* agency actions; public participation in agency proceedings
- government documents, 26  
   federal reports about state policies, 29  
   using in petitions, 38  
   *See also* law books  
 graphs and charts, 37, 40
- H**  
 health and safety  
   books about, 82  
   children's health care example, 35-36  
   health insurance provider purchase example, 32  
   HMO conversions to for-profit company examples, 7, 16, 22, 35, 36-38, 39  
   Medigap insurance example, 7, 20-21, 31  
   toxic spraying of roadside vegetation example, 22  
   warning labels for lice products example, 13  
   *See also* automobile safety examples  
 health care agencies, 69  
 housing agencies, 69  
 housing, example, realtors' fixed fees, 13
- I**  
 independent agencies, 11  
   OMB review requirements, 14.n2  
 information sources, 25-27  
   public access to, 71-74  
   *See also* government documents  
 Internet research, 26, 67-68  
 intervention in agency proceedings, 73, 74
- L**  
 law books  
   federal and state, 27-28  
   Pocket Part of state code books, 67  
   *See also* citations  
   *See also* government documents  
 law review articles, importance of, 28, 29  
 laws  
   finding updates to, 28, 67  
   governing access to federal information, 71-73  
   governing access to state/local information, 71-73  
   how to find, 27-28  
   how to understand, 28-29  
   importance of researching, 22  
   model petitioning law, 84  
   *See also* legal research  
   *See also* regulations  
   *See also* rules  
 lawsuits  
   about agency actions, 49, 55  
   differences from petitioning, 21  
   relationship to petitions, 12  
 lawyers  
   general counsels for agencies, 67  
   hiring, 27  
 legal research, 19-20, 27-28  
   books about, 81  
   citing, in petitions, 39  
   how to read laws, 28-29  
   state-by-state guide to petitioning laws, 85-87  
   worksheet, 89-91  
   *See also* law books  
 legislation  
   books about influencing, 83  
   proposing on the ballot, 56  
 legislative support  
   for challenging agency decisions, 55, 64  
   in lieu of or addition to petitioning, 21  
 legislators and legislative staff  
   locating, 67  
   obtaining information from, 26-27, 29, 82  
   thank-you notes, 54  
 library resources, 25-29  
   *See also* government documents  
 licensing agencies, 9, 71  
 licensing boards, public members on, 73-74  
 licensing processes, 12, 13-14, 22-23  
 lobbying  
   books about, 83  
   in support of a petition, 53  
 local agencies  
   how to petition, 15-16  
   public access to proceedings of, 73
- M**  
 Maine Bureau of Medical Services,  
   petitioning example, 7  
 Maine Consumers for Affordable Health Care  
   petitioning examples, 7, 22  
 media campaigns, 43-48  
   after petition is filed, 49, 63  
   checklist for launching, 60-61  
   media contact list, 43, 60  
   sample media advisory, 78  
   strategies for public hearings, 51-52  
   worksheet, 94-96  
   *See also* coalitions

*See also* reporters  
 Medigap insurance example, 7, 20-21, 31  
 Motor Voters  
   petitioning example, 35  
   sample petition letter, 75  
*See also* Consumers for Auto Reliability and Safety (CARS)  
   petitioning examples  
 municipal agencies. *See* local agencies

## N

National Highway Traffic Safety Administration (NHTSA)  
   examples, 7, 13, 35, 54-55  
   *Guide to Transportation Decision-Making*, 82  
   sample petition to, 75  
 natural resources agencies, 70  
 news advisory  
   about news conference, 46  
   before public hearings, 51-52  
   sample, 78  
 news conferences  
   checklist, 60-61  
   how to hold, 45-48  
   sample advisory, 78  
   when to use, 44  
 news "pegs", 44  
 news releases  
   after a petition is accepted, 54  
   checklist for writing, 60  
   from coalitions, 45  
   how to write, 44-45  
   release dates on, 44  
 news stories, 43  
 NHTSA (National Highway Traffic Safety Administration). *See* National Highway Traffic Safety Administration (NHTSA)  
 nongovernmental organizations (NGOs), 6, 11, 13-14  
   *See also* World Bank

## O

occupational licensing boards, 73  
   *See also* licensing agencies  
 Occupational Safety and Health Administration (OSHA) petitioning regulations, 65  
 Office of Management and Budget, 15, 38  
   *Guide to the Federal Budget*, 82  
   review requirements, 14 n2  
 Ohio Department of Insurance  
   petitioning example, 32  
 opponents' position  
   after a petition is accepted, 54

importance of knowing, 26, 32  
 rebutting, 53  
 responding to, 52-53  
 organizations. *See* nongovernmental organizations (NGOs); private organizations  
 organizing. *See* community organizing  
 OSHA (Occupational Safety and Health Administration) petitioning regulations, 65

## P

permitting agencies, 9  
 permitting proceedings, 11, 22-23, 36-38  
 Pesticide Watch petitioning example, 22  
 petitioner's kit, 57-64  
 petition follow-up  
   checklist for post-filing action, 61-62  
   monitoring enforcement after acceptance, 54  
   worksheet, 96  
 petitioning  
   advantages over lawsuits and legislation, 6-7  
   alternatives to, 21-23  
   alternatives when petition denied, 55-56  
   combining with other actions, 21  
   examples, 6-7, 12-13, 36  
   of federal agencies, 14-15, 65-66  
   laying the groundwork for, 25-41  
   legal basis for, 6, 14, 15, 39  
   of local agencies, 15-16  
   model state law authorizing, 84  
   overview of the process, 9-17  
   postfiling actions, 49-56  
   prefiling actions, 16-17  
   re-petitioning, 55, 64  
   of state agencies, 15, 67-68  
   where there is no process, 16, 66, 67  
   why do it, 6-7  
 petitioning process  
   action summary of, 57-65  
   chart, 70  
   countering opponents' position, 26, 32, 52-53, 54  
   *See also* petition follow-up  
   *See also* petition writing  
   *See also* timing  
 petitions  
   acceptance by agency, 50  
   agency response to, 49  
   changing or making additions to, 62  
   delivery of, 40  
   length/complexity of, 35, 43  
   lobbying in support of, 53  
   news hooks about, 44  
   notifying agency staff when filing, 40-41  
   relationship to complaints, 33  
   use for media campaigns, 23  
   worksheet for filing, 94  
 petitions that are denied, 16-17  
   checklist for, 64  
   effectiveness of, 12-13  
   what to do about, 54-56  
   worksheet, 102  
 petitions that are granted  
   checklist for, 64  
   what to do about, 53-54  
   worksheet, 101-102  
 petition writing, 35-41  
   authority section, 39, 80  
   checklist for, 58-59  
   conclusion section, 39  
   format to use, 36-38  
   language and style to use, 36  
   petitioners section, 38, 80  
   relief section, 39  
   research to do beforehand, 19-23  
   sample of a petition, 79-80  
   statement of facts section, 36, 37  
   worksheets for, 88-102  
 phone numbers for state agencies, 67-68  
*Physician Discipline in California: A Code Blue Emergency*, 26  
 Pocket Part of State code books, 67  
 politicians. *See* federal elected officials; legislators and legislative staff  
 posthearing comments, 53, 63  
   worksheet, 99-101  
 press conferences. *See* news conferences  
 press releases. *See* news releases  
 private organizations  
   petitioning, 6, 11, 16  
   petitioning effectively, 16  
 problems  
   checklist for defining, 57-58  
   framing, 35-36  
   researching facts about, 25-27  
   researching scope of, 19  
   worksheet for defining, 88  
 public comment period, 50  
   what to do after, 53  
 public hearings  
   answering questions at, 52-53  
   checklist, 62  
   preparing for, 50-52  
   worksheet, 97  
   *See also* posthearing comments  
   *See also* testimony at public hearings  
 publicity. *See* media campaigns; reporters  
 public participation in agency proceedings, 13, 73  
   books about, 83  
   funding for, 74

Public Records Acts  
 sample request under, 76-77  
 states, 26, 73  
 public support, building. *See* community organizing; media campaigns  
 public utilities. *See* utility and energy agencies

**Q**  
 quotations, using in news releases, 45

**R**  
 radio news, working with, 47  
 ratemaking agencies, 9  
*See also* utility and energy agencies  
 ratemaking proceedings, 11-12, 73  
 books about, 83  
 regulations  
*Code of Federal Regulations (CFR)*, 27-28  
 procedural, (within agencies), 12  
 proposing, in petitions, 39  
 state agency reviews of, 54  
 uses for, 11  
*See also* rules  
 regulatory agencies, 9, 68, 82  
 relief section of petition, 39  
 sample, 80  
 reporters  
 answering questions by, 47-48  
 communicating with, 44, 51-52  
 individual interviews with, 44  
 news advisories, 51, 78  
 providing contact info to, 45  
 working with, 47  
 writing petitions for use by, 35, 36, 38  
*See also* media campaigns  
 researching  
 books for, 81-83  
 chart showing steps, 10  
 researching agencies, 20, 29  
 checklist, 58  
 worksheet, 91-92  
 researching solutions, 20-21  
 researching the law. *See* legal research  
 researching the problem, 19, 25-27  
 checklist, 57-58  
 worksheet, 88  
 Rev. prefix, 67  
 rulemaking proceedings, 11, 22, 31, 50  
 rules  
 petitioning for enforcement vs. creation of, 17  
 procedural, (within agencies), 12  
 "proposed rules" from agencies, 50  
 uses for, 11  
*See also* regulations

**S**  
 Senators and Congress members, 30-31, 66, 81, 82  
 Senior Citizens Bill of Rights, 20-21  
 service agencies, 68  
 social welfare and entitlement agencies, 9, 11  
 state agencies  
 books about, 82  
 consumer protection, 70-71  
 education, 70  
 employment, 70  
 finding examples from other states, 32  
 food quality, 68-69  
 health care, 69  
 housing, 69  
 how to petition, 15, 67-68  
 intervention in proceedings of, 73  
 licensing, 71, 73-74  
 model petitioning law for, 84  
 natural resources, 70  
 utilities and energy, 69  
 welfare, 70  
*See also* Maine Bureau of Medical Services  
*See also* names of specific California and Ohio departments  
 state capitol pressrooms, 46  
 state court case citations, 29  
 state elected officials. *See* legislators and legislative staff  
 state laws and regulations  
 about petitioning, 85-87  
 citing in petitions, 39  
 finding, 28, 29  
 statement of facts section of petitions, 37, 38  
 State Open Meetings Acts, 73  
 State Public Records Acts, 26, 73  
 sample request under, 76-77  
*State Yellow Book*, 67  
 statutes. *See* laws  
 Sunshine Acts, 72-73  
 support agencies, 68

**T**  
 testimony at public hearings  
 checklist, 62  
 preparing, 51, 52  
 worksheet, 97-99  
 timing  
 best times for news conferences, 46, 47  
 grace period before rules take effect, 54  
 of news advisory about news conference, 46

of news advisory before public hearings, 51-52  
 of news releases, 44  
 of notice to agency about petition filing, 40-41  
 of testimony at public hearings, 50-51  
 TransAfrica petitioning example, 7  
 TV news, working with, 47

**U**  
*United States Code Annotated (USCA)*, 27, 28  
 U.S. Code Congressional and Administrative News, 28  
 U.S. Environmental Protection Agency (EPA) petitioning procedures, 14  
 U.S. Food and Drug Administration (FDA)  
 example, 13  
 petitioning procedures, 14, 65  
 program for consumer representation, 74  
*U.S. Government Manual*, 66  
 utility and energy agencies, 69, 73, 83  
*See also* ratemaking proceedings

**V**  
 visual aids, using, 37, 40

**W**  
 Web sites  
 federal agencies and departments, 66  
 Freedom of Information (FOI)  
 contacts, 72  
 individuals and organizations, 81-83  
 Senators and Congress members, 81  
 states, 28, 67  
*U.S. Code*, 27  
 welfare agencies, 70  
 Wellpoint example, 36-38, 39  
 Wirth, Senator Timothy, 13  
 witnesses  
 checklist for selecting, 63  
 timing of public testimony by, 50-51  
 worksheet for identifying, 99  
 World Bank example, 7  
 World Trade Organization, book about, 82