

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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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

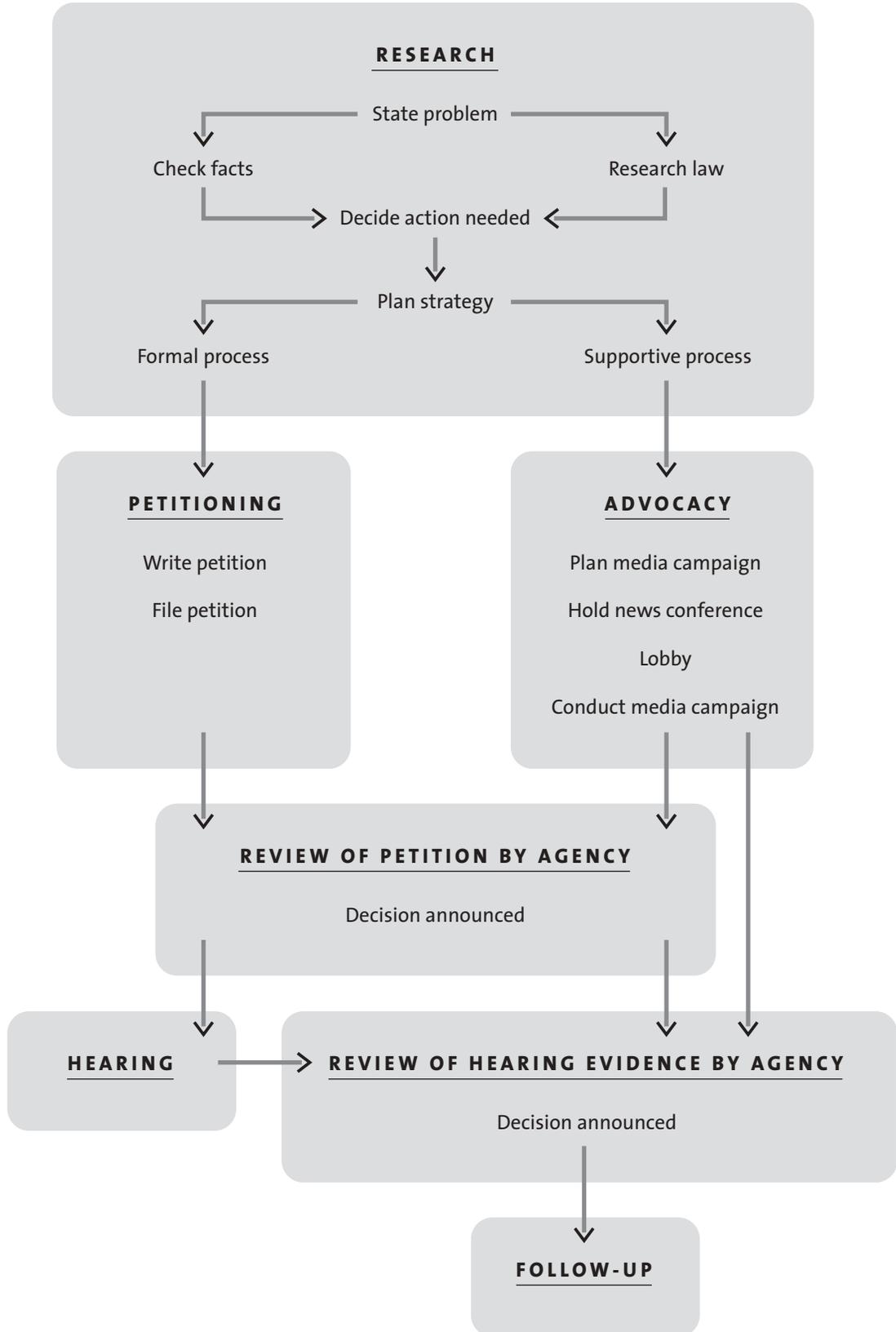
■ **Business standards agencies** are responsible for regulating a specific business or industry to protect the public interest. For example, the U.S. Food and Drug Administration is a regulatory agency.

■ **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,¹ and by the Office of Management and Budget.² 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.

¹This 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.

²OMB 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*