



May 21, 2021

Administrative Conference of the United States
1120 20th St NW, Suite 706 South
Washington, DC 20036

Re: Comments on *Mass, Computer-Generated and Fraudulent Comments* (draft circulated May 11, 2021).

Dear ACUS Committee on Rulemaking:

Thank you for this opportunity to comment on the Rulemaking Committee's draft recommendations. On behalf of Friends of the Earth and our 2.8 million members and activists located throughout the United States, please accept these comments on the draft report entitled *Mass, Computer-Generated and Fraudulent Comments*. These comments closely reflect those submitted by our partner organization Free Press.

Friends of the Earth is a membership-based nonprofit organization devoted to achieving a more healthy and just world. We speak truth to power and expose those who endanger the health of people and the planet for corporate profit. We organize to build long-term political power and campaign to change the rules of our economic and political systems that create injustice and destroy nature. Much of this mission involves direct involvement in federal administrative processes. Our organization employs campaign staff whose jobs involve close tracking of and participation in government proposals and activities, as well as communicating daily with our member and activist list to ensure that they are aware of government activities affecting their lives and the world around them. The lifeblood of our work includes gathering and delivering member and activist comments to federal agencies and other officials to ensure that public opinion is considered as part of the administrative process. Indeed, in the past year Friends of the Earth delivered 4,754,374 comments from the general public to public officials as a result of 178,439,468 emails to our member and activist list.

According to one campaigner on Friends of the Earth's Food and Agriculture team:

We rely heavily on mass comments to weigh in on regular pesticide registration reviews. These are cases where EPA makes important, long-term decisions on potentially extremely dangerous chemicals that impact a broad range of communities and the environment. Without action alerts and public comments, the general public would have very few opportunities to even know that they have a right to ask EPA to protect them and their communities from these chemicals. Eliminating mass public comments would further entrench EPA's reliance on industry funded and provided information that already plagues the registration process and keeps countless dangerous products on the market.

As Free Press states, we encourage the Committee to focus on expanding the public's ability to meaningfully participate in administrative proceedings. This is right that is guaranteed by the Administrative Procedure Act, and a duty which agencies are mandated to fulfill. The opportunity to meaningfully engage is especially important for communities representing Black, Indigenous, and People of Color and other disenfranchised communities, such as members of the general public who live or work in communities that are directly impacted by agency rules, actions, and decisions, but who are so often excluded from involvement in pertinent proceedings.



It is commonplace for federal agencies to discount or dismiss mass comments already. This is a pervasive and significant problem, given the importance of public comment to our democracy. In March 2021, NOAA publicly announced that there was zero opposition to a proposed development scheme off of Florida's coastline despite the fact that Friends of the Earth submitted a mass comment petition to the agency containing the signatures of approximately 150 Florida residents who opposed the plan. NOAA did acknowledge our petition and the overall signature count of 27,368. To that end, we underscore the need to prioritize ensuring that agencies have the proper tools and resources – as well as clear guidance from ACUS regarding procedures – to adequately review their respective dockets and mass comments received.

We are grateful for the opportunity to provide the following edits and comments on the draft report, which Free Press also raised during the ACUS Committee meeting on May 11, 2021:

- Lines 30-32, as currently written these lines suggest that all three types of comments (mass, computer-generated, and fraudulent) can contribute to “rulemaking delays” and other “legal issues.” We recommend removing this sentence as it does not align with the Committee’s recommendations that clearly explain these three types of comments are not similar in nature.
- Lines 56-64, because this section accurately captures the scope and purpose of the recommendations, we recommend moving this entire paragraph up, placing it after Line 27, to frame the recommendations from the start. This paragraph also will make it clear that ACUS is in favor of widespread public participation in administrative processes.
- Lines 89-92, we recommend deleting this sentence as it is duplicative and devalues mass comments by contrasting them with “unique content” and comments with “meaningful information.” This language inadvertently attributes less value to mass comments submitted by members of the public with similar or identical text and should be deleted to accurately reflect the positions outlined in the Committee’s preamble.
- Line 95, add “for the public” after docket. This will clarify that the navigation tools and suggestions are intended to make it easier for members of the public to review the agencies’ dockets.
- Line 105, the Committee should further clarify what it means by “clear notice.” When, where, and how should this notice occur and/or be conveyed to members of the public? Does ACUS intend to use the APA definition of notice? If not, what standards is it trying to apply?

We view this as the first of many productive conversations regarding specific ways to improve federal agencies’ acceptance and treatment of public comments, especially those submitted by nongovernmental organizations on behalf of their membership and activist lists. Please do not hesitate to contact me if there are any questions or there is any need to follow-up on this communication.

Sincerely

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