

Opening Statement
Joint hearing before the Permanent Subcommittee on Investigations
And
Regulatory Affairs and Federal Management Subcommittee
Thursday, October 24th at 10:00

“Review of E-Rulemaking Comment System”

- Good morning, welcome to today’s hearing and thank you to Senator Portman and Permanent Subcommittee on Investigations for partnering with the Regulatory Affairs Subcommittee on this hearing to discuss improvements to the systems by which the public responds to proposed regulations.
- The Administrative Procedure Act outlines the basic requirement that “interested persons” shall have the opportunity to participate in the rulemaking process through the submission of their views.
- The APA’s legislative history shows this was designed to be the minimum agencies were required to do for public engagement.
- Most executive orders that currently govern the rulemaking process emphasize the need for public engagement.
- Executive Order 12866 directs agencies to provide the public with “meaningful participation in the regulatory process” and a “meaningful opportunity to comment on any proposed regulation.”
- Similarly, Executive Order 13563 directs agencies to adopt regulations through a process that “involves public participation.”
- These requirements to engage the public recognize that agencies do not have all the answers and ideas that work on paper might not work in practice so it is vital that potentially regulated parties be involved in this process.
- Today’s notice and comment process, however, is often a roadblock to meaningful participation.

- As outlined in reports by PSI, GAO, the Administrative Conference and other organizations, these websites are not as user friendly as they should be.
- Interested parties must navigate through multiple websites, multiple dockets, and poor search features to find the specific rule on which they wish to comment.
- Once they have found the correct rule and correct docket the public faces a host of backend issues that the PSI report describes in detail: significant number of spam comments, explicit language, and even virus-infected files.
- If someone manages to wade through these issues and submits a comment, they then hope the agency has not already made up its mind on the major aspects of the proposed rule and is truly open to different perspectives.
- Earlier this year, the Regulatory Affairs and Federal Management Subcommittee held a hearing and discussed the need for advanced notices of proposed rulemaking. Former OIRA Administrators supported the idea, recognizing that at the proposed rule stage, where the APA requires notice and comment, agencies have generally already made up their mind on how they will regulate.
- To address this problem, Senator Sinema and I introduced the Early Participation in Regulations Act, which would require an advanced notice for major rules. The bill passed out of this committee with bi-partisan support.
- Public participation is vital to the rulemaking process, but if agencies only take public comments after they have decided how they want to regulate or the system for receiving those comments is unnecessarily difficult to navigate, then the public comment requirement is not effective.
- Requiring earlier public outreach and simplifying the notice and comment system would give the public a meaningful voice and provide regulators with perspectives they otherwise may not have considered, which would result in more effective and less burdensome regulations.
- I look forward to discussing solutions to these issues this morning. Thank you.