



**Asia-Pacific  
Economic Cooperation**

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## **Enhancing Transparency and Engagement Through Digital Tools: Developing Centralized Web Portals for Consultations**

Submitted by: United States



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Practices - Regulatory Reform the  
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# **Enhancing Transparency and Engagement Through Digital Tools: Developing Centralized Web Portals for Consultations**

2018 APEC Conference on Good Regulatory Practices

Port Moresby, Papua New Guinea

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# Agenda

U.S. Legal Framework for Public Consultation

Public Consultation

eRulemaking: Systems and Governance

Improvements to Regulations.Gov

Conclusions

# Legal Framework for Public Consultation

## Federal Register Act of 1935

- The *Federal Register* is the official daily publication for rules, proposed rules, and notices of Federal agencies and organizations

## Administrative Procedure Act of 1946 (APA)

- The APA requires that agencies go through a “notice and comment” process in which agencies provide all members of the affected public, both U.S. and foreign, with notice of a proposed regulation and an opportunity to comment on it.
- Before agencies can issue a final regulation, they must respond to the public comments, make sure that the final regulation is a logical out-growth of the proposal and the administrative record, and is not arbitrary or capricious.

## E-Government Act of 2002

- Requires agencies to:
  - publish on a publicly accessible U.S. government website all information that the agency is required to publish in the *Federal Register* under the APA;
  - accept public submissions electronically; and
  - ensure electronic docketing is publicly accessible via a Federal Government website

# Public Consultation: Notice of Proposed Rulemaking (NPRM)

## Preamble

- Legal authority for the regulation.
- A summary of the provisions in the regulatory proposal.
- A description of alternatives to the agency's proposal.
- Solicitation for public comments on the issues raised.
- Various legal and analytical assessments.

## Regulatory Text

- Draft text that the agency proposes be codified in the Code of Federal Regulations (i.e., law).
- Allows regulated entities to identify likely costs of compliance, including changed manufacturing practices.

# Public Consultation: Responding to Public Comments from Stakeholders in the Final Rule

## Preamble

- Discussion of changes from the NPRM and why they were made.
- Responses to public comments on the NPRM.
- Various legal and analytical assessments.

## Regulatory Text

- The text that will be codified in the Code of Federal Regulations (i.e., law).

## Effective Date

- The APA requires at least 30 days from publication
- There are exceptions (including “good cause”).

# Public Consultation: The “Administrative Record”

All and only the information that

- the agency relied on to develop the regulation; and
- the courts can rely on during judicial review.

Contents

- The proposed and final regulations.
- Supporting information, data, and research, including RIAs.
- All public comments and notes of public hearings and meetings with outside parties.

# The eRulemaking Program

## Regulations.gov

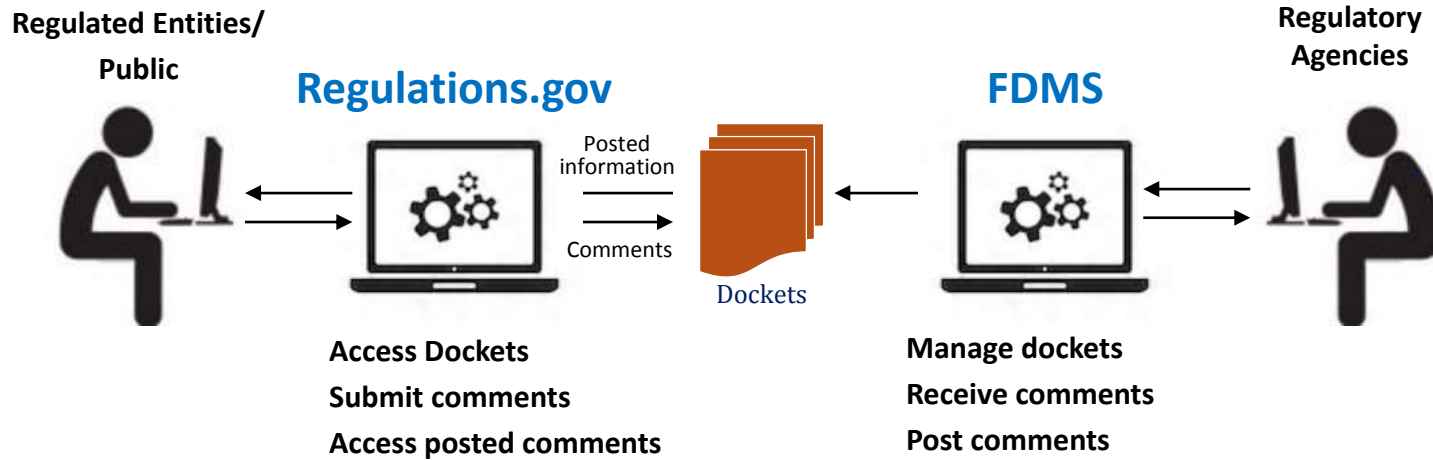
- A public website to make the U.S. rulemaking process more accessible, participatory, and comprehensible.
- Direct data feed from the Federal Register, the daily U.S. publication that publishes all regulatory actions.
- Millions of documents, including public comments and supporting materials, available to the public.
- Continuous upgrades to underlying technology to enable rapid and dramatic changes to user interface at lower cost.
- Application Programming Interface (API) now available for other users to repurpose the regulatory content and create online forms to submit comments on proposed rules.

## Federal Docket Management System (FDMS)

- The “back end” system agencies use to accept and review public comments and manage docket materials.



# eRulemaking: Information Systems



# Governance: Interagency Coordination of eRulemaking

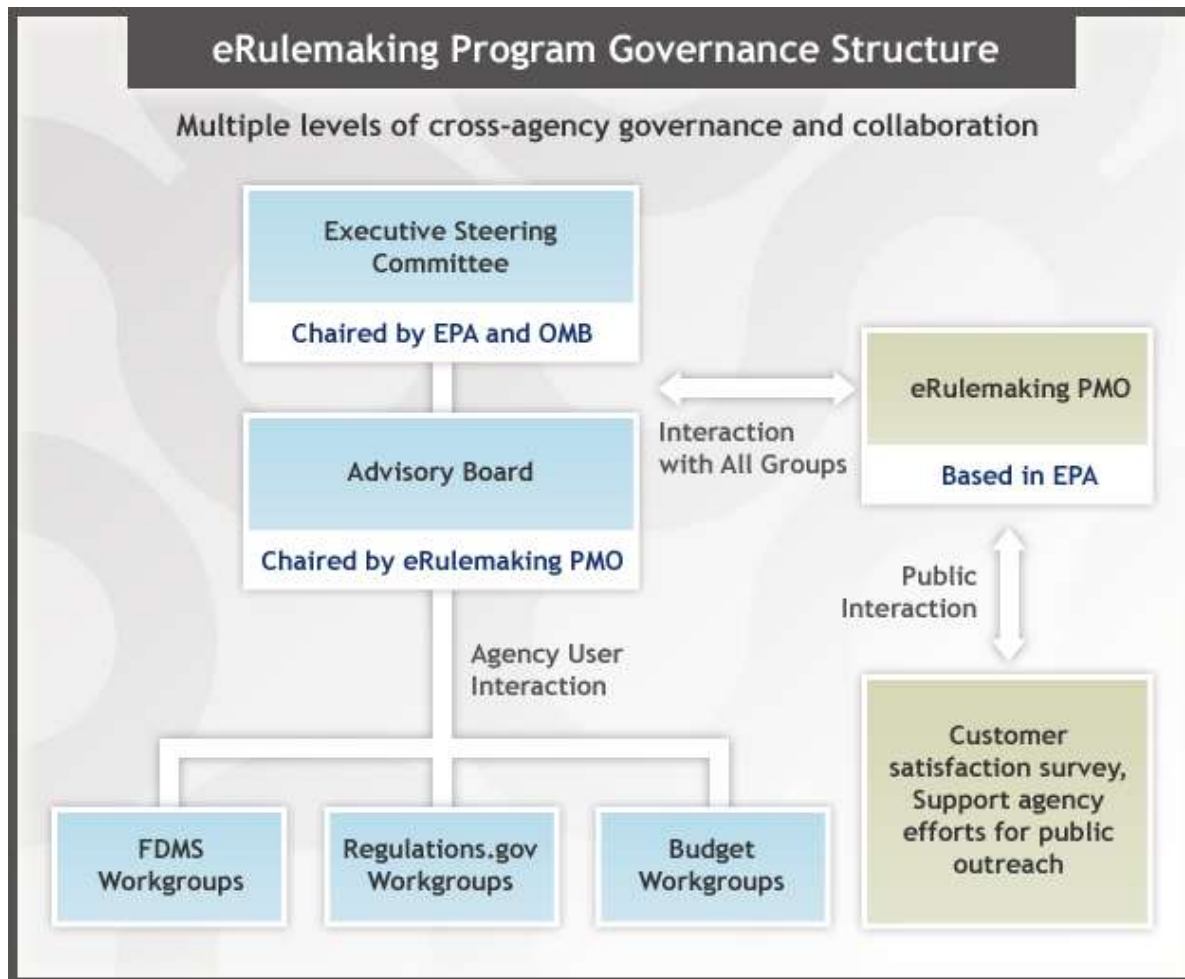
**Program Management Office:** Environmental Protection Agency hosts the Program Management Office (PMO). The PMO manages the IT contracts, committee structure, and budget process on behalf of partner agencies.

**41 Partner Agencies:** All major regulatory agencies currently use Regulations.gov as their electronic comment and public docketing system.

**Independents:** Some of the independent agencies with major rulemaking are not currently on the site, such as SEC, FCC, FDIC, Federal Reserve.

“Shared service” funding structure (i.e., “cross-agency”).

# eRulemaking Governance



# Regulations.gov: Homepage

## Homepage

- Navigate with Search, Browse, and Learn
- Commenter's Checklist
- Connect with social media tools and Exchange

## Browse up to 10 new categories

## What's Trending uses site data

## Learn about the regulatory lifecycle

## Search improvements

The screenshot shows the Regulations.gov homepage. At the top, the logo "regulations.gov" is displayed with the tagline "Your Voice in Federal Decision-Making". Navigation links include "Home", "Help", "Resources", and "Feedback and Questions". A search bar is prominently featured, with a red box highlighting the "Search", "Browse", and "Learn" buttons. Below the search bar, there is a "Participate Today!" section with a search input field and a "Search" button. The main content area is divided into several sections: "What's Trending" with a list of trending items, "Comments Due Soon" with a list of upcoming comment deadlines, and "Newly Posted" with a list of recent posts. On the right side, there are sections for "Are you new to the site?", "Site Enhancements", "Developers", "A Commenter's Checklist", and "President's Executive Order". At the bottom, there is a footer with navigation links for "Home", "About Us", "Resources", "Help", and "Connect With". The "Connect With" section includes social media icons for RSS, Facebook, Twitter, and YouTube, which are highlighted with a red box.

# Regulations.gov: Docket Page

## Docket Page

- Puts docket materials into a “virtual folder” including: primary documents, supporting documents, and comments.

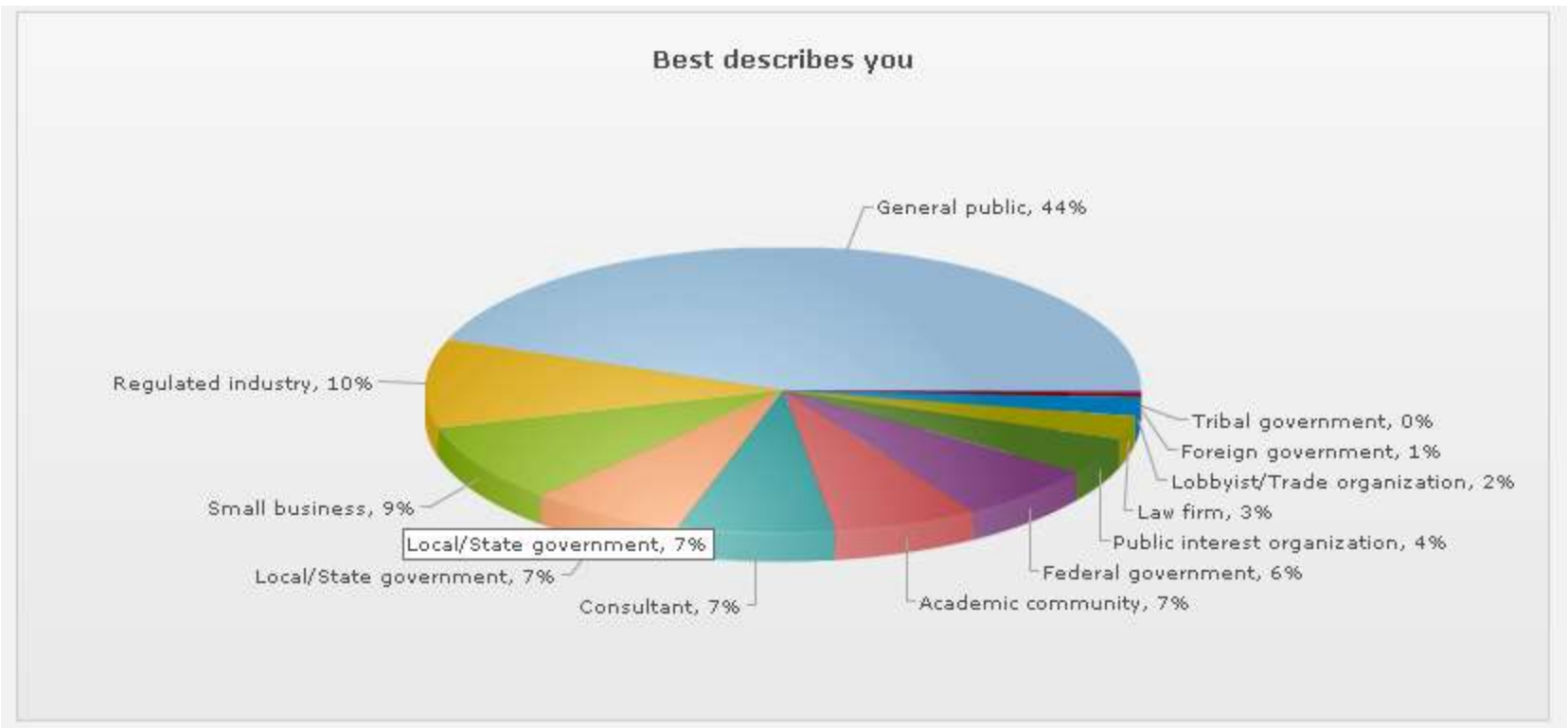
“Comment Now” button is one click access to submitting a comment.

Shows how many comments have been received.

Compiles relevant data from other sites, such as the Federal Register and RegInfo.gov

The screenshot shows the Regulations.gov website interface for a docket titled "Designation of Critical Habitat for Gunnison Sage-grouse". The page includes a search bar, navigation links (Home, Help, Resources, Feedback and Questions), and a "Take a Tour!" button. The docket information includes the ID (FWS-R6-ES-2011-0111), Agency (Fish and Wildlife Service (FWS)), and Parent Agency (Department of the Interior (DOI)). A summary states that the proposed rule designates critical habitat for the Gunnison's sage grouse. The RIN is 1018-A071, and the priority is Substantive, Nonsignificant. A "Sign up for Email Alerts" button is present, showing 219 comments received. The page is divided into sections: "Primary Documents" (2 items), "Supporting Documents" (3 items), and "Comments" (197 items). A "Comment Now" button is highlighted, indicating the comment period is closed. A "Regulatory Timeline" sidebar shows the stages: Pre Rule, Proposed Rule (Current Stage), and Final Rule. The "Agency Contact" section lists Douglas Horta, Chief Branch of Listing, Endangered Species Program, FWS, DOI, with contact information for email, phone, and address.

# Regulations.gov - Audience



# Improvements to Regulations.gov

“Commenting” and “Writing” APIs now available for other users to repurpose the regulatory content and create online forms to submit comments on proposed rules.

Upgrade search criteria and create “flags” for certain impacts (industry, international, small business, environmental, etc.).

Simplify and standardize document types.

Require the use of Regulation Identification Numbers (RINs).

Build and display lifecycle of a rulemaking—comprehensive data sharing between and among *Federal Register*, *Reginfo.gov*, and *Regulations.gov*.

The most redesign in February 2012 improved navigation, search, and layout features.

# Conclusions

Build political support by following consultation procedures that:

- are predictable and uniformly applied, and
- hold regulators accountable.

Consult at a stage in the rulemaking process that is:

- sufficiently advanced for stakeholders to evaluate the substance of a proposal, but
- not too late for regulators to make changes in response to stakeholder input.

Allow all stakeholders (not just insiders) to participate, including:

- SMEs,
- foreign traders and investors, and
- stakeholders geographically removed from the center of power.

Be humble:

- Government doesn't have all the answers, particularly in an age of complex global supply chains.
- There is no shame in changing proposals in response to stakeholder comments.



# References

- Administrative Procedure Act: [www.archives.gov/federal-register/laws/administrative-procedure/](http://www.archives.gov/federal-register/laws/administrative-procedure/)
- E-Government Act: <https://www.gpo.gov/fdsys/pkg/PLAW-107publ347/html/PLAW-107publ347.htm>
- Federal Register: [www.FederalRegister.gov](http://www.FederalRegister.gov)
- Federal Register Tutorial: <https://www.archives.gov/federal-register/tutorial>
- Stakeholder Participation in the Regulatory Process: [www.regulations.gov](http://www.regulations.gov)