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Public Participation in Rulemaking

Regulatory Policy Commentary

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The Internet and new media tools make two-way sharing of government information and public feedback not only possible, but also more convenient than previous paper methods. Public consultation is the solicitation of public participation in the form of public comments during the rulemaking process. [Executive Order \(EO\) 13563](#) lays out new guidelines for regulatory process and analysis that require United States (U.S.) federal agencies to take special initiative to improve public consultation during the design and implementation of regulations. [The Order “requires an ‘open exchange’ of information among government officials, experts, stakeholders, and the public \[and\]... is designed to foster better and more informed agency decisions.”](#)

Innovation in new media and information technology is changing how people interact with each other and their government. [eRulemaking](#) is an electronic government (E-GOV) initiative, from the E-Government Act of 2002, to increase access to and participation in developing regulations and other related documents that effect the public, and promote more effective and efficient rulemaking. In 2003, [Regulations.gov](#) was launched as a website platform for the public to search, view, and comment on regulations issued by the U.S. government. Before Regulations.gov, if a person wanted to comment on a regulation, she would have needed to know the sponsoring agency, when the regulation was published, review it in a reading room in Washington, D.C., and then engage in a comment process specific to that agency. Changes to the accessibility of regulations and proposed rules allow more people to be active in the regulatory process.

eRulemaking also affects the capacity of agencies to process proposed and final rules. The goals of the eRulemaking movement continue to be reinforced by recent executive policy. A [memorandum issued by Cass Sunstein](#), the current Administrator of the Office of Management and Budget’s Office of Information and Regulatory Affairs (OIRA), highlights how the principles and requirements of EO 13563 are being addressed across the federal government. Public participation is expected to be taken to a new level under the directive from the President and OIRA, by requiring federal agencies to facilitate an “open exchange,” between government officials, stakeholders, and the public. To fulfill this requirement, viewpoints and information provided by participants are made public to the extent feasible before decisions are made.

Rapid changes in new media are leading to new opportunities for eRulemaking. The [Department of Transportation \(DOT\)](#) DOT has partnered with the [Cornell eRulemaking Initiative \(CeRI\)](#) to develop a pilot project called the [Regulation Room](#). CeRI studies the way that regulations are presented to maximize engagement on specific proposed regulations. The Regulation Room is designed and operated by CeRI and hosted by the [Legal Information Institute \(LII\)](#) to provide an online environment for people and groups to learn about, discuss, and react to selected rules proposed by federal agencies. The mission of CeRI is to work with federal agencies to discover

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the best ways to use web 2.0 and social networking technologies to improve public understanding of, and participation in, rulemaking. This work to develop best practice methods could be valuable for regulatory agencies moving forward to meet the public participation expectations of EO 13563.

Academic research methods are used by CeRI to study the effects of different web technologies and approaches to enhance public understanding and participation, evaluate the advantages and disadvantages of proposed rules, and report the findings of regulatory impacts. DOT has invited other federal agencies to participate in the project, and the following have joined: Department of Homeland Security, the U.S. Coast Guard, the Environmental Protection Agency, the Federal Communications Commission, and the Nuclear Regulatory Commission. It is yet to be seen how the push for a unified effort to solicit public participation will affect the regulatory process and outcomes. It also raises the question of whether increased accessibility to proposed rules will decrease the opportunity costs of participation enough to improve the quality and/or quantity of submissions.