



Public Consultation in the U.S. Regulatory System

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Any views expressed here are solely those of the presenter, and do not necessarily reflect the position of the Office of Management and Budget or the Executive Office of the President.

Agenda

1. Why is Public Consultation Important?

2. Legal and Policy Framework for Public Consultation

- Administrative Procedure Act (APA) of 1946
- Executive Order 12866
- World Trade Organization (WTO) requirements
- Electronic Government Act (E-Gov Act) of 2002

3. Facilitating the Submission of Effective Public Comments

- Seeking and responding to public comments
- Key aspects of the regulation to publish for comment
- Identifying upcoming agency regulatory actions

4. Public Comment Infrastructure

- Federal Register (national gazette)
- eRulemaking Program (Federal Docket Management System & Regulations.gov)



Why is Public Consultation Important?

- **Enhanced Information Quality:** Public consultation allows input from those affected by the regulation. It brings in external expertise that helps regulators avoid potential unnecessary costs and inefficiencies.
- **Credibility:** Seeking the views of affected parties strengthens the relationship between government and stakeholders.
- **Better Implementation and Compliance:** Consultation can identify unintended effects and practical problems. This increases buy-in and facilitates implementation.



Legal Framework for Public Consultation: Administrative Procedure Act of 1946 (APA)

- The APA requires that agencies go through a **notice and comment** process open to all members of the affected public, both U.S. and foreign.
- Proposed regulations must be published in the *Federal Register* (national gazette).
- Before agencies can issue a final regulation, they must respond to **all 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.
- All members of the public, including any **international stakeholders**, may comment on rules.



Legal and Policy Framework for Public Consultation: APA, Executive Order 12866, WTO

The APA requires agencies to provide an opportunity for the public to submit “written data, views or arguments.”

The APA does not require a minimum comment period.

- In 1993, Executive Order 12866 encourages agencies to provide **at least 60 days** for public comment, to the extent feasible and permitted by law.
- Agencies will provide longer comment periods when stakeholders may need more time to understand and analyze a complex regulatory proposal.

APA Good Cause Exemption

- The agency may find “good cause” that notice and comment would be “impracticable, unnecessary, or contrary to the public interest.”
- The agency must explain its rationale for finding good cause in the preamble to the interim final rule.

World Trade Organization (WTO) Requirements

- The United States uses the APA to implement the WTO requirements to take trading partners’ comments into account.



World Trade Organization (WTO):

SPS Agreement Annex B - paragraph 5

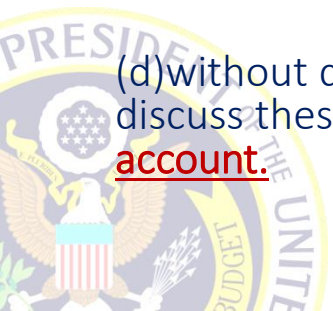
5. Whenever an international standard, guideline or recommendation does not exist or the content of a proposed sanitary or phytosanitary regulation is not substantially the same as the content of an international standard, guideline or recommendation, and if the regulation may have a significant effect on trade of other Members, Members shall:

(a) publish a notice at an early stage in such a manner as to enable interested Members to become acquainted with the proposal to introduce a particular regulation;

(b) notify other Members, through the Secretariat, of the products to be covered by the regulation together with a brief indication of the objective and rationale of the proposed regulation. Such notifications shall take place at an early stage, when amendments can still be introduced and comments taken into account;

(c) provide upon request to other Members copies of the proposed regulation and, whenever possible, identify the parts which in substance deviate from international standards, guidelines or recommendations;

(d) without discrimination, allow reasonable time for other Members to make comments in writing, discuss these comments upon request, and take the comments and the results of the discussions into account.



World Trade Organization (WTO):

TBT Agreement Article 2.9

Whenever a relevant international standard does not exist or the technical content of a proposed technical regulation is not in accordance with the technical content of relevant international standards, and if the technical regulation may have a significant effect on trade of other Members, Members shall:

2.9.1 publish a notice in a publication at an early appropriate stage, in such a manner as to enable interested parties in other Members to become acquainted with it, that they propose to introduce a particular technical regulation;

2.9.2 notify other Members through the Secretariat of the products to be covered by the proposed technical regulation, together with a brief indication of its objective and rationale. Such notifications shall take place at an early appropriate stage, when amendments can still be introduced and comments taken into account;

2.9.3 upon request, provide to other Members particulars or copies of the proposed technical regulation and, whenever possible, identify the parts which in substance deviate from relevant international standards;

2.9.4 without discrimination, allow reasonable time for other Members to make comments in writing, discuss these comments upon request, and take these written comments and the results of these discussions into account.

Legal Framework for Public Consultation: E-Government Act

- The **E-Government Act of 2002** required regulatory agencies to improve performance in the development and issuance of agency regulations by using information technology to increase access, accountability, and transparency.
- **Goal:** Provide the public convenient access to electronic rulemaking dockets, and make it easier for the public to comment on regulatory proposals.
- **Solution:** Regulations.gov and Federal Docket Management System
- **Improve and modernize** well-established legal and administrative procedures by leveraging new technologies that make it easier for members of the public to understand and participate in the development of regulations.



Legal Framework for Public Consultation: E-Government Act

- Increases public participation with early engagement and social media tools
 - A taxonomy of regulatory terms to simplify the online regulatory content.
 - Creating more comprehensive electronic versions of paper regulatory dockets.
 - Enable visitors to customize review of regulatory information.



Facilitating the Submission of Effective Public comments

- **At time of proposal**

- disclose, in sufficient detail, the thinking underlying agency's proposal and supporting data and analysis
 - Enables public to critique the proposal knowledgably and develop alternatives to the proposal

- **At time of final rule**

- respond in a reasoned manner to “significant comments”
- explain how the agency addressed those comments, and
- show how these responses led to the final rule



Facilitating the Submission of Effective Public comments

- Requirement for agency to explain rationale and substance of final rule in light of comments
 - serves as an internal check on arbitrary agency action by ensuring that, before taking final action, an agency can clearly articulate the reasons for its decision, including its reasons for not agreeing with comments opposing that decision
- Process of including in the final rule careful, step-by-step written explanations of its reasons for accepting or rejecting comments gives the agency opportunity to:
 - judge whether any revisions in the planned final rule might be appropriate



Facilitating the Submission of Effective Public comments

Key aspects of the proposed regulation to publish for public comment:

- **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. Use prompt questions - ask specific questions of the public – Data? Impacts? Unintended consequences? Alternatives?
 - Various legal and analytical assessments and underlying assumptions.
- **Regulatory Text**
 - Draft text that the agency proposes be codified in the Code of Federal Regulations (i.e., law).



Facilitating the Submission of Effective Public comments

Publish a list of regulations agencies are planning to issue

- Unified Agenda and Regulatory Plan
 - The Unified Agenda of Regulatory and Deregulatory Actions is the semi-annual publication about agencies' upcoming regulatory actions. Includes a brief summary of the regulation.
 - The annual Regulatory Plan explains the regulatory priorities of agencies.
 - Both are available on the [Regulations.gov](https://www.regulations.gov) and [RegInfo.gov](https://www.reginfo.gov).



Public Comment Infrastructure:

(1) Federal Register (national gazette)

- Established in 1935, the official daily publication for rules, proposed rules, and notices of Federal agencies and organizations.
- Lets members of the public know what the government is doing in one central location.
- Executive orders and other presidential documents are also published in the *Federal Register*. This is required by law (Federal Register Act of 1935).



(2) eRulemaking Program

- Federal Docket Management System (FDMS): The “back end” system agencies use to accept and review public comments and manage docket materials.
- Regulations.gov: A public website to make the Federal rulemaking process more accessible, participatory, and comprehensible.



Federal Docket Management System (FDMS)

- Federal Docket Management System (FDMS) is the back-end system that “feeds” Regulations.gov.
- Most regulatory agencies (40+) currently use Regulations.gov as their electronic comment and public docketing system.
- Each partner agency has access to FDMS to manage their various dockets and review comments before posting them on Regulations.gov.
- In general, agencies post all comments regardless of merit, however they do review for issues such as: privacy information, confidential business information, forms of pornography, etc. and either redact or don't post.



Public Comment Infrastructure: eRulemaking – Regulations.gov

- A public website which allows for members of the public to comment electronically on proposed rules and other documents requesting public comment.
- Increases ease for the public to access documents in the *Federal Register*.
- Allows for agencies to consolidate comments in an easier manner and use electronic systems to search for comments.



Public Comment Infrastructure: eRulemaking – Regulations.gov

- Direct data feed from the *Federal Register*, the daily U.S. publication that publishes all regulatory actions.
- Over 200K dockets, and over 7 million 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.



Public Comment Infrastructure: 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 is the logo "regulations.gov" with the tagline "Your Voice in Federal Decision-Making". Navigation links include Home, Help, Resources, and Feedback and Questions. A search bar is prominently displayed with buttons for Search, Browse, and Learn. The main content area features a "Participate Today!" section with instructions on how to submit comments and a search bar for Rules, Comments, Adjudications, or Supporting Documents. Below this is a "What's Trending" section with a list of trending regulations, including "Coverage of Certain Preventive Services under Affordable Care Act" and "Endangered and Threatened Wildlife and Plants: Threatened Status for the Distinct Population Segment of the North...". To the right, there are sections for "Comments Due Soon" and "Newly Posted" regulations. On the far right, a sidebar contains links for "Are you new to the site?", "Site Enhancements", "Developers", "A Commenter's Checklist", and "President's Executive Order". The footer contains links for Home, About Us, Resources, Help, and Connect With, along with social media icons for RSS, Facebook, Twitter, and YouTube.



Public Comment Infrastructure: 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 displays the Regulations.gov website interface for a specific docket. The header includes the site logo, navigation links (Home, Help, Resources, Feedback and Questions), and a search bar. The main content area is titled "Designation of Critical Habitat for Gunnison Sage-grouse" and provides a "Docket Folder Summary" with links to view all documents and comments. It lists the Docket ID (FWS-R6-ES-2011-0111), Agency (Fish and Wildlife Service (FWS)), and Parent Agency (Department of the Interior (DOI)). A "Summary" section describes the proposal to designate critical habitat for the Gunnison sage grouse. Below this, a "Primary Documents" section lists two documents, each with a "Comment Now!" button. A "Supporting Documents" section lists three documents, each with a "Comments Not Accepted" status. A "Comments" section at the bottom shows a comment from Robert & Linda Hancock. On the right side, there is a "Take a Tour!" button, a "Sign up for E-mail Alerts" section showing 219 comments received, a "Regulatory Timeline" section showing the progression from Pre Rule to Final Rule, and an "Agency Contact" section with contact information for Douglas Krotka.

regulations.gov
Your Voice in Federal Decision-Making

Home Help Resources Feedback and Questions

Designation of Critical Habitat for Gunnison Sage-grouse

Docket Folder Summary View all documents and comments in this Docket

Docket ID: FWS-R6-ES-2011-0111 Agency: Fish and Wildlife Service (FWS) Parent Agency: Department of the Interior (DOI)

Summary:
We will propose designate critical habitat for the Gunnison's sage grouse (*Centrocercus minimus*) under the Endangered Species Act. This species occurs in southwestern Colorado and southeastern Utah.

RIN: 1018-AX71 Impacts and Effects: Energy CFR Citation: 50 CFR 17 Priority: Substantive, Nonsignificant

+ View More UA and Regulatory Plan Information and Docket Details

Primary Documents View All (2)

Endangered and Threatened Wildlife and Plants: Endangered Status and Critical Habitat Designation... Comment Now! Due Apr 02, 2013 11:59 PM ET

Endangered and Threatened Wildlife and Plants: Designation of Critical Habitat for Gunnison Sage... Comment Period Closed Mar 12, 2013 11:59 PM ET

Supporting Documents View All (3)

Related Docket: Endangered Status Listing for Gunnison Sage-Grouse - FWS-R6-ES-2012-0108

Supporting & Related Material Posted: 01/11/2013 ID: FWS-R6-ES-2011-0111-0004 Comments Not Accepted

Literature Cited for Gunnison Sage-grouse

Supporting & Related Material Posted: 01/11/2013 ID: FWS-R6-ES-2011-0111-0002 Comments Not Accepted

UTM Coordinates for Designation of Critical Habitat for the Gunnison Sage-grouse

Supporting & Related Material Posted: 01/11/2013 ID: FWS-R6-ES-2011-0111-0003 Comments Not Accepted

Comments View All (197)

Robert & Linda Hancock's Comment View Comment Submitter Name: Hancock, Robert & Linda Posted: 03/27/2013 ID: FWS-R6-ES-2011-0111-0200

Take a Tour!

Sign up for E-mail Alerts

219 Comments Received*

*The total reflects comments received from Regulations.gov and other means as of 11:59 PM yesterday. All comments received may not be posted at this time including bulk submissions; therefore, the total comments received and posted may differ.

Regulatory Timeline

Pre Rule

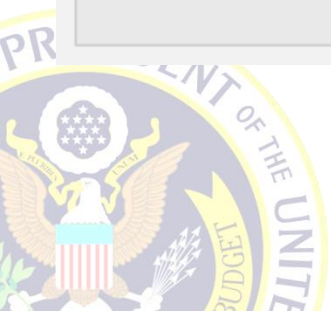
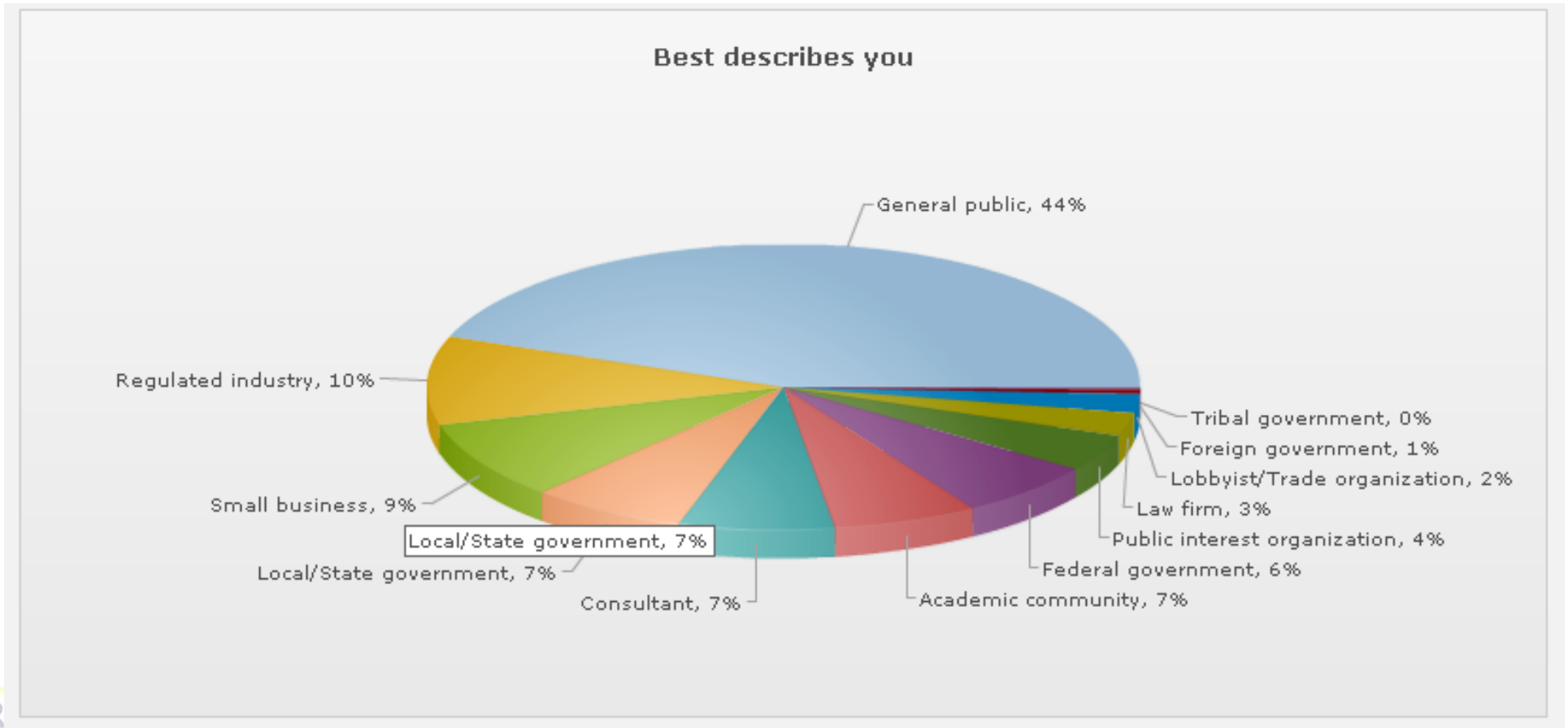
Proposed Rule Current Stage

Final Rule

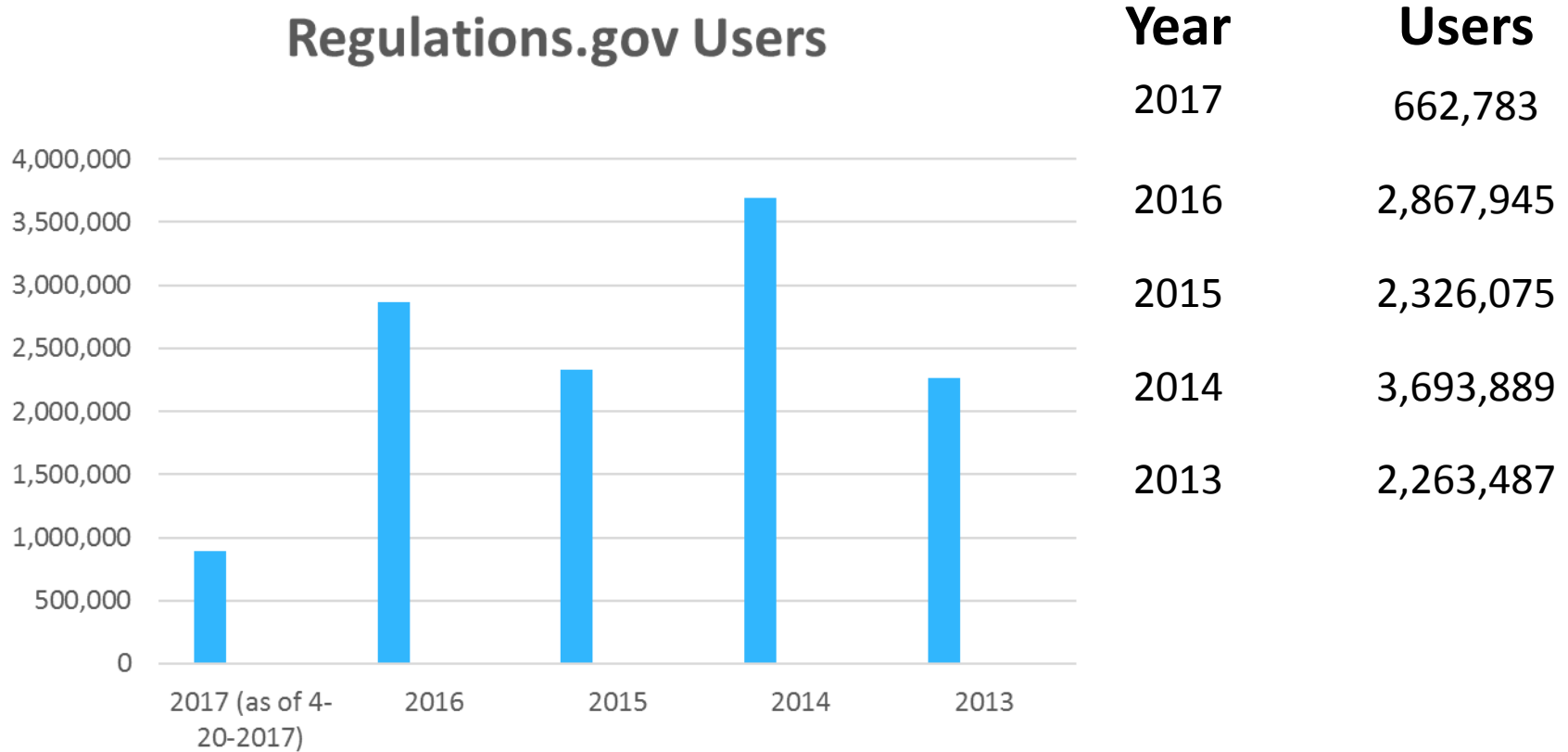
Agency Contact

Douglas Krotka
Chief, Branch of Listing
Endangered Species Program
FWS
DOI
douglas_krotka@fws.gov
703 355-2022
703 355-2434 (fax)
Room 420, 4401 North Fairfax
Drive, Arlington, VA 22203
Arlington, VA 22203

Regulations.gov - Audience

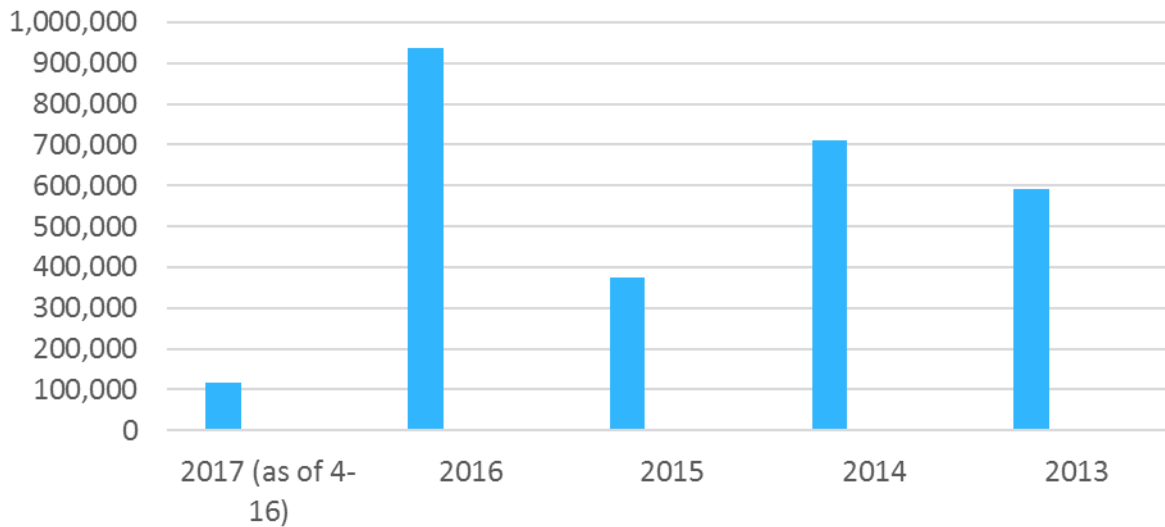


Regulations.gov - Stats



Regulations.gov - Stats

Comments Complete on Regulations.gov

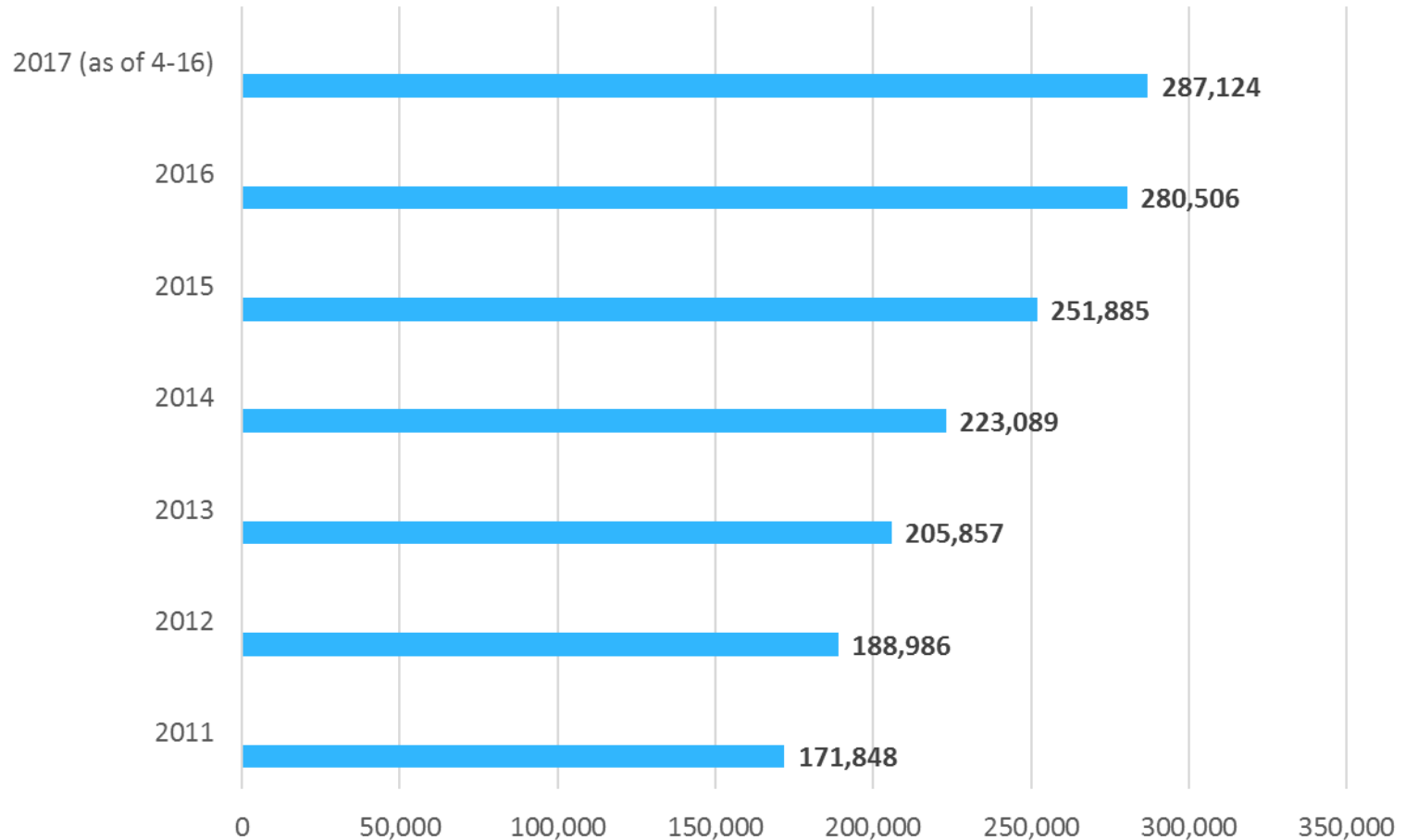


Year	Comments
2017	118,047
2016	937,519
2015	374,488
2014	711,415
2013	592,585



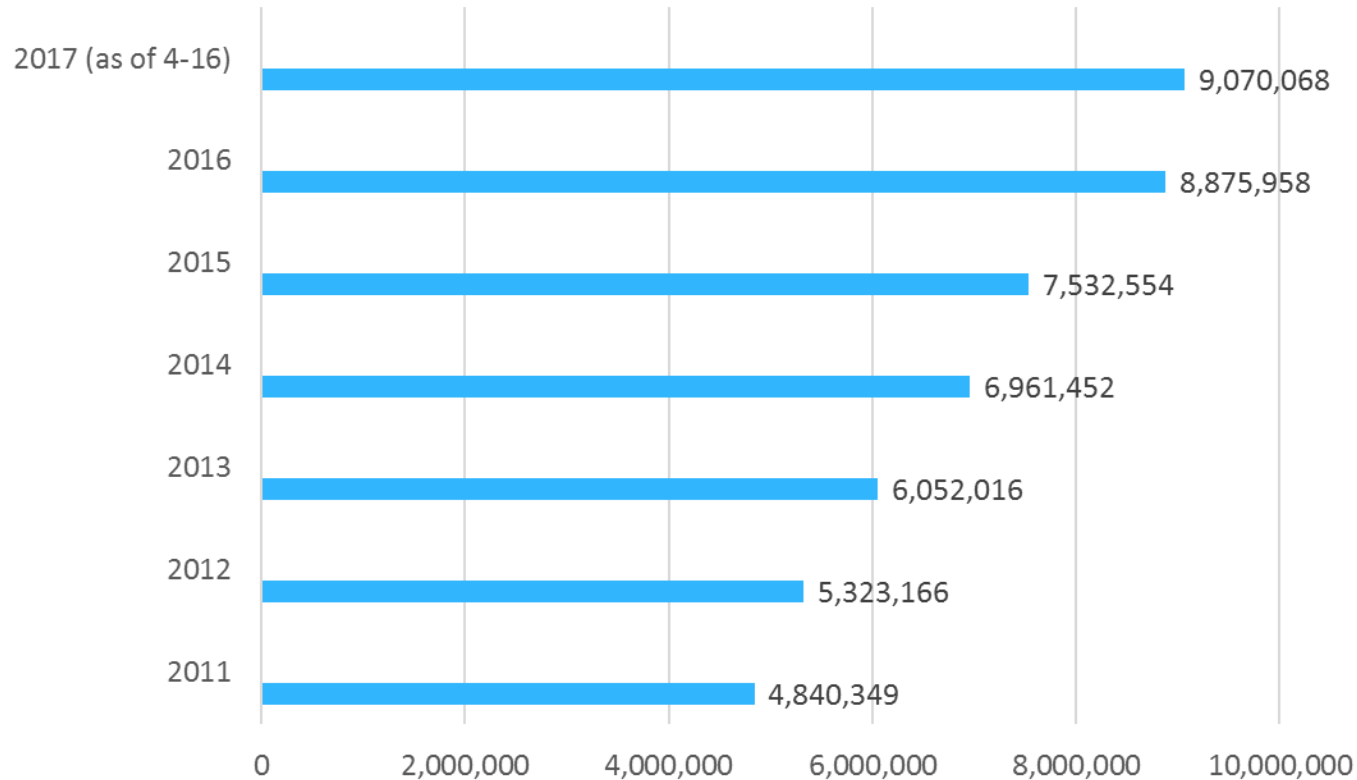
Regulations.gov – Stats

Total Dockets



Regulations.gov – Stats

Total Documents



References

- Administrative Procedure Act of 1946: <http://www.archives.gov/federal-register/laws/administrative-procedure/>
- Executive Order 12866: <https://www.archives.gov/files/federal-register/executive-orders/pdf/12866.pdf>
- Federal Register Act: <https://www.archives.gov/federal-register/laws/federal-register>
- Federal Register: www.FederalRegister.gov
- E-Government Act of 2002: <https://www.archives.gov/about/laws/egov-act-section-207.html>
- Public Participation in the Regulatory Process: www.regulations.gov
- Regulatory Review Dashboard: <http://www.reginfo.gov/public/jsp/EO/eoDashboard.jsp>
- Regulations.gov: <http://www.Regulations.gov>
- WTO Inquiry Point “Notify US”: <http://gsi.nist.gov/global/index.cfm/L1-1>

