



**Premium Cigar Association Submission on Broadening Public Engagement in the
Federal Rulemaking Process
March 9th, 2023**

Which of the following recommendations would most effectively broaden public engagement in the Federal regulatory process, especially from members of underserved communities and those who do not typically participate in the regulatory process? Are there recommendations that are not helpful?

Agencies are never going to be able to maintain direct contact with all stakeholders and underserved communities are often skeptical of their ability to impact public policy. For example, small businesses often feel their involvement in policymaking is an afterthought, yet in many industries they are the predominant market force. Maintaining regular communication with trade associations will help agencies to stay up to date about trends, technology, and impacts so that regulations are informed in their pre-rulemaking phases rather than requiring substantial correction between the proposed and final rule stage.

The most helpful recommendation is: *Proactively disseminate relevant materials, especially through partnerships with community-based organizations, industry intermediaries (such as trade associations), and other institutions.*

An example of success in this area is the Department of the Treasury, Alcohol & Tobacco Tax and Trade Bureau (TTB). TTB leadership makes itself available to meet with trade associations, and staff proactively seek input on future regulatory updates. TTB is well known for not merely attending trade shows but also providing Q&A opportunities. They also provide responsive and accessible feedback in the form of online newsletters and FAQs on pertinent topics including regulatory changes and compliance.

Are there obstacles or barriers to greater public participation, especially for underserved communities, that are not addressed by these recommendations? If so, are there other recommendations that we should consider?

Agencies should maintain regular communication with the Small Business Administration Office of Advocacy whenever undertaking major rulemaking. Small businesses directly reflect the diversity of their communities and are often underutilized resources when agencies are researching and preparing guidance and promulgating new rules.

Similarly, agencies should be communicating with the Department of Commerce when major rulemakings or regulations that will affect how a U.S. company operates overseas should be required to produce an international economic impact analysis. In a global economy, regulatory

changes in the U.S. can have destabilizing effects on developing countries that specialize in producing feedstock, components or finished goods destined for the U.S. market. These effects, in turn, affect U.S. interests in trade, security, and foreign relations.

For example, the FDA Center for Tobacco Products has yet to produce a small minority owned business impact assessment for its NPRM “Tobacco Product Standard for Characterizing Flavors in Cigars” despite openly acknowledging that the purpose of the new rule was to limit access to tobacco products favored in minority communities. The FDA has also failed to even acknowledge any impact the proposed rule would have on potentially tens if not hundreds of thousands of jobs in agricultural zones throughout Central America, and the corresponding effect that would have on irregular migration, economic and political stability of those regions.

Are there existing materials, such as guides or tools, that would be especially effective in revising and potentially implementing these recommendations? What new tools or guidance are needed?

While everyone has a right to comment and receive responses from the agency be heard, it is incumbent upon agencies to moderate public engagement to ensure that well informed and representative voices of a variety of constituencies are heard. OIRA should provide guidance for agencies conducting in-person or virtual public comment or listening sessions in order to ensure that the platform is utilized to voice a variety of well-informed community and stakeholder perspectives.

The FDA example that was highlighted during the March 7 OIRA Listening Session - a lottery for selecting public speakers - was concerning. This system is regularly gamed by special interest groups who submit coordinated requests to speak as a National Association, 50 affiliated State Associations, hundreds of affiliated Local Chapters, and individual Executives, Board Members, and employee/intern “ambassadors.” FDA does not pre-screen its lottery selected speakers list to ensure diverse interests and balanced perspectives. As a result, sessions are often hours of repeated talking points and pontification with little substance.

FDA’s new leadership has even acknowledged the severity of their community and stakeholder engagement problems by enlisting the Reagan Udall Foundation to conduct an independent evaluation to identify, at a granular level, the agency’s failures and to make recommendations in these areas. Highlighting FDA during the March 7 listening session harmed the credibility of OIRA’s exercise.

How can intermediaries—such as trade associations or coalitions—be helpful in reaching individuals and small organizations or businesses, where have they been successful in doing so, and where might they be insufficient?

Trade associations and membership organizations are aggregators of common interests, have the trust and understanding of their constituents, and the resources to provide well-informed and

impactful communications. They support information flow both to government and to stakeholders, which is especially important when seeking greater inclusion. In some industries, small business is the predominant marketplace, making legal analysis and public comment a challenge. Associations fill this need and are often the only way that stakeholders in these industries learn about major regulatory changes. Associations can also help bridge skepticism and cultural barriers by serving as a trusted intermediary that can facilitate understanding and compliance. For example, it has been incumbent upon intermediary organizations to decipher and inform thousands of small businesses of the regulatory requirements associated with FDA's T-21 policy which was implemented with nearly no guidance despite direct Congressional action. Federal agencies should be leaning on these groups early and often as the primary means of staying in touch with their regulated stakeholders.

Submitted on behalf of the Premium Cigar Association:

A handwritten signature in black ink, appearing to read 'J. Habursky', with a stylized, cursive script.

Joshua Habursky
Deputy Executive Director/Head of Government Affairs
Premium Cigar Association

About the Premium Cigar Association:

Founded in 1933 as the Retail Tobacco Dealers of America, the Premium Cigar Association (PCA) is the oldest, largest and most active trade association representing and assisting retailers of premium tobacco products and their suppliers. The PCA represents nearly 3,000 retail stores who employ 30,000+ retail workers in the United States of America.