

Committee on Regulation
April 25, 2011 Committee Meeting
Comment of Neil Eisner

Reeve,

Thanks for the opportunity to review this recommendation. I think it is very good. Going through each recommendation –

1. I would vote for the 1st option. I don't see a real problem on this issue. I think the APA can already be read to require a "reasonable" comment period and EOs 12866 and 13563 generally require 60 days unless a shorter period is justified. One additional concern I have with a mandated number is that, in some instances, agencies have justification for no comment period but provide a very short period because they have time to do so. A mandatory minimum would result in no comment period in those situations. I would also stress the concerns many have that asking for legislation could lead to something other than is requested.
2. I have no problem with this. I believe we already do it.
3. We already do this, also. I think it is good policy. An ACUS recommendation would help. But some may be concerned that reply comment periods could be used to submit new comments. You should think about adding ", and limited to," at the end of the 4th line, after "input on..."
4. I also agree with this recommendation. But I think the phrase "opening of a rulemaking" is too broad and somewhat vague. The measurement should be from the end of the comment period on the last stage of the rulemaking. Up to that point, the record should not be stale. I would also delete the phrase "agency believes that" in the last sentence. The agency should be pushed to consider the record and not just state a belief. They have an incentive to not have to do another round of comments.
5. This is the only one I disagree with. The presumption should be reversed. The agency should permit anonymity unless there is a reason it would not be appropriate. I believe, as written, it cannot effectively be enforced. What is the difference between an unsigned comment and one with a name, if we do not know the name. How do I even know that the official stationery of a large corporation is that of the corporation and the signer is indeed an official there. If we say we need signatures, will they be legible, will the signer just make up a name? We must also consider the negative affect this could have on using web 2.0 technology, such as blogs where some use made up monikers. Most importantly, the comment should be judged on its merits rather than the name. If anonymous, I may not give it the same consideration as I would to a known expert, but if they are correct in their point and provide proof that our proposal would cause harm, would we have to ignore it because it was unsigned?
6. Very good idea. We already do this, and I know others do.
7. Ditto. But fn 7 relies on an EIS document. I would recommend using a proposed rule

Please let me know if you want to discuss this further.

Neil