

March 10, 2023

Re: Broadening Public Engagement in the Federal Regulatory Process

Submission of Walton Francis to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget, in response to its March 2023 request for ideas on improving the federal regulatory process to better serve the public (<https://regulatorystudies.columbian.gwu.edu/broadening-public-engagement-federal-regulatory-process>).

My submission reflects my decades of regulatory and Internet experience. I served as the Director of the Division of Policy and Regulatory Analysis in the Office of the Assistant Secretary for Planning and Evaluation, Department of Health and Human Services. I led the regulatory review, or regulatory impact drafting, or both, on most of the HHS rules that had major life-saving benefits or created major cost reductions over a 25-year period. I have read thousands of public comments on hundreds of federal rules.

In 1995 I led the government-wide task force under then OIRA Administrator Sally Katzen that created electronic rulemaking, subsequently adopted and eventually centralized through [regulations.gov](https://www.regulations.gov). Unfortunately, the promise of that huge reform has not been fully realized. And that performance gap affects most heavily the public at large and all the disparate member interests of that public.

I was also co-chair for content of the HHS departmental website in the early years of the World Wide Web and as a private citizen created both the written publication and user-friendly website for *Checkbook's Guide to Health Plans for Federal Employees*, revised annually and now in its fifth decade.

OIRA is to be commended for seeking outside input into improving the important functions that the regulatory process provides. Most of the problems I have identified, and my recommendations for specific reforms, fall into five broad categories.

All the recommendations that follow are specifically intended to “remove systematic barriers to and provide equal access to opportunities and benefits, identify communities the Federal Government has underserved, and develop policies designed to advance equity for those communities” (from E.O. 13985) and to help implement “a comprehensive equity strategy that uses the agency’s ...regulatory functions to enable the agency’s mission and service delivery to yield equitable outcomes...” (from E.O. 14091).

To understand the analysis that follows, a realistic starting point lies in the public face of [regulations.gov](https://www.regulations.gov), through its most common typical guide to and access to public comments from communities affected by a proposed rule:



PUBLIC SUBMISSION

[Comment from Sheton, Herb, HHS-OCR-2023-0001, HHS-OCR-2023-0001-0001, 2022-28505](#)

Agency Department of Health and Human Services

Posted Feb 24, 2023

ID HHS-OCR-2023-0001-0079



PUBLIC SUBMISSION

[Comment from Smock, Amanda, HHS-OCR-2023-0001, HHS-OCR-2023-0001-0001, 2022-28505](#)

Agency Department of Health and Human Services

Posted Feb 24, 2023

ID HHS-OCR-2023-0001-0080



PUBLIC SUBMISSION

[Comment from McCready , John, HHS-OCR-2023-0001, HHS-OCR-2023-0001-0001, 2022-28505](#)

Agency Department of Health and Human Services

Posted Feb 24, 2023

ID HHS-OCR-2023-0001-0082



PUBLIC SUBMISSION

[Comment from Brecker, Steven, HHS-OCR-2023-0001, HHS-OCR-2023-0001-0001, 2022-28505](#)

Agency Department of Health and Human Services

Posted Feb 24, 2023

ID HHS-OCR-2023-0001-0087



PUBLIC SUBMISSION

[Comment from McDonough, Susan, HHS-OCR-2023-0001, HHS-OCR-2023-0001-0001, 2022-28505](#)

Agency Department of Health and Human Services

Posted Feb 24, 2023

ID HHS-OCR-2023-0001-0089



PUBLIC SUBMISSION

[Comment from Zu Grau, Fade, HHS-OCR-2023-0001, HHS-OCR-2023-0001-0001, 2022-28505](#)

Agency Department of Health and Human Services

Posted Feb 24, 2023

ID HHS-OCR-2023-0001-0092

Displaying 26 - 50 of 830 results

< 1 2 3 4 5 6 7 ... 20 >

This extract from an HHS-proposed civil rights rule shows nothing but the name of the person submitting (not necessarily the author of) each of 830 comments on this rule. Any individual or organization dealing with one of the protected classes of individuals might like to see the comments from organizations or individuals dealing with the same or other protected classes to better understand the proposed rule and its effects. This extract shows how regulations.gov might be best understood as hidden docket files.

Any American suffering from one type of discrimination might like to see the comments from members of other minority groups to see how they would be treated under this civil rights rule, and whether that is accurately described in the rule's hundreds of pages of preamble text and regulatory language. Any organization providing services to protected classes of individual might wish to see what impacts are likely, and whether there may be less burdensome ways to meet the new standards. As things stand now, the only way for either of these to find out would be to click on each name in the table, click again to download a comment if it is more than about a half-page long, and peruse the comment to see if it came from one of the groups or sources sought. Then the user would have to reverse the process to get back to the same page (but not the same line) and click on the next name, if the starting point can quickly be found. A rough estimate would be that it would take 30 seconds on average simply to locate and scan each the comments. This means about 7 hours of work for each person who diligently seeks what is legally public information (830 times .5 = 415 minutes or about 7 hours). If as few as one-thousand people seek the information, the burden on the public would be about 7,000 hours just to get to the starting point of a careful review of what may only be a handful of (different) useful comments to each. But why should most of this work be required? (Hint to OIRA: the time wasted in finding comments is regulatory burden that should be specifically addressed in every proposed rule.)

A diligent member of the public might also be lucky (or unlucky) enough to find out that this rule got over 47,000 public comments and might wonder what they contained. That ordinary American might never find out since even a search of the only obviously available source, a generic FAQs page that applies to all rules at regulations.gov, provides no specific answer (in this case an expert reviewer would know that the discrepancy was almost certainly duplicate submissions from one or more mass-mail campaigns, from unnamed groups that might favor or oppose the proposed rule, in numbers on each side that this agency does not divulge).

This endurance contest flunks a "do it like Amazon does it" test by a country mile. If a user had to spend 7 hours to find the most useful books on topic X in category Y from Amazon's millions of book selections, that company would long since have disappeared from the short list of highly useful searchable sources.

Issue One. Unlocking the Electronic Docket Room Files. The OMB analysis of "Broadening Public Engagement in the Federal Regulatory Process", emphasized what is arguably the single most important problem that needs addressing: **the facilitation of informed public input into the substance of proposed rules.** This function is the central purpose of the public comment provisions of the Administrative Procedure Act. It was the primary purpose of the electronic rulemaking initiative. And it is central to the steps needed to broaden public engagement in the regulatory process. It could be vastly strengthened by relatively simple changes to current e-

rulemaking practices and responsibilities. As I said decades ago in describing the breakthroughs to be enabled by the e-rulemaking reforms:

In the public comment stage, the public can not only post comments on a proposed rule, but also review the comments of others. Interactive dialog (with or without government staff actively involved) can be used to hone issue identification, improve suggestions for change, or even reach consensus. Instead of Alaska, Alabama, and Arkansas each independently sending inconsistent comments on the 60th day to a dusty document room on the same bothersome point, Alaska can propose a change early in the process, Alabama can suggest an improvement, Arkansas can recommend an even better way to handle the concerns of all three states, and Alaska can agree with Arkansas.

This argument applies with equal or greater power to any disadvantaged category of Americans, and even to many advantaged groups. How many affected consumers, for example, are aware of the Department of Energy's energy conservation rules and the impenetrable thickets of technical and legal information that dominates those *Federal Register* documents (see, for example, the proposed standards for residential clothes washers, starting at 88 FR 1350), a document about 300 type-written pages long. And what would any ordinary consumer do in the face of these daunting pages, or even the almost unintelligible (to ordinary Americans) half-page summary of "Benefits and Costs to Consumers" (at 88 FR 1352). By some standards, this is an impressive regulatory document. But by the standards of usefulness or even readability or intelligibility to the 330 million Americans who are not experts on the issues and facts presented in this document, it is arguably an abject failure. But there is hope for those Americans, including the millions of experts in the actual use of washing machines. That hope depends to some degree on better plain English writing (see recommendation below), but to a much larger degree on the willingness and ability of thousands of regulatory experts to write intelligent and incisive and readable comments on ways to improve that regulation, a willingness that would be vastly improved if they knew that their comments would actually be read and used by Americans with voices that can be heard, including organizations that represent those Americans but which, with rare exceptions, would be unable on their own even to understand this 300 page document.

At the time electronic rulemaking began, and for some years afterward, some federal agencies made public comments (either as received electronically or after scanning) available online for all to see. But during the ensuing decades the "user friendliness" of what became centralized as regulations.gov led to the creation of an almost impenetrably complex website. It became essentially unusable by ordinary persons by being highly technical and unforgiving of any search terms that do not meet its tightly limited vocabulary. For example, users were expected to know agency names, EO 13771 designations (Why would a repealed EO be listed?), "priority" as "economically significant" (What is that? Why is the term "major rule" not allowed), whether "small entities" (What are those?) are "affected" (whatever that means), and on and on. Common terms for many regulations are not recognized. Reasons for search failures to bring desired dockets (what are dockets and

why is docket content now largely empty?) are not provided. Even when a member of the public had one of the widely used numeric descriptors or a rule, such as a Federal Register date and page, a CFR Volume and Part, a RIN number, an agency docket number, or an OMB control number, the search was doomed because regulations.gov did not recognize most of these commonly used numbers.

Many of these and related problems have been reduced in recent years. (The absence of an assured and adequate funding stream for regulations.gov has been a decades-long problem that has impeded needed features and reforms to those features). But enough of them remain that it can be a grueling experience even to find a particular proposed rule. The user then faces the need to understand his complex search and/or submittal options. One example of the problems remaining is that the instructions on how to submit comments are not on or referenced from the home page of regulations.gov, and not included on the list of FAQs accessed from the home page. Among the remaining mysteries are why so many comments are not posted (the explanation given within one of the FAQs is clearly incomplete), and why the useful and common-sense term “docket” apparently has no remaining function or meaning yet remains as a seemingly important search option.

It appears that individual agencies are allowed to make submission decisions that completely frustrate the ability to select particular comments to skim. Entering into the searchable docket room only a phrase such as “Comment on FR Doc # 2023-02102” is devoid of utility, compared to an entry giving the name and organization of the commenter and a brief paragraph or two that users can skim rapidly.

But supposing a searcher gets lucky and finds the rule he or she is searching for, figures out that comments of many persons are available to review before writing his own, and is given author identification information on the comments listing pages. It turns out that reading a comment that is more than a paragraph or two long (which is to say, almost all organizational and detailed comments) requires an actual download of a PDF file, then clicking to and opening the document, perusing it and likely reading at least the first page, and then a return that gets the user to the page, but not the place, from which the document was downloaded. Rapidly skimming most or all the comments to look for kinds or sources of comments is impossible, and a cursory review of even a few hundred detailed comments will take hours of time. Hence, the design of this website makes it so tedious and difficult to use that the idea of interacting with other members of the public (or simply commenting on their comments) becomes an impossible dream.

In a world in which any competent designers and website programmers could follow the example of Amazon (displaying rule titles as if they were book titles and displaying comments by the public, there is no excuse for not making such reforms. Amazon does not require its users to download customer reviews, one by one, in order to skim or read them, and regulations.gov should not do so either.

Of considerable importance, these same reforms would greatly facilitate cross-agency reviews at the federal level, giving federal reviewers (for example, OMB, SBA Advocacy, and

Departmental components other than those that wrote a rule), critiques or insights that would improve their own comments. In preparing these recommendations I perused the handling of comments on an OSHA rule published in June of 2021 (“Occupational Exposure to COVID-19, OSHA-2020-0004). In just a few minutes work, guided by the one an actual line of professional and organizational information for each comment on the pages listing public comments, I spotted a half-dozen fatal but potentially correctible flaws in that rule in both its hundreds of pages of requirements and in its Regulatory Impact Analysis estimates of both benefits and costs attributable to the rule, quite apart from the legal issues that led the Supreme Court to decide against the rule.

Accompanying those reforms, of course, should be others. Agencies would need to be required to transmit detailed/expert comments within a day or two of receipt, to allow commenter collaborations (or even simple reviews) maximum time for review and further actions.

Issue Two: Using Comment Buckets. Many rulemakings generate relatively large numbers of simple “like” or “dislike” comments with no substantive analysis of proposed regulatory provisions. From the point of view of potential users of in-depth comments addressing specific issues, these are largely clutter. It would be a highly useful reform for regulations.gov to separate these like or dislike comments from those presenting detailed analysis. Comments are not inferior because they use a few pithy words or sentences to describe a position—simply different. In recent years there has been increasing concern over much larger numbers of such comments on particularly controversial rulemakings. See, for example, “Mass, Computer-generated, and Fraudulent Comments” (report submitted to the Administrative Conference of the United States, 2021, at <https://regulatorystudies.columbian.gwu.edu/mass-computer-generated-and-fraudulent-comments-0>). But the problem for the public wanting to participate in an actual engagement with regulatory details is the same whether the like and dislike comments are hundreds, thousands, tens of thousands, or millions (millions in the notorious net neutrality rulemaking of the Federal Communications Commission). Any consequential volume of such comments mixed in with detailed comments gets in the way of understanding and participating in the rulemaking.

From the perspective of maximizing the ease of use of the rulemaking docket by different audiences, there is a simple and straightforward solution. Every rulemaking could divide public comments into three categories: “short comments in favor”, “short comments opposed”, and “detailed comments” (two additional buckets might be reserved for pure campaign mail, pro or con). Any or all comments could, upon receipt, be assigned to one of these three (or five) categories. Most of those that are labelled “detailed” could be identified as such simply by having at least a few coherent paragraphs on the first page, together with a length of 500 words or more, and would be transmitted to regulations.gov (or handled by regulations.gov directly) and placed in the “detailed comments” online bucket. All users would see entries in all three (or five) categories but could limit their search or their attention to those in each specific category. Or there could be four or five categories including, for example, one for “detailed think-tank” comments and one for “detailed comments by affected publics”. Or like and dislike comments could be divided into “identical wording” and “own wording” categories. The crucial point is that by whittling an otherwise overwhelming mass of comments into a few useful categories, and then displaying them

in a user-friendly way, the ability of the public to engage substantively in the regulatory process would be massively enhanced. This includes both those in the public most interested in making a simple and straightforward like or dislike position known, and the those in the public most interested in improving the details of a regulatory proposal by those it would affect. Many of the most useful comments on the OSHA rule, for example, came from nurses and other practitioners and focused on the practical impossibility of either requiring a six-foot distance between patients and staff in healthcare settings or of requiring a detailed record of each of the millions of encounters at shorter distances.

I note that nothing in this “bucket” recommendation presents any serious legal problem. The rule-making agencies’ responsibilities for addressing public comments in final rules would not be changed. Efforts to weed out “fake” comments would not be hindered (though they might become more complicated with the advent of Artificial Intelligence software). What I propose is quite simply making the electronic docket room genuinely useful in the real world. Nor does it complicate agency management of “mass” comments, and it may indeed simplify management by using buckets to sort out large numbers of comments.

I further note that Amazon uses a similar “bucket” approach to separate product comments into two categories: those that simply like or dislike (on a rating scale of 1 to 5) and those that have an explanation of their rating on the same scale.

Issue Three: Drawing on the Think Tank Universe. Members of the public have in theory (but not always in practice) five methods of getting information leading to useful and productive engagement in the rulemaking process. First, they can rely on the mass media press, both print and broadcast, to highlight issues of potential concern and to bring them to their attention. Second, they can rely on the specialized press that covers specific issue areas and brings issues to the attention of the affected companies and their staffs. Third, they can rely on professional or affinity associations (e.g., National Rifle Association, Planned Parenthood, and the American [name it] Association). Fourth, they can scan the pages of the *Federal Register*. Fifth, they can scan the hundreds of “pages” listing the names of commenters in regulations.gov to seek comments of interest. This is a pathetic list, not least because with the partial exception of professional or affinity associations, not one proposed rule in a hundred makes any of these lists in a usable way. Indeed, considering not only rulemakings, but also information collection notices and meetings notices, every year the *Federal Register* covers thousands of issues of concern to large sub-groups of the American population who will never learn even that those documents exist.

There is an interesting way to expand the “news” about rulemaking issues and actions. Hundreds (thousands?) of public interest organizations of one kind or another aspire to identify and promote public engagement on (or at least public knowledge of) regulatory issues. A relatively small subset of these focus on rulemaking more broadly. These include, for example, the Brookings Center on Regulations and Markets, the Heritage Foundation, the Mercatus Center, the Competitive Enterprise Institute (CEI), and the George Washington Regulatory Studies Center. These organizations all organize and publish summary information on important rulemakings. The CEI and Brookings, for example, publish lists of “major” and other important rulemakings. Indeed, some government agencies, notably OMB’s OIRA and the GAO (for the Congressional Review Act)

publish important information periodically. See, for example, OIRA's semiannual "Unified Agenda of Federal Regulatory and Deregulatory Actions" and the (currently overdue) annual "Report to Congress on the Benefits and Costs of Federal Regulations."

For present purposes, I will focus on the weekly *Regulation Digest* of the GW Regulatory Studies Center. This publication is a "must read" for those needing to follow a broad, government-wide range of regulatory issues and important regulations. What is most notable about it is that it focuses almost entirely on expert views related to issues that are or will become the subjects of federal rulemaking and publishes those views from a broad range of think tanks and other organizations, views which might be thought of as "public comments" on many proposed federal rules. Its regularly used sources including about three dozen think tanks and a dozen or more newspapers and magazines. Any given issue will have links to perhaps a hundred thoughtful articles. Since it is issued weekly, at a very rough estimate it annually provides links to roughly 5,000 thoughtful or important articles, of which perhaps half pertain directly to specific regulatory actions or issues. For example, the SEC proposal to require public companies to publish forecasts of "climate-related risks" has gotten a dozen or more reviews (mostly negative) in the last several months that were reported by the *Digest*.

Each of the think tanks and other organizations listed above, and dozens of others, have obviously limited financial resources. The *Regulation Digest*, for example, does not appear to be archived for more than a few months in any public source or to be indexed to handle a much larger repository of analysis. To do so in a systematic "data base" way would require considerable time and expense. Yet every one of these organizations, and dozens of others, has useful information on specific regulatory proposals that is never found or seen by more than a tiny fraction of the potentially interested public. If one assumes, illustratively, that the *Digest* references one-tenth of the genuinely useful pieces of information on rulemakings that is not submitted as a formal comment on a specific rulemaking, that means that on the order of 25,000 (5,000 X one-half X ten = 25,000) unofficial "public comments" aren't reaching the audiences that would most benefit from them. The real loss is probably ten times as much. Add to this the tens of thousands of the most thoughtful official public comments on proposed "major" rules (ten or twenty per rule X 1,000 rules over the last decade) that are equally if not more valuable, but never seen by anyone but a tiny handful of government bureaucrats. These bureaucrats are under tremendous time pressure to "get the final rule published ASAP without any major changes" with minimal damage to the rule as previously accepted and adopted as their own by higher levels of both career and political staff.

Just suppose, however, that a levy was imposed on each of the four dozen rulemaking agencies, of a pittance equal to the fully loaded cost of one GS-13 bureaucrat. These few millions of dollars could be used in either grants or contracts to one or more think tanks willing and able to build useful, timely, and functional databases of useful analyses commenting on specific rulemakings. Even better, why shouldn't private think tanks and donors pool resources in such a user-friendly data base, using the existing regulations.gov comments collection, and the large pool of privately published comments, as searchable resources accessible to the many publics affected by government rules. The most important requirement levied on this organization would be to

include comments from the entire spectrum of thoughtful supporters, thoughtful opponents, or simply objective commenters on each rule.

Indeed, such grants could allow and/or require searching regulations.gov for a fraction of the most useful comments on each proposed rule, documents that would join the external resources listed above (and others), in creating and maintaining a genuinely useful and timely “bank” of information on specific regulatory issues. This would be easily accessible by persons who would not normally have the resources to even begin to know how to find information that would help them intervene productively in the regulatory process. Using the cost estimates above, the civil rights regulation’s 830 comments would not need to be searched by each of a thousand concerned persons, at a cost of 7,000 hours of work, but by a handful of persons expert at searching for useful comments (graduate students hoping to work for a regulatory agency someday, or even to work for OIRA?). The results of their work could be linked from many intermediaries (not least of which would be regulations.gov and the *Regulation Digest*) and tailored to specific audiences most likely to be concerned over a particular rule.

Is it any wonder that underserved communities, and even well-served communities, rarely have knowledge that would directly assist them in understanding the regulatory issues that face them, making their concerns known, and doing so in ways that build on the concerns of other affected groups? In the real world in which we live, a document published as a proposed rule already has the power and prestige of an expert and powerful agency with a vested interest in that rule being published as a final rule rapidly and with minimal controversy or change. There are counterpart interests scattered throughout the 330 million persons affected by one rule or another (and often by many) published each year, but outside the worlds of trade and advocacy publications, they have little in the way of useful information sources outside of the handful of regulatory issues that get national press attention.

Issue Four: Writing Readable and Analytically Robust Preambles and Guidance. The Plain Writing Act of 2010 requires that government documents be written in clear and comprehensible language. This law applies to regulatory preambles (but not regulatory text), as has long been indicated in OMB guidance. Yet regulatory preambles are all too often virtually impenetrable to an ordinary reader (see, for example, the clothes washer rule and COVID rules discussed above, each hundreds of detailed pages long). There is no simple solution to this problem, which in some cases is inherent in the rule’s subject matter. It could get, however, more high-level review, and a new OMB Bulletin would not be amiss. Agencies could be required, for example, to designate one or more persons or components that would have a plain writing compliance responsibility and whose names, titles and contact information would be listed in regulatory preambles. Regulatory preambles of highly technical rules could be required to have longer, and clearer introductory sections written for a lay audience. Another useful reform would be to require that each rule describe any needed future guidance documents, including their contents and timing, in a brief preamble section. If drafts or scopes of such documents are available, they could be included in the preamble or posted online and linked from the preamble. In the final rule, details arising out of public comment concerns to be handled in guidance rather than regulatory change could be addressed in that section or document.

One dimension of this communication problem is missing information. There are three missing elements from many preambles: candid discussions of their weakest assumptions, discussions of potential failure modes, and discussions of legal limitations on what might have been more cost-effective options. These are all implicitly required in OMB Circular A-4, but not as clearly or thoroughly explained as they should have been. For example, the removal of legal barriers need not and probably should not be proposed or advocated in any rulemaking, but that does not mean that they should not be presented and explained. Avoiding even mentioning a reform that is inconsistent with an obsolete or dubious law should not be an option. Where the costs of the status quo are substantial, these should be estimated in order to inform the Congress and Executive Branch of the magnitude of benefits of a future reform.

Another example of missing information is a big problem for the public as well as to valid regulatory decisions. Rules that rely heavily on references to documents that are not available both online and at no cost to readers should be reviewed either to see if all or almost all such references can be eliminated without substantially damaging the evidentiary base of the rule, or the preamble be rewritten to describe in detail the findings and methods of such studies, along with an expert review and commentary on their reliability and applicability to the proposed regulatory requirements. The public should not be required to pay for documents required to understand a rule and its strength and weaknesses, or to rely on the competence of any document either unavailable to the public or not shown to be reliable. In addition, studies that disagree with these doubtful sources should always be included, if available and reliable.

The problem of missing information is to a substantial degree in the hands of OIRA, at least for major rules. These missing elements belong on a check list that should be applied to every proposed and final major rule. Good “plain language” is also something that OIRA analysts often focus on, even when that is not central to their review or compatible with tight schedules. But the best use of OIRA’s scarce resources is to insist that agencies have such responsibilities in place, and exercise them well, at a level above that of the drafting component.

Issue Five: Managing and Financing the Electronic Docket Room. It is clear from the checkered history of centralized electronic rulemaking, and its current weaknesses, that management and financing have been a perennial problem, vastly complicated by varying agency compliance and resistance. The relatively recent placement of regulations.gov in the General Services Administration has doubtless helped with such problems, but GSA resources are limited, and GSA is not and never has been focused or staffed on serving the American public directly. That said, one reform option is to assure that GSA gets the resources and mission statement to assure that needed reforms are made. A starting point would be a public debate on the recent history and performance, and reforms made or not made, under the arguably unwieldy structure of current governance of regulations.gov.

This would require, quite apart from financial resources, a brand-new commitment to create an “add-on” function of making it easy and simple for any American who is not expert in rulemaking procedures to find the comments of others, and/or comment on, every rulemaking. This “Amazon model” is likely not within the present capabilities of any federal agency and would need substantial external advice and technical help. The issue is not costs. As indicated by a visit to the

web sites of any of the think tanks listed earlier in these comments, even a shoestring budget can produce useful information in user-friendly ways. The issues involve reaching the public in useful ways, functions not within the normal skill set of any existing agency. And this would be most usefully done if it included comments on rules or on potential rules that are not submitted to the government as comments within the scope of the Administrative Procedure Act. What affected publics need is candid information of how rules will affect them, positively or negatively.

Given these problems, it would arguably be best that the needed reform is best approached by using the existing regulations.gov as a data source of comment documents that continues to be managed largely as at present for assisting agencies in meeting the Administrative Procedure Act requirements for dealing with such comments, with serious public participation reforms in the hands of private think tanks focused on “getting the word out” on regulatory issues and have private organizations take the lead responsibility on packaging information in easy ways for the affected publics to access and use.

I hope you find these comments helpful and useful. Although I have made specific suggestions for fixes to specific problems, I am sure that there are other options or tweaks to these that may well be better or easier to create or use. The key goal to seek in all design work on the public comment and participation problem is to make it easier to use for ordinary persons who can, with better features and ease of use, engage more productively to improve the quality and usefulness of individual regulations. Reaching and assisting the many public groups affected by regulations is not a legal problem, or primarily a regulatory process problem, but a website creation and design problem.

Note: please inform all participants in the recent online public meetings on these issues of the online location of a central website that includes the written comments, such as this one. The authors of these various comments and recommendations could learn from each other’s comments, and create improved comments and recommendations, but only if this knowledge base is made available to them, as well as to the public at large and the other experts who have yet to provide their views or engage in this process. As a specific example, I have heard criticisms of the PDF format for displaying comments. But I have not seen any specifics as to the basis for these criticisms and the problems that may or may not need attention. Where are the comments on this issue? How would it affect the reforms I and others recommend?

Sincerely,

Walton Francis
5700 Robeys Meadow Lane
Fairfax, VA 22030
walton.francis@mac.com