

Comment from Liaison Representative Rebecca Orban on *Mass, Computer-Generated, and Fraudulent Comments* (draft circulated May 7, 2021).
May 10, 2021

Thank you for the opportunity to comment on the revised draft recommendation. I have three comments ahead of the May 11, 2021, committee meeting.

1. Suggested revision to Recommendation 5, line 109.

Suggested revision shown in tracked changes:

If an agency flags a comment as computer-generated, or removes such a comment from the docket, the agency should **note** the removal in the docket. **The agency may also choose to notify the submitter directly, if: (1) the submitter provided contact information; and (2) contacting the submitter does not violate the agency’s security policies, which may prohibit directly contacting senders of “spam” or similar computer-generated communications.**

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- Deleted:** notify the submitter of the agency’s action either by noting
- Deleted:** or by notifying the submitter directly

Reason for suggestion:

An agency docket has multiple audiences, and a member of the public may have viewed the comment before it was removed. For transparency, therefore, the agency should consider how to indicate a comment has been removed – for example, by retaining a descriptive entry in the docket but “hiding” the comment. This applies regardless of whether the submitter provided contact information.

But, a common reason for flagging a comment as computer generated is that it contains “spam” characteristics, possibly including advertisements or malicious links. Directly contacting someone who is already sending spam may violate agency IT policies or invite further abuse of agency systems.

These concerns may apply to Recommendation 9 as well.

2. Suggested revision to Recommendation 7, line 117.

Suggested revision shown in tracked changes:

When an agency relies on a **comment the agency knows to be** computer generated, **the agency** should be certain to include that comment on its rulemaking docket and note that it was computer generated. When publishing a final rule, agencies should state whether they removed from the docket any computer-generated comments.

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Reason for suggestion:

The added language would match Recommendation 10 and would acknowledge that agencies may not be able to tell which comments are computer generated.

3. Regulations.gov “Commenter’s Checklist”

In the context of Recommendation 12, I want to ensure the committee members have seen the relatively new “Commenter’s Checklist” on Regulations.gov. If one clicks “Comment” on a document that is open for comment in Regulations.gov, the next screen has the option to click on hyperlinked words reading “Commenter’s Checklist.” This link opens a new window that shows:

- a list of advice on how to prepare persuasive comments;
- a list of reasons why one’s comment may not appear in the docket, including “part of a mass submission campaign or is a duplicate” and “identified as spam”; and
- a section on form letters that reads as follows:

Form Letters

Organizations often encourage their members to submit form letters designed to address issues common to their membership. Organizations including industry associations, labor unions, and conservation groups sometimes use form letters to voice their opposition or support of a proposed rulemaking. Many in the public mistakenly believe that their submitted form letter constitutes a “vote” regarding the issues concerning them. Although public support or opposition may help guide important public policies, agencies make determinations for a proposed action based on sound reasoning and scientific evidence rather than a majority of votes. A single, well-supported comment may carry more weight than a thousand form letters.

Rebecca Orban