



ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

March 24, 2020

SENT VIA REGULATIONS.GOV

Mr. Tobias Q. Schroeder
Director, eRulemaking Program Management Office
Office of Regulation Management
General Services Administration
1800 F Street, NW
Washington, DC 20006

Re: Notice–MR–2019–01; Docket No. 2019-0002; Sequence No. 35, Modernizing Services for Regulation Management

Dear Mr. Schroeder:

On behalf of the Office of the Chairman of the Administrative Conference of the United States (ACUS), I offer the following comments in response to the above-referenced request for comments of the General Services Administration (GSA).

We appreciate that GSA selected ACUS Research Director Reeve Bull to participate in its January 30 public meeting on mass and fake comments. Although our remarks draw on ACUS's work, they do not necessarily reflect the agency's views or the views of its members.

This letter and the attachments highlight ACUS recommendations that address many of the issues on which GSA now seeks comment. They address ways agencies can use online media to facilitate public engagement in rulemaking, handle mass and fraudulent comments, and organize e-dockets to facilitate public access to rulemaking materials. Additional resources are available at www.acus.gov/rulemaking. I encourage GSA and federal agencies to consult these resources as they consider ways to modernize regulation management services.

Using Online Media to Facilitate Public Engagement

ACUS urges agencies to strategically use their websites and social media to “inform and educate the public” about agency activities, including their rulemaking processes, and alert potential participants to upcoming rulemakings. For example, agencies may wish to:

- use multiple social media channels to notify potential participants about upcoming rulemakings;
- create a dedicated webpage for each rulemaking initiative that describes its status and opportunities for public participation;
- provide a one-stop, easily located webpage with information about all pending rulemakings, especially those currently open for comment; and

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- prominently post a rulemaking comment policy on their websites.

These and other recommended strategies can be found in ACUS Recommendation 2018-7, *Public Engagement in Rulemaking*, 84 Fed. Reg. 2146 (Feb. 6, 2019); Recommendation 2011-8, *Agency Innovations in e-Rulemaking*, 77 Fed. Reg. 2264 (Jan. 17, 2012); and Recommendation 2011-8, *Social Media in Rulemaking*, 78 Fed. Reg. 76,269 (Dec. 17, 2013).

Handling Mass and Fraudulent Comments

ACUS has encouraged agencies to “us[e] reliable comment analysis software to organize and review public comments,” noting that 5 U.S.C. § 553 does not require agencies to “ensure that a person reads each one of multiple identical or nearly identical comments.” ACUS has also suggested that “the eRulemaking [PMO] and individual agencies . . . establish and publish policies regarding the submission of anonymous comments.” See Recommendation 2011-2, *Rulemaking Comments*, 76 Fed. Reg. 48,791 (Aug. 9, 2011) and Recommendation 2011-1, *Legal Considerations in e-Rulemaking*, 76 Fed. Reg. 48,789 (Aug. 9, 2011).

ACUS also hosted a symposium in October 2018 about mass and fraudulent comments. Participants included high-ranking government officials and other leading regulatory experts. A transcript of the event is available on ACUS’s website at www.acus.gov/mass-and-fake-comments-transcript. Although the participants’ views do not necessarily represent the views of ACUS, they set forth a variety of thoughtful perspectives that GSA may wish to consider.

Organizing e-Dockets to Facilitate Public Access

ACUS has recommended that agencies “use one e-docket for each rulemaking proceeding to the maximum extent possible.” ACUS has also encouraged the eRulemaking Program to ensure that “agencies receive prompts that alert them to any e-dockets that do not have supporting and related materials” and advised the eRulemaking Program, the Office of the Federal Register, the Regulatory Information Services Center, and offices with statutory rulemaking responsibilities to ensure that “information in e-dockets can be connected to other relevant information.” See Recommendation 2018-6, *Improving Access to Regulations.gov’s Rulemaking Dockets*, 84 Fed. Reg. 2143 (Feb. 6, 2019).

ACUS’s Office of the Chairman thanks GSA for this opportunity to comment on ways to modernize services for regulatory management. Please contact me at trubin@acus.gov or (202) 480-2097 if you have questions or would like further information.

Sincerely,

Todd Rubin

Todd Rubin
Attorney Advisor

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Attachments: [Summary of Relevant Recommendations \(next page\)](#)
[Recommendation 2018-7, *Public Engagement in Rulemaking*](#)
[Recommendation 2018-6, *Improving Access to Regulations.gov's Rulemaking Dockets*](#)
[Recommendation 2017-2, *Negotiated Rulemaking and Other Options for Public Engagement*](#)
[Recommendation 2013-5, *Social Media in Rulemaking*](#)
[Recommendation 2011-8, *Agency Innovations in e-Rulemaking*](#)
[Recommendation 2011-2, *Rulemaking Comments*](#)
[Recommendation 2011-1, *Legal Considerations in e-Rulemaking*](#)

cc: Ms. Jessica Salmoiraghi, ACUS Government Member, GSA

Modernizing Services for Regulatory Management Summary of Relevant Recommendations

Public Engagement in Rulemaking Recommendation 2018-7 84 Fed. Reg. 2146	Offers strategies agencies can adopt to obtain high-quality public input through enhanced engagement before and during informal rulemaking.
Improving Access to Regulations.gov's Rulemaking Dockets Recommendation 2018-6 84 Fed. Reg. 2143	Encourages the eRulemaking Program, the Office of the Federal Register, and the Regulatory Information Service Center to better integrate their platforms, and encourages agencies to improve docket management practices, including by using one e-docket per rulemaking to the extent possible.
Negotiated Rulemaking and Other Options for Public Engagement Recommendation 2017-2 82 Fed. Reg. 31,040	Offers best practices to help agencies select the optimal approach to public engagement in rulemaking, focusing in particular on negotiated rulemaking.
Social Media in Rulemaking Recommendation 2013-5 78 Fed. Reg. 76,269	Encourages agencies to explore the use of social media in the rulemaking process, offers best practices for rulemaking-related public outreach, and identifies legal considerations.
Agency Innovations in e-Rulemaking Recommendation 2011-8 77 Fed. Reg. 2264	Offers strategies agencies can use to increase the visibility of rulemakings, make comment policies easy to locate, and ensure access to materials from completed rulemakings.
Rulemaking Comments Recommendation 2011-2 76 Fed. Reg. 48,791	Offers best practices for agencies to promote optimal public participation in informal rulemaking, such as by developing guidelines to help the public submit effective comments, leaving comment periods open for sufficient periods, and posting public comments online.
Legal Considerations in e-Rulemaking Recommendation 2011-1 76 Fed. Reg. 48,789	Addresses key legal and policy considerations and urges agencies to consider using content analysis software, provide online access to all supporting studies and reports, and replace paper files with electronic records in the docket.