

Comment from Senior Fellow Richard J. Pierce, Jr. on *Mass, Computer-Generated, and Fraudulent Comments*
April 3, 2021

I appreciate the hard work that the authors of the report have devoted to this project, but I think we should take an entirely different approach.

All three of these phenomena are rooted in the same basic problem--the public misunderstands the nature and purpose of the notice and comment process. It has nothing to do with an attempt to measure public support or opposition to a proposed rule. It should never be used for that purpose. Any attempt to use it for that process would be a counterproductive failure.

It is a socially valuable process that has the potential to improve the quality of proposed rules by providing an opportunity for interested parties to provide potentially useful data and analysis that courts require agencies to consider in the process of drafting a final rule.

The draft proposed recommendations implicitly accept and reinforce the widespread public confusion about the nature and purpose of the notice and comment process.

My draft recommendations would include:

Agencies should consider seriously all well-supported substantive comments from any source.

Agencies should never consider comments that are not substantive or that are not well-supported from any source for any reason.

Richard J. Pierce, Jr.