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The Honorable Henry A. Waxman
Ranking Minority Member
Committee on Government Reform
House of Representatives

The Honorable Joseph I. Lieberman
Ranking Minority Member
Committee on Governmental Affairs
United States Senate

Subject: Federal Rulemaking: Agencies' Use of Information Technology
to Facilitate Public Participation

This letter responds to your requests that we provide examples of how federal agencies are using information technology (IT) to facilitate public participation in the rulemaking process. You also asked us to identify potentially beneficial uses of IT in the rulemaking process that have not yet been adopted by federal agencies, and to discuss the benefits and drawbacks of standardizing innovative uses of IT across multiple agencies.

The basic process by which federal agencies develop and issue regulations is spelled out in section 553 of the Administrative Procedure Act of 1946 (APA). Among other things, the APA generally requires agencies to (1) publish a notice of proposed rulemaking (NPRM) in the Federal Register; (2) allow interested persons an opportunity to participate in the rulemaking process by providing "written data, views, or arguments;" and (3) publish the final rule 30 days before it becomes effective. Various legislative and administration initiatives have emphasized IT's potential to improve the federal government's performance. For example, the Paperwork Reduction Act of 1995 says that the Director of the Office of Management and Budget (OMB) should promote the use of IT "to improve the productivity, efficiency, and effectiveness of Federal programs, including through dissemination of public information and the reduction of information collection burdens on the public." One of the recommendations of the National Performance Review in September 1993 was to "[u]se information technology and other techniques to increase opportunities for early, frequent, and interactive public participation during the rulemaking process and to increase program evaluation efforts." A December 17, 1999, presidential memorandum on "Electronic Government" noted that "as public awareness and Internet usage increase, the demand for on line Government interaction and simplified, standardized ways to access Government information and services becomes increasingly important," and directs federal agencies to take steps to address that growing demand.

To accomplish all three of our objectives, we interviewed officials and staff at OMB and selected agencies with significant responsibilities for health, safety, or environmental regulation: the Departments of Agriculture (USDA), Health and Human Services (HHS), Labor (DOL), and Transportation (DOT), and the Environmental Protection Agency (EPA). We also spoke with representatives of the Office of the Federal Register, the National Governors Association, and other individuals and organizations interested in federal IT and rulemaking issues (e.g., the National Federation of Independent Businesses, Public Citizen, OMB Watch, and authors of published and unpublished material on regulatory IT issues). We attempted to contact other organizations that have been active in the rulemaking process but were unsuccessful. We also reviewed the agencies' World Wide Web sites, information they submitted to OMB that was used to prepare the Information Collection Budget for fiscal year 2000, and other information that identified innovative IT applications in the federal government. Finally, we examined the rules that the agencies proposed during calendar year 1999 to determine the extent to which they permitted electronic comments. We did not attempt to catalogue all innovative IT applications in the rulemaking process or to evaluate the quality of those practices identified. We conducted our review between February and May 2000 in accordance with generally accepted government auditing standards.

Results in Brief

All five of the regulatory agencies that we examined were using some form of IT to notify the public about opportunities to participate in rulemaking and to facilitate the receipt of public comments. All of these agencies had web sites that conveyed rulemaking information to the public and/or maintained some rulemaking records in electronic form, and all of them accepted electronic comments for at least some of their proposed rules. However, the specific features and uses of IT differed significantly between and sometimes within the agencies. For example, DOT had established an Internet web site that housed regulatory information for every agency within the department and was searchable in a variety of ways. Other agencies either had no such information electronically available or the nature of the information available varied from one part of the agency to another. Some of the agencies were beginning to use targeted, proactive notifications of forthcoming rules, and some were experimenting with interactive comment processes.

The individuals and organizations with whom we spoke did not identify any potentially beneficial IT-based public participation applications that had not been adopted by at least one of the regulatory agencies that we examined. However, some of them indicated that certain IT practices (e.g., proactive notification systems, portals and gateways to information for particular groups, and interactive participation mechanisms) should be more widely used. Several individuals and organizations suggested that agencies move to a more consistent organization, content, and presentation of information to allow for a more common "look and feel" to agencies' IT-based public participation mechanisms in rulemaking.

Although some of the individuals and organizations that we contacted said that standardization of IT-based public participation innovations across agencies could lead to more participation in the rulemaking process, the agency representatives that we contacted generally did not believe that cross-agency standardization was either necessary or appropriate. They said that each agency needed to develop systems appropriate for their

particular circumstances and that there were no data indicating that the current lack of standardization was a problem, or that standardization would improve either the quantity or the quality of the participation that agencies receive during the rulemaking process. They also said that standardization would require substantial resources and that those resources might be better used in other endeavors.

Agencies Differed in Their Use of IT to Facilitate Public Participation in Rulemaking

In order to participate in the rulemaking process, the public must first be aware that agencies are considering rules that could affect their interests. Therefore, we examined the agencies' use of IT both to inform the public of opportunities to participate in rulemaking and to facilitate the receipt of public comments. All of the agencies that we examined had IT initiatives in both of these areas, but the size, scope, and specific elements of those initiatives differed both between and within the agencies.

Governmentwide IT Applications to Inform the Public of Opportunities to Participate

Federal regulatory agencies have used both governmentwide and agency-specific vehicles to notify the public about opportunities for public comment on upcoming rules. Some of the traditional governmentwide notification vehicles are now being offered to the public in both paper and electronic forms. For example, the Unified Agenda of Federal Regulatory and Deregulatory Actions is published in the Federal Register twice each year by the Regulatory Information Service Center (RISC),¹ and provides uniform reporting of data on regulatory activities under development throughout the federal government. The activities included in the Unified Agenda are, in general, those expected to have a regulatory action within the next 12 months, although agencies may include activities with an even longer time frame. The Unified Agenda contains a wealth of information—so much, in fact, that locating information about specific rulemaking actions can prove daunting. For example, the most recent edition of the Unified Agenda (April 2000) describes 4,441 rulemaking actions under development or recently completed by 60 federal departments and agencies. However, IT has demonstrably improved access to this information. Since October 1995, the Unified Agenda has been published electronically and is searchable either through RISC's web site (<http://reginfo.gov>) or the Government Printing Office's GPO Access web site (which can be accessed through <http://www.access.gpo.gov>).²

Shorter-term notice of upcoming rules is provided by the NPRMs that agencies publish each day in the Federal Register. Agencies also publish information on scheduled hearings and

¹RISC is part of the General Services Administration, and works closely with OMB to provide information to the president, Congress, and the public about federal regulations.

²GPO Access is funded by the Federal Depository Library Program, and has grown out of the Government Printing Office Electronic Information Access Enhancement Act of 1993 (P. L. 103-40). It provides free on-line access to over 1,000 databases, including the Code of Federal Regulations, the Congressional Record, and the Commerce Business Daily.

other opportunities for public participation in the Federal Register. Like the Unified Agenda, the printed version of the Federal Register is so voluminous as to be daunting. Federal agencies publish thousands of proposed rules each year, and finding a particular rule on which comments are being solicited can be difficult. This task has been greatly facilitated by making the Federal Register available electronically and searchable through the GPO Access web site. GPO Access can be used to search the Federal Register back to 1995 with particular search parameters (e.g., proposed rules issued during December 1999 containing the phrase “air quality standards”).³

Using Agency Web Sites to Identify Proposed Rules

All of the federal regulatory agencies that we examined also used their own web sites to disseminate information about their rulemaking plans and activities. However, the agencies’ web sites differed widely in the content and organization of rulemaking information, the array of tools they offer to facilitate use, and the extent to which they support customized dissemination of information to the public. These differences are apparent from the first page in the agencies’ web sites—referred to as the agencies’ home pages. Some of the agencies’ home pages feature direct links to their rules and regulations. For example, EPA’s home page (<http://www.epa.gov>) has a link called “Legislation & Regulations,” which leads to another link entitled “Regulations and Proposed Rules.” Similarly, DOT’s home page (<http://www.dot.gov>) includes a link to “Dockets, Rules & References,” and DOL’s home page (<http://www.dol.gov>) contains a link entitled “Laws & Regs.” In contrast, neither USDA’s (<http://www.usda.gov>) nor HHS’ (<http://www.hhs.gov>) home pages had visible information about general rulemaking activities in the departments.

The regulatory links on the agencies’ home pages did not always directly identify rules available for comment.

- EPA’s “Regulations and Proposed Rules” link on its home page allowed the user to transfer to the electronic Federal Register on the GPO Access web site. The user was then required to exit EPA’s site and use the GPO site’s search tools to identify EPA proposed rules among those of every other federal agency. Although the “Regulations and Proposed Rules” link also permitted the user to identify “Environmental Documents” in the Federal Register, the search tools identified any document related to a date or keyword, not just proposed rules.
- DOT’s “Dockets, Rules & References” link on its home page takes the user to a second page with other links, including “Transportation Legislation and Regulation,” “DOT Legislative and Rulemaking Documents,” and “DOT Regulations, Orders, Policies, and Regulation.” However, none of these links provided a listing of DOT proposed rules available for comment. Like the EPA site, the “DOT Regulations, Orders, Policies, and Regulations” link directs the viewer to the GPO Access web site.
- DOL’s “Laws and Regs” link on its home page ultimately allows the user to identify proposed rules within each of the department’s various agencies and offices, and provides a hypertext link that allows the user to view a copy of the proposed rules. However, some of the rules

³The 1994 Federal Register database is also available through GPO Access. Although it can be searched by keyword, it contains no fields or section identifiers to facilitate searches.

that were listed had been published more than a year previously, and were no longer available for comment.

Some of the smaller organizational units within these departments and agencies provided a listing of proposed rules available for comment. For example, USDA's Animal and Plant Health Inspection Service's (APHIS) web page contained a "Regulations" link that provides a listing of recently published rules, along with text or Adobe Portable Document Format (PDF) files allowing viewers to read the rules on line. HHS's Administration for Children and Families (ACF) had a web page on "ACF Regulations Currently Open for Comment." However, it was not immediately apparent how to locate that page from the HHS home page; the user had to click on "HHS Agencies" and, at the ACF web page, use a "drop-down menu" entitled "Select a Topic" within which the "Regulations Currently Open for Comment" page is located. Other HHS agencies (e.g., the Administration on Aging and the Agency for Toxic Substances and Disease Registry) did not list rules that were available for comment. Similarly, EPA's Office of Air and Radiation provided a listing of proposed rules available for public comment. Again, however, locating that information from EPA's home page was not easy or immediately apparent. One route required the user to access the "Information Sources," "Dockets," and "Air and Radiation Docket and Information Center" web pages before arriving at a link to proposed rules available for comment. Similar listings of recently proposed rules available for comment were not available using this procedure for other EPA offices (e.g., Water and Solid Waste and Emergency Response) and programs (e.g., Underground Storage Tanks).⁴

Featuring Rules of Interest

Some of the agencies featured links on their home pages notifying the public about particular regulatory issues of widespread public interest. For example, the home page of both DOL and the Occupational Safety and Health Administration (OSHA) within DOL pointed to a separate web site for OSHA's November 1999 proposed rule on ergonomics, which pulled together in one place all of the electronic information related to this rulemaking (e.g., the rule, its economic analysis, and hearings transcripts). As will be discussed in more detail later, the USDA home page identified a separate web site for the department's Agricultural and Marketing Service's (AMS) proposed rule establishing standards for organically produced food. That site provided a wealth of information about the proposed rule, including the text of the rule, the agency's regulatory impact assessment, and how to submit comments and search the comments that have already been submitted.

Portals and Gateways

Some of the agencies had also developed portals or gateways providing customized information for particular target audiences. HHS supports a number of these gateways and has a "Gateways" button on its home page identifying them, which includes both HHS-sponsored sites (e.g., "Organ Donation" and "YouthInfo") and other sites (e.g., "U.S. State &

⁴However, EPA's Office of Prevention, Pesticides and Toxic Substances home page did have a "Laws & Regulations" link that contains a link to a list of proposed rules available for comment.

Local Gateway”). The state and local gateway was designed to give state and local government officials and employees easy access to federal information, and includes a link to a “Laws/Regulations” page that organizes the information by topic (e.g., “Families/Children”) or by related links (e.g., “Federal Laws/Regs/Presidential Documents,” where the user can link to the GPO Access site). One such related link, entitled “Electronic Rulemaking,” identified several electronic rulemaking initiatives across the federal government (e.g., the DOT docket management system discussed later), and provided links to these initiatives. EPA had a link on its home page for particular audience groups. One such link was a “Small Business Gateway,” which organizes regulatory information of special interest to small businesses. This gateway guides small businesses to a variety of environmental information sources, and provides links to related resources outside EPA, such as the Small Business Administration’s Business Advisor. The EPA Small Business Gateway also provides a link to environmental regulations and laws, including “new regulations, proposed rules, important notices, and the regulatory agenda of future regulations.” However, this is a link to electronic documents available in the Federal Register through the GPO Access web site, not EPA—specific proposed rules, and the viewer is then required to use that site’s search tools to identify particular proposed rules.

Proactive Notification Systems

All of the governmentwide and agency-specific resources discussed thus far are passive information systems, requiring users to take the initiative and find out about upcoming and recently proposed rules. Some agencies are beginning to use more proactive mechanisms for alerting the interested public about impending regulatory actions and opportunities for participation. For example, HHS created a web site for the administrative simplification provisions of the Health Insurance Portability and Accountability Act of 1996 that provided information on several related proposed rules. The site permitted the interested public to subscribe to a list server that would notify subscribers by e-mail when NPRMs and final rules are published or posted. Similarly, the APHIS web page on recently published rules and regulations allowed users to enter keywords and receive e-mail when certain key words appear on the pages.

Using IT to Facilitate the Receipt of Public Comments

All of the regulatory agencies that we examined explicitly permitted the public to submit electronic comments on some, but not all, of their recent proposed rules. By creating electronic dockets, some agencies were expanding the options for public review and comment not only on proposed rules, but also on regulatory analyses and the variety of other materials that make up the public record for the rulemaking. Agencies were also beginning to offer the public more interactive options for participating in rulemaking. However, there were significant differences in how the agencies had implemented these capabilities.

Filing Comments Electronically

NPRMs that are published in the Federal Register have traditionally instructed interested parties to submit written comments on a proposed rule to the appropriate rulemaking docket, and have provided a mailing address where such comments can be filed. Legislative and

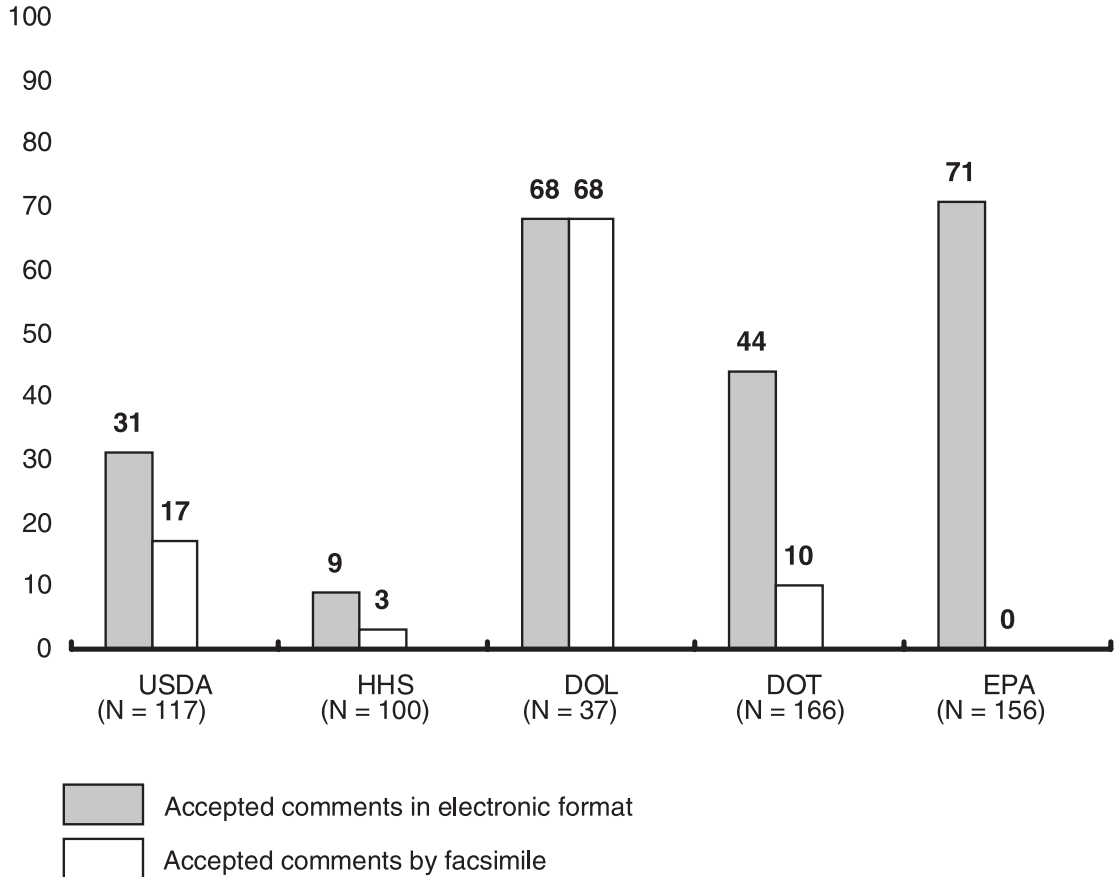
administrative initiatives have encouraged, and in some cases required, agencies to allow the public to provide information to them electronically. For example, the Government Paperwork Elimination Act requires OMB to ensure that federal agencies, “when practicable,” allow individuals and other entities the option to submit information to the agency electronically and maintain records electronically by October 21, 2003.

For the five regulatory agencies on which we focused in this review, we examined the 576 proposed rules that they published in the Federal Register during calendar year 1999 to determine the extent to which they explicitly noted that public comments could be submitted electronically or by facsimile.⁵ The results, presented in figure 1, indicate that the agencies varied substantially in those dimensions. EPA and DOL explicitly permitted electronic comments in more than half of the rules they proposed during 1999, while HHS allowed electronic comments in less than 10 percent of its proposed rules. The agencies also varied in the extent to which they explicitly permitted comments via facsimile, with EPA not calling for facsimile comments in any of its proposed rules during 1999.

⁵We excluded from this review proposed rules that were routine or administrative in nature (e.g., within DOT, U.S. Coast Guard rules establishing bridge-opening schedules). A DOT official said that the Department permits the public to submit comments electronically on all of its proposed rules.

Figure 1: Agencies Varied in Percentage of Proposed Rules Published During Calendar Year 1999 Explicitly Permitting Electronic or Facsimile Comments

Percentage of proposed rules (1999)



Note: Comments were considered “electronic” when the rule explicitly provided for comments to be submitted through the Internet, by e-mail, or on a computer disk. In 39 of the 93 DOT rules that did not explicitly provide for electronic comments, DOT referred the reader to its docket management system for more information about the rule. In that system, users could file electronic comments.

Source: [Federal Register](#) via GPO Access.

In some cases, the agencies did not allow “stand-alone” electronic or facsimile comments. For example, in one EPA rule and four DOL rules, any electronic comments that were submitted had to be accompanied by paper comments as well.⁶ In other cases, attachments or additional materials, such as studies or journal articles, could not be submitted electronically; commenters had to submit those materials separately (in duplicate) to the appropriate docket office. In 12 of the 25 DOL rules allowing participation by facsimile, commenters had to submit original written comments as well.

⁶EPA said that any public comments submitted electronically for the agency’s Superfund Docket must also be submitted as a paper copy.

We accessed the Federal Register notices for each of these 576 proposed rules electronically through the GPO Access web site. Although many of the NPRMs provided an e-mail address to which comments could be filed, the current system for electronic Federal Register notices does not permit the user to provide a “hypertext” link to a site where comments could be immediately filed. An official at the Office of the Federal Register told us that the Government Printing Office was experimenting with upgrading its publishing system to permit the use of hypertext links in electronic rules. He also noted that any such upgrade would be a large and expensive effort, and that it was unclear when, if ever, hypertext links could be added to the Federal Register. Some of the agencies’ web sites currently provide for such hypertext links, but not for comments on rules.⁷ For example, a button is provided at the end of each EPA press release that immediately permits the interested public to file a comment on the announcement. However, none of the EPA rules that we could access through the agency’s web site had this feature. Some of the agencies rules with their own dedicated web sites provided separate links to both the rules and electronic comment procedures (e.g., the AMS organic standards rule site within USDA’s site).

Providing Access to Regulatory Supporting Materials

Regulatory agencies are required to prepare supporting materials for many of their proposed and final rules, including economic analyses (i.e., the alternatives considered, and the costs and benefits of the alternative selected); and descriptions of how the agencies have complied with various rulemaking requirements (e.g., the Regulatory Flexibility Act, the Paperwork Reduction Act, and Executive Order 12866). These materials, as well as the comments filed by the public in response to an NPRM, have traditionally been housed in agencies’ rulemaking dockets. Access to these materials can permit public comments filed on rules to be more informed and targeted to particular issues.

Some of the agencies that we reviewed had begun to make supporting materials and public comments electronically available to the public. DOT had the most extensive docket system—an electronic, image-based database covering every agency and every rulemaking action within the department. The database contained over 800,000 pages of regulatory and adjudicatory information stored on-line for research and retrieval via the Internet. The information in the docket was searchable by keyword, docket identification number, or in other ways. For example, entering the word “airbag” in the keyword search box yielded a listing of 39 rulemaking documents, including agency reports, hearing summaries, and comments filed by other interested parties. Each of these documents could then be obtained from the DOT docket management system. DOT officials told us that the electronic docket has become the official rulemaking record for the department, enabling DOT to save over a million dollars each year in administrative costs and facilitating the rulemaking process in other ways (e.g., permitting agency professionals to review comments at their desks or at home).

⁷The closest to this type of electronic commenting system that we found was in the Federal Aviation Administration at DOT. There, a user could read a copy of a proposed rule in Microsoft Word, click on a link for DOT’s docket management system, and then access that system’s electronic commenting process. However, the link did not transfer the user to a comment box particular to the rule at issue.

Other agencies either had no such electronic dockets or their systems were not as comprehensive or sophisticated as DOT's system. Neither DOL nor OSHA systematically provided regulatory background information to the public through their web sites. To view most OSHA rulemaking materials in the official record, even if they were submitted electronically, interested individuals must go to the docket office in OSHA headquarters and examine the paper files. The information electronically available in the agencies' rulemaking dockets sometimes varied within the agencies. For example, the web site for EPA's pesticides docket contained risk assessments for many of 49 organophosphate pesticides. The page for just one of these pesticides contained hundreds of pages of information about the rule (e.g., health effects assessment, environmental fate and effects assessment, EPA correspondence, and registrant comments). On the other hand, EPA's Office of Water docket site contained a narrative description of the docket, an e-mail address, and other written descriptions; no electronic rulemaking materials were available. EPA officials said the agency recognized that this varying level of service was being provided to many of the same customers, and therefore was in the process of improving the quality and consistency of their electronic dockets.

As previously noted, agencies sometimes provided electronic access to docket information for particular rules. For example, the web page for OSHA's proposed ergonomics rule provides full transcripts of its public hearings and copies of both its health effects and economic analyses for the rule, including the expected effects on small businesses and other small entities. In some cases, though, this information can be difficult to locate. For example, EPA's web site provided detailed information on its 1999 proposed rules on lead and lead compounds and other persistent bioaccumulative toxins. However, to obtain this information from EPA's home page a user must maneuver through a series of pages (e.g., "Programs," a "Toxics & Chemicals" sublink, and "Toxic Release Inventory") before arriving at a page featuring links to the rules and related documents.

Viewing/Responding to Comments of Others

Several of the agencies that we examined were using IT to permit the public to view the comments the agencies had received on proposed and final rules. However, the extent to which these comments were electronically available and the role that this access played in the rulemaking process varied substantially. In each of these dimensions, DOT's docket management system appeared to allow substantial public access and utility.

- In some cases, comments were available to the public only if those comments had been filed electronically. However, in DOT's document management system, comments received on paper are scanned into the system, thereby permitting the public to view all of the comments submitted by others, regardless of the medium that was used.
- In some cases, the public could view comments only for rules issued by certain agencies or offices, or for certain rules within certain agencies or offices. However, public comments were accessible through the DOT's document management system for virtually all rules issued in the department.
- In at least one case, the public could access the comments filed only after the comment period had closed. However, in other cases the comments were available while the comment period was open, thereby allowing the public to respond to the comments filed by others. For example, DOT's docket management system maintained all materials submitted during the

rulemaking in the official electronic record. As a result, the on-line user could review all comments on a rulemaking and file a responding comment while the comment period was still open.

Other agencies made comments available electronically for certain rules or groups of rules. For example, EPA made an index of public comments and the text of the comments electronically available for selected regulatory documents as part of a pilot program. Comments filed electronically in relation to the HHS administrative simplification initiative were stored automatically in a database, and the comments were then publicly available via the initiative's web site. Users could search for comments either overall, for particular rules, or within particular sections of the rules. USDA's APHIS had experimented with several approaches to accepting and posting electronic comments on about 10 different proposed rules in recent years. In one of these approaches, users were asked to answer specific questions identified as areas where APHIS most needed comments, the answers to the questions were entered into a database with a web interface, and commenters were allowed to review all the electronic comments posted and to post other comments to the site. At the time of our review, APHIS officials were attempting to identify the circumstances in which electronic comment approaches work best. For example, they said that electronic comment processes for controversial rules on which a large number of comments are filed may ultimately yield little more than a count of supporters and opponents. However, they also said that electronic comments appeared particularly helpful on less controversial rules with technical elements and on which commenter interaction was possible—in essence, a real-time, informal “peer review.”

Use of IT in Other Forms of Interactive Participation

Agencies have also used IT to facilitate other forms of public participation in the rulemaking process. For example, the Small Business Regulatory Enforcement Fairness Act (SBREFA) requires that EPA and OSHA convene a special review panel before issuing a proposed rule that the agency believes will have a significant economic impact on a substantial number of small entities. The panels are to collect advice and recommendations from representatives of affected small entities as part of their deliberative process. An EPA official told us that the agency is using e-mail as a way to facilitate the delivery of documents to the small entity representatives and to receive their comments. He also said that EPA had created web sites for several rules that were used in conjunction with SBREFA panels to pull together information that commenters needed.

The related literature indicates that some other agencies have begun to experiment with on-line dialogs or interactions among participants during the rulemaking process. For example, as a part of its rulemaking to develop rates that would finance Internet connections in schools and libraries, the Federal Communications Commission sponsored “moderated, on-line policy dialogues” for educators and librarians that, according to an unpublished report, enabled over 500 participants from across the nation to learn about the proposed rule, share their views with each other, and offer comments to the Federal Communications Commission. A DOT official also indicated that the Department's Research and Special Programs Administration had used a “chat room” arrangement during some of the agency's rulemaking comment periods.

Multidimensional Electronic Rulemaking

Some of the agencies' electronic rulemaking systems contained several of the innovative dimensions previously discussed. As noted previously, DOT's docket management system permits comments to be submitted electronically or on paper, allows the public to comment on other users' comments, and permits access to a wide range of regulatory supporting materials. Other agencies' had these and, in some cases, other innovative features. However, unlike the DOT system that is applicable to all of the Department's rules, the other agencies' multidimensional systems focused on just a few rules, or even a single rule.

For example, AMS within USDA has been conducting an electronic rulemaking for nearly 3 years that encompasses a number of innovative design elements. The proposed rule was published in December 1997, and is intended to establish standards for organically produced food. The program manager for the National Organic Program said that AMS knew that the rule would be controversial, so AMS decided to take advantage of IT's potential to facilitate the comment process, allowing comments to be provided via mail, fax, and e-mail. Comments were posted for public view and response in the agency's web site, along with transcripts of national public meetings. AMS received more than 275,000 comments on the rule, which were assigned key words to facilitate subsequent analysis. As a result of the comments received, AMS changed the proposed rule and it was republished for comment in March 2000. AMS said in the proposal that it was the agency's intention to have all comments, regardless of media, available for viewing on the program's home page or at the agency's docket room. As previously noted, USDA maintains a link to this rule on its home page, and the organic standards site contains the text of the proposed rule, its regulatory impact statement, and instructions on how to submit comments and search the comments that had already been submitted. The AMS system also allows users to search the full text of the public comments, identifies form letter comments and ex parte communications,⁸ and provides a list of related government web sites—features that are currently not available in the DOT docket management system. Although currently limited to this one rule, the program manager said that AMS plans to use these electronic rulemaking features in other potentially controversial rulemakings.

According to the AMS program manager, the interactive comment process changed the dynamic of rulemaking participation. Previously, he said, commenters typically waited until the last minute to file comments so that no one could see their views until after the comment period was over. In the organic standards rule, however, people submitted comments early in the process to have the greatest influence on the evolving discussion. The Under Secretary of Agriculture for Marketing and Regulatory Programs said that full-scale Internet access had dramatically increased public awareness and participation, and had saved taxpayers and USDA more than \$100,000 in administrative costs associated with the rulemaking.

⁸According to AMS, form letter comments are separately identified because they share the same themes and are received by the Department in large volumes. AMS said an ex parte communication is an oral or written private communication from someone outside of the United States Department of Agriculture to a Department official who is involved in decisionmaking on a pending rulemaking proceeding. The ex parte communication is received through channels not prescribed by the Department, and it concerns the merits of that proceeding.

Several Observers Suggested Greater Diffusion of IT Innovations and Consistency

The individuals and organizations that we contacted for this portion of the review included academicians, interest group representatives, and agency officials and staff who were knowledgeable about electronic government and rulemaking issues. Although not inclusive of all such individuals and organizations, those we contacted did not identify any entirely new categories of potentially beneficial IT-based public participation applications that had not been adopted by at least one of the regulatory agencies that we examined. However, they noted that the current uses of IT in rulemaking are often pilot projects of limited scope, and suggested more widespread adoption of some of those innovations by federal agencies, or by the federal government as a whole. The examples that they cited included the following.

- One organization representing small businesses indicated that it would be helpful if there was a single portal or “electronic clearinghouse” to which small businesses could turn to obtain information about rulemaking activities throughout the federal government (i.e., similar to EPA’s small business portal). More generally, one commenter said there should be a single regulatory portal for all federal rulemaking activity.
- Other commenters suggested greater use of proactive and customized regulatory notification systems. For example, the State of Washington has established a list server, centrally managed by the state’s Division of Information Services, which can be used by all state agencies to selectively notify citizens of opportunities to participate in government decisionmaking, including rulemaking. Citizens are able to register to be placed on the listserver for particular topics.
- Other commenters suggested greater use of interactive participation mechanisms, including online dialogs and meetings, and the use of video. For example, the State of Washington currently uses a statewide video network for meetings and collaboration, with videos available over the Internet. The State of Hawaii is also using networked cameras to conduct legislative hearings, through which geographically dispersed citizens can participate. Although it was not clear whether these video networks had been used in a regulatory context in these states, the commenters suggested that they could be used to facilitate participation in rulemaking.
- Some of the commenters also said that federal agencies should more commonly provide access to the economic analyses and other underlying rulemaking information that frequently resides in agencies’ dockets. One commenter suggested that a central, governmentwide site be established linking together the information available in individual agencies’ sites, thereby enabling the public to “drill down” into individual agencies as well as obtain similar information across agencies.
- This observer also said that the fully electronic rulemaking at AMS on organic standards should be replicated in other parts of USDA. However, he also noted that parts of the electronic system for the organic standards rule were developed by a contractor using proprietary software, and because USDA does not own the application, even AMS cannot use it for other rulemakings.

Several of the individuals and organizations that we contacted also suggested that agencies move to a more consistent organization, content, and presentation of information to allow for

a more common “look and feel” to agencies’ IT-based public participation mechanisms in rulemaking.

- One representative of state governments said that coordination or standardization across the agencies in a state is “almost mandatory.” He said that many states are establishing state chief information officers who are generally responsible for creating an interoperable infrastructure and common data standards for all agencies within the state.
- Several of the federal agency representatives also indicated that a common structure or approach for public participation in rulemaking made sense. For example, one agency representative said that the use of commonly accepted models for such administrative tasks as receiving and logging correspondence and storing documents could save money and facilitate access. He specifically cited the DOT docket management system as the type of model that could have broader applicability.
- Similarly, a public interest group representative said that it would be very helpful to have a regulatory taxonomy or thesaurus relating similar terms, which could be used to improve the quality of searches in different agencies’ search engines. More generally, another public interest group representative said that a “common look and feel” for regulatory information within federal agencies could make it much easier for the public to locate, read, and digest relevant information. However, he cautioned that agencies have important differences, which may suggest that a “one-size-fits-all” approach would not be desirable.

Agencies Generally Questioned Need for Standardized Uses of IT to Facilitate Rulemaking Participation

Several of the individuals and organizations that we contacted during this review indicated that standardizing innovative uses of IT to facilitate public participation in rulemaking could have advantages when compared with the current fragmented system. For example, some of them generally indicated that standardization could make the current system more accessible to the public, thereby leading to more participation in the rulemaking process. Other observers simply indicated that greater standardization made sense. Representatives from the agencies included in our review also indicated a few areas in which standardization, or at least more coordination, among agencies in this area could be helpful. First, they said that standardization is probably a good approach for resolving legal issues that each agency will have ultimately to face, such as the use of copyrighted material and censorship of comments received by the public that might be accessible to minors. They also said that coordination could facilitate information sharing among the agencies, thereby speeding the diffusion of innovations that are appropriate and useful within the agencies’ particular context, keeping each agency from having to “reinvent the wheel.” Currently, they said, there is no structured way for agencies to learn about best practices in other agencies. For example, one agency representative told us that she was unaware until recently of the DOT docket management system.

Overall, though, the agency representatives questioned the need for a standardized approach to using IT to facilitate public participation in rulemaking. They said that each agency and each rulemaking is somewhat different. Therefore, they said, the agencies need to be able to design their public participation procedures to fit the particular circumstances appropriate

for each rulemaking (within the parameters of the APA and other applicable statutes). They said that the current system reflects that diversity, with agencies developing new participation processes and information management systems as needed for their individual programs and communities. For example, one agency representative said that DOT's docket management system could not simply be replicated at HHS or USDA because of differences in the degree of management centralization and independence afforded the departments' constituent agencies. Standardization, they said, could decrease the agencies' ability to tailor regulatory approaches and inhibit further agency innovation by "freezing into place" the particular practices that have been developed so far. They also said that the current flexible arrangement permits agency officials to ensure that the use of IT in rulemaking is carried out within the agency's overall IT strategic planning efforts.

The agency representatives also said that they were not aware of any data suggesting that the lack of a standardized approach to regulatory participation was a problem to either the public in general or to the regulated entities that are most likely to participate in rulemaking. Therefore, they said, determining whether there is a problem by gathering information from the public through surveys or other means might be a good first step before proceeding to a standardization "solution." Several of the agency representatives also questioned whether moving toward a standard, electronic system would enhance public participation, either in terms of the number of comments submitted or the quality of those comments, or would improve the quality of the rule under consideration.

The agency representatives said that standardization of IT-based public participation vehicles would require scarce agency resources, and that any resources provided to the agencies to improve their IT systems might be better spent in areas other than public participation in rulemaking (e.g., using IT to facilitate regulatory compliance or some nonregulatory area). They did not believe that every agency should be required to have a "regulations" link on its home page, noting that many different organizational units and interests are vying for space on agencies' home pages. They also saw no need for agencies to always provide an e-mail address or web site to which electronic comments on proposed rules could be addressed. Doing so for all rules, they said, could overwhelm the agencies' systems; may be unnecessary for some relatively uncontroversial rules; and may be a less effective use of the agency's resources than more traditional methods (e.g., placing notices in trade publications or setting up a call center).⁹ They also said that, once established, agencies would have to be concerned about ongoing maintenance of some of these standardized systems to make sure that the information therein is timely, accurate, and complete.

The agency representatives also made a number of other points that suggested that standardization of participation processes was not needed or could be undesirable.

- Several of the agency representatives indicated that standard electronic approaches to learning about participation opportunities already exists—the electronic Unified Agenda and

⁹One of the agency representatives indicated that the system overload problem could be solved by developing information retrieval systems ahead of time that would accommodate large traffic volumes. For example, he said his agency had developed a format into which electronic comments could be filed, which greatly facilitated the subsequent analysis of the comments.

Federal Register on the GPO Access web site. They said that anyone could use that site to find out about any upcoming and recently proposed rules.

- One of the representatives indicated that an IT-based “solution” to improving public participation in rulemaking could underscore the “digital divide” that currently exists in the country between those members of the public that currently have regular access to a computer and those that do not.
- One of the representatives said that differences in agencies’ current hardware and software systems could make it difficult to adopt standards, and that some agencies’ current systems may not allow them to receive and archive nontextual materials such as graphs, compact discs, or physical items that are part of many rulemaking records. Another representative said that IT is changing so rapidly that establishing a standardized electronic approach to public participation may have some real disadvantages later on, locking agencies into outmoded technologies.

Other individuals and organizations that we contacted, including a public interest group, a business group, and an academician, also cited concerns about a “one-size-fits-all” approach being applied to agencies with vastly different missions. Also, a small business representative told us that, although she believed that there is a need for more coordination and cooperation across federal agencies, small businesses are generally skeptical about the benefits of standardization because their interests may be neglected.

Conclusions

Participation in the rulemaking process requires (1) the public to be aware of opportunities to participate and (2) systems that will allow agencies to receive comments in an efficient and effective manner. Agencies can use IT to inform the public about participation opportunities either through passive systems that require users to take the initiative to discover rules available for comment or proactive systems that alert interested individuals or organizations about impending regulatory actions. Passive systems include both governmentwide web sites that allow users to find out about proposed rules in any agency (e.g., GPO Access) and web sites for particular agencies or offices that have identified rules available for comment (e.g., USDA/APHIS, HHS/ACF, or EPA’s Office of Air and Radiation). However, none of the five departments and agencies that we contacted had links on their home pages that identified all rules available for comment within their entire organizations. Proactive systems permit the interested public to be notified by e-mail when proposed rules are published (e.g., the HHS web site for its administrative simplification initiative), but were much less common than passive systems.

One relatively simple way for agencies to facilitate the receipt of public comments is to provide an e-mail address at the end of proposed rules to which the public could respond electronically. Agencies could also state that comments could be provided by facsimile. However, the agencies that we contacted differed substantially in the extent to which they explicitly provided for these modes of comment during calendar year 1999, and none of the agencies permitted either mode of communication for all of their proposed rules. Some of the rules with their own dedicated web sites (e.g., the DOL/OSHA ergonomics rule and the USDA/AMS organic standards rule) provided links to both the rules and electronic comment procedures.

One way to facilitate the receipt of informed public comments is to permit electronic access to regulatory supporting materials, such as economic analyses and the comments of others. DOT had the most developed electronic docket system of the agencies that we contacted, covering every rulemaking action in the department and including all public comments received regardless of medium. DOT officials said the system had saved the department more than a million dollars each year in administrative costs and facilitated the rulemaking process in other ways. Some agencies have begun to use IT to facilitate interactive public comments, permitting users to comment on the comments filed by others (e.g., at DOT and in the USDA/AMS organic standards site) or to participate in on-line dialogs with rule makers (e.g., DOT's Research and Special Programs Administration).

All of the departments and agencies that we contacted during this review were developing the IT-based public participation vehicles that they believed were best suited to their particular needs. As a result, the agencies' participation vehicles varied substantially. Several of the individuals and organizations that we contacted said that the agencies should move to a more standardized approach, and said that standardization could make the current system of participation more accessible to the public. However, many of the agency officials and staff questioned the need for standardization. They said that (1) agencies need to be able to design their procedures to fit their particular circumstances (e.g., the degree of management centralization in the agencies); (2) standardization would require scarce agency resources that might be better spent elsewhere; and (3) a good first step might be to determine whether lack of standardization is really a problem. On the other hand, the officials and staff were supportive of efforts to better coordinate the use of IT-based participation mechanisms in order to avoid each agency "reinventing the wheel." Such coordination will require better communication within and among the agencies. The ultimate adoption of particular approaches within those agencies will require sufficient resources and an understanding of how the approaches will fit into the agencies' overall IT strategic plans.

Agency Comments

We provided a draft of this letter to the OMB Director for his review and comment on May 17, 2000, but we did not receive any official OMB comments on the report within the time allowed. However, OMB staff provided information during and at the conclusion of the review that was incorporated where appropriate.

As we arranged with your offices, unless you publicly announce this letter's contents earlier, we plan no further distribution of it until 30 days after the date of this letter. We will then send copies to Representative Dan Burton, Chairman of the House Committee on Government Reform; and to Senator Fred Thompson, Chairman of the Senate Committee on Governmental Affairs. We will also provide copies to the Honorable Jacob J. Lew, Director, OMB; the Honorable Dan Glickman, Secretary of Agriculture; the Honorable Donna E. Shalala, Secretary of Health and Human Services; the Honorable Alexis M. Herman, Secretary of Labor; the Honorable Rodney E. Slater, Secretary of Transportation; and the Honorable Carol M. Browner, Administrator, EPA. We will also make copies available to others on request.

B-284527

Please contact me or Curtis Copeland at (202) 512-8676 if you or your staff have any questions.

A handwritten signature in black ink that reads "Michael Brostek". The signature is written in a cursive style with a large, stylized initial "M".

Michael Brostek
Associate Director, Federal Management
and Workforce Issues

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