



ADMINISTRATOR
OFFICE OF
INFORMATION AND
REGULATORY AFFAIRS

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

May 28, 2010

MEMORANDUM FOR THE PRESIDENT'S MANAGEMENT COUNCIL

FROM:

Cass R. Sunstein
Administrator

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SUBJECT:

Increasing Openness in the Rulemaking Process – Improving Electronic Dockets

On January 21, 2009, the President issued a memorandum calling for the establishment of “a system of transparency, public participation, and collaboration.”¹ The memorandum required an Open Government Directive to be issued by the Director of the Office of Management and Budget (OMB), instructing “executive departments and agencies to take specific actions implementing the principles set forth in this memorandum.”

Following the President’s memorandum, OMB’s Open Government Directive requires a series of measures to promote the commitments to transparency, participation, and collaboration.² Section 4 of the Directive specifically instructs the Administrator of the Office of Information and Regulatory Affairs (OIRA) to “review existing OMB policies, such as Paperwork Reduction Act guidance and privacy guidance, to identify impediments to open government and to the use of new technologies and, where necessary, issue clarifying guidance and/or propose revisions to such policies, to promote greater openness in government.”

Pursuant to OMB’s Open Government Directive, we are issuing this Memorandum to promote greater openness in the regulatory process. More specifically, we are providing guidance to agencies in compiling and maintaining comprehensive electronic regulatory dockets on Regulations.gov, in order to give members of the public improved access to information on which agencies rely in making decisions relevant to rulemaking. This guidance is consistent with the requirements and purposes of the Electronic Government Act of 2002, Section 206.³

¹ Available at <http://www.gpo.gov/fdsys/pkg/DCPD-200900010/pdf/DCPD-200900010.pdf>

² Available at http://www.whitehouse.gov/omb/assets/memoranda_2010/m10-06.pdf

³ Public Law 107-347: Electronic Government Act of 2002, Title II. Sec. 206

The current online regulatory environment includes several Federal websites (e.g., Regulations.gov, reginfo.gov, federalregister.gov, along with various agency websites) that contain important and sometimes diverse elements of the regulatory docket. While the various websites offer transparency, the Federal regulatory agencies should make better use of technology to provide more complete electronic regulatory dockets, which will increase access, accountability, and participation in the rulemaking process.

Electronic Regulatory Docket

To the extent feasible, and consistent with applicable laws, regulations, and policies, agencies should make their electronic regulatory dockets on Regulations.gov consistent with their paper-based dockets. Both dockets should provide the public with access to all relevant materials.

To the extent that they are part of a rulemaking, supporting materials (such as notices, significant guidances, environmental impact statements, regulatory impact analyses, and information collections) should be made available by agencies during the notice-and-comment period by being uploaded and posted as part of the electronic docket. Such supporting materials should also include the Regulation Identification Number (RIN).⁴ These materials should be in machine-readable format to enable the public to perform full-text searches of the documents and to extract information.

OMB expects agencies to post public comments and public submissions to the electronic docket on Regulations.gov in a timely manner, regardless of whether they were received via postal mail, email, facsimile, or web form documents submitted directly via Regulations.gov.

Whenever agencies make information publicly available, they should work with agency counsel and the senior agency official for privacy to ensure compliance with all applicable laws, regulations, executive orders, and policies, including those that pertain to national security, information security, confidentiality, privacy, and intellectual property.

Common Taxonomy and Data Protocols

Currently, agencies do not always use consistent naming conventions and search criteria. The resulting inconsistency imposes an unnecessary burden on members of the public when they are attempting to review regulatory content. To improve the public's ability to find and search for information within a docket and from one docket to the next, the eRulemaking Program Management Office (PMO) and partner agencies will, within six months of the date of this Memorandum, produce a best practices document for all agencies using Regulations.gov and the Federal Docket Management System (FDMS), to establish a common taxonomy and to adopt data protocols for the various document, sub-document, and non-rulemaking document types. This best practices document should consider existing taxonomies already familiar to the

⁴ April 7, 2010, Memorandum: Increasing Openness in the Rulemaking Process – Use of the Regulation Identifier Number (RIN), available at http://www.whitehouse.gov/omb/assets/inforeg/IncreasingOpenness_04072010.pdf

regulatory community, such as those established by the Administrative Procedure Act and Executive Order 12866 (e.g., proposed rule, final rule, and economically significant).

The PMO should work with the General Services Administration (GSA), Regulatory Information Service Center (RISC), to reduce burdens on agencies by using the Unified Agenda data elements to pre-populate electronic dockets on FDMS. Agencies will use this data and metadata in their public dockets on Regulations.gov.

This data exchange will help align the electronic dockets to the stages of rulemaking by allowing agency updates of their Unified Agenda entries automatically to reflect relevant changes. For example, when an agency modifies its agenda entry to indicate that a rulemaking will go to the final stage, the electronic docket on Regulations.gov will show the change. Associating docket content with the various stages of rulemaking will help the public to understand the entire “lifecycle” of a rulemaking.

Please forward this Memorandum to the appropriate officials in your agency or department. If you have any questions about this Memorandum, please direct them to your agency’s OIRA Desk Officer.