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Regulation Room: How the Internet Improves Public Participation in Rulemaking

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Regulation Room

*How the Internet improves
public participation in rulemaking.*

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Cornell eRulemaking Initiative (CeRI) designed and operated Regulation Room, a pilot project that provides an online environment for people and groups to learn about, discuss, and react to selected proposed federal rules. The project is a unique collaboration between CeRI academic researchers and the government. The U.S. Department of Transportation (USDOT) was CeRI's first agency partner and chose Regulation Room as its first open government "flagship initiative." USDOT received a White House Open Government Leading Practices Award for its collaboration in the project. CeRI owns, designs, operates, and controls Regulation Room, but works closely with partner agencies to identify suitable "live" rulemakings for the site and to evaluate success after a rule closes.[1]

The CeRI team includes researchers from communication, computing, conflict resolution, information science, law, legal informatics, and political science. This interdisciplinary approach is unusual and has allowed the team to draw on many different areas of research in designing Regulation Room. Four USDOT rulemakings have been offered so far on the site.

Background
When rulemaking occurs, the originating agency must give public notice of the proposal, reveal any scientific studies or data, and explain legal and policy rationales. The agency must also provide a reasonable time (typically 45 to 90 days) for public comments. The agency is also legally required to read these comments and consider them. Although the right to comment is universal, industry groups, trade and professional associations, and similar legally sophisticated and well-resourced entities have dominated the process.[2]

Since the mid-1990s, individual agencies and the federal government have used the Internet to broaden rulemaking participation. Early agency-specific systems, such as USDOT's Docket Management System, were superseded by www.regulations.gov (the government-wide e-rulemaking portal). These systems essentially put the conventional process online: Citizens go to a website, view the notice of proposed rulemaking (NPRM) and other key rulemaking documents, and submit a comment in a comment box or by attaching a document file.

This approach makes rulemaking materials easier to access, to submit and view comments. However, there has not been a substantial expansion of meaningful public participation.[3] To be sure, some rulemakings now spark more than 100,000 email comments generated via advocacy groups, but these largely duplicative comments tend to add little substantive information to the rulemaking. Simply putting the notice-and-comment process online has not been enough to elicit informed and helpful participation by a broader range

of affected individuals such as small business owners and small government entities.

Three Barriers to Broader Participation in Rulemaking

The Regulation Room project starts from the hypothesis that a successful public participation system must address three barriers to citizen engagement in rulemaking.

1. Lack of awareness that rulemakings of interest are going on and that participation is possible. Even if a new rulemaking does attract media attention, people rarely know they can take part in the process by commenting.

2. Information overload from voluminous and complex rulemaking materials. Effective participation is informed participation; yet, the notices of proposed rulemaking and the supporting analyses can total hundreds of pages. In addition, our readability analyses reveal that even for rules that are not highly technical, these documents are often written at a graduate school level.

3. Unfamiliarity with how to participate effectively. Lacking an understanding of the nature and importance of rulemaking, many affected individuals and groups do not know that participation in this process is not like voting. The prevalence of mass email comment campaigns is dramatic evidence that new participants often do not understand the importance of giving reasons, acknowledging competing arguments, discussing alternatives, and substantiating claims.

Our goal in Regulation Room is to discover how human effort and Web 2.0 technologies can lower these barriers to elicit a broader range of public participation that has value to rule makers.

Alert and Engage

The process of remediating public unawareness begins long before the comment period opens. First, the team works with its partners to identify the range of possibly affected individuals and entities and create a communication outreach plan. Although everyone is welcome to participate in Regulation Room, our primary focus is to engage stakeholders who would most likely not participate unless they are actively recruited and encouraged to learn about the rulemaking.

We try to discover where and how these target individuals and groups receive information. We identify membership associations, recreational and trade publications, and influential individuals (such as bloggers), and reach out to them through email, telephone, and online communications.

We develop a list of keywords and phrases to use proactively on Twitter, and we post ads on Facebook and Google by setting up continuous automated searches and responding with comments or "tweets" when the rule or its subjects appears in news sites, blogs, or Twitter. Regulation Room has a presence on Facebook, which is designed to encourage users to share issue posts and individual comments. We coordinate media outreach with agency partners and try to persuade conventional and online media to publicize the rulemaking and the availability of Regulation Room.

Managing Information Overload

A crucial participation technology in Regulation Room is "targeted" commenting, which is the ability for users to attach their comments to specific segments of text. E-rulemaking proponents have advocated such functionality to encourage more focused and specific comments, rather than the vague global expressions of support or opposition newcomers often submit. Targeted commenting can help comment analysis, because comments on the same topic are grouped together.

However, length and readability level makes it difficult for users to comment directly on the text of an NPRM. The Regulation Room solution utilizes several information design strategies:

- **Triage:** After carefully reviewing the NPRM, we identify and foreground the information new commenters will most likely be interested in and need; we package this information in thematic segments (six to 10 "issue posts") of manageable length.
- **Translation:** Employing plain-language writing principles, we use relatively simple vocabulary and sentence structure.
- **Layering:** We use Web 2.0 hyperlinks to allow users to go deeper (to relevant sections of primary documents, statutory text, or background information) or to find help (glossary and brief explanation tool tips). Through layering, all information in the notice of proposed rulemaking and supporting documents is available in a form that gives users control and is less likely to overwhelm them.

The home page for Regulation Room is designed to encourage and support user engagement.

- **Indexing:** All posted topics are visible and accessible from a navigational index; within each post, every section available to comment on has a title, all of which are visible and accessible from an index at the top of the post.

Overt and Covert Education
Although we continue to refine our design strategies, we doubt it is possible for many inexperienced commenters to navigate the information demands of effective rulemaking participation without some human assistance. Therefore, the other essential tool Regulation Room uses to reduce the barrier of information overload is human moderation. Trained moderators:

- recognize when users are missing or misunderstanding important information and help them acquire it,
- encourage more knowledgeable or engaged users to go more deeply into the agency's analysis,
- point out other issues and other comments that are related to the commenter's apparent interests or concerns.

Regulation Room moderators are frequent, visible voices in the discussion. Additionally, they emphasize a substance-neutral moderator persona. Their job is to facilitate a knowledge-building community that supports learning, participation, and access to the rulemaking process. They model the kind of thoughtful, inclusive engagement that we try to cultivate as the site norm. Most important, they remain neutral about the agency's proposal or commenters' reactions to it.

Site Design and Functionality
Giving users the ability to rate or recommend a comment is a proven inducement to online engagement.[4] Nonetheless, we made the deliberate choice not to encourage "rulemaking as voting" by including user voting or ranking mechanisms in Regulation Room. Moderators can "recommend" comments that illustrate effective commenting, which reinforces desired site norms and teaches effective participation.

We have begun experimenting with an "endorse" function, based on post-rule survey evidence that some Regulation Room visitors did not comment,

Pick the Right Rules, Use the Right Tools

The rulemakings offered on Regulation Room are carefully selected, because they directly affect individuals or entities who are unlikely to engage effectively in the conventional commenting process. This is where close consultation among CeRI researchers and agency partners is especially important. Two of the four USDOT rulemakings involved proposals that would significantly affect a large number of small business owners. The others involved physical and Web accessibility for travelers with disabilities and extensive new consumer protections.

Regulation Room experience has shown that bringing new commenters into such rulemakings can yield observations, evaluations, questions, and criticisms based on commenters' first-hand experience with the problems the agency is trying to address and the circumstances in which new regulations will be implemented. This information and perspective, or "situated knowledge," is often deeper and more complex than what the agency gets in comments from representative advocacy organizations or interest groups.[1]

We believe it is important to focus on rulemakings in which we and our agency partners can reasonably predict the existence of untapped situated knowledge, because lowering the barriers to effective rulemaking participation requires a significant investment of time and resources.

Regulation Room uses a combination of social and conventional media outreach, careful design for informational content, deliberate choice among possible participation technologies, and human facilitative moderation to increase meaningful participation.

In the rulemakings offered to date on Regulation Room, between 66 and 95 percent of people who commented reported that they had not previously participated in a federal rulemaking or were not sure if they had participated.

Endnote:

[1] Farina, C., Epstein, D., Heidt, J., & Newhart, M.J. (in-press) *Knowledge In The People: Rethinking "Value" In Public Rulemaking Participation,* Wake Forest Law Review.

http://regulationroom.org

because others had already made the point they would have made. While we applauded the desire to avoid content duplication, we were also aware of research suggesting that users get more satisfaction out of online experiences if they actively participate rather than simply "read."[5] Therefore, we added "endorse" as a way to participate without increasing comment repetition.

So far, use of endorse has been modest, allaying our fears that people might stop making substantive comments and simply start voting via endorse. Moreover, noncommenters make up approximately 25 percent of the endorsements, which suggests that functionality fulfills an important role for some participants. In addition, another subset of those who endorse a comment then add their own comment later suggests that endorsing may be a precursor to more substantive participation.
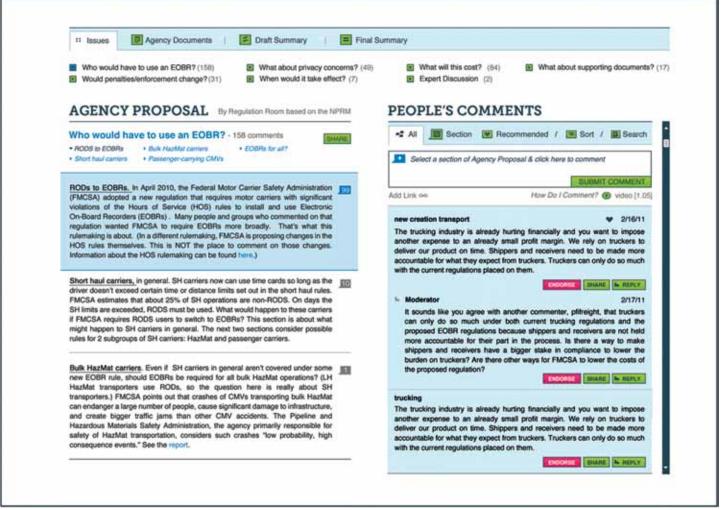
Initial Regulation Room experience gives cause for optimism about broadening public participation in rulemaking. The overwhelming percentage of those who comment are new to the rulemaking process, and our partner agencies have reported that this new participation can bring valuable situated knowledge to their decision making.

At the same time, the Regulation Room experience cautions that the challenges are considerable and government leaders may not fully appreciate them. Motivating individuals to participate in an unfamiliar process has proven far more difficult than we anticipated. Making complex regulatory policy issues accessible to new participants requires carefully designed technical and human support. In particular, moderation is important, because it helps commenters obtain needed information and nudges them to make effective comments.

The computer science part of the Regulation Room research includes discovering whether aspects of the moderation process can be automated. In the near term, however, it is not realistic to expect technology to replicate the value human moderators add.

Regulation Room's issues page helps users locate topics of interest.

We believe Regulation Room's most important lesson is that broadening effective public participation requires considerable investment from the citizen participants and from their government.

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Ms. Cynthia R. Farina is the faculty director of the Regulation Room project, a lifetime fellow of the Administrative Law and Regulatory Practice Section of the ABA, and a public member of the Administrative Conference of the United States. She co-authors the leading casebook on administrative law, and she has been a Cornell Law School faculty member since 1985.

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5. Nonnecke, B. and Preece, J. (2001) *Why lurkers lurk.* Boston, M.A.: Proceedings of the Americas Conference on Information Systems.