



POTOMAC INSTITUTE FOR POLICY STUDIES
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April 26, 2015

To:

David A. Bloom
Acting Chief Financial Officer
Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Re: Comments on EPA-HQ-OEI-2015-0039, E-Enterprise for Environmental Portal

We appreciate you inviting comments on the E-Enterprise for the Environmental Portal. We have opinions in regards to maximizing the benefits of the Public Portal and have provided our comments for your consideration.

While the purpose of the Public Portal is to “provide an easier way for citizens, academics, and NGOs to access environmental information tailored to their interests through user profiles,” we believe that the portal should not just provide users with access to relevant environmental information, but should also serve as a tool for citizens, academics, and NGOs to participate in the rulemaking process.

The EPA currently allows this community to participate in the rulemaking process through comments, such as the one we are writing now. The EPA has already recognized the benefits of opening up the rulemaking discussion to the public as evidenced by its continued push to solicit the written and verbal comments of stakeholders and the general public. We envision the Public Portal as an expansion of the EPA’s current public outreach initiatives that would include more thorough, accessible, and specific information about rules as well as a forum for public feedback.

We have identified three components that we believe the Public Portal should incorporate in order to provide greater transparency and participation throughout the rulemaking process. First, the Public Portal should include all scientific data and information relevant to a rule as well as a forum through which the public could provide feedback on the material, resulting in a type of public assessment of scientific information. Second, the portal should include a similar feature that provides all relevant cost benefit data and analyses in order to allow for public review and assessment of this information. In addition to features that allow for more direct public engagement with the information that goes into the rulemaking process, the portal should include a third component: a poll through which members of the public could indicate their opinion of a rule. Through this poll, the EPA would be able to track the overall public sentiment surrounding all or sections of a rule.

The Public Portal should be designed to ensure maximum transparency by requiring members of the public who voice their opinions through the portal to provide various identification metrics. By requiring these metrics, the Public Portal would ensure that information such as affiliations and qualifications would be easily apparent and traceable.



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Ensuring the Public Portal has our recommended capabilities will not only modernize the way the EPA makes rules, but it will also lay the framework for a new standard of how the rulemaking process should occur in other regulatory agencies in the 21st century. There is a growing demand in our country for public insight into the mechanisms by which our government makes decisions. Creating the Public Portal as we envision it will contribute to an increase in the overall transparency of the Executive Branch and the sentiment of participation on the part of the general public.

We briefly describe how the Public Portal could be used and created in these ways below.

Public review of scientific data and information

When drafting a rule, the EPA uses various types of information to determine the best possible rulemaking action. However, that information is often scientific in nature and its evaluation is restricted to experts. We live in a time in which the notion of an expert is changing. The belief that you need a degree in a particular field to be able to comment on information related to that field is outdated. The public is smarter than experts acknowledge. The public is also likely able to provide critiques that reflect the diversity of our society, allowing for a greater examination of creative thoughts that might not be intuitive to experts entrenched within their respective fields and restricted by various professional ideologies.

It only seems logical that when evaluating scientific data and analyses, which will be used to create rules meant to help society, we should include the voices of those individuals who make up our society. We live in a democracy, yet our rulemaking process does not reflect this ideology. One might argue that the current system, which allows the public to comment in no specific way on a particular rule, does constitute a democratic process and renders our argument irrelevant. We disagree. The public needs to be encouraged to comment directly on how scientific information is being used to guide the development of a particular rule. The Public Portal should be designed in such a way that makes it easy for the members of the public to provide their own thoughts and opinions on the validity and usefulness of scientific information, regardless of their credentials.

Recommendations and Clarifications:

- The Public Portal needs to provide an interface where a particular user can provide specific comments about the acquisition and interpretation of relevant environmental data.
- This interface needs to prompt users to comment directly on scientific data or other information provided to them by the EPA. Ideally, this prompt would be standardized to reflect the nature of how scientific information is reported and acquired. This might mean creating specific prompts aimed at assessing the nature of a specific risk-assessment model or statistical analysis performed on a data set. Prompts also need to be made for the methodology used to acquire the data.
- This interface needs to create transparency around this process by requiring personal information about each individual participating including his or her full name,



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occupation, education, qualifications, and a personal statement explaining why he or she feels compelled to comment on a specific issue.

- Once a user has provided this feedback, the EPA must consider completely the information provided and be able to justify its decision to ignore or incorporate elements of the response into the rulemaking process upon request.
- We believe this interface is more of a “must-have” requirement rather than a “nice-to-have” requirement.

Public review of cost benefit analyses

In the same vein as the argument presented above for scientific information, we believe that the public should have a say in the process of determining the financial implications of creating or not creating a rule. Cost benefit analyses are not an exact science. Often the decisions made regarding the economics of a rule are based on a series of subjective assumptions that differ across varying economic schools of thought. The results of these analyses can be vastly different based upon the assumptions made and models used by the experts involved. As a result, it is often possible for both proponents and opponents of a rule to issue an analysis that supports their position. Limiting the discussion of the costs of a given rule to a handful of people or groups of people leaves the vast majority of society without a say in the matter and increases the likelihood that the personal sentiment of those involved will dictate the decisions made. Therefore, the public needs to be encouraged to comment directly on the cost benefit analyses performed during development of a particular rule. The Public Portal should be designed in such a way that makes it easy for members of the public to provide their own thoughts and opinions regarding the validity and usefulness of a cost benefit analysis for a proposed rule, regardless of their credentials.

Recommendations and Clarifications:

- The Public Portal needs to provide an interface where a particular user can provide specific comments about the details surrounding the potential economic impacts of a given rule.
- The public needs to be guaranteed access to all economic data and information used by the EPA or the OMB in the development of a cost benefit analysis for a given rule.
- This interface needs to prompt users to comment directly on the economic data or information provided to them by the EPA. This prompt should reflect components of cost-benefit analysis such as methods used to acquire economic data, the assumptions and models used to assess economic impact, and the regulatory conclusions drawn.
- This interface needs to create transparency around this process by requiring personal information about each individual participating including her or his full name, occupation, education, qualifications, and a personal statement explaining why she or he feels compelled to comment on a specific issue.
- Once a user has provided this feedback, the EPA must consider completely the information provided and be able to justify its decision to ignore or incorporate elements of the response into the rulemaking process upon request.



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- We believe this interface is more of a “must-have” requirement rather than a “nice-to-have” requirement.

Evaluating public sentiment on EPA rules

Currently there is no way to quantitatively understand where public sentiment stands on a rule in general, much less for various aspects of a rule. Our current method to evaluate public sentiment for a given rule is qualitative at best and is based on interaction with the rulemaking agency during the notice and comment portion of the rulemaking process as outlined by the Administrative Procedure Act. It would be easy to incorporate, using the Public Portal, a tool whereby individuals could voice their opinion of either being in favor of, opposed to, or impartial to a specific rule. Additionally, it is possible to build upon this to allow users to vote on parts of a rule. The Public Portal should be designed in such a way that users can easily and quantitatively share their support, opposition or impartiality to a rule or specific aspect of a rule.

Recommendations and Clarifications:

- The Public Portal needs to provide an interface where a particular user can, with the click of a button, demonstrate her or his impartiality to, support for, or opposition to a rule or specific aspect of a rule.
- The interface would need to incorporate a sort of polling application that allows a user to ‘click’ one of three sentiment buttons in response to a question about a rule or specific element of a rule.
- The creation of this sentiment acquisition tool would provide a quantitative metric for public opinion with regards to EPA rules or aspects of EPA rules.
- The quantitative metric of public opinion for a rule would help the EPA understand how the public feels about certain details of a rule it is creating in real-time, providing it a way to comprehend actual public sentiment rather than estimate it from limited interaction with society and expert opinion.
- Our proposed transparency requirements for Public Portal participants would prevent individuals from “spamming” the survey and skewing the vote.
- The EPA would not be bound by the results of the quantitative survey this sentiment acquisition tool would provide. The point of the tool is to provide the EPA with a better metric for public opinion during the rulemaking process.
- The EPA would need to make the results of the quantitative survey provided by this tool available to the public instantly, such that users and the EPA can clearly monitor how public sentiment, in regards to a rule, is changing in real-time.
- We believe this interface is more of a “must-have” requirement rather than a “nice-to-have” requirement.

The Public Portal provides a unique chance to facilitate several opportunities that will no doubt improve public involvement in the rulemaking process, increase transparency of the actors and actions that occur during the rulemaking process, and ensure the best available science is appropriately incorporated into the rulemaking process. Making these adjustments to EPA-HQ-OEI-2015-0039 will revolutionize the way agencies generate rules by creating a



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process that prioritizes public input and promotes a level of transparency that is unattainable with the current rulemaking framework.

Thank you very much for your consideration of our comments.

Sincerely,

Charles Mueller, Ph.D.

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Charles Mueller is the Director of the Regulatory Science and Engineering Center (RSEC), a Center of Excellence within the Potomac Institute for Policy Studies. RSEC seeks to communicate regulatory science and engineering principles to the public and provide advice to government agencies, academia, and industry that results in the development and implementation of sound regulatory policy for the betterment of society. He obtained his PhD in Biochemistry from the University of Maryland. He is currently a Research Associate at the Potomac Institute for Policy Studies where he creates policy recommendations based on science and technology.

Jennifer Buss is the Director of the Center for Revolutionary Scientific Thought (CReST) at the Potomac Institute for Policy Studies. CReST is devoted to the study of revolutionary scientific developments of today and the future, and even more importantly, their potential impact of these developments on society and policy. She has a PhD in Biochemistry from the University of Maryland. She is currently a Research Fellow at the Potomac Institute for Policy Studies.

Sabrina Katz graduated from Georgetown University with a BA in History, concentrating in environmental African history. In the fall of 2015, she will begin pursuing a dual MA/MSc in International and World History from Columbia University and the London School of Economics. She is currently a Research Intern at the Potomac Institute for Policy Studies.

The Potomac Institute for Policy Studies is an independent, 501(c)(3), not-for-profit public policy research institute. The Institute identifies and aggressively shepherds discussion on key science and technology issues facing our society. From these discussions and forums, we develop meaningful science and technology policy options and ensure their implementation at the intersection of business and government.