

Chapter 48

Who Participates Now... and Why?

A Case Study of Modern Interest Participation and Bureaucratic Decision- Making in the Age of E-Government

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ABSTRACT

This study seeks to investigate two primary questions. One, I examine how technological changes to the opportunity for participation in the notice-and-comment stage of the rulemaking process affect the quality, quantity, and content of information provided to governmental decision-makers by different types of interests. To do so, I present findings from interviews conducted with regulatory analysts who have been engaged with the transition to www.regulations.gov since the beginning stages. The interviews reveal a somewhat “mixed bag” as the impact of the transition is evaluated. As is common in public organizations, the pursuit of equity and securing the individual rights of citizens to participate is not necessarily compatible with the values of economy, efficiency, and effectiveness.

Two, I ask how the dimensions of complexity and salience of a policy issue affect the level of participation by different types of actors in the regulatory policy arena. Using Gormley’s (1986) framework of regulatory politics, I develop measures that attempt to capture the dimensional constructs of rule-complexity and issue-salience that might affect different actors’ levels of participation in the rulemaking process. Given the transition to the Regulations.gov platform, I test several propositions implicit to the stated equity-based mission of the George W. Bush administration’s “e-Rulemaking Initiative” (eRI). My findings indicate that these dimensions do, in part, account for the amount of activity of different types of organizations and individuals, despite a “leveling” of access across stakeholder types.

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INTRODUCTION

Technology... the knack of so arranging the world that we need not experience it. – Max Frisch, Homo Faber (1957)

Max Frisch's novel *Homo Faber* explores a theme that should be quite familiar to modern public administrators. The story's main character engages in a classic Oedipal struggle between technocratic ratiocination and the exigent acceptance of the chaotic real world (Ricker-Abderhalden, 2005). Recent technological innovations to the notice-and-comment stage of administrative rulemaking were proposed to "revolutionize" the nature of information exchange between agencies and different types of stakeholders (Noveck, 2004). However, the intent of this transformation is quite the opposite of Walter Faber's lament, quoted above. Rather than limiting participation in thousands of technocratic decisions that impact the everyday lives of citizens, the technological advance was intended to encourage engagement, information diffusion, transparency, and the exchange of ideas (Lubbers, 2010).

At the same time, the theme in Frisch's novel is exceedingly relevant to implementation of rulemaking processes. Rulemaking agencies are faced with shifting contextual dynamics inherent to the changes of formal and informal norms that guide behavior within their institutional settings. Emergent exigencies are invariably created by changes in the institutional structure. And with these new demands, administrators are forced to once again reconcile their own technocratic claims with political and environmental obligations. Thus, as in Frisch's work, the narrative becomes "layered with flashbacks, self-reflection, and hints of future consequences" (Ricker-Abderhalden, 2005).

Started in 2003, the "e-Rulemaking Initiative" (eRI) set out to provide all potential stakeholders a centralized, online platform from which rules issued by any and all federal agencies

can be reviewed and commented on during the notice-and-comment stage. The Web site (www.regulations.gov) provides opportunities for stakeholders to more easily navigate agency rulemaking activities by dockets that hold all materials related to an issued rule (e.g., the proposed rule, supplementary materials and analysis, other stakeholder comments). The site's visitors can download documents for their own purposes and issue comments on rules directly from the site. Federal agencies migrated to the new centralized platform incrementally over the last six years of the George W. Bush administration's tenure. Full implementation, across federal agencies, was completed by September 30, 2009.

This study focuses on one regulatory agency that promulgates regulations in two distinct policy areas to test a model derived from Gormley's (1986) framework of regulatory politics. I develop measures that attempt to capture the dimensional constructs of rule-complexity and issue-salience that might affect different actors' levels of participation in the rulemaking process. Using an agency rule as my unit of analysis for the quantitative portion of the study, I analyze 65 rules issued and made final by the agency over a four-year period. Immediately preceding this period, the transition to *Regulations.gov* took place and qualitatively changed how potential participants could engage with the agency at this stage in the policy process. To capture the perceptual change in the quality, quantity, and substance of information exchanged between stakeholders and government officials, I provide insight obtained through a series of semi-structured interviews with regulatory analysts at the agency.

This study serves as a launching point from which analysis of participation in the rulemaking process might be extended to a broader array of issue domains and agencies that have undergone similar changes to the venue's structure. This analysis may help to inform both practitioners and researchers of how to balance seemingly incongruent objectives of technocratic efficiency

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