Echols, Mabel E.

From: Phil Schwartz |
Sent: Tuesday, March 31, 2009 11:21 PM
To: FN-OMB-OIRA-Submission
Subject: Suggestions for Improving EO 12866

Suggestions for Improving EO 12866

Here are several suggestions pertaining particularly to the second, third, and final dot points on the list of questions in the February 26 notice,

Disclosure and transparency;
Encouraging public participation in agency regulatory processes;
The best tools for achieving public goals through the regulatory process

Empowering the public with better tools to help identify the rulemakings that will significantly affect them so that they can effectively and efficiently participate in these rulemakings is a worthy good government objective.

There are more than 3,000 rules under development at any one time and improving the current information dissemination regime and efficiently providing data on rulemakings that is more accessible, timely, and useful can be very challenging and at times technical and "inside baseball", but nevertheless worth the effort. Thank you for the opportunity to submit these suggestions.

When Revising EO 12866 Refer to "Updating a Database" rather than to Publishing a Semiannual Regulatory Agenda in the Federal Register, and Maintain Future Flexibility and Minimize Constraints on Providing Timelier, More Economical Updates

In the late 1970's and the early 1980's when the basic Regulatory Agenda structure for inviting pubic involvement in upcoming rulemakings was put in place, the Federal Register was the most efficient vehicle for communicating this information. But 30 years later we can and should move toward a more transparent rulemaking process in which everyone is efficiently provided with timelier, more accurate information. The shift to making an Internet database the fundamental home of the Reg Agenda in 2006 was very well received. It will be useful in promoting clearer, more powerful thinking about the possibilities for delivering Agenda information if we phase out thinking about it as a document and start generally referring to it as a database, which after all is a much more powerful tool than a document.

Do not preclude updating at least some of the database more frequently than twice a year. Large rulemaking agencies such as DOT and EPA are already posting timelier, more accurate information than is available on reginfo.gov. Another possibility to work toward might be whenever an actual OMB priority classification is fixed and recorded in the non-public part of ROCIS, why not have that information flow through to the public part of the Regulatory Agenda website in the RISC OIRA Combined Information System (ROCIS)?

In drafting a successor to EO12866 don't assume that the constraints imposed by the Regulatory Flexibility Act (RFA) will always remain in place.

> For example, if the RFA were updated, the requirements to publish the Regulatory Flexibility Agenda in the Federal Register and also to publish in October and April might be eliminated. Not publishing the Regulatory Flexibility Agenda and the Regulatory Plan in the Federal Register Plan would save about $5 million over the next ten years in Federal Register costs and also a considerable amount of staff time. The public would get information that is on balance timelier and more accurate because the complicated and sometimes lengthy process of preparing the information that is in ROCIS for FR publication would be eliminated. As part of keeping flexibility with regard to timing, pay particular attention to the meshing Regulatory Plan and database updates with the larger government calendar. Find a better time to publish a Plan than six weeks before an administration leaves office.

Second, you could release updated information once it has received appropriate clearances.[i] Don't hold up fresh information on 4,000 rulemakings from 60 agencies because one Agenda entry from one agency is still being discussed by OMB and the concerned agency. Publishing a "Unified" Agenda in which everything is released on the same day has a high and unnecessary cost in terms of timeliness. Releasing agency agendas on different dates would also make it possible to focus more attention on and better engage the public on particular groups of regulations. Perhaps the agenda for reforming financial regulation could be released and highlighted on one date, and another group of regulations from another group of agencies could be highlighted the following week.

Improve the Organizational Structure and Tools for Supporting Easier Public Participation in Rulemaking

Putting RISC and the e-Rulemaking project in the same organization as recommended by the ABA (and possibly even adding a revived Administrative Conference of the US) would make it more likely that the public could efficiently be provided with powerful, non-redundant tools for effectively participating early in the rulemaking process.

Currently the Regulations.gov website which has accomplished a great deal in the few years it has been functioning doesn't have a tool that lets people be informed when a particular rule is proposed. A person would have to check each day whether the rule they are interested in has been published. What about having agencies open an electronic docket on regulations.gov whenever they add a rulemaking to the Regulatory Agenda? They could then use the regulations.gov notification feature to sign up for an e-mails when particular regulations are proposed.

Thank you again for the opportunity to participate in this important effort.

Philip Schwartz
Washington DC

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[i] A minor point with regard to clearances, since the majority of Agenda entries are not significant actions and the underlying rulemakings are not reviewed by OMB -- perhaps the Agenda entries for these rules could flow into the public database immediately and not be held up while the entries on significant actions are reviewed. Or alternatively, Agenda information on rules that aren't significant wouldn't have to be submitted to ROCIS until shortly before the Agenda is released which would let agencies provide timelier information and allow the database update process to operate more efficiently.

4/1/2009