

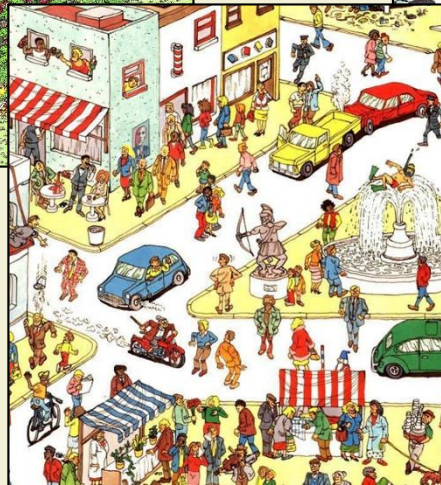
# Regulations Matter: Issue Spotting & Comment Drafting

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# Issue Spotting – Tips & Strategies



# Issue Spotting – Tips & Strategies

## General Review Roadmap

1. Review preamble and executive summary
2. Review section-by-section analysis
3. Compare eye-catchers with regulatory text at the end
4. Go beyond the notice, if needed, for assistance and guidance

# Issue Spotting – Tips & Strategies

- **Ctrl+F**
  - ✓ Tribe     ✓ Native     ✓ 13175
  - ✓ Tribal    ✓ Rural     ✓ Others?
  - ✓ Indian    ✓ Urban
- Look for clear statements
- Look for ambiguity
- Identify areas of conflict
- Compare what is written with what you know to be true

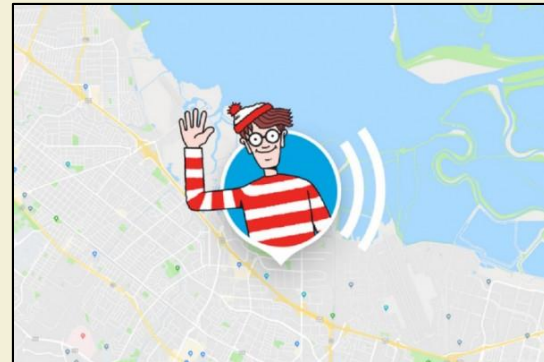


Photo courtesy of Tech Times

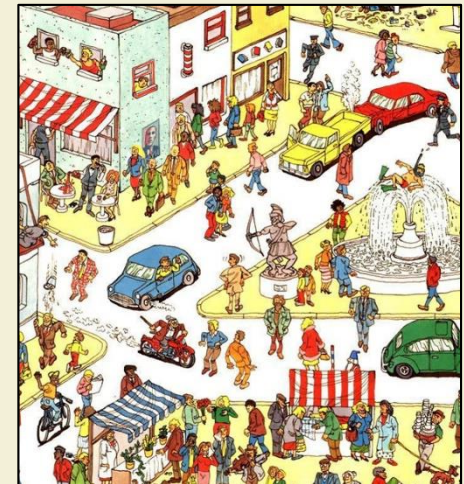
# Issue Spotting – Tips & Strategies

- Pose questions and then look for answers in the proposed text:
  - Does the agency identify a specific problem?
  - Does the agency offer clear reasoning for its solution?
  - What evidence/research is relied upon? Does it include AI/AN programs and populations?
  - Has the agency addressed potential tribal impacts?
  - Others?

# Issue Spotting – Tips & Strategies

What about when there is no reference to Tribal Nations or Urban Indian programs?

- Silences can make big statements
- Acting without accounting for sovereignty or trust/treaty obligations
- Prime time to comment

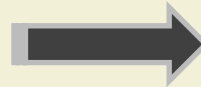
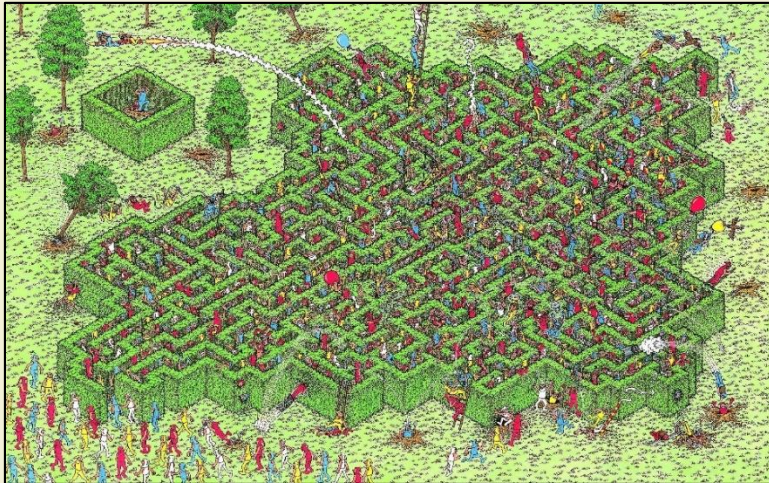


# Issue Spotting – Tips & Strategies

## Valuable Resources on Regulatory Actions

- NIHB!
  - ✓ Regulations tracker
  - ✓ MMPC Regulations Workgroup
- HSDW General Memoranda
- Agency fact sheets and policy guidance
- Past comments
- Healthcare and tribal organizations
- Others?

# Issue Spotting – Tips & Strategies



# Comment Drafting – Tips & Strategies

- Consider the Purpose(s) of Submitting Comments:
  1. Communication with the Agency about responsibility to Tribes
  2. Persuade Agency to take a particular action
  3. Establishing standing & a record for litigation
  4. Other purposes?
- *Purposes inform drafting strategy, including content, tone, and follow-up measures*

# Comment Drafting – Tips & Strategies

- Remember that this is an act of storytelling
  - Invoke a powerful indigenous narrative
    - Remember the power of stories!
  - Explain who you are and where you come from
  - Identify the sources of U.S. responsibility to your community (treaties, trust, etc.)
  - Use stories from your community to illustrate your comments
    - Builds understanding, familiarity
    - Helps reader visualize what impact will look like

# Comment Drafting – Tips & Strategies

- Explain why the Agency should do what you are asking them to do
- Reasons include:
  - It is the right thing to do
  - It fits with their own goals/benefits them
  - It is legally required
- *Look for the “interest convergence” (cost savings, alignment with Administration goals, etc.)*

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# Comment Drafting – Tips & Strategies

- Set ground for litigation
  - Administrative Procedure Act (APA) authorizes courts to set aside agency actions when they are “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law”
  - Establish standing
  - Raise issues before the agency
- *Preserve your option to file suit down the line even if you don't think you will sue.*

# Comment Drafting – Tips & Strategies

- Additional drafting tips:
  - Invoke treaties/trust responsibility
  - Reach out to your experts!
  - Leave enough time for internal clearance
  - Tribes are never “stakeholders”
  - Invoke consultation
  - Align tone with objectives

# Comment Drafting – Tips & Strategies

- Follow-up measures
  - Reach out to agency
  - Stay involved in further iterations of a rule
  - Reach out to other government partners
  - Carefully consider any publicity strategies
- *Remember that regulations often develop and change over time—tribes have seen good outcomes through continued dialogue.*

# Questions?

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