

*Small Group Discussion -- Interest Groups
Group One -- September 5, 2003*

M2: Targeting the knowledge of the people within the agencies, a particular set of questions. We are a small enough group but we've got a finite number of folks here can represent agency perspectives in this discussion. The others who are around the table although we will contribute, although we will contribute probing you in certain directions. Seven folks here who bear the brunt of talking because you've got what we want.

M1: What we will do is start with the first question about what are the general challenges that you face regarding rulemaking at your agency and like Stuart said we would like to hear from all of you. We want any ideas that you may have. The other thing that I would ask you to do is, for recording purposes, it would be nice if you put a number in the corner of your name card. Just for transcription purposes so that we can record as quickly as possible. We are going to take about 10 minutes for each question, so you will have to (?) quickly, so we apologize for that. So the first question is: what are the greatest challenges, the rulemaking challenges faced by your agencies?

12: I probably come with a different perspective than most of you. NARA is a small agency, our largest rulemaking, the one that generated the most comments was on issue back in 2000 I think we had about 250 comments. But we also are a very small staff. I am the head of the staff and I have 2 people, all three of us only work part time on regulating. One of the challenges for us is, even though we have relatively non-controversial rulemaking, for the most part don't generate a lot of comments, any kind of assistance we could have to make the process work smoothly and to help us do some of the things that larger agencies that have much larger, more experienced staff is helpful.

1: One of the problems that we face is getting information accurately. A lot of the rulemakings that we do, and especially the types of rulemaking we are really into now, we are going to be dealing with a lot of diverse and small sources. And getting accurate information from those sources is difficult. A lot of them also tend to be small businesses, don't have a lot of time, effort, and energy to put into getting us information. Without information we can't write good rules. That's probably one of the biggest challenges that I see for us going forward. It certainly has been a challenge, even in the last 5 – 10 years. We've been making folks sitting on (?) or making national business (?) Getting good information is always a challenge for us.

8: Just to follow up on that, when you get the good information, being able to access it and present it in a way that's palatable and understandable by the decision makers, which is for us one of the main goals. And getting all the comments in the rule, how to process them instead of present them to the decision makers as one input and actually there must have been several. (??)

4: Just want to verify, you said when getting the information, is that for getting the rule written in the first or you mean the comments that come in once the rule has been put out?

1: Well I'm talking about actual data that we can base, which we can then use to develop technical analyses on ignitions and emissions controls and so forth, which we use to propose and ultimately promulgate a rule. So it's really the initial information from the facility. Getting information from comments, most of our rulemakings, now this is (?), it's not true of all the rules that my office does, but we don't get so many comments that can't sort of digest them. That's probably not true for (?) resource. A lot of times those comments are just comment without good information to back it up. It's not helpful, because if someone says 'you should set the emissions level at 12 not at 20'. Fine, where's your data to back that up? No data, then we say, no data to support this comment and move on. That's pretty much how we have to address it. There's no other way to do it.

7: Can I follow up on that? Are there decisions that have been made in rulemaking environment that (?--Follow up, decision made on anything other than data?)

1: Yes.

7: Where there's public values or political pressures?

1: Well, there are always political pressures on any controversial rulemaking. And those may come from various sources and sometimes they come from trade associations, sometimes they come from the SBA, or directly from the SBA or through the office of management and budget. Because they review, they don't review all our rules, but they certainly review all the rules that they consider significant. So yes there are political pressures. The reason for that question you're saying is the public perception and where, if there are...what the public opinion on a lot of these things are, is important. Yes, it probably is, because again, political officials ultimately make all final regulatory decisions in my agency. And they are interested in what the public wants. That is why they are in the political arena.

2: When you were talking about challenges, at first I thought you were wondering about rulemaking, but if it's for general challenges. I would say in our agency where we have dealt with a number of controversial environmental issues, certainly political pendulum (??) has basically prevented things. And that's (??) and maybe we'd be better off if there hadn't been rules coming out towards political (??). (??) we have, administrations have a tendency to freeze regulations that were issued (??) so we've got a number of rulemaking (??) in the process of (??)

M1: What do the rest of you have to say that haven't spoken up, just about the challenges that (?)

13. Well aside from the rulemaking that we talked about earlier with trying to marshal all the comments for example, when we did tobacco, we actually tried to do many of the things you have on the board. And they didn't work. We wound up scanning the comments and then sorting them manually. Unfortunately we were in the neighborhood of 700,000 comments, there were about 50 different areas of form letters. It took us a while to identify all the variants. People would play with the variants by juggling orders of context so they were harder to detect. Aside from those process questions, for us part of the problem too is the personnel. I don't know if this is true with other agencies, but in FDA's case, our rules are not done by one particular staff. There's five component, aside from the commissioner. Each component has its own staff. And so each of them too, does its own hiring. So the level of expertise among the writers varies tremendously. From people that have never done it before and our getting basically (?), to those who have graduate degrees or particular expertise in science or in law. So you have that disparity in the troops and in that case differences in quality control, quality of the document, the rigor of the analysis. For example, let's assume that you have the reg. writer who was an attorney and a litigator, he might consider weaknesses in his argument and pattern his rule perfectly. But that layman doesn't think that, in defense of the rule. He might not recognize that. He might not recognize the importance of language, being consistent, using the right term, using the right (?) system. In our case sometimes, is something is out of place people immediately think there's something wrong here and I need to find out what. For us we try to keep a close watch on the language, but when the drafters have different skill levels, that's real hard.

12: I'd agree with that for my agency.

4: Is that again, (?) on the one hand language is drafted keeping in mind the (?) down the road, is language usually drafted to make it easier for the public to comment and understand this stuff? Are these at odds with one another?

13: Sometimes, because basically your general council or chief councils want to be very precise and will condition the language so that it's not absolute. Where as if you were a writer and you were doing it in plain language preferences, you might not appreciate all the shades of grey in the ruling.

1: In EPA we actually have a plain language initiative, where we are suppose to be writing our rules in plain language. Our office of general council on board with that and they were part of that initiative too. We do have attorneys that review all our rules before they get published, at least in the office of air, probably too in office of water too. They look at it from the legal aspect, but they don't draft the language though. In general they review the language that, in air a scientist or someone of that type has written, hopefully in plain English. And then if they see legal problems with it, they correct them.

M1: Ok, thank you very much. We also need to give {name} and {name}, do you have different perspectives that you would like to share with us on this question?

11: Well, I come from a different place in this, the Federal Register itself only occasionally issues a regulation. We are one of the central managers of the rulemaking process. Receiving documents from agencies, publishing them in the federal register and also serving with {name} on the e-rulemaking board. I would say our challenge is, in this environment are many, one of them is balancing IT based solutions and political objectives, with the legal requirements under the Administrative Procedure Act and the Federal Register Act. Attempting to achieve more standardization, but running up against agency cultures that are divergent. And as well, individual preferences, not just agencies, but individual offices and rule writers within agencies. There is a great deal of variation in the way documents are assembled and organized and some of the ideas we talked about today about easy ways of commenting on pieces of rules great in an ideal or theoretical sense, less easy to accomplish on a day to day basis when you have people writing rules in all sorts of different ways right now.

9: I would agree with all the comments that have been made. I would just add one more observation, which is a lot of the rulemaking activities are being legislated (?). We have seen more and more legislation requiring rulemaking as it pertains to independent decisions by the agencies. Also, time constraints being placed on agencies. We heard this morning about a 6 week turn around for (?) from the time that the comment period closed to the public publishing of the rule. So that's becoming more of an issue--the very high pressure environment.

3: Can I just pose a question to the group? Would you consider it a challenge to get the word out to all relevant stakeholders? The federal register is going to be the focus of this, because it seems to me that if the right stakeholders are unaware of the proposed rule then their comments are lost in the process.

1: That's my point. It's very difficult sometimes to identify the people that we need to be asking the input, asking for the information. Because a lot of times we don't always know who they are.

8: You also don't want to seem like your making part of the audience. Like you don't want, like the sourcing the comments from certain people deliberately, like you're weighting your answers.

1: The other thing is that there are legal restrictions in our ability to gather information due to the Paperwork Reduction Act.

12: One thing in the last 5 years or so, we've become a lot more proactive in our agency about trying to go out and notify people about the availability of a rule for comments. We have lists that we've made up of, list serves that we notify routinely of regulations relating to certain areas, or professional groups that we work with, depending on if it's an research...arch able regulation or a records management regulation. So we try and get the word out as evenly as we can.

9: I think the transportation is a fairly transparent process, at least from inside the agency looking out at the community. I think that most rulewriters would say that they do get comments from those folks that have an interest or who care, but that just may be their little universe. There may be others out there. I think the general opinion would be that most of the time people that would want to comment have the opportunity.

13: FDA's case, as part of our clearance process with our department, there's a box where it asks if, literally if there a roll out with this rule. Some way to alert people to it.

M1: Ok, if I may interrupt. We need to move on to our next question. What methods or tools (electronic or otherwise) help you meet these challenges? I know you all listed several different challenges, what tools do you have available?

8: You're asking what we currently have, not for our wish box right?

M1: Yes, it's just a general question.

?: Some of what we've talked about over the last couple of years, is whether or not you are simply digitizing the process that already exists. Using all of the practices that you already use, in a digital environment. (?) solve problems not digital (?) but also how is the process (?) run differently to avoid the pitfalls of the old process but also the pitfalls that are being created by digitizing rulemaking.

1: One of the things that we do at EPA when we do rulemaking, typically our process is once we identify...for example we are going to write a rule for dry cleaning, which we did, and there is a mission statement for dry cleaners. Typically what we do, I don't know what we did in this case, is we go out and try to identify as many dry cleaning establishments as we can through various databases and we mail them a letter and say, here's the information we want, these are the kinds of things that have to be cleared through OMB more than nine. So, then we take that information back and we compile it and use that to actually determine what the rule should be. I think there are some cases, and I'm not certain about this, but I believe there are some cases where we have actually contacted stakeholders through trade associations and we have even put a questionnaire on a website and allowed people to fill that out if they wanted to. If it hasn't been done, it has at least been discussed. That would be a little bit different from what we are doing, because in this case rather than sending it out to everybody, we try to get the word out to everybody, we try to have them come back to the web site and fill the information out because we think that's actually easier than for them to have to fill out a questionnaire on paper and mail it in to us.

4: And what do you do with the data?

1: The data would just be compiled and analyzed in the same manner. Although, since it is already in electronic format we could probably do an easier job of compiling and analyzing it, then we could if we did everything on paper.

5: When you did this was there managerial opposition? One can (?) saying we want you voting (?) comments via website, one can say in addition let's just open up the website and see if people, and we tell them they can go the regular way or they can go this new way and just see what comes back. Would that be (?)?

1: I think that when we did that, that was an alternative. We went out and did a data gathering. We couldn't just put up a form on our website and hope that people would come to it. We actually have to go out and identify who we want to contact and get information from them. For example, we may say we are going to send out this questionnaire, but we are going to have it up on the website if somebody wants to just log on and fill it out that is going to save them time and effort.

5: So that's for a very structured thing. Let's say for the general comment where you don't structure it as much, you just sort of put the proposed new regulations and (?)

1: I don't think we have done that. And the reason probably that we haven't done that is we try to structure the data coming back to us. A lot of times when we do our rulemakings, let's say we have a population of 100 facilities out there, we need to have same information on all 100 in order to determine what the rule is. That's why we tend to have a more structured data gathering effort. That's not to say that there wouldn't be a benefit to that. There wouldn't be a benefit to having a site out there where we say, we are doing this rulemaking and by the way even before we get to the point where we are proposing the rule, if anybody has information that would be relevant to us for this rulemaking, or data, send it to us, here's a website.

7: Giving advanced notice of the process?

1: Well, the advance notice is just an advance notice and we are asking for information. That's not to say we couldn't just do that as a manner of course and not have an advanced notice. That's not to say we wouldn't need to do an advance notice of proposed rulemaking in order to do that. That has never been done to my knowledge. In thinking about actually putting a questionnaire on a web site, I'm relatively certain we have done that somewhere, but again that was kind of an alternative to people just filling out the questionnaire and sending it in.

4: This again is an example of collecting information, doing the rule foundation process, and is this kinds of support along the lines of comments analysis that we saw this morning? Or this more numerical analysis?

1: It could be just a little bit of difference. We get all sorts of correspondence when we do a rulemaking, prior to proposal. All sorts of letters of people commenting on it. Up until the time we propose we have the option of picking and choosing what data we want to use. It's only after we propose a rule, at that point we have to respond to all the comments that come in. Prior to that, if somebody sends us a letter and we say this data does not work for us, we can throw it in the trash can, doesn't matter. We have no legal requirement to use it. If they send us the same information after proposal, then we are required to respond back to it. So it's different legal requirements during different phases of rulemaking.

M1: Would anyone else like to add to that question?

2: Just a general comment that the electronic tools that we are using, I think have a pretty good and bad side. The thing is we have tools that make it easier for people to submit comments and that's good, but we're getting many more and more comments at a time of having diminished resources to respond to them in the process (?) And we have more avenues for making information available electronically on website and firstgov and federal registry, but every time we put it some place else there are also many opportunities for misinformation, wrong information, errors (?), we have to track all of those. I also think there is a lot more opportunity for probable violations of limited environments because we have a very decentralized operation, I'm pretty sure that people are making information available at totally inappropriate times.

8: This sort of goes along with that, another (?? talks very softly, can't hear a lot) This is one experience, (?) in the office of water, worked with 3rd party somewhat behind scenes in order to get our data to be uniform. (?) Just couldn't outline exactly how we wanted it to be (?) GIS data (?) analysis, we want to be able to zip it together therefore, you unify the data set. But we couldn't outline (??) That's sort of a quasi-tool (?) 3rd party (?) data set.

9: I'm not the best person to answer your question, but I was just trying to think of it in many different ways. We use any and all methods of gathering information. The traditional kinds of public meetings. Recently the FAA did some online forum, online public meetings on the web. We also gather statistical data of our own and using any data that we get from anybody else and do our own analysis. We have complaint lines, hotlines, consumer complaint hotlines that feed in information. Sometimes that data is available for looking for problems or assessing problems. One of the easy things that , NISSA does, and this just kind of feeds the concept of authority in terms of, a lot of times they will have to do their own analysis they actually reverse engineer component systems in order to get pricing and so forth. They will break down a manufacturers piece of equipment, do reverse engineering and come up with their own estimates of what it would cost and so forth. So a lot of heavy engineering and technical kind of work. Those are some of the main methods, but of course there's sort of the informal communication. I think that you shouldn't discount the fact that, outside of the formal process there is a lot of interaction at conferences, at technical meetings, phone calls where people are talking outside of the comment period, when information is being gathered. I think answers any way we can and always get information. One thing, in terms of methods and tool, once we get the information, one of the things we've had to do, and I think this could be solved very easily by putting technology (?), in case we have large volume of comments, we have to actually take that information and put it into another databases, software. Build separate databases that would allow us to do

the queries and searches we want to do. So the immediate problem could be solved, I think, using some of the search technology, that's something that more recently has come into being because our docket system has limitations. Our staff will actually hire someone to build a database that we can use to do analyses.

M1: Ok, any of the rest of you? Something you would like to build on what you've heard or a separate tools that you use?

?: (?? Soft talking can't hear)

5: Is ICF good? (?? Something about record for public comment)

7: (??) I think what you are referring to is probably handled by our content analysis team. They do have a lot of comment (?)

5: You haven't heard words from them saying 'this is garbage', 'this is too offensive' Don't handle, have electronic systems to handle. Developed their own.

7: I don't think they get to our system, they use their own.

8: They did try to sell to us.

5: So these are (?) not employees of the agency?

2. During the reinvention effort a group formed we actually call an enterprise team. We are still attached to a staff and a national headquarters, so they were physically located in Utah and MT. (??) They handle a lot of the content analysis for the forest service, but depending on the rule, it would be handled an individual staff (?) We do have a lot of comments, we had half a million comments for wolf reintroduction (?) comment service, I personally am not well versed in technical systems.

7. One of the things that's kind of come up when we are talking about this with different audiences is the sense of, question of culture of agencies and (?) The idea as we open it up [tape break]

1: We take all these comments, we get them on paper, we summarize them, we respond to them. If we start getting a significantly higher volume of comment we would have to go to an automated system, I think in order to have any hope of meeting any reasonable timelines. But that's something that is not in our culture. That's not the way we have done it. I don't know, I think there would be some local resistance to doing it. Just

because, from the actual rulewriters themselves, the guys that actually sit down and deal with the comments, because that's not the way they are used to doing it and they are going to be uncomfortable with the idea that they are not going to be actually looking at... by having their contractor look at these comments. A lot of times we hire contractors to do a lot of heavy data crunching stuff.

??: Same at the FDA?

13: Because we are decentralized we go in different ways. For example, one of our components has statutory deadlines for getting certain rules out. Because it's getting a higher volume than expected, it's actually turned into a contract with one of those outfits, as someone was speaking earlier to do the triage. Otherwise the existing system at the agency is to scan the comments if they are not already electronic, and therefore they are available to the drafters at a much earlier stage than getting the paper version. Our difficulty is you have 3 mechanisms for making a comment. There's paper mechanism, we scan those, but then you have an electronic mail comment mechanism where they will send us the file. The third is electronic comment where you literally type your comment in the screen. The difficulty we are finding with the electronic mail version I people are duplicating what they send on paper, or they are sending earlier versions or drafts of what they will send. So now we have to start comparing drafts from the same person to see what has changed.

8: Same comment.

7: One thing we have heard about that is some people will use (?) methods with suspicion because they are afraid one of the methods won't work.

Several um hums.

13: Because in our case many of the comments will arrive on the last day of the comment period so that, you don't want your competitor to see what your comment is, so you put it on in the last minute.

2: For our agency, this will be a huge change if have to go totally on the edocket, because our operations are so decentralized. We've got relatively small headquarters staff and (?) I'm not sure how in the world we would handle having to list every (??) Staffing and money that would be required for that...come on. And that's not organization wide.

5: I think this points to a serious basic dilemma, if you say you will not go electronic, we

will do business as usual that limits the pipeline in, that means we just tap all our normal (?) so we don't reach the vast majority of the population, we don't get comments from (?—maybe media). And unless they wake up and start pushing things from their side and make high volume, everything is fine and you can go another day. As soon as we open Pandora's box and we make all these tools available, they are going to respond and give us a hell of a lot more stuff, and we are going to need more tools...so you get on that slippery slope. So I can imagine managers sitting down and saying no way, you keep Pandora's box closed. Until, and by then it might be too late, the world outside just says, well we opened the box, we've got nothing to lose. And we keep pushing things in, then you have to respond post hoc. Then you run the catch up game. So now is the time...if you open up now and you say let's put in these tools, let's (?) make websites available, but structure them the way we like them. Let's do things so that by the time it hits the public, it's already in a form that we like and we can deal with. Then you, I think you could make an argument and you stand a better chance of dealing with the avalanche that is going to come. The problem really is the managers might not believe this argument. Some might and some might not. Maybe a good idea from the research perspective, we are looking for manager that will believe this and go and lead the way. So when 2 years later when other managers are not quite convinced that you don't do agency (?) yeah, they opened the box and it's working for them and we noticed a decrease in (?) let's jump on the bandwagon too.

7: When the USDA national (?) program put that site up, it didn't come from the top down, it came from a little group. One guy in particular thought, well this might be helpful because we know that this is going to be controversial and we...

8: Set up web site in 97,

7: Set up a website for the organic program where they proposed a proposal rule, this was 97 around Christmas time. And opened the floodgates, and weren't prepared for what was about to happen. Because the proposed rule was at odds with public culture of organic agriculture, the avalanche came in. They had to figure a way of dealing with it. What we...and realize that these innovations happen when there's an advocate within the agency that can fight the fight. How do you find them, how do you identify them? Another question is, how do you disseminate the good, the bad, and the ugly without these reservations so that people buy in early enough. They don't feel like (?) They are a part of it. I think that's part of what {name} and {name} are trying to figure out where those few weavers are within the agencies that allow the jump across the threshold, or risk taking. From your experiences within the different agencies help us figure out how do you find them? And what makes them

successful in pushing an agency past its own cultural (?) Miracle to probably have a group of (?) you must see the successful innovators and the (?) innovators alike.

11: We've noticed that there are, for instance we've sort of seen displayed here today that there are great differences even within EPA. And we noticed that a long time ago, that there were certain offices who were much more adept at preparing their data for publication than others. They were willing to learn the underlying tagging scheme of the federal register, and funnel documents into a central shop, apply those tags, get a much bigger discount from the government printing office. So that manager was then able to say, look I've saved \$X00,000. Everybody in his group profited. He got a raise, his people got great raises. But interestingly, that wasn't adopted agency wide, because there are still some people at EPA that don't want to follow that model. And you see the same thing, I think {name} was talking about with the various choices that offices have made about the docketing process. Apparently there are bells and whistles that are available to some who inquire and maybe push it and others did not. We are happy to kind of recreate the system that they already had in electronic form perhaps. We have a number of examples of that, including the erulemaking, regulations.gov itself, is also an example of individual initiative. Not waiting for the big IT project to get underway, but just getting things off the ground, even though it's not a perfect application.

1: I think that at EPA, and I don't know who was personally behind this, but it seemed to me like EPA laid, certainly at the Office of Air and I can't say about the Office of Water, we do a lot on the web. It's very much a daily used tool for me and I think for a lot of people in my office. We take all of our rules, proposed, (?) are put on the web. We have an Air toxics web site. You want to know anything about air toxics you go to that website, all the stuff is there. To the extent, now like the older rules, like the 92 rules, there's not a lot of information there. But you can go to the 2000 rule, you can find background documents, you can find proposed (?) rules, you can find implementation tools, you can find comment response documents. All that stuff is put on the web. So, I think at least in Air that we've done a lot to change the way we disseminate information and we've used the web effectively. But, I know that the Federal Register at one time was uncomfortable with the fact that we were publishing documents on the web before it got published in the Federal Register. They were concerned about that. I had a conversation with someone about this recently. We felt that was very important and our stakeholders were very pleased that we did that because there is a 3-4 week time lag and they got more time to look at these rules and comment. That was giving them extension to the comment period without us having to do it.

7: Sounds to me like decentralization (?) Success story that I am most familiar with is at DOT. Basically rounded up (?) we are going to do this together on the web and

one docket managing system that was really outstanding (?) I wonder what the secret was?

8: Good leadership.

13: In our case we do have centralized docket, but decentralized reg. status. If you went to our website for example, not only would you get the pdf version of the actual rule, we will also give you the display version with (?) and table form. So in theory you can see the rule the day before it gets published. As long as its on display with (?) You can also access all the comments, but when comes to decision making at the drafting end by our cultured staff, we are trying to work at that right now by having all of our components meet on a monthly basis to talk about the major issues, identify them. All of their (?) Try to make sure we're all on the same page. If there's one thing one component is doing, that seems to be very good, maybe that is something the entire agency could have done. So that's something that we are doing.

M1: Anything else?

9: I would say we are past the point where we had to get real culture shift about using electronic means. I think we are past that. I think that our people now see the value, the convenience and access issues, at home you can get to the information. It just makes sense. Good business. You can prove the numbers that have been shown is something like a million dollars per year in savings. (?) I think where we are at right now is, in terms of high volumes of comments, crisis of getting all these form letters and having to parse things out. Also your (?) agency managers aren't that careful about how you classify people, because there are political elected officials who are managing in (?) career staff. Technical people who are managers and there may be cases where high volume comments is useful for political folks who want to know what public opinion is, but it is not useful for the managers that are trying to analyze the information about the rule. There may be some (?). The other thing is, I've had the experience of talking to some people in NISSA about, they just recently put out a notice for comment on high beam headlights that have glare. You've probably been driving along and had one of these pierce your eyesight. One of the things that...most areas they can test their equipment or car or vehicle. But when it comes to driver behavior or driver impact, they can't readily test that. So by having 80,000 people send in comment that says, 'you've got to do something about this glare, it is affecting my ability to drive at night'. That's sort of a way to see how humans are reacting to something that is out there, that they can't really test very easy or very defensively. There may be cases where a high volume of comments might be useful (?) technically. Even in the pharmaceutical area I think that people's reaction to drugs or adverse reaction to drug medications, might be

interesting to know how that is accruing. Or if it's occurring, if you can't set up a test to test that in the large population. So there may be cases where you want to do that polling, the problem is if you got that kind of stuff going on where you are trying to collect (?) information at the same time. So there needs to be some way, I think you demonstrated there's more than the opportunity to poll and get opinions and pull that out, separate that out from the substantive comments (??). Being able to do both can benefit those in command. I hope we are past the issue of paperwork (?).

5: This brings up a point of something else I wanted to ask you. Before you even start writing the regulation, this kind of feedback might come from the population. Are there ongoing data commenting collection efforts that are aimed at some kind of future regulation? Where you put some guy on the job and you say, look at the headline (?) issue because I know it's probably be (?) and I expect you are going to have to write regulations three years out. Or is there no such effort?

9: We do that a lot. Example I can think of immediately is we did a kind of forum on driver distraction from use of cell phones. This was done about 4 years ago. They were basically, we put up a website, it was not a rulemaking activity, just a public forum trying to solicit comment on whether people thought this was a problem and what the agency could do about it.

5: Does this tie back to existing regulations and studies? Does it make sense to think of like a web site that is not just a commenting center, an education center, and a hyperlinks to all relevant things that are used (?)

9: This is an example where we had a guy in the research office, typical staffer that didn't know what the rules were and just set up a website and basically created a whole forum and generated a huge amount of comments. It had polling features and all that. The interesting thing was, when we got the polling data back it differed from what the scientific poll was. They were reporting the same thing so the question was, did you have a representative sample or not? That was one of the issues, but there was an information correction activity and of course when we were finished, we handed it over to management and they are all saying, well what do we do with this now? They didn't know if we had a representative sample or if it was valid or other comments that came in. It was in the early stages, but that's been done, I can think of 3 or 4 cases, electronically where we have done that. Of course, before we did it without electronic means. In pre decision phase there's a lot of that kind of problem identification and research being done.

1: It's probably not very true at EPA, because most of our regulatory decisions are driven by law. First they write a law and then we write the regulations to carry out the law. In our case, the Clean Air Act.

8: Clean water act

1: We don't go looking for more regulations to write. We have enough we are required by law to write now.

M1: If we could move on again, several of you have mentioned how the things that we talked about in the workshop, how information technology tools may be useful to your agency. Do you have anything else to add on that?

5: When thinking of the dream list this morning, what struck you as really nice? What did you really, really like. We probably, it's unlikely even if the whole thing gets funded with wonderful ease, that we will be able to do even half, given the amount of money. So what is sort of highest priority and what is sort of may be nice later.

8: I'm thinking right off the bat, one is the ability to parcel information. (?) be able to divide up who sent, authorship, and some of the different categories we had. The other thing is to detect the duplicates and the similars and being able to extract what is different. That's very useful.

1: I would say the same thing from my perspective. One of the hardest things to do, is take all these comments, condense them down into a summary and then respond to them. A tool where we could take all this large, and it may become this large mass of information, condense it down to, here is the crux of the real comments. Then you sit down and write a focused response to them. Would be a great tool

5: So a simple solution to, I like it, I don't like it, that's useful. (?) the mothers and the lawyers.

1: Being able to sort it into, I think this particular part of the rule...For example, we might get 16 people that comment and say, your proposed emission limit for particulate matter is too high, it should be this. So we respond to all those comments and say your cost for this particulate control technology are wrong because of...and they might list a (?) of things and we would respond back to them and say we disagree or we agree and we have changed our costing based on these comments. Those are the sort of exercises we go through in responding to comment.

5: So what I hear you saying, is the first cut, the first sorting criteria is the section particulate regulation, the sub issue, the second cut is who is for and who is against. The third cut is maybe the kind of question (?)

1: We don't really care who it is.

8: We do

13: We don't care

8: For example, political (?). There is this group called Hook and Bullet. Which is, it's not the confirmation group (?), it's not Sierra Club, it's hunting and fishing, so they are constantly reminding they are also conservative. (?) They listen to this group and they want to know what they have to say.

1: In our case for example, if a mom wrote in and said, your emission level is not stringent enough, and say an environmental group wrote in and said, your emission level is not strict enough and they both said it ought to be something else. We wouldn't care the fact that one was a mom and one was an environmental group. We have 2 comments saying that the emission level is not stringent enough, hopefully someone will give us some data and we will respond to that comment in the same way.

5: You are required to respond to every comment?

1: Yes,

?: Every relevant comment?

1: Every relevant comment. If someone just sends us a comment that they don't like the way our logo looks for example, we don't respond to that. They have to at least address the regulation.

13: I think, the reason why I am sort of hedging on some of the elements here is because, some of the might be ok things, you have a double-edge sword. For example, if you sort things into yes or no, yes I like it, no I hate it; some people may treat your rule as a referendum. Majority vote wins. The problem with that is, a lot of people that like rules usually aren't motivated to write in and say that they like it. So if it becomes yes or no, people might take that to mean no wins, no would win most of the time. Another problem I can see with identifying the authors, while we might look at the authors

expertise as letting us understand the amount of thought that went into the comment, we usually don't identify the identity of the person who submitted the comment, because as a philosophical matter we are trying to treat them all equal. As long as they make a relevant point, it doesn't matter whether it was John Doe or huge drug company, it's all the same to us.

1: One difference between your situation and like EPA's, is that generally when people comment on our rules it's not favorable. We don't have to worry about there being a referendum on the rule. Usually no one, if they are commenting it's because they don't like something. Typically, in the case of our rules, most of our, the majority of our comments that we get, 2 big groups out there. You have the industries who will be impacted by the rule who are generally against whatever it is you are doing, it's usually too stringent, too costly. You may also get some input from some of the environmental groups, probably to a lesser extent and they will probably say that you are not being stringent enough. I might get 50 comments from the industry saying bad things about the rule and one comment from Sierra Club saying if I don't do it this way, it's going to be illegal. Well this is a powerful argument right here. The fact that 50 people didn't like it, is not as powerful as this argument if they are right and doing it the way they want me to is illegal.

7: When the organic program manager was talking about what struck them, he said that before the proposed rule they could have predicted where the organized groups would line up, they knew in advance (??) But what was stunning, was the 100,000 uniquely written comments. They couldn't predict those. They weren't (??) What is useful to them? What do agency rulewriters want? Public comment, do you want those individual comments that are maybe written by lay people but send a persuasive argument. Or would they rather have a 75 page technical document?

8: Both

1: Comments without supporting data are not real helpful from our perspective. Generally when somebody like NRDC or somebody like a trade group comments on a rule, they will provide data to substantiate their comment. And it's your job to go back and look at their data, and maybe even look at their data and (?) perpetration that they did for example. Still there is data for you to work with.

7: That must be very tough.

1: It is sometimes. The opinion of the general public, I mean it's not like we don't care about it, but because of the things that we do are tied so closely to the actual writing of

the law. Anything that kind of is just like a public opinion, it just doesn't carry as much weight as a technical argument or a legal argument. So getting 100,000 comments from the population in general, getting their feeling about this rule, from our perspective doesn't really, at least in the kind of rule that I write, it's not really as helpful. Now maybe for a larger program, like maybe new source review where maybe the law is not as clear and they are working in a lot more grey areas from the political standpoint, but I think in general having 10 well focused comments to raise the 10 real issues would be a lot more useful to me than 100,000 people writing in with their opinion of a rule.

9: Do you think that part of that is because the analyses that you do is fairly quantitative, in looking at, you don't have as good of method of measuring human impact or social impact if you do...benefit cost in terms that manufacturer or the Congress could understand. And maybe (?) there's a bias within the agency, or within rulewriters towards things that support methods that you are able to put quality data into rather than saying, we need to come up with better methods of measuring impact on communities. You do benefit cost analysis we have to look at all these things, but some things are easier to measure and quantify and analyze. Say you tend to go towards that?

1: The easiest thing for us to analyze is, what is the cost of the rule? In other words, when I write this regulation, how much money are people going to have to spend to comply with it? And then from that we go and we decide does the cost benefit exist. And also we look at is there a legal minimum that we have to meet. If it passes that test, then you look at what are the economic impacts? Maybe the cost looked reasonable, but we are going to have a very adverse impact a certain industry and many business are going to close, or something like that. We would look at that stuff and maybe the cost benefit is not there. Generally we don't have the tools to go beyond that.

9: I think that may be one of the problems that we don't have methodology there to measure impact. We tend to not look at that data with the same importance as you give data that fits into our methods.

1: One of the most, one of the criticisms that EPA has received from GAO or OMB, is that we do not do a good enough job of quantifying the benefits of our rules. But even that being said, that would still be quantitative analysis. We would sit down and say, ok this is what the impact on the community is going to be from a health stand point. And we can point to this and say, well it's going to have a very significant economic impact but we are going to save 1,000 lives. So then, of course you have a decision to make there, which is more important? The economic part or 1,000 lives part? But still those are quantitative analysis.

7: Is one of the potential uses of IT in [tape break]

1: ...air toxics may be a significant impact. You know red is really bad and green is good. We do those kinds of maps all the time. The real challenge for us is the underlying data to present that map back to them.

9: I just wanted to take this time to respond to {name}'s comment. I think in our, when I talk to people and basically there are two things that we are looking for are the duplicate detection techniques. That's an immediate need in the commentary scene, as you can see that if we had it right now it would be helpful. (? Faded out)

5: Those by the way seem to cross cut all the agencies. Duplicates is a big problem, part of the problem is making sure you didn't miss anything at all, that the whole spectrum is there. And then comes, what seems to be in the second order are things like segmenting and organizing the different groups. And measuring this side and their opinions. And then helping with things like the economic analysis or (?)

1: One of the things that you mentioned that I found interesting, I think it was your presentation, would be you can take a particular comment and somehow link that to maybe even information you have in your docket, which is now going to be all electronic. So when you summarize the comment and you go into your own docket and pull the information out that you need, because that's not to say that right now when we go through and we are trying to respond to comments, there might be something buried back in the docket that we've forgotten about that might have pertinent information and we might not necessarily always find it. That would be an interesting tool and I think that would be very helpful to rulewriters.

5: Also the studies. You could have the studies in there done by the Rand Corporation or something. That you could imagine a little magic point that said, with respect to these comments, this point links to this study, this thing...

1: Right, even stuff that's not in docket yet. Maybe somebody sent you a comment that's a very good comment, but there's no data to support it, but there is data some place else that they don't even know about.

7: That's a form of automation that we (??? Something with legal and cultural)

1: It's just (?) information.

7: Maybe more connections to the (?)

1: Yeah, there's certainly no legal or cultural problem to that. Information is...well you can't have too much information. But being able to do a targeted identification of information that will help you solve the questions is always a good thing.

7: What about usability? What comes to mind when you think about ruling out new applications for technology transfer, research in the private sector or the federal agencies practice. First from your end and then from your knowledge of (?)

3: I can kind of supplement that, when you do this do you ever test it first? Plausible users or is this kind of based upon your best guess about what these will be able to do? Do you ever bring users in and watch them try to use the edocket?

8: If only we could have done that (?)

7: I think when I read, and I don't read in that area much, I get a sense of what happens as soon as a developing IT (?) rolled out onto the floor of an agency and into people's living rooms and they either use it or they don't use it, and (?) I think what we are asking is, can you tell us, we want to incorporate into our research, usability. Guidance, what do we need to know about problems at your end, given these kinds of cost benefits studies. All the regulatory requirements and kind of compliance issues. Does this (?) rule meet all of the regulatory standards for how you write a rule? Turbo Tax for rulewriters. Kind of a Turbo Tax for public comment. Maybe you have already started developing this stuff ad hoc, in terms of guidances or (?) in which you direct...

1: We don't have anything in Air that I know of, of that type. All that is handled, give our rule to {name}, {name} reads it and be sure the Federal Register will like it. And we give it to our attorney to make sure we didn't leave any legal loopholes. That's pretty much how we do it. We don't have any electronic tools to do that.

7: Would they be useful?

13: Yes, some. For example, there are standard parts of a document. So we have our regulations and we have a pedatorial section and we do our of our regulations for style purposes. So they developed standard paragraphs, just take them off the web and (?) them in.

1: Well, we do that also, but it's still done manually. Still someone sitting there reading that thing to make sure we did it right.

13: But for documents we generate fairly often, we also have templates. All you do is plug in the data and it does it automatically for us. There are some things we do. It came down to whether people use about IT application, usually not. The only exception was in tobacco where agent spent a little more than a week out at Oracle and other contractors to pick their brains concerning us, what do you literally do from time to time to start thinking about a rule, trying to design a program.

8: Let me try and understand your question first. You are interested whether there is any kind of (?) that there is or that we can think of to kind of electronically pool or facilitate out a smoother process of rolling a rule out?

7: (??) Despite the different constituencies, and clientele, and cultures, and subagencies that might...

8: You mean facilitating the rule, not the (?)

1: Rolling out the rule or writing the rule?

7: Both. We are thinking cradle to grave. We are trying to pick your brains to find out where research in IT applications and computer interface or something like that would be of the most use. From the time Congress tells you that you need to write this rule, to the time that it is in the courts.

1: I don't think that that would be something that would be high up on my wish list right now. Just because that would be a...I just see it as a difficult proposition. When you sit down and write a rule, we actually developed, we have these 10 year back standards that we are just all booked up. We developed a model rule for that. We did it, it was all done on paper, so there was no IT technology involved, other than the word processor. But my recollection that we developed this model rule on paper and we put a lot of effort into it, but when we actually tried to apply it, it just didn't work very well. If we (?) the complexity of trying to develop an IT version of the model rule, I don't see that right now as something that would be real useful.

4: Can I ask a question about public comments. You see people are coming in on the internet and making these comments, is there any transfer, is there any intent to capture information about the click stream? About what stages they were at, how long did they spend time at these stages, is that correlate with the quality of the comments? Because a

lot of the discussion has been on the outcome of what they do, but is there any attempts to...

1: Not useful or of interest.

3: Have you noticed any difference between type, quality, link for comments that are sent in electronically versus on paper?

9: For one thing, the electronic comments tend to be focused on, they are brief and they focus on a particular topic or issue, as opposed to the kind of things that come in written, which are usually research and cover the whole spectrum of issues, it might be an 8 or 10 page written submission from an association that has done the research and covered the whole gamut sort of at one time. Where as an individual might have an opinion on a particular issue or a bone they want to pick with the agency, so they will come in and make crazy comments. The other thing I think happens electronically, it's being underutilized, or people will read other people's comments. They will come in and just read the docket, but they won't actually comment because somebody's already made the comment. There are underrepresented (?), so you see you may not be getting the full picture of everybody in there because a lot of cases they are just coming in and reading as opposed to commenting.

7: They just say I agree with that.

9: Yeah, they could just say, I agree with that, you get more of that. And even when the written comments come in from Joe Public, they are usually similar to the electronic comments, they are brief and to the point. You see there are different styles of communication, depending on who the author is that(?)

3: So you are saying sort of the electronic comments are maybe a bit more spontaneous and less formal and less more from an individual rather than organizations.

9: I don't know about that. In my case I've seen people send in the written comments and then post them electronically. So you could have a large document with attachments in the electronic comments too. I think the difference is the authors. The authors generate different types of communication and styles because they may not have done as much research, they may not be looking at the whole rule, they basically (??)

1: You also have to think about when the comment, if that rule is going to impact the commentors livelihood, they are going to take the time and effort to do a pretty detailed

comment. When you are dealing with a trade association or one of the affected industry, they are going to research it. It really doesn't matter how it's sent, it's going to be much more detailed comment (?) type of data. Because one thing you can look at is, they are getting paid to do this, this is their livelihood. If I'm Joe Public out there, I'm doing this on my own time and I don't have time to sit down and do a bunch of research. I just want my opinion known. So you are always going to get...even back before there was ever an internet you still had that same sort of thing when people made comments but it was on paper.

4: You also see comments (??) people cut and paste the rule and then write their own comments or...

1: There's no real, some do, some don't. I think in general they may make reference to a relevant section and a lot of times they will just talk about it like...Let's say they might actually put in an actual sentence from the rule and it's nice when they do those things because you know exactly what they are talking about. In many cases they will just talk about the rule and say, the economic analysis is inaccurate because you didn't consider this, this, this and this. And then they might have a paragraph of data backing up that statement or factual information backing up that statement. Or they might say that this control technology will not work, will not meet this emission limit, they won't even directly reference the rule and here are the reasons why. So, they don't...it varies.

5: If I were a rulewriter, would it be a crazy idea to write the proposed rule and for each little piece write proposed responses myself and stick them in the website and say here is the whole thing. Here's the reg. and my new changes and here's my own written anticipated responses and so when the public sees this they really see sort of the pre-structured form of the response and they can be quick. Agree, disagree, or amend.

(A lot of commenting at once)

12: I can't see agencies doing that. I can see interest groups perhaps wanting to have something like that for their people, but to sort of pre-judge how the public is going to comment I think would make you very vulnerable.

7: In fact that's what is going to happen. We are going to fire people tomorrow, they are already reversing these websites so that they can create, they are doing that as an activist organization, and as agency personnel, I don't think (??) We are mainly curious about just how far you folks can go toward creating at least an option?

8: One thing that was discussed in response to our 100,000 comments was the possibility on that opening (?) have some kind of hotlink that said advocacy groups responses, or advocacy group interests. Something very simple and that would go to a page where there would be the ability for those interest groups to set up however they wanted to do it, a form letter, with their text in it and then a space for original text. They would coordinate with EPA, so they could do it however they wanted to, say whatever they wanted to, but that would be submitted to the docket, but that those (?) would be parched out separately. The form would go from one file (?) and the core of those would go to another pile. And it wouldn't post it together seamlessly and the prize or aware for these groups collaborating would be that they would get their name and address of the person who wanted to comment, because they always want that to fill up their membership and all this. Our prize would be that these two things would automatically separate but without promoting the response. That was just something we had (??)

1: One thing we do in rules though, when we write preamble, a preamble is nothing but our rationale for the rule and some other administrative stuff. When we talk about, for example, one of the rules I just did we set a certain particulate matter emission limit for existing lime kiln. We said, we had been, industry that made comments that we that we subcategorized by control devise, we are requesting comment on this. So that is sort of what you are talking about. We are not saying what our response would be, we are just saying we specifically want comments on sub-categorization by control devise. And that's how we deal with that. The rule is the rule. It is what we think is our best offer so to speak, or our best analysis that meets the requirements of the law and whatever cost benefit analysis, if we are doing a cost benefit analysis on the rule. We don't have other parts of the rule where we have a proposed alternative, if we get these kind of comments. That's not how we do it. We do ask for comments on specific parts of the rule and we'll even lay out different options. We'll say we chose this level, we considered this level we didn't choose, we would like comment on that. We do that for DAX to.

4: Take it one step further and maybe in the rule itself provide boxes that they could respond. For example that {name} had, he had the section 2.2 (??) so if you had the responding question or the (?) question of the rule, boxes at appropriate points that helps the processing of the comments that come back. Go back to {name}'s point about a tactic about dealing with the strategy of putting stuff on the web, you set up the rule, accept the comments that do come in, well...

1: Well, what you could do is, you could link to a certain part of the rule. What you would be doing is making people structure their comments in a manner that would be easier for you to do the analysis later.

4: That's exactly...

1: So rather than have them sit down and write a 10 page dissertation the way they want to, you could have them write a 10 page dissertation the way you want to. That wouldn't necessarily be a dis-benefit to them either.

5: It's a good thing for them because they know that you can take their stuff and put out a much more effective rule. Plus they can learn how to write their comments in a way that is legalese or important or something.

7: However, this presupposes the commentors in public who are not educated who actually look at those rules before they comment (??) Small (??) is not always picked.

1: Those people are the ones that are going to tend their right to comments, that you are probably going to come up with a fairly generic answer to, as in we note your comment, there's no data to support this. Based on the data we have we can't support the change that you want to make.

4: One way to deal with this is to have comments for sections and then at the end you could say general comments. So if somebody wanted to skip through all this and go to general comments, they could.

7: Somebody is going to say, nope, the general comment box has to come first.

4: If you put if first then it's a condition.

3: But if they have to read all the specifics and they are not interested in them then they just bail out.

5: You have to tell them, look guys if you want us to take seriously what you are saying, you need to say why we must do what you think. And the way that you say why, you have a (?) a specialist in this. The discourse, the groups with the discourse who say if you point to this study, you point to something. You can't just say, I don't like it therefore the whole country must change.

1: I think the way the laws are written though, people have the right to do that, even though we may not agree with it. That's one of the things that makes democracy messy.

5: You have right to say, we have no data to support. You are welcome to say this, but I'm sorry what (?) do with that comment. So historically you show this is what happens to this type of comment.

11: From a publishing perspective and a document markup perspective, what you are saying is fascinating and it's something that we've talked about in our erulemaking group, about infusing xml tags into the data at the publication stage. And those could be hidden tags that would later reveal the ability to have a drop down box that would say agree, disagree, reasons why, that sort of thing. But I wonder, is it worth the effort. When you are working, if it's one office in an agency that wants to experiment with it, that's the place that is a good test bed. But if the edocket system adopts this in whole, it's likely to be a huge investment and I wonder whether Joe Public is going to use that facility or is just going to have a general comment, 'I hate this, you are causing me to lose my job'. Or the interest groups are going to want to use it, feeling that they don't want to be put into these little boxes. They would rather say, read the whole rule, formulate their draft, pass it around, and then send it in, in mass. That's a question.

5: That's an empirical question that we should test, therefore I think having such a site and saying in the normal way, you can submit comments in the regular way, just like before, or you could use this site. And then looking at the kind of people who use this site, is very useful. That one could see, both on the rulewriters' side how more efficient and how quickly can I go through this (?) and just from the comments, what percentage go through this site and what's the diffusion of the opinions and types of people and so on. Do mothers like this site? Do the uninformed like this site? Whatever. Then after such a study (??) then I can come back and say, ok we tried this. Here is our experience. This kind of thing works, this doesn't work. This is the kind of thing that will help me know where I must invest my work too.

4: Right, that's one of the behaviors, that on the technology side, with regard to cost of doing this, I think the marginal costs are (?) severe. The fixed costs are setting things up. And there I think we need to take some of this excess (?) and I think this can be set up. That you put in these boxes, as long as there are tags to know that this is a section and now I need to insert automatically that we don't agree and here are reasons why, like you were saying.

7: If I can just say, part of what we are doing here is getting the dialogue going, so as you go out talk about the things that we've done. Part of what we are doing is devising a research proposal. So that we can continue to do research in the way and informed the developing of this, not given the 6-12 month due date, which is how long it takes to get together and do a good proposal, but 5-10 year rate. What will e-rulemaking look like in 5-10 years? Is it possible to imagine that rulemaking will probably be entirely different than what it is right now. This sort of pilot study of usability, (??) maybe doesn't resonate with you right now, but the CS people and the computer interface researchers figuring out why people go to Turbo Tax version, or why they would go to the old fashion version is (?). It's of interest. And it may inform not how you do business for the next year or two, but how you will do business 5-10 years from now in your agency. We are a little closer to a paperless society.

9: What you are going to have to do to pull that off is to find a rule that is going to generate a lot of comment. Somehow you are going to have to know which rules, there are certain rules that are going to peek public interest, so you are going to have to identify that. Then you are going to have to fine someone who is willing to test it. I can envision where you have an entry point where somebody could come in and say 'would you like to make a comment?' 'Would you like to have a TurboTax version guide you through it?' They can say that route or they can do how they normally have done it. As long as it all comes back into one place where the rulewriter is going through just one set of comments and they know that they aren't some how parsed out of finding them. You might be able to find an agency that would be willing to do that.

7: I've seen in the past a proposed rule language that says, when you sight scientific studies, we will take you more serious. If you make references to where your data comes from or if you sight a basis for your reasons, it's more likely that you will be taken seriously. It's possible to put that into the proposal, then it is probably also possible to experiment with architectures that help. Some sort of a box, 'enter the relevant studies' or something. If you want to put in URL's in your comment, you can.

9: I think you might want to ask the group tomorrow that first to see whether if they would have any interest in participating in that kind of an experiment. Because that may be (?) area to an agency, that they may feel that they are being somehow manipulated or that they're being identified or singled out. I don't think you are going to find resistance though. If there's an agency and they think they could benefit from it in the long run. As long as it doesn't cause more work for them. If you are just setting

up a parallel way to comment and it's (?) version, I don't know why anyone would necessarily object to that.

5: What you need to do, is (?) from 2 sides. When you set up something like this and you go to your regulation writer and say, you have control, set it up the way you like it so that you get the comments that make your job easier. They will probably say, of course. But then the public side might come and say, no we don't like to be shoehorned, too much structure. And then general comments fields we are going to use that, thank you very much. If you go on the other side and say, 'public, you control the site. Ok, they will put the regulation up and then you can make whatever site you want and they have to deal with what you want. Sort of like it is today, they can send you anything they want and you have to deal with it. They will say yes, and you'll say, well this doesn't change my life and they can just now email rather than mail. So in the middle there may be a place where one can negotiate a somewhat structured thing that is innocuous to them and helps you. But it has to have enough freedom that they can feel they are not in a box. But enough structure that you can feel that you get something out of it. And our job as researchers, is to find that fit and to find out what that thing looks like, whether it's the same for all agencies or different. Whether you need to structure the final 10% yourself, that's what we have to do, that's our job.

7: Part of that will consist of lobbying within the interagency dialogue and go on about what is phase III and (???) consists of menu of tools that might be available when an agency is putting out a proposed rule and the agency is processing public comment, that they there for the taking but they don't necessarily have to be used. There's more research that has to be done. Is this agency having success with these tools? Is everybody on board? Do they have no use whatsoever for stakeholder identification, for example. (??)

8: Just a small thought, in terms of you saying this discussion is part of developing a proposal, I just wanted to add in, as you choose a scenario or a rule to do your process or do a test on it, one of the things added on to what you want to think about in terms of selecting that is, the kind of questions it poses to a group, not only technical issues but a lot of the rulemaking is to that technical standard, but also it should be something that has legal questions and sort of background. Where people need to develop a legal argument possibly in their comment. (??) That's a very different style of commenting, is developing an argument. That is another way that you need to structure your comment. You wouldn't want it to say, section, response, section, response. In this case, in regard said that blah, blah, blah.

5: That's an important point so that the general principal is this set up, therefore we see (???) And then it's a different discourse.

13: I would add to that...[tape break] (these are the recorder notes--Little dilemma, in preamble have things that people attack even attack reference) similarly with us, it's also legal authority. Also references, people attack our references. To give you an example, we did one dietary supplement rule, dealing with (Petra?) Did over 200 studies. Industry hired people to attack every single sentence. So we were faced with comments, but you had to go through your counter argument as to why this study was wrong and that study was wrong. So all of those comments had nothing to do with the (?) themselves. They are ways of attacking a rule.

M1: We haven't talked specifically about regulations.gov. Should we just kind of summarize our findings and then talk about our general lessons learned from today and your experiences. Who would like to start?

12: I have found it fascinating to hear the different ways that different agencies are dealing with things. I think in terms of the questions that you are posing about how you might change things, maybe I've been in government for too long, I really think that the best chance of doing some of these proposals is to get an advocate at e-reg or, and I'm sorry {name}, the Federal Register to sponsor the experiment in terms of having a better chance of acceptance. I can speak for what we would be willing to do or not do within my agency, but I know that our lawyers would probably the great queasies over having something different than the way it's always been done. I expect that most agencies are going to have somebody in their chain that has to sign off. Looking at finding, either somebody that does something very rarely and they aren't controversial rules, so they aren't likely to get hauled into court over, because that's another serious issue. Or finding a champion, either OMV, if they would be so brave, or...something that could be clearly seen as an experiment, like with what the Federal Registry has done with the different publications formats, so it's seen as something that's not threatening.

7: One thing, I know the digital government program managers made heavy emphasis on working with real world data. In rulemaking you work with real world rulemaking, but do you see a role for doing this sort of laboratory style outside of this? Is there anyway of testing these ideas without having the doing with live rulemaking? (???)

1: (??) I don't know how you would simulate that, in a laboratory. It isn't saying that it can't be done, but I was at a loss.

9: If you create a laboratory setting, then the question is, can you apply it to the real world? So, you are better off trying to operate in the real world and try to do some kind of local tests. And maybe one way to do it, would be to go back and do historical work. To go back and look at what happened and run your software on existing datasets, where you know the outcome already and compare results of what the software can do, to what actual attorneys did 5 years ago when they did the analysis. But even that's probably...the other thing you could do is, before and after the Internet type of data, historical data. I think you are stuck having to work in an empirical, real world kind of environment. (??) Even in our agency, we test equipment and stuff, we test it in a real world test track. We don't test it in a laboratory because you could maybe get different results.

3: I think there maybe like a credibility issue. Sales issue in going from lab results to implementation. If you do a lab study and you find that 90% of the users, whether they be rulewriters or stakeholder commentators, 90% are having trouble with some feature or are unsatisfied with some feature. Because numbers do look different in the real world, but it's a sign that something's wrong. (???) in our proposals that we can generalize (??) But there is another particular issue, how do you persuade those in charge?

9: Yeah, I think that's another challenge is getting staff to take time off to participate. (??) if you to pull attorney's off or rulewriter's off the job, how do you get them off the job for 2-3 days to do something (??)

3: In my experience, not in rulewriting, but in other government applications, what's involved is some senior person buying into the value of the work and saying, you know we will make the time available. At least you're not talking about large amounts time. Number of hours per person.

1: The point that was made earlier about, even if one agency does it and they do it well and it's positive. Whether or not that translates into the entire government or even if you could expect that. I don't know if you should expect that because each agency is so different. Maybe you are just going to have a few agencies that are out there leading the charge and the rest are behind, as evidenced by who participated today. We hope that in the process of generational changes, that you get these kinds of things happening. I don't think you could, it will be interesting to see how far this erulemaking initiative, because that's going to force change in this community. If you can't do that, then you probably can't adapt technology.

7: That's what my lowest common denominator is probably. (??) That's one of the realities, right that everybody (??) Lack of continuity, (??) to get everyone on board, strip away this or that. (??) Ok that's what we have been doing all along, I guess that we're searching around here for a meaningful research questions that will do something other than gather dust.

12: I have one other thing. I think partly, I think the comment about, who was here? Different agencies have different communities that they are regulating. That they are getting comment from and ours is a small agency, we get it mostly from people who want to do research in our holdings or from federal agencies. Those are the 2 main areas that we regulate. That's totally different than industry where a lot of you are involved in regulating. So it may be worth exploring whether it's just different cultures or different regulation audience cultures that would make a difference as to whether something might be worth pursuing.

9: The reason I'm (??) typology or classification in rulemaking, even the general what kind of rules there are and what different audiences the agencies, or regulated parties, just doing that would probably be a big step forward. It's actually more of an act of interest, may not have (?) value. Just even understanding what environment we're in, is probably the first step. Even in Dot, just across DOT there are huge differences. In regards to how they official take this and how they tap it out and how much public interest there is. It really is quite different.

7: Any last comments?

8: I was sort of blown away at the beginning. I had no idea or knowledge that this was available. You literally just had a meeting with consultants, just 2 days ago, who were trying to go, basically what you guys did and for very little money, all things considered. It was, they were using tools out of the box. We were excited with what they were (?). So, it's exciting to see that the technology is there, but there is sort of the brakes come on immediately. I think about what we said about different compilations of different agencies and different choices (??) they all need to be satisfied, that's one thing. There's (?) and there's hard copy, and scanning them, and different formats. (??) minimize as much (??) The last thing, I think I echo what you said about buy in and leadership from top down. You can find (??) within the agencies and champions that you are looking for, they are out there. There's people who love technology and will jump on board and get excited about it, but you need the leadership to be able to draw on those people and say go back in there and do something a 4th way (??)

7: (??) We helped people who did come to this meeting to identify who those people are. For example, I know we've got a sympathetic ear now, especially the administrators at EPA, (??) She wondered if there was any way to be an advocate to the higher levels at EPA. There may be other people, I know that EPA was sympathetic a couple of years ago when we came to the first workshop. There may be others at other agencies I haven't visited. The other thing is if you want to, if and when we make a proposal, what comes out of all this, helping us to link up with those people, meet with them and figure out what, whether it's our (?) or other types of collaboration that {name} mentioned that will push the whole project along. (??) Functioning in generally a collaborative environment.

8: When {name} came and the words that stick in my mind, were he said, 'receive the report.' I guess that just really made me cringe, because (???) How dare you worry about that.

7: **Hard work can lead no where at various times. I think {name}, doesn't mean he can't do what he wants to do, but {name} is on the advisory committee, there are other people as well who will shape (??) come from all this, is talk it up.**

5: It's something that helps, have something that is really sort of useful. (?) From all of what we talked today, I thought about 2 experiments that I see, one of them is does it help to have pre-structured the comment infrastructure. Making a pre-structured web site and running an experiment parallel and just seeing what happens. And if it does help, and you can measure it by seeing how quickly your regulation writers deal with these comments (??) How much time they saved and how much money they saved. (???) If you can do such experiment, and one can have these clues and one can actually siphon them out into good. This is what happened and this how much money was saved. If it is that money really was saved, (??) then people will listen. I don't see, there still may be all kinds of (?) if you have a good case you can show it. If you don't save money, if it doesn't go better, than you have no business, then you should stop right there. (?)The second experiment is how much do simple the data processing techniques, like duplicate detection, (?) how much do they actually help the actual regulation. And there you make an experiment. You build a tool, (??) some people may be willing to try it for one regulation, they try it. You measure how long they take, you measure how many comments (?) if they say no (??) if they say yes, it was great look how much money I saved, look how much time I saved, then you go to the manager and you say, look you may not like this, but what are you going to do. Here is a tool that saves us money. At some point it comes down to that. Whatever authority (?) that's the only way you can address these concerns.

1: One thing to add to that, when you are talking about, like you mentioned rule litigation. One of the basic questions is, is this e-rulemaking going to help write better rules and how do you measure that? I don't actually think you can measure it based on litigation, because litigation is driven by a lot of things other than how you wrote the rule. It's generally driven by the impact of the rule and whether people like it or not and who's involved. The other thing is, the thing that I get from this is, can this help me do my comment response task better. It sounds like there are tools that could help with that. But the other thing that would be even more helpful, rather than just improving the comment response process, is at the same time is there a way that this e-rulemaking can help me get better information. Can it make, is it easier now for people to send information to me that is going to help me write a better rule. If we can accomplish that we will have accomplished a lot, because one of the most difficult things is getting good information. Another thing that has to do when you talk about the managers, I think of course I've got a manager, so I think more as a staff level guy, is this going to be something that is going to be forced down my throat or is this something I am going to want to embrace? Now I can tell you, for example like the edocket, the edocket was something that, we were just sitting there fat, dumb and happy one day and the next thing you know here is this email on edocket and we are all looking at it going, what the hell is this? Things haven't gotten much better since then. I don't think anyone has seen a real benefit from edocket as it exists right now. All it really is, is commenting in an electronic version of what we were doing before, except a little bit more chaotic. It's funny, but at the same time there was no, I don't think there was any buy in at the staff level on doing it. This is just something that came down. But I think this whole rulemaking, you mentioned {name} and obviously she works in the administrator's office, I bet that she is carrying a lot of weight from the agency. I think that this thing is, for our agency is coming and I think it's going to be, it's not going to change, we are not going to go back to the old way of doing things, and there is going to be a big push for us to continue to go forward with this. To make the agency and agency divisions, and agency information, more electronically accessible to the general public. That has been a push ever since I've been in the agency, just since 1997, but I've seen a big push and I don't think that that is going to change. And regardless with the administration, I don't think.

7: Thank you everybody.