

*Small Group Discussion -- Agency Representatives
Group Two --September 4, 2003*

M1: . The opening question is...What are the greatest rulemaking challenges you face in your agency?

P6 - Probably some agenda setting challenges.

M1 - Your agency, is that something you involve stakeholders at all in?

P1 - Oh yeah. Public meetings and things like that and encouraging petitions targeting what should be changed. My own flesh and reaction when you said that was the greatest challenge for us was actually maintaining a focus on doing quality regulations with all the falderal that surrounds the process these days and all the of congressional mandates and the legislative challenges and the endless stream of supporting analyses that have to be written just this way or just that way. Maintaining the focus on quality is a challenge for us.

P6 - The academic (?) the ossification of the rulemaking process. It's so rigid and so enclosed. (?) exterior motives, a lot of academics, the study of rulemaking much more difficult that the adaptors of the Administrative Procedure Act (APA) intended. Statement by a famous administrative office (?) said that notice and comment rulemaking was the greatest procedure invention. (?) since then basic simple procedures has so much loaded onto it that some people (?).

M1 - Would others agree with what {name} and {name} were saying?

P10: I am just going to ask a question, when you talk about things being added on to the process, are you talking about things like the federalism analysis of paper reduction act analysis or are you talking about all those things that have been imposed by Congress or an Executive Order? Or are you talking more about court decisions that have made...raised the bar so high that it's difficult, that the agencies feel like they have to cross themselves 5 times in order to make sure that the rule is something they can put out? Or both?

P6: I think the answer is all of the above. I think you picture the three branches that have contributed. The courts have this process of judicial review, questioning out what the arbitrary and capricious test means, have added a lot of requirements to the rulemaking process. The Supreme Court put a little bit of a stop to that with the Vermont and Yankee case. It said that courts should refrain from adding to the requirements that aren't indeed (?). Nevertheless, just the arbitrary, capricious test itself has (?) requiring a lot of preambles, responding to

comments, that sort of thing. The legislative branch has obviously added a number of statutes over and above the APA. The White House over the years started (?) White House review, certain rules anything that kind of wraps things up (?) have added all these different Executive Orders. So you've got laws, court decisions, Executive Orders. You put them all together, that's a big load. You can defend each one individually. It's hard to say that the small business rate and flexibility analysis is a bad thing. But why should small business get singled out? Why not write urban, or something else. Where do you draw the line?

P5: What I found anyway in the last 2 or 3 years, is the administration is really relatively anti-regulatory. So we've found that a lot of things just stop in its tracks. Second political amble now trying to get anything to the head. I don't know, I woP1 for FDA in copying and services, and I don't know if this has been something that has been happening to all the different agencies, or if something that we've just...we've added yet another layer in our regulations, whereby we have to do a concept paper that needs to go up in the chain before we can even start to do a proposed rule.

P6: When was that (?)

P5: It's an agent fast requirement. I don't know if something that you've seen.

P4: We call it analytical group (?)

P11: Now do you both use also a regulatory woP1 plan?

P4: Same thing

P11: That is the same thing?

P5: Just changed the name of the (?) We have questions, just as an example, we are trying to implement a congressional mandate. We have the Animal (?) act, that was passed in 1996 by Congress. We have one little facet left that we need to do on that act. So years later we're woP1ing on it. And we have a proposed regulation, but before we could even do the proposed regulation and start developing it, which is a laborious long time...we can do a concept paper. And part of the concept paper is a cost benefit analysis, so its sort of like putting the cart before the horse a little bit, because you are trying to something that's fairly detailed before you really have fleshed out the real reg. And this is something that is mandated by Congress so it's not even something that we necessarily as an agency are trying to probalgate because we think their needs to be a regulation, it's something that Congress told us to do and we're simply just trying to do it. But the concept

paper that I am speaking of is for input (?) Just doing the concept paper is going through all the food chain of going through ____, going through (?) if its deemed significant enough, this has been in the works for about 9 months, we still haven't gotten it out of ____yet.

P4: How much flap do you have from other agencies where either real or imagined (?) interest in what you are doing?

P5: Not too much. There have been some agencies outside of --- or agencies like ____...

P4: They want to get involved at the (?) stage. That's where we hit a wall, because environmental issues are not necessarily local to the ____.

P5: I haven't seen that much (?) because I think we're kind of at the low level of the food chain.

P1: I think we coordinate pretty well together on interagency matters.

P5: Yeah, we have an MOU for instance, going up the food chain now.

P1: Like you and we and the food safety inspection service on BSE and other BSE issues have done...

P5: Yeah, we've done pretty well.

M1: acronyms

P1: Like mad cow disease instead of BSE.

M1: So the animal cannibalism is all under...

P5: So it's a little bit difficult to...

P6: I have just one comment, there's a new directive from OMB about peer reviewing all your studies and documents related to regulation that came out August 29th. It requires submitting a plan where reviewers...to do peer reviews you have to appoint peer reviewers, read the report, respond to the report. So there another whole layer. This is just a draft nonetheless, so you should get a comment on it. But it's going to be a new layer of requirements added onto the rulemaking process.

P4: I will observe at the same time OMB will say you want a goal by August, or something like that. Peer review done well can take 3/4 year or a year. Even just for the reviewer to give back the comments and looking at the response.

P6: And who's going to pay for it?

P4: Ignoring costs, assume we have a printing press in the basement, just the sheer time...the calendar rolling because if for example you have a cost study based on a resource impact, aquatic resource impact study. That study changes a lot, the cost study has to change. If they somersault both of those need to be able to respond and be done before the proposal or final rule is signed. And at the same time you have people saying at that White House said we would like this by December. And harmonizing those requirements, they don't fit.

?: There's a waiver...

P4: Problem is giving that waiver has been...they would prefer not to waive, for example, small business impacts on a big rule because it will put the administration in a position to (?)

P5: Things that have been really hot like bio-terrorism regs., that has pushed really fast.

P4: They have to figure a way to ostensibly comply with all these other things. I have a hot reg. and they're saying do it now, and we're saying but we have all this other stuff. It's not impressing anything.

M1: This might be a transition, are there any particular methods or tools, IT-based or otherwise, that you could see helping you overcome some of these obstacles?

P4: A quick transmittal of the body of comments received. I have an advanced (?) proposal, it wasn't quite "what do you all think about waters?", but necessarily got pretty blind set comments as well as some of the issues we asked about. There's a lot of data and it's very useful in suggesting a variety of different approaches that we might take. Getting those quickly, being able to analyze those quickly by issue, and also understanding the organizations role from which they come, helps speed things up. The data we got was the data I'd been trying to get for two years and had not been able to, because I needed people to generate it and they weren't interested until they had a (?)

P7: Do you have to wait until the end of the comment period to start seeing that stuff? Or do you start seeing it as soon as it comes in?

P4: Well, it depends. If we play the edocket straight we would still be getting them. They were in our same building so we did what we called triage by letterhead. We went down...the paper docket is official, so they would print the edocket pds as well as (?). And then scan and load the edocket, those that were sent in by US mail. We went down and we pulled and Xeroxed all the letterhead, and then started working with that, because they weren't able to tell us...they thought a couple of months before they could pass to us, and 2 days after the comments closed we were getting questions from our politicals. So we decided to never mess with the edocket. So again, the quick pass off.

M1: So it's all about speed.

P4: It's all about speed, but also accuracy. Being able to get sort of a "well we kind of got this sort of thing that's preliminary" that's really useful to be able to say. Because among other things you have my politicals who were asking but trying to push back on the "it's been a whole week, why aren't you drafting a proposal of response".

P1: We found one interesting thing that we did that worked out surprisingly well. Just a year, year and 1/2 ago, my agency established one e-mail address that's in every federal register notice. And in the address section it says, "you can mail your postal comments to this address or you can email them to [regulations@h\(?\)usda.gov](mailto:regulations@h(?)usda.gov)". We found that a great many people who send us postal comments will also e-mail a copy to that address. Now that gives us an online searchable database of almost everything. In particular, every lobbyist and professional organization, everyone with a letterhead basically does that now. And that's been a great help in comment analysis

?: How do you count them? Do you count it as 2 or 1?

P1: We count it as one.

P4: How do you sort them to know that you've got, (?) same guy (?) We have the same problem, people would send it in electronically by email, they sent it to the edocket, they'd mail one, and then they'd send an FYI copy to the administrator who would send it to us.

P1: We often get 4 or 5 copies in the end. Frankly, we are just lucky in scale. Most of our dockets only get up to a couple of hundred comments.

M1: So that's another technological challenge, duplicates of a different type.

P4: The same person. They are copies.

P7: Duplicates is something different.

P4: The challenge is identifying that indeed they are duplicates. If you have everything ultimately in electronic format in text readable you could do that. Believe it or not Lotus notes had a little macro writer, that sorted with maybe 70% accuracy. Different form letter families, but we need it to do (?). Sorting duplicates took a certain amount of time.

P7: So, to the extent that things move into electronic form in the next few years, either from scanned paper coming in and turned into pdf, or something submitted online. It seems reasonable that you could get faster access to stuff. You could see it coming in, as it's coming in, so if that's useful you could, from the first week.

P4: Yes, I think...was it you that showed the rate at which things arrive? Although, (?) deadline, if it's advanced notice it sort of trickles off. There is a certain amount that comes in early. A lot of...I used to be on the other side, making comments, and we would wait until the end so (?) That's much easier by edocket and I think...I don't know if it's one of the reasons why, but because those were up it was easier for people to see it, we got more earlier. There was still a rush at the end, but it was not flat and then up. It was almost straight up.

P7: So you get some sense of what the issues would be early?

P4: Oh, easily. Before actually when I was writing the ___ I made a list of issues I knew we were going to get because this is something that has been (?)

P6: Also if you had that feature that (?) click and see what everybody else is commenting, that will give you incentive to get your in early. So yours can be the one everybody uses for issues.

P4: If you could figure a way to also have the group that's encouraging the form writing campaign to be able to get (?) addresses. They don't care if it's on their site or agencies or something. (??) That's one of the reasons why they do it. Also useful for them to say we got 126,000 comments saying don't do a rule. It's not a popularity contest, but that statistically tells you...

P1: I would add to the list of tools that might improve our process or our work. Generally, any means of disciplining our commentors. I don't want to sound too nitpicking about it, but in fact, the survey that {name} mentioned that went out to different agencies, one of the questions it asked was very similar to this one,

“what do you need to improve the quality of your rulemaking?” And one of the responses from an agency that will remain nameless is basically we ‘need smarter better customers’. ‘We need smarter, better educated people reading our rules and responding to them’. Now I almost wish that was me, it wasn’t but...really though if we could use technology to focus the commentors into the areas that are useful. To strengthen the probability that they will provide actual data and arguments, rather than just an opinion. If data and arguments are in fact available.

P7: (?) technology is a simple website design. I comment on a couple of things in areas where I have expertise and I would be qualified to give good comment. But I have no idea what kind of comment people want. It’s only in the last year becoming involved with this community that I understand that the comments I submitted were probably discarded immediately because they didn’t contain the information that would have been useful to the people who read them. I think much of the public, even if it is educated on a subject, has no idea how to write comments that would be useful. So some guidance would be helpful.

P4: I’d like to see the guidance, focus it, say what you’d like to see, but I’m reluctant to say ‘we want it on this issue with this kind of data’ because that assumes I know everything. And a lot of times they may have an ancillary issue I didn’t think about. That they would like to submit data on and comments as well. Or an issue that cuts across all of those, it doesn’t fit well in kind of a pigeon hole. Pigeon hole comments are much easier to deal with, but the best data to help guide my rule may cut across those. There was a...I think in EPA’s notice there’s (?) I don’t think it’s great, but it does say how to write a good comment. Talk about what specifically the issue is you have, what you don’t like, what you would like, and any data you might have to support.

?: (??) nobody will see it

P4: That’s the problem. Having a little hot link – how to make your comment get heard better. As opposed to pigeon holing it as too ‘how many acres should be enough to be counted as a want’. That’s not their issue, it’s not acres its function, there would be no way to say that. That would be bad.

P3: Going back to her suggestion, which I think is just great, breaking it down, to be able to click on a section of a rule and doing that section...the tool that you brought up, that section by section analysis being able to put comments associated with a section. Most people in rulemaking have a section by section analysis that may say the truckers comments is XYZ our response is...I just think that is an invaluable tool. If there was anyway to encourage commentors to follow that sort of format, I think that would be a great service.

P4: If they could even include comments on the preamble discussion, because in a lot of our rules that's where the action is. You may be changing 4 lines of text in the red, but you've got 20 pages of discussion about what you mean.

P3: People add so much to the preamble

P8: That's what we learned too. (?) rulemaking was maybe 3 lines and we got 80,000 comments

P4: Did you have a long preamble that kind of explained?

P8: A very long preamble. Explain why we are setting up the level it is, and who could and couldn't make it. Had to justify why you were changing.

P4: If you had 3 lines but you had a 30 page preamble and somebody was commenting on section 8 on page 12 of the preamble, then that (?)

P10: Frankly I think that, the more sophisticated folks are going to be commenting largely on aquatic life because they realize that's the language that's going to have the legal effect. The folks who maybe need the background information to understand the preamble, in my mind are more likely to be the average consumer, average person who needs this additional language in order to be able to understand the rule. I do think that its important that we have an opportunity to comment (?). Because I think there will be folks who, for whom, that's the only way they know how to understand the proposal and comment on it. The other thing is sometimes there may be discussion of an enforcement strategy or the way that the agency anticipates handling something, and isn't necessarily dicotified so you don't have an opportunity in an edocket sort of way to comment on the preamble, then those thoughts may not be captured.

P5: I agree with her . . . and what I've seen in the (? # stated, either 3 or 30) years that I've been working is the sophisticated trade organizations do sort of laboriously comment on each section, but the generic Joe Public consumer will look for plain English interpretation of what the reg is in the preamble and will comment. The comment that Joe Public may make may not be particularly substantive but just the same you can't really ignore if there are enough comments on it you really need to address it. That having been said I think it would be really useful internally to be able to do the summary that we talked about. That was really exciting to me, the summaries each codifies each particular section, that right now I think we are still doing manually. We send out the comments to the scientists, and the scientists will go section by section

and make up their own (?). And something like that I think could really pull everything, and my concern would be that it would actually capture everything. It might miss a particular letter, it might miss a particular element.

M1: You have clusters that you identify and then be able to...

P5: Yes, you have a summary, to have it generate a summary. Or at least if not generate an actual summary, at least put the clustering of a particular category so you don't have to physically take the time to go through every single comment and type it in yourself. That I think would be really useful. Particular, since I work . . . and the legal end and I have scientist at the other end and sometimes everything is not on electronic version and I just sit there and pull the comments and say what are they actually saying, what do they actually mean. It would be useful to shoot over an electronic version and I could just scroll it and look at it really quickly.

P6: I was also impressed by {name}'s vision of this whole thing. One thing that I especially liked about it was the automatic feature of having these links in the document and commenting on one part of the document. Maybe generating a little heading as to which part of the document the comment is addressed to, which would make it easier for the sorters out there. Then collating them all at the end so you have one comment with a bunch of different headings that could be used. Another aspect of this, I'm sure you agencies take comments on the analyses that are in the proposed rules that will pose (?) those could be kind of set off so that people searching can view the comments just on the analyses themselves. I wasn't all that impressed with... well, in terms of expert participation I thought the clustering part was really impressive, but the summarization part didn't move me very much. I didn't think that the technology had advanced enough to really make that useful.

P1: It was very much an extract rather than abstract summary, as he said.

P7: As to state of the art, his demo could have been slightly more convincing in the extraction area. The state of the art is to go into documents and pluck out sentences that are the most representative of that docket or that section and assemble those representative sentences into the summary. And they don't read as well as human created summaries, that's true. It might be useful as a rough draft for a person who is going to create the final summary.

P1: But for a rulemaking summary, if you just change the key word list so that the summary included sentences that contained the words revise, remove, delete, add, change. We have seriously to get the guts of the comments that way, because you really are interested in what they are telling you to do differently.

P4: We developed a (?) 130,000 comments on a proposal (?). We wrote a software tool, not that you guys would be critical, that those where we had a series of coded issues that we developed while we were writing. And I could for example put in 'non-environmental NGO' commenting on isolated waters and it would pull up in a string, the edocket number, the name of the organization, and the section of the comment that talks about what isolated waters. We had some sentences about the (?) in context. I asked them to (?) That was done sort of a quiet company about edocket stuff. I also want to say to an extent it augments implementation of {name}'s world which I think would be a great one. For us our most sophisticated users comment very heavily on the preamble and its almost always a preamble discussion that forms the guts of the inevitable lawsuit. Almost always. Any ___ rules the action is included, that's just sort of rule of thumb.

P1: Is it still the case that most ___, because I know you've got a lot of court cases, are most of the successful challenges based on procedural violations rather than rational basis?

P4: Not in my office. In 1970s is was probably like 85% procedural. I think its less now, there's all these challenges there that say 'the substance is wrong and by the way you missed that one paragraph inside of what was otherwise a form letter and you don't have it in your summary with all the comments received'. That's my fear is that we lose it on that. Usually (?) based on substance if we were not implementing the act. The last year and half we have had 27 federal court decisions on my rulemaking issue area, we've got about 25 more (?).

P6: What percentage of your rules are regulated?

P4: In my office 100%.

M1: Do you think in any of these agencies represented here, would any of these tools allow you to carry out rulemaking procedures that would be less vulnerable to litigation?

P3: We just had a rule (??) regulatory flexibility analysis. I follow the guideline of the (??) rule, but people...we haven't gotten any comments on impact the small business' have. Agencies

?: Is there a separate study on it?

P3: Yes, a separate study on it, but the agency is kind of at a disadvantage. So we were really shocked that OMB kicked it back to us and said you've got to do

more to reach out and find out how the small businesses are impacted. I don't know, maybe a tool that spells out this is what SBA looks for, or this is what OMB, if we could standardize it for all agencies. It's just hard (?)

P4: The current manifestation at ___ I think makes it harder to make a defensible rule, because the edocket does not distinguish between form letters vs. form letters with paragraphs added. They were not given to us, if there were comments on a proposal I would be legally vulnerable. (?) comment review and similars (?) those similar comments. That's something that we've... that's the trouble about raising the issue. So I think it will get fixed but its something to keep an eye out, is watching out so you don't miss the little similar comment that comes in the avalanche of form letters. As {name} was saying, a really easy and good way to do that, but only if you put it in place of understanding the legal vulnerability if you don't. The edocket at ___...

M1: So that would be on your list of priorities for...?

P4: I put it number one. That aspect (?) we lose it.

P3: (??) technology available now?

P7 [tape break]

P4:...insert your individual areas (??)

P1: I love it when we get emails that include sort of at the bottom as a footer the email from somebody else saying 'here why don't you send this comment to APHIS'.

M1: We've done a pretty good job exploring some of the ways you might improve rulemaking, maybe improving on the speed. Reducing the manual labor, or there other areas in which you would see erulemaking, either addressing some of the specific challenges that you brought up or providing other benefits that we haven't talked about?

P10: One thing I wanted to mention and it doesn't go to benefits, but I think is something that is important to keep in mind, and that's the issue of late comments and how the agencies deal with them. And how the edocket system would deal with them. Because I've worked for 2 different agencies writing regulations and in both offices the agencies did accept late comments. Now it's a different circumstance if you've got a statutory mandate. If you've got substantive late comments coming in, I'm actually working on another rule now where the trade industry that represents literally every manufacturer affected by

this rule because there aren't that many manufacturers, has not submitted a comment and it's more than a week late and there's no feasible way that I'm going to...it is important to have their comments, but I'm thinking if we go to an edocket system are we now going to formally abide by the cut off periods for the comments? I know in instances, and this relates to ___ at ___ where I know someone who happened to get a huge comment in on their meat and poultry (?) regulation the day after the docket closed, but because it was an important comment from an important organization the...

P4: Hum, you're not important, yours doesn't count.

P10: Well, I'm relating an anecdote.

P4: Obviously that's the challenge of late comments.

P10: My point is there are decisions made by the individual agencies and just like this with me, if this were an edocket would this group be just bounced back and not be able to submit their comment.

P4: Or labeled LATE and then hand it to you

P3: The agencies are still in charge of making that determination. Prior determinations, late comment is simply___ accepting them, the particular comment, scanning it in, and putting it in the right agency folders

P1: It will be harder, it will be more visible how you are dealing with late comments.

?: Other people will know that it's late.

M1: But that would be most valuable to you is if with regulations.gov, for example, if it continued to send you comments that were submitted late and you would make a determination?

P10: Yes, I guess that was my concern, is that you're going to have a person who is setting up the website saying, ok this comment period closes on Sept. 4th therefore they remove it from the web page and people can no longer comment after Sept. 4th. That may make a lot of sense to the IT folks but it's not going to make a lot of sense to the reg. council, so I just wanted to highlight it.

P3: I'm actually on the ____. We're trying to keep the group focused on some of these are agency decisions don't get bogged down in that whole electronic version being the official record. ___ is worried about 'we'll be responsible for

excellency'. No, no, no you just have to follow (?) steps and if the docket is missing something, it's not ___'s fault, it's the agency, or other analysis that goes on. So, we are trying to keep them focused on issues that are just technical, (??) debate about substantive decisions (?) no every agency treats it differently. No way can we come up with a standard on substance.

P4: That decision would become important though if it went live without human intervention. There was some discussion at __A where I'm submitting a comment and I'm attaching 3 articles in pdf form from different magazines and they are copyrighted. And __ doesn't go live right away, it looks like it does, but those aren't put up on the web, because it would be violation.

P3: There are some fair use exceptions and that sort of thing. So the first time you have a cause of action and it's the person who submitted the comment, not ___.

P4: Exactly, but we just decided not to publish it. What allows us to avoid all those, at the edocket level, those decisions is it doesn't go live right away. There's a person that sort of takes a look, slows it down but it woP1s.

P3: You don't have an electronic as the official record.

P4: As the official, but we really don't want to publish something on the web so that you don't have a copyright even if it's the commentor, you could get into a lot of trouble.

P3: (?) difference of opinion on that.

?: (?) confidential business information

P4: And then there's a copyrighted article referenced in the comments, that they attach for our information and we have that in a hard copy docket, but we don't publish them on the web.

P6: Why don't they give you copyright for lease?

P3: If you're allowing it in your paper docket, it's the same. Someone can walk into your offices, make copies of the comment, so the question becomes once you post it to the internet the article becomes more readily available, but you have some (?) decisions that expel you.

P4: All I'm suggesting is because ___ doesn't have it go live right away, the decision about how to treat those didn't have to be made at the edocket setup

level. It could happen, it can vary. And edocket for the government as a whole, it can vary from agency to agency, but it becomes an edocket setup issue if it goes live right away. For example, all the copyright attachments or all the CBI attachments are on the web as soon as the commentor says send. It's the processing that allows, and I think should the teaming be allowed, the different agencies to woP1 it out by themselves, or this thing will never happen.

P8: Why would someone send CBI information to the web?

P4: I sure wouldn't.

P8: People that have that certainly aren't going to be dropping it off...

M1: Would it be valuable at all for the web form to have a checkbox that says this is copyrighted material?

It sounds like right now it's...

P4: It might and then we could just say the commentor said or something like that.

P10: The average consumer isn't going to understand.

P8: I think the website should have something for the viewer 'have confidential business information, do not submit it through this portal'.

?: Our site says that.

P3: You have a whole different process.

P2: But the federal agency documents usually say that. The federal registry documents themselves that you're commenting on will usually say do not send confidential information.

P3: (??)

P8: But they should, most people who are submitting do not want to do that.

P4: You were asking about in what was electronic tools made things a little easier and quicker for us, one that should be easy is if it could generate essentially a list of commentors, or an index of materials in the docket. We used to do that when it's hard copy, but I'm told now that at least in the ___ docket, they don't have one. That's useful in a lot of ways, one is that can give me a response to the incessant number of comment questions I get about well, 'who

commented?', 'did so and so comment?' or 'where is comment by so and so, what edocket number?' And it's also useful because when we are defending the rule we bring the whole docket into evidence by submitting the index. Now we are going to have to (?) unless we generate our own, which is probably what we are going to have to do. Some way of generating just an index of who commented and maybe the edocket number would be very useful.

P7: You should be able to get half dozen kinds of indexes, slice and dice the data a whole bunch of different ways, zip code, congressional district, names, subject.

P4: With the stuff that we've done within my office we can do that now, but it's only for the 133,000 that have been chose to put on the edocket, we don't have the other set of comments. We need it, (?) other agencies would have similar views...like if your main trade association had commented yet.

P3: (?) when you put in the docket number it pulls up everything

P4: One would hope, but there's a field they populated with 61 Fed reg DADA rather than Association of state loans managers, so that field is the same virtually in all except the last 200, because that's the point where we (?) populated with something useful.

M1: {name}, does the document management system at ___...things are getting scanned originally and then you've got your hard copy and each thing gets assigned a unique identification number

P8: Unless we call the docket people and say, listen if you get 50 copies of a form letter, that's one entry.

P9: Do people understand that? Do the people who are submitting understand how you count.

?: We're working on it.

?: Probably not

P10: I think the...having just prior coming to __ working in ___, the ones who have these websites understand, but they count on the volume and as was pointed out they also count on this for membership purposes. Anyone who is sophisticated enough to set up a take action, or actual, this sort of thing, odds are they are sophisticated enough to know how those comments are counted once they get there.

P3: When you pull up the index it will have an entry (?) and that's an indication that we got a hundred of this type of comment.

P4: If you were answering the question, 'how many comments did you get?' would that count as 1 or 100?

P3: At the top of the index it would say 5000 documents and...it's separated into 2 things, I'm thinking documents and comments, but it could be pages.

P4: I'm wondering if you had a form letter, like we had roughly 24 writing campaigns that resulted in roughly 125,000 emailed comments, we count them as 125,000. One of each family was put up on the web with a note how many, we had 350 of these, but we counted as 350 we just don't load all 350 at the moment, because the number matters to some.

P3: We load up all (?) under one entry. So you would go click on that pdf and then you just scan through.

P4: That's very tidy. That's nice.

P8: (??) 60 copies of same letter, listed as one entry.

P4: Would that be by the same signature line?

P8: No this would be the exact same letter just different people signed it the wording was exactly the same. That counts as one entry of the docket. So out of 18,000 there were really 80,000 because a lot of entries represented 50 documents, they were the exact same document. WE said alright we are just going to scan 50 documents and then we are going to do the entry so that scanned document, new entry...we know what's going on, when we see that we know what's happening. We also have them, when the (?) in and out rule closed on Feb. 14th the 15th we got dumped on snow. We told them these big ones come in ignore them on the 14th, we want you concentrate on this list, we gave them a list of 25 people that we really felt would comment and we said look for those, then when you can start doing the other ones. We want these big boys.

P1: How do other people feel about approaches to get commentors to criticize and rebut other people's comments? Interactive commenting, discussions, moderated discussions, chat rooms, whatever? Electronic negotiated rulemaking. Myself I love it when they do my work for me, and we try to encourage commentors to respond to other comments that are on the other side of an issue, but do other people find that useful, would you like to encourage it?

P4: I find it interesting. We also had a campaign to try and get states to withdraw their supportive comments and come in the other way. It could go either way, I know a lot of commentors really liked being able to see who had commented for. Some of them say 'we endorse ducks unlimited comments' without qualification. Others already know, for example the development community know what the environmental community, (?)

P8: I heard a lot of the comments we dealt with on the (?) organizations and what they look like, (?)

?: Sometimes they share them.

P8: They do share them.

M1: I was going to raise the point earlier, the question of whether some of the groups understand how their form letters get counted. In meeting with some of these groups they told us, look we don't care if those 30,000 get counted as one, we still have our legal council that's putting together our substantive comment. We are still going to submit our comment so count those how you want, you are going to get our...

P4: Although our issue the day after the public comment period closed the environmental groups as a group put out a press release saying 127,500 argue don't do a rule on this issue. It mattered how many they had, and then the opposing side said it's not a popularity contest, they issued their press release. We just sat back and said thanks for doing the counting.

M1: So would others of you agree then that the volumes, do you not necessarily have a problem with that if the tools are there to sort them into the similars or (?)? That it's important for your agency to know how many people out there are on a particular issue?

P10: Well, I think you went a little further than I would of. Off the record, I think it's a necessary evil. I think that we want to encourage public participation, unfortunately, what we see a lot of are form comments that just don't address sections, don't provide supporting data. We can get 50 million comments, but if there are no supporting data, if there's no rationale which connects to the statute and gives you the legal justification for doing it. A perfect example would be like genetically modified foods, where it's a hot issue and you can get a lot of people to react. But it's 'stop the Frankenfish', there's nothing substantive there.

P4: Is it useful that you got, say 35,000 folks that say 'stop the Frankenfish'? Is that anything you or your management would be interested in? And you've got 140,000 saying create the Frankenfish.

P10: Let me answer it this way, we often times end up noting the volume of the response, but have to say 'though a number of people raised this issue there were no substantive data submitted and there nothing would meet the showing required by...And so you note it and there's nothing you can do.

P6: I have a good example of that, the tobacco rule, where the tobacco companies passed out post cards at NASCAR races. And 250,000 postcards came in objecting to the proposed ban on tobacco advertising in sports events. So FDA put them in one box and said that's one comment times 250,000. And the footnote is NASCAR changed the Winston cup to the Nextel cup a couple of years later.

P5: One comment I would make to follow-up is the...Frankenfish, because we do cryogenic animals and we get the same type of comments, is that I think that one way you can address it even though your right, it's not going to substantively change anything legally because they are not giving you any data, but I think you can in the final rule or another document, address it by going into more detail. Saying here's how it's going to work with the labeling, and here's why we can't do the label. You can legally as well as scientifically elaborate on some of the points that they raised. And I think that that is useful in some regard, even though you are not going to do exactly as they want, you may be able to (?) some of the fears by giving them more explanation. Maybe you didn't give enough explanation in the first go around.

P6: Congress can overturn agency rules. They did it in the ergonomics rule. It's the only one so far, but if they get enough cards and letters coming in that can (?) Congress a little.

P4: They irradiate their mail in Ohio.

P1: Talk about your paperwork reduction though, if any, I always thought it was worthy of a post article, but all of those Congressional notifications we send to Congress and they never do...they don't even read the rules, they don't reply to them..

P1: If I were going to be truly subversive I'd like to form a coble of federal agencies with the mission statement that we are going to force Congress to do their jobs.

P4: We are all going to propose on the same day and (?) a flush out?

P1: No, I just thought in our responses to comments we would start being truthful about things that should be but Congress hasn't done anything about it and we can't help that.

(Again many talking at once)

P1: Yes, there are reproactions.

P10: They just will keep you from spending any of your appropriations money on promulgating a rule.

P4: Oh that's happened. Our folks we had a limitation on promulgating the rule for how you handle streams that don't meet water quality standards. We didn't exactly drill them, it said non of these monies shall be used to finalize or to implement this rule, and so Clinton had 10 days to sign it, we issued a rule in 9 days. Trust me this was not well received.

P8: We were blocked from even studying our issue. After we went out with a (?) eight year with advance notice. There were those in the auto industry and others that said no, the republicans are in charge and we'll get them to sign it, prohibit you (?) even thinking about the issue until Dec. 2001. And then (?)

P4: Plus we also operate under the substantive statues they give us. We are implementing what Congress has made clear.

P8: Yes, our budget went from officially in 2002 60,000 and then we had extra money with inside the agency. Then it went to (?) A little bit of a bump back.

M1: Would it be cynical, in some ways I think what I am hearing is that there is a current, maybe it's a permanent regulatory environment that makes your job so difficult that there are not necessarily any silver bullets. Are there IT tools to make it easier?

?: There's possibilities that have gotten greater and the resources have gotten smaller at the same time.

P4: But easier, yes. Easy, no.

M1: Well I see it's more optimistic that I thought.

P4: For all of it that really drives me insane I really love our edocket's ability to put the comments up and available for us and for the public to look at. I think that's great. The information that I've gotten, emails back from folks that are using it in their PhD. dissertations and data coming in for litigation, a variety of other things that go well beyond our rulemaking. I think that sort of the issue, the information available on the issue is much richer for having done that via the edocket. These guys aren't coming with their quarters to feed the Xerox machine wanting paper docket from the system, I don't think.

P5: And even though we know that the rule may be going nowhere, we are still obligated to work on it. We still spin our wheels, sometimes knowing it's going to be worthless to spin our wheels. So to the extent that we have to spin our wheels, IT will be useful.

P4: I think a pop up like solitaire game.

P1: You know there's one silver bullet I can think of that would be nice to have and {name} eluded to it in his description of module 3, a virtual desktop of rule writers, and I'll believe it when I see it. In general, any applications that could be used government-wide to standardize things like risk analysis and economic analysis and so on. Accepted court proven tested application for doing those things.

P4: I'd like an OMB test of application.

P1: Well yeah.

P3: I guess I'm a pessimist because I think the minute you get it standardized is the time that OMB decides, no we don't want this rule going any where. Even though you've done your (?) analysis according to SPA criteria. I guess I'm a little leery of standardized response, that sort of thing. I think that...

P1: I'm talking specifically about economic modeling software and risk modeling software. If we could all agree on some common ground, I don't want to...I see the risk you're talking about of getting locked into standardized language, but it's not that so much I'm talking about. It's actual how to manipulate data, what data is relevant to doing economic and risk analysis.

P10: It's like agencies can't agree on how much a life is worth. I don't know how they are going to get to the point of developing whole models when we can't agree...

P1: Well maybe it's worth a real public discussion if we don't know how to do economic analysis, then why the hell are we doing it all the time.

P10: I don't think that we don't know how to do it. I think that everyone agrees on the end goal, they don't agree on how to get there.

P4: Also, if you get a 'this is the proper way to do it' you just created and template against which when the rules being challenged they will look to see if you did it. If it says have 200 in your sample set and you had 201 or 199 you might be subject to challenge.

P1: So you'd rather be a moving target then too...

P4: I don't know but it makes me a little concerned about having a sort of template for the goal and moving from that. I'd love to have one, but it would make me nervous in defending the rule later, because application in the real world always varies.

P10: But I think this also gets to the data quality issue that I think you raised earlier. I know from my woP1 with a non-profit before coming to the agency, that I know in talking with folks writing rules in some of the agencies, they will see that they were (?) theirs because the data quality requirements were so high that if certain interested parties adopted the tactic of not submitting data to help justify the cost benefit analysis, they could prevent a rule from moving forward.

P6: Come back later and attack them.

P10: Yes

P3: That's what happened in our rule. It's going to cost, it's going to cost, it's going to cost. Didn't provide the agency with any numbers so they were like ok our best estimate from talking to people. (? I think someone said no) That is exactly it.

P4: We had the opposite thing in a couple of areas, some of the variances on the Clean Water Act were available only if you submitted the reasoning for why you require a variance as part of the rulemaking process. Or show that you were on life support and couldn't lick a stamp and mail it in. We have these technology based nation effluence standards and they apply to your company, unless your company says why the factors EPA considered when they developed that were different from yours and you submitted all that data. If you didn't submit the data you can't apply for the grant. . . .But I understand that they get big risk

comments from people trying to preserve the option and fighting for variance whenever it comes up.

M1: I want to revisit one issue, that {name} started to get to earlier in talking about trying to keep agency issues with the agencies. There are certain things that should be decided at that level, can any of you talk about what you see is making the unique organizational cultures in your agencies or other agencies you are familiar with that might make using some tools that are being etched here this morning difficult? From something as general as just plain resistance to change or is it more specific things like...?

P1: I think the attitude of general counsels amongst the various agencies has a lot of affect on what cultural barriers exist.

P4: We have pressure from stakeholders depending how much you try to structure the way in which comments are put in to the edocket. We would do that with less contact, they would suspect it does not have the content-neutral objective.

P6: There's many ways to look at it.

P4: They would think, well 250 characters or 500 characters or 10 pages to say why your fundamental idea is stupid. If you don't give the option to say, or something like that. Or by putting it in this way I don't have the opportunity to submit all the data on a related issue that you forgot to ask. And also change view by stakeholders and different administration agenda is viewed as the change itself as an agenda. Regardless of who's in office (?)

P7: So one of the positive things that I thought I heard earlier was that a lot of the comments from the general public right now are not very useful, because of the way they come in. But that it's possible future systems could guide people in creating more effective comments, but some of the things that we talked about were example driven or form driven interfaces doing that which would probably guide them in some directions. So if I hear you correctly, you're saying that some of the stakeholders...

P4: All my (?) folks would submit in hard copy, they would not use the edocket if they were not able to structure the discussion of this issue in the way that means the most to them.

P7: Well that's ok, not ok, but the other part of that is, would they view it with suspicion, hostility that you were trying to structure the discussion?

P4: Yes

P3: Even if it was {name}'s idea. Section by section

P4: Yes, that would be ok, but you would have to have a really big other issues, and unlimited space to put that in. So they would sort of do, yes, no, yes, no and then sort of dump their comment. I don't know how different that is from what we currently get.

P1: I think the degree of hostility to a preformatted or guided commenting process is related to something that ties into negotiated rulemaking too. They always tell you the first step in selecting an issue for negotiated rulemaking is to see if the involved parties have some overlap in goals. If you have one party whose goal is no regulation on the subject and the other party is the opposite, then that's not a good candidate for negotiated rulemaking. The same applies to directing the discussion of comments. Their goal may not be, of some commentors is not to, it may not be to have a regulation, it may not be to improve a regulation, it may be something else entirely. It may be to make a public point, or it may be to recruit members, or something else. So our goal is hopefully to improve the regulation under discussion and I guess depending on how many people out there who consider themselves stakeholders agree that the point is to improve the regulation, the more there is agreement on that the more you can get away with a preformatted or guided commenting system, I think.

P4: That brings up something that would be great sort of IT solution. We had a comment from the agriculture agency in South Dakota, it was one page long and they really meant it so they underlined everything. That was fine in the hard copy but when the pdf was read it's blank. A little bit of 'how to do this well' on the interface of public comments, don't underline would have been really helpful, because in doing the scans, what did South Dakota add? I know they were one of two states that emphasized this particular point and that's why it wasn't picked up.

P7: People should be able to submit any format that they want, technically there is no reason they couldn't upload word files or whatever else they are most comfortable with.

P4: If they are told they can. Our edocket doesn't say you can attach that.

P7: I know, I know.

P8: We ran into a problem with that the year that (?) deadline. We get like no comments from people and then they would call me and say, 'your stupid docket

didn't attach my comment and they would send it to me, so it would show up in the docket maybe a couple of days later, and we were like ok we got the comment so we are considering them. So they were frustrated, 'well I tried to attach and the thing didn't woP1' because it was overloaded. But still we then accepted their comments and dealt with them over that blizzard weekend and then we came back and we eventually figured out what their number became, therefore it was accepted.

P4: But that slows you down.

P6: What if there's a virus?

P8: It didn't slow us down it slowed the public down. Eventually some of those people resubmitted it by hand. If there was a virus I don't know. They were frustrated, 'we've got document, your stupid system didn't accept it, here you go.' So I was getting 5 emails in a minute from these people and I was calling people and said listen we're taking this off in a week and we're getting dumped on with snow, what do you have, give it to me. I'm only...

P4: I set up a second e-mail box, I didn't give out my own email or my own phone number because it would than be unavailable for anything. Someone who was on a major rule with all the oil and hazardous waste bills is the contact, had his voicemail box fill up every 15 minutes and his email he got between 2 and 2000 a day. He's functionally not available, so I set up a different one so that could be functionally not available.

P9: I think {name}'s comment brings up a really good point is trust, do people trust the erulemaking system as it works now and any system that gets built they have to trust it or ...

P8: I don't think it was trust, they were like pissed off because they had something and they couldn't do it and then they'd say 'well let's send it to Ken anyway'.

P9: But they also have to trust that it mechanically works, that their comment gets there, but also the issue that {name} brought up earlier, are you trying to siphon their ideas in certain directions. So it has to have integrity. And then the security angle as well is the third aspect of trust, it has to all be there or people aren't going to buy into it.

P8: Right, because I have the right to send like everybody quickly and send fed ex boxes to people up in Boston, couple got it, a couple didn't. Of course, our fed ex pick up wasn't a late pickup because of the snow, we scramble to find some

place, my co-worker had her husband pick her up and drop her off at (?) to send it out, because the fed ex guy says, 'oh, we're cancelled because of the snow storm', we are like 'what!' We need, give me a place, where should we take this? There was some sort of 24 hour place that was open.

P4: It would be nice if the commenting public and the folks that criticize the end result heard stories like that, as far as, how hard you were trying, in terms of turning things around.

P8: It was like 4:00 and I didn't get some I started calling everybody that I thought I would get comments from and asked, are you submitting comments? Can you get them to us? We are waiting...just make sure these guys are doing it first, they would all like reference each other. Concerned scientists referenced the _____. They had persons writing it and then eventually they all just show up.

P1: Maybe instead of having a comment period end date, we should say one of these days we are going to stop accepting comments, get yours in early.

P8: I think it would be good. Eventually when a lot of them came in it was too late. Too late, we are already under fire, we don't care, we are ignoring this.

P1: I love the ones who always send their comments direct to secretary or administrator of the agency and ignore the instructions in the federal register on where to send them.

P4: When they make it down to the docket about 5 weeks later after 6 calls from the people wondering where their comment was in the docket.

P5I: What the problem is, it doesn't have a labeled docket (?) your violating (?) can't do that even though it's related to the particular topic it doesn't have a docket number on it.

P8: Then finally get a request to fill out a formal letter of response. We say, no this is a docket response it goes into the docket. We are not responding, it goes into the docket just like everything else, just because they sent it to our administrator, I'm not sending a response to these people.

P4: We have the opposite problem, our administrator decided everything addressed to the administrator would get a unique response back. They were not thinking about the CC...(people commenting and laughing) My colleague who is here today is taking break from answering these controlled correspondence, because we write back, 'thank you for your comments, we've

added them to the docket, it is an issue...’ and we put 6 copies of this and put it in a little envelope and ...

P8: We got comments from elected officials, we sent a letter and said we dumped it into the docket.

P4: We dumped it into the docket but then we need to write a response. Back to the sender just because they CC the administrator with something that they submitted to the docket. One of those, we didn’t mean to catch you type moments, but it’s taking a lot of time.

M1: I made a note and kind of caught it under the topic of, better educating the public about the commenting process. In addition, any sort of subset of that, or addition too that we talked about earlier, is obviously we need to educate them about writing more substantive, useful comments.

P8: I just had to add new boilerplate on how to submit comments.

P3: Well that’s from the federal register, they had a new address section and then we also recommend that you add a privacy act statement.

P8: Then we have the whole thing about comments, how can you submit like plain language comments. It’s not written in legalese, it’s written very much in plain language in the back and doesn’t look like the rest of the notice.

P4: It’s in the back, not front.

P8: It’s in the back.

P4: Does it jump out at whoever is just sort of cruising to make comment.

P8: It references I believe, see the comment section. It looks different than the rest of the document. Because it has a lot of indents and bullets. So if someone’s reading it, it stands out a little bit.

P3: Actually, that should appear under the addresses section.

M1: Can we go onto another question real quick because we are moving towards the time when we are going to try to summarize. Of course our final report will have all the detail, everything we’ve talked about. If you could, aside from the legal issues around privacy, if you could name the 5 fields of information that

you want to collect on commentors; zip code, phone number, address. What would be the most important ones to have? Affiliation?

P1: Relatives in Congress.

P10: Donations to major parties

M1: That information is available at a number of different websites.

P1: And some of it's even true.

M1: Obviously, the person's actual name is probably not that valuable?

P3: If they have a substantive comment and you want to ask a question having a name and phone number at least.

M1: Because you do have to follow up on occasion with a comment?

P3: yes

P1: Now ___ edocket actually doesn't highlight the name, does it collect it and keep it behind the scene, but it can't sort by name? You don't collect names at all in the edocket?

P4: Nope. Nope. And that's why we don't have a list of the commented.

P3: You could do a full text search on the ___ and pull up someone's name.

P4: Provided that you know that they put their middle initial in or not, or they spell smyth and it's not smith, and so forth.

P1: But that was a privacy act decision, wasn't it, more than anything else?

P4: I'm not sure it was an overt decision. ___ back when decided that they would accept anonymous comment and as a result they don't have a field where you put your name in or click anonymous. Which I think would be good, because most folks will put their name and organization in. You could just leave that blank and submit. I think it would be handy if you either had to click 'I want to be anonymous' or you typed your name in. Location and organization, if relevant, would be the 2 things that I would find very helpful.

P7: Well also because people who use the web today get stamps that people are being trained not to give their name if have any option to not give it.

P8: We've got to get the name, out of the 18,000 or so I'd say about 100 were fake names that were hysterical. We had one from A. Moron. A. Moron was great because when you did search, what A. Moron had done, he had taken a letter he received back from his Congressman in Illinois and submitted all sorts of drawings and comments on that so it showed up in the docket as being submitted by a member of Congress. When I pulled it up I thought, what is this? So we thought, oh we missed somebody in Congress, we were annoyed so we called everybody and like oh my look at this person. I also got one from Charlie X. Horse that said 'ban cars, use horses instead'. We love that, that auto industry guys thought that was hysterical.

M1: So {name} is there (?) processing technology that can pull out those fake names?

P7: no

P8: A little bit of humor as you are scanning through it. Just bizarre names that people were using.

P5: Get the trade organization, because the most substantive comments come from the trade organizations. They just know how to write.

P4: It would be useful if there was a box they could check that said 'document attached' because in our edocket sometimes the edocket in transmitting things to us send us the front page and had no indication that there were graphs, charts, and pdf files attached. It would be nice just to be able to sort by that to make sure you've got everything.

P1: Sometimes things get entered as separate documents there and plausibly could be because people attach other people's studies or articles and it can be misunderstood as a separate comment from the organization that wrote it and they hadn't sent us anything themselves.

P8: I think something that happened to some people that couldn't attach, they just sent two separate things.

P4: Encouraging them to send on a CD, pdf's and documents. Like the ___ had a 160,570 page hard copy they sent and a CD. I was warned that when you printed it, it was about 18 and a half inches. But as it was it was totally searchable, attached as a pdf and it was all great for us. It was also easier for the docket to load it right up because they already had it in pdf rather than having to scan.

P8: We requested electronic versions of confidential files (?).

P6: How about zip files?

P4: If I had a zip thing on my computer. I got a zip file, it was something like 15,000 form letters from Earth Justice. I just wondered down to the docket and said, can you do anything with this? Because they said they weren't going to print them out. The docket, I don't know, will get back to me.

P1: Now of course the regulations.gov when comments are submitted to there they forward them to the agencies in zipped format, which causes us a few little problems. We don't get many comments that way.

P7: They can be unzipped automatically. No human ever has to see them in that format.

?: If you have unzip on your...

?: You get those things for free it's just discouraging to do.

P4: We are strongly discouraged from putting agent software (?) If I tried to download zip and unzip for free, I'm sure that little red light would go off somewhere.

P1: Is it built into Windows nowadays?

P7: It should never get to you. Right. That stuff should be unpacked as part of the submission process. They upload it in packed form, fine. But then it gets unpacked as it's being accepted into the system and you never see.

P4: Although, it's saved if it comes in as an email attachment or it is an email.

P7: All of that should be processed automatically. I mean no human should be touching that stuff, because there are too many opportunities to drop stuff.

P8: I don't think any of us would like that. If it's automatically unzipped, I would kind of guess (?) would be great. If not, that's a hassle.

P7: I understand, but all of that state of normalization stuff, standard stuff, you can buy that.

P6: So we can add to the list of culture being influenced by general council, is the culture being informed by the government in charge of...

?: Data security.

P3: I couldn't even get plain language software on my computer. I review rules, why can't I get plain language software, they want a 10 page paper about why I want plain language software.

P6: In plain English?

P4: My administrator got called in front of the government operations (?) to explain why our computer system was not more sophisticated than it was. And said that we should be disconnected from the internet in order to make sure the data was secure and it wasn't as bad as at interior.

?: Do they have internet connection now?

P4: They do now. They dropped like 9 bucks(?). So data security, and also the possibility of this file coming in and being on zip. Having a EXE or something hidden in there and getting into our system, makes the folks who run our IT say 'I don't think so'. If there is any possible data security issue, I don't think so.

P1: Keep in mind that the government still agonizes over things that have been common practice in industry for over 10 years. You heard {name} say they are finally accepting pdf formats now.

P7: I have a question coming back to something that we talked about earlier, when we were talking about trust being a key issue. To the extent that you begin using language analysis or text finding software or anything like that, in some ways the process becomes a little less transparent. You can explain what you are doing. I was wondering if that's going to raise an issue of gaming the system and whether that's something that you see as being a problem?

P6: What kind of announcement would you have to make to the world at large and public that we are now using this kind of technology to read your comments? Is there a notice that has to be given to the public about that?

P7: Well right and if you do that then you are going to get into (?)

M1: Do you think that in the future, a year or 2 from now, that these things are going to be ruled out if there was a much larger scale national woP1shop where the trade organizations of interest group C or most active commentors are

present with people from federal agencies so there could actually be face to face dialogue.

?: Reduce a lot of suspicion about it.

M1: Would that be too idealistic?

?: I think that would be a good idea.

P4: We talk with them all the time anyway, except from the day that the proposal period closes, not until the final. If we talk with them you have to docket that too, but we talk with them all the time about what we are trying to do, things we are trying to do. They come and talk with us and meet with our administrators.

M1: But then they still go back to their offices and try to game the system.

P4: They still like to have it in their comment or not. If gaming the system makes their comment ineligible I'm not sure they want, in terms of helping shape the rule the way they want it.

P7: Perhaps for these large organizations you are going to list them in anyway, they don't need to game the system. It's probably going to be smaller groups who would do that to make sure that their issues rise to the top and are visible. Who more visible than they might otherwise be or even deserve to be.

P4: Visible doesn't mean that they drive the result. If they are willing to... good enough to game it so that concern on Frankenfish on my rule looks to be the most important issue, I go, 'I don't think so'.

P7: So you don't care, you're not worried about that?

P4: Not particularly, unless they game the system that changes other people who have already made comments or something.

P7: Ok

P10: I agree with you, I think that the largest negative impact that you have would be that things that would otherwise fall within one of the clusters or perhaps be more easily summarized aren't going to be, therefore you will be looking at those comments, but...

P7: Gaming the system just wastes your time a little bit, but otherwise doesn't change the outcome?

P10: That's how I feel.

P4: No

P1: That's how we need to design these systems, so they can divert the flood of irrelevant material one way and the trickle of relevant material another. We need to know what happens. We need to preserve it all and we need to have a count and so on, but we just need to separate it out early on.

P10: And keeping in mind that we err on the side of inclusion getting to {name}'s concern that we have these long form comments and at the end there's this one nugget that actually is something we need to address or we are going to end up in litigation.

P4: Our summary of public comments we are preparing says, and we received a comment on how to improve the Clean Air Act, _____, we do not feel appropriate to respond. We are putting that in there even though they were a little off message.

P1: Now we actually say something like, several dozen commentators submitted comments that were outside the scope of this rulemaking. And then we don't say what they were because, why.

P4: In our preamble summary we do that, but we do a comment by comment somewhere in the response.

P1: I see.

P3: For all of the comments?

P4: Sad but true.

P4: The preambles we do not actually go all the way down. This is a document that actually becomes part of the official rule docket for the final rule. It varies on level of intensity, that's for the most intense. And it's for rules we are sure we are going to be nailed on.

P6: On a case where a rule that you are going to be sued on, you get to prepare an appendage for the court, right? So that's not the entire rulemaking docket,

that's available to the court if they want to see it, there's also the joint appendix part, do you do that electronically?

P4: (? Maybe I don't think we can??)

P6: Then that might be an area that electronic rulemaking techniques may come in handy once you get to the litigation stage because you have to digest the overall document into something the courts can utilize.

P4: At litigation stage there's 2 game fields that are most useful. One is the name of the commentor, because if one of the commentors happens to be one that is suing you it's really good to quickly pull out what they said.

?: Of course you are not reporting the name right?

P4: We now have an internal software that will do that.

P1: That's the box we really need for ancillary information, will you sue?

P7: So are these issues, most of these you are going to know ahead time, is that right?

P4: Knowing ahead of time is incredibly manpower intensive. Because what they do is give the electronic copy of a codes line of text, coded at issue 13.

P7: For every document?

P4: Yeah, if it's not (?)

P7: Would it make sense to code a set of these and then turn some IT learning software loose on this to do it automatically.

P4: It would be really interesting to compare that with what was done by the educated eye. To see how good, because we have the educated eye set up, if you'd like to do a wiz at your side with the computer.

P7: Because I mentioned what the data says, getting the academic community woP1 for free, so (?) orders example that's what they do. They have a whole set of codes that they code all news stories by and they wanted those done automatically.

P4: The edocket electronic comments on our rule are 3300, plus or minus some.

P7: 3300 what?

P4: Comments received. And we have them coded into 50 different issues. What it does is it brings up the text that addresses that issue plus some sentences ahead and behind. So if you say for environmental NGO's you want to see all the comments on tributaries, it will bring those up. And it will have the edocket number, the name of the organization, the extracted text, some space and then the next entry.

P7: So this is sentence level (?) that you guys do now?

P4: Afraid so, it's painful.

P7: So this is stuff that people would like to get their hands on and it would be interesting to see...

P4: And it is not something that we are making available to the public at this time. (?) We also built it as generic so that it is not specific to any (?).

M1: So now let's start making notes on what I would point out as some of the key things. A lot has come up, (?) lots of areas to address, but we should also open it up in case there is anything else any of you can think of that is particularly pressing?

P4: Obstacles, also I would put down resources. Because, a lot of the problems the ___ docket has is they have like one port per (?) and lost a lot of stuff.

M1: (?) increasing standard (?)

?: Increasing responsibilities, and legal requirements.

P6: Increasing resources.

M1: Ok, so we had the quick transfer of comments, getting them into your hands as soon as possible. The other thing was duplicate detection.

P1: And as {name} pointed out distinguishing duplicates from near duplicates that they have an original nugget in them.

?: Dupes

M1: In many ways that's probably more important, that

P4: I always call them near forms because dupes I think of as two letters {name} submitted as opposed to a form that both {name} and {name} submitted. Because dupes would count as one, forms would count as 2 but entered once.

M1: And then the clustering.

P4: Generating a list of commentors.

M1: Yes, that's on my list. How about, I am just going to create another category that would be other needs. That would be were we put educate citizens.

P4: Related to that under top useful IT tools, can you put in links to, where they can click on, 'how to write a good comment' or 'how to search easier', 'what you can do'. I think that they tend to assume, not just computer literacy, but understanding of that particular site than perhaps most commentors have.

M1: So we captured I think both of those aspects there. Higher quality citizen comments but they also need to understand how the actual process woP1s so that those quality comments they are submitting get handled in the appropriate way.

?: Also might want to be reassured about privacy issues. If they send a comment in, you are not going to get spam because of it, or they are not going to have a cookie on their computer.

?: I asked if they put cookies on computers.

?: It's not allowed.

P8: However, they do let them register voluntarily, which I'm not sure how that woP1s without cookies.

M1: Any other questions or issues that need to be resolved?

P8: I have to admire the people out there who are constantly spamming our regulations email address with this and that. Wouldn't it at least make sense to remove the .gov ones or the organizational domains.

P7: I'm glad that they don't. Congress is now annoyed enough that they may actually do something.

[various chatter]

P4: I think easy submission of comment attachments versus data, agency system/data security. That's partly agency culture, but if the IT folks say it threatens our data and system security then it just won't happen. The discussion stops. Kind of like it's necessary for (?) terrorism, the discussion stops.

M1: [tape break] either including them in the handling of your mailed comments or your faxed comments, because they were also sent in through our website. Encouraging them in that manner, as opposed to saying, 'hey we are really not collecting paper anymore, just send us an email'. I can imagine that being a sort of turn off to...

P6: OMB's latest thing on peer review, they said due to the delays in getting mail here at OMB, chances of your comment getting here on time are much better if you send it electronically.

P3: I think we would like to see more people use electronic format. We are actually surprised that given the advancement of the ___ that we don't receive more comment electronically, even though everything is available electronically.

M1: And that might be a really key resource question for you then is, why?

P3: Right, why aren't people doing it electronically.

?: It probably has a lot to do with how the interest groups are directing people to submit comments. If you hand out postcards, you get postcards.

P4: We had a switch. Folks didn't know on ___ edocket that they could attach a pdf of their signed by the governor letterhead. The governor didn't want to have his name attached to (?). It wasn't...we say a noticeable increase in the submissions of the organizations after we called around and said, 'guys you can just hit attach and you can attach a pdf. So I think part of it is they want the letterhead and signature on it. It looks more real that way.

P2: If you are looking for something to look into; the GAO report on records.gov was talking about, and that's what I think {name} was talking about, that very few people are using records.gov. Now I think they are getting a million hits, but what they are doing is they are going into the federal registry documents on GPO access and probably commenting directly from those links rather than coming back out to use the comment. Interesting to know why. You can sort of figure out it's kind of awkward to come back out of the document, since you are already in the document and you've got a link, go directly to the agency, why go through a third party to get your comment in.

P4: I had never heard of regs.gov. I don't know of anybody who had prior to this. They know to send it to the EPA edocket because it's in our notice. But I don't know that we've had, I guess there have been a couple of ___ comments that have come in...

P10: I think that the other question to ask, is just, how much of these letter writing campaigns do you use for grassroots purposes, membership purposes? No matter what you do they are not going to use a government website, if they can't capture information they want or if they don't feel that the take action step of submitting it through a government website is enough involvement for their members. Having worked in a nonprofit, there's just a mindset about this. I think there will always be a portion of those activities that regs.gov is not going to capture.

P4: With the NGO community or those who wish to have writing campaigns be willing to run them off of the government site. Where it comes in, pick your form letter you want to attach your name to, and goes N + 1. If there was a way that they, may be passworded, could peel the addresses off, just like they do when it's run off of their own website. If the letter campaigns were run through the e-docket, you don't have the problem of sorting and mixing and matching and getting flooded by them. They wouldn't do that unless they could get their addresses. Question is, would they, if they could do that on a gov server. Have a link from their page that somehow would download the names.

P6: What about a confirmation? People sometimes want to get a confirmation that their email was received.

P2: I think that is what {name} was talking about before. Why people were reluctant to use it. The trust issue.

P6: But it's not the practice to send confirmation.

P1: Well, electronically it is, but ___ systems gives you a confirmation as soon as you submit your comment, does ___?

P4: To my knowledge it doesn't.

P7: Did you ever buy airline tickets? At the end it says, we've accepted your transaction, here's your confirmation number.

P8: People questioning, 'I submitted, I didn't get a confirmation'. I think it was just overloaded over that weekend.

?: Are the key (?) is that for tomorrow's group?

M1: Or more of generally for our research group.

P4: I think it would be a really lively discussion, I know my particular stakeholders I would bet, that they would be adamantly opposed about a very structured comment page. I think they would be less than thrilled. I think that would be interesting.

M1: Let's actually make a category that's going to be, questions for stakeholders.

P8: And they've got a real dilemma because each of them wants ready access to everybody else's comments, not their own.

P4: Well, they don't want their own comment, or the way they comment to allow them to restructure the question.

M1: Other things in particular that you would be curious to see the responses from some of the interest groups?

P9: Maybe some of their motivations behind their campaigns.

P1: Yeah, if they could give a mix of how much of their effort is to make a political point that there's a lot of citizens on their side, vs. how much they really want to do detailed analysis and argument for the rationale basis.

?: If it's the first, then why did they write in their comments?

P8: Do they understand that just a volume of comments is irrelevant?

P4: It's not a popularity contest. But it's of interest to my management, 120,000 say that...

P10: They fundraise off of it too. We generated x number of comments...

P4: I got a fundraising envelope saying stop that rulemaking, and it was my rulemaking.

?: I like it when the ___ knocks on my door. I say, 'listen, I support a lot of what you guys do but you could comment directly on stuff that I do, so I can't be seen as giving you any money. I can buy your calendar in a retail store, but I can't write a check to you. The guy just gives me this befuddled look.

P4: Interest in commenting electronically vs. hard copy, what makes them favor one over the other if anything. That way if there are reasons like, I like to have it on letterhead, that they like hard copy then that is easily addressed.

P8: I'd like some law school with a lot of time on their hands to explore from where perceives the right or the assumed right to send us stuff in writing. The postal thing entirely. Could we get away with simply eliminating postal delivery or hard copy delivery of comments?

P8: There used to be different models. There were times when you had to show up in person and speak to testify to an agency. I'm just intellectually curious about it because you know that in 40 years, at least one hopes there won't be all this postal mail going around back and forth.

P3: You could ask them, do they believe electronic forums are useful because it seems like agencies that have held electronic formats, chat rooms back and forth, we don't seem to get a lot of meaningful comments. I just wonder if the public finds them more meaningful. Most people say public hearings are...

M1: ___ did that and ___ did that as well. That kind of public forum on internet, on public participation.

P3: Well, no this was on a particular rulemaking.

M1: On___'s, yeah. The one the ___ did was just...

?: ___'s was their new rule or guidelines on public participation. I found it interesting that your general councils found it necessary to ban a whole lot of things in that online discussion of public participation. They wouldn't let you record names, and they wouldn't let any moderation take place by the agency.

M1: This actually brings up another point too that I'm sure will come up tomorrow, is I sense in talking to some of the groups so far that they don't like the idea of online interactive dialogue. Some of the things you were talking about earlier related to what I've heard from some of the groups. That is it's really a zero sum game, win or lose. That's why you (?) and bog down their servers. You win if you do and you make your point. That's not what (?) say, but that's the way they look at it.

P6: I don't think that's quite fair. I think there are some successes of negotiated rulemaking over the years, where people have actually negotiated and reached a

consensus and we come out with a rule that wasn't litigated. Most people were relatively happy with the rule. But it takes a certain rule to allow for that.

P4: One of the challenges is, is which stakeholder's going to be in the room. (?)

M1: Well, and that's why, perhaps if you could do the negotiating forum on the internet you can involve a lot more stakeholders and you avoid that.

P4: I think that would be useful for the non-headquarters trade associations NGO's. The usual suspects based in Washington see each other, they talk. They may be at opposite end of the table at panels but they talk.

P9: Each organization use different strategies depending upon who they are trying to lobby. For example, here we are talking about erulemaking and encouraging it, but if they are lobbying congress as well, congress until very recently was not very keen on email in any way shape or form, until the anthrax point. Even then still many of them aren't. And also when they get them, they do count the numbers. So they don't just say, I got one that said something. They have somebody who answers the phone and someone could ramble on forever and they are just going to put a little check mark, I got a yes. I got another yes, I got a no. At the end of the day they come up with a tally. That's very different than what the erulemaking process is.

M1: Is that going to go under the motivations for (?) tactics?

P9: I think it's slightly different, because it's strategy. Motivation might be fundraising or increasing their profile, or simply winning the issue. But their strategy is do they also lobby members of Congress? Do they also lobby state legislatures, do they lobby government agency? They are also lobbying executive branches through rulemaking process and these are all very different.

P4: One way you can check some of that and I know in our ruling you will find that a lot, where on their comment they CC all their members of Congress. Their representative and their Senator. We got a boat load of those. And then the Congressman forwards it with a cover note to us. (?) respond again when we are not visibly responding to ...

P1: And then the Congressman gets our response and sends a response back to the constituents.

P4: Exactly.

M1: Really this is an educational issue. If the staffers and the Congressional officers are taught that when it's been CC to them and the To line is the agency there is no need for them to forward to you.

(many comments at once)

P1: You know what I have always wanted to do is to sponsor debates between representative stakeholders on a rule of mine and ideally transcribe it or even do it online in a live chat room kind of environment. But let them actually stand up and duke it out.

P4: We set that up by encouraging certain groups to have conferences on an issue. We had some really lively forums.

P1: Did you have any official presence at these?

P4: We were one of happily several cosponsors and many sides were heard and it was very lively with a lot of audience participation.

M1: Something just occurred to me and then we should really break. If there were independent organizations that, one we will be here tomorrow is the _____, and other similar groups that would be probably willing to organize or host, through their websites this sort of a dialogue or debate, however you wanted to set it up. Would it be possible if such a debate took place, through an organization's website like that, to take the content out of that debate and submit it sort of as a comment into your docket?

P4: The challenge by the way of getting that debate going is the folks who write this stuff into comments are not going to spend a great deal of their time debating the method...they are not IT people, they're not necessarily development people. They are not the ones interested in the mailing list that comes from this. So convincing them that it is worth their time. You had the trouble getting some of the environmental NGO's here tomorrow. They are substantively involved. This is a process tool. They need to realize that the important link here would be (??) If you were to transcribe that and send it to us, I don't know for example if I would summarize it in my public comments other than down here in the comments on the Clean Air act. But it would be very useful to {name} for example.

P3: In something like that I would only want to ensure the people that participated understand that that transcript had been submitted to _____. That sort of information could be searched. (??)

P10: I actually have one request. For summarization, could we possibly put in parentheses-Next generation? I feel like, and I do understand that there are difficulties in getting this, but perhaps it was today just the demonstration, but I wasn't overly impressed by what I say in that particular instance. I think that the next generation of those tools might be more useful.