

# *Agency Representatives*

## *Focus Group Report*

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Lisa Thrane, Ph.D.  
Iowa State University

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For more information, please contact Dr. Stuart Shulman ([Stuart.Shulman@drake.edu](mailto:Stuart.Shulman@drake.edu)) or visit: <http://www.drake.edu/artsci/faculty/sshulman/eRulemaking/>.

# Evaluation Report

## Agency Representatives Focus Group

### ***Abstract***

*Eighteen agency representatives and academics were invited to participate in a focus group to evaluate the rulemaking process. For some participants, barriers to effective rulemaking were evident in divergent goals among political and legal entities and agencies. Many participants reported that the number of comments was steadily increasing while financial resources were shrinking. Most agency representatives viewed IT tools that could reduce the human labor costs while maintaining a thorough examination of comments favorably. They included a quick download of the comment database, duplicate and near duplicate detection, sort capabilities (i.e., list of commenters), section analysis, text clustering, and summarization. There was a sentiment that guided commenting was a potential method to educate citizens on writing persuasive comments. However, there was uncertainty among some participants whether interest groups and citizens would support it. Some participants voiced concerns about ensuring receipt of commenters' documents (i.e., comment deadlines, attachments) in an eRulemaking environment. A few participants noted security, incongruous leadership among various agencies, and management issues as organizational barriers for eRulemaking. Many reflected on the challenges faced by public participation, and the strategies employed to gather data from stakeholders. Several participants generated questions for interest groups including motivational and strategic objectives, and openness to submission of form letters through a government-run website. Lastly, some participants proposed guidelines for continued research. These individuals recommended targeting a specific agency to conduct research. Among the eRulemaking research topics raised were generating better rulemakings, gathering better information, enhancing comment response, and getting staff "buy in."*

### ***Introduction***

Agency representatives as well as academics were invited to an eRulemaking workshop held at the National Science Foundation in Arlington, Virginia, on September 4, 2003. The session began with opening comments and presentations by the principal investigators. Dr. Stuart Shulman and Dr. Stephen Zavestoski presented opening remarks and explained the overall direction of the workshop. This was followed by a talk by Dr. Jamie Callan, entitled "Accessing and Analyzing Large Public Comment Databases." The discussion focused on statistical techniques that could be used to organize and identify

key information. Afterward Dr. Eduard Hovy's presentation, "Design of Information Access and Presentation to Support eRulemaking," highlighted the types of technology such as text clustering and summarization that would support eRulemaking. In addition, representatives from the EPA and NSF addressed the group. This commentary provided the framework to engage the group in a discussion of the applicability of IT tools for eRulemaking as well as other pertinent topics.

In order to facilitate this process, 18 agency representatives and academics were divided by agency affiliation into two groups of 10 and 8 members each. In addition, the four principal investigators facilitated and participated in the focus group discussions. The 18 participants signed informed consent forms before the discussion commenced. They were instructed that their participation was strictly voluntary and that they may choose not to respond to a question or to withdraw from the group at any time. Permission to tape record the focus group was granted by the participants for the exclusive purpose of accurately capturing and retaining their comments for analysis. The participants were assured that their comments would be kept confidential. In addition, the participants were assured that their comments would not be attributed to them in any way, nor would the analysis identify any participants by name or title/role (unless they specified otherwise). The discussion lasted approximately 1 ½ to 2 hours. Time constraints prevented all members from commenting on every question posed. Some topics generated more discussion in one group than in the other.

Agency representatives detailed the obstacles they faced, the role of electronic tools, organizational factors, and the impact of interest groups and commenters on

effective rulemaking. Agency representatives also posed questions for interest groups and conversed about the future direction of eRulemaking research.

### ***Obstacles to Rulemaking***

Participants were first asked to discuss the rulemaking challenges faced by their agencies. Several agency representatives reported that the political climate, litigation, shifting expectations and responsibilities, and data compilation and management hinder effective rulemaking. Five people suggested that the political climate was a significant factor. In regard to writing quality regulations, rule writers' level of expertise varies within a given agency. Another participant added, "All the 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" compound the problem. There was a sentiment among some agency representatives that the current regulatory climate made their jobs difficult. On the other hand, not all participants agreed that their agencies were "subject to the same political whims."

Three participants emphasized the challenges associated with court requirements. One person said, "The courts have this process of judicial review. Questioning about what the arbitrary and capricious test means has added a lot of requirements to the rulemaking process." Two persons noted the incongruity between accessible language and legal jargon. One person said, "We do have attorneys that review all our rules before they get published." Attorneys review the language that was "hopefully in plain English, and then if they see legal problems with it; they correct them," the participant added.

Several agency representatives expressed that the rulemaking process is adding to their workload when budgets have declined. Two individuals commented that Congress

has mandated “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.” It was noted by a few agency representatives that directives and regulations added a “new layer of requirements . . . onto the rulemaking process” while other participants did not report legal challenges as a significant obstacle.

Many participants explained the challenges of data collection and analysis at various stages of the process. One participant mentioned that it was difficult to gather data from “diverse and small sources” like small businesses in order “to develop technical analyses . . . which we use to propose and ultimately promulgate a rule.” After obtaining valid data, another individual said, “Being able to access it and present it in a way that is palatable and understandable by the decision makers” is a primary goal. One person indicated that the “high volume of comments” has created a “crisis of getting all these form letters and having to parse things out.” Another participant said, “We’re getting many more and more comments at a time of having diminished resources to respond to them.” Even with the volume of comments, six participants suggested “including comments on the preamble discussion.” It was argued that those ideas might not be captured otherwise.

### ***Useful IT tools***

Many agency representatives defined various electronic tools that would be useful. These included ready access to the comment database, sort capabilities, duplicate detection, section analysis, text clustering and summarization, and guided commenting. One individual pointed out that “a quick transmittal of the body of comments received” and suggested that a method of sorting by topic and organizational group would “help

speed things up.” Two participants requested an electronic tool that “could generate essentially a list of commenters, or an index of material in the docket.” It would allow agencies to respond to questions about commenters and reference the edocket number. In addition, “When we are defending the rule, we bring the whole docket into evidence by submitting the index,” suggested a participant.

Seven participants noted the importance of tools that would detect copies, duplicates, and near duplicates. One person stated, “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.” Six individuals recommended a “section by section analysis” tool. One person indicated, “If there was any way to encourage commenters to follow that sort of format, I think that would be a great service.” Three participants viewed the summary tool with enthusiasm. However, one person said, “I didn’t think that the technology had advanced enough to really make that useful.” Another person added, “I think that the next generation of those [summarization tools] might be more useful.” Two people specifically mentioned the clustering tool. One participant stated that an automated method to cluster “a particular category” would save the time of going “through every single comment.”

Many participants shared that IT could help citizens write better comments by guiding their responses and/or offering specific guidelines. One person stated, “We could use technology to focus the commenters into the areas that are useful.” Another participant added, “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.” A participant suggested that users could be educated about a particular

site by adding links about “how to write a good comment or how to search easier.” In reference to whether commenters would be receptive to a “preformatted or guided commenting process,” one person said:

Their goal . . . 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.

In regard to the success of guided comments, a participant brought up the issue of trust.

The individual said:

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.

*Guidelines.* Several participants offered specific suggestions about mailing, formatting and writing comments, discussed privacy issues, and described how form letters were counted. Three individuals suggested that comments are delayed if they are not sent to the specified addressee. Another person recommended not underlining words because “that was fine in the hard copy; but when the PDF was read, it's blank.” One participant suggested that if possible comments needed to “provide actual data and

arguments rather than just an opinion.” It was also suggested by some participants that if a substantive comment was made, the commenter’s name and telephone number were helpful, in case an agency needed to seek clarification. There was some discussion that citizens needed to be educated about “privacy issues.” For instance, one person stated, “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.”

One individual shared how mass form letters were counted. The participant said, “This would be the exact same letter . . . . Different people signed it; the wording was exactly the same. That counts as one entry of the docket.” One participant said, “We oftentimes 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 so, you note it, and there’s nothing you can do.’” Several agency representatives noted that sorting documents by support/opposition to a particular rulemaking could have the unintended consequence of transforming the process into a referendum. It was suggested by some that since the opposition tended to comment more often, rulemaking could be driven by this bias. In addition, it could also generate an onslaught of non-substantive comments from both camps designed to tip the scales in their own favor.

### ***Questions Raised About eRulemaking***

A few agency representatives discussed comment deadlines, file formats, attachments, and demographic data collection in an eRulemaking environment. A person asked, “If we go to an edocket system, are we now going to formally abide by the cutoff period for the comments?” The individual argued that a cutoff period 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. In

reference to unzipping comment files, it was problematic for three participants. One of these individuals said, “If it is automatically unzipped, it would be great. If not, that’s a hassle.” The inclusion of copyrighted articles in comments and Confidential Business Information (CBI) generated discussion among six participants.” A participant requested a box that could be checked if an electronic document had an attachment. In regard to EPA’s edocket, another person indicated it would be convenient to have the option of remaining anonymous or providing one’s name, location, and organization.

### ***Organizational Culture***

Some agency representatives discussed e-culture and security, leadership, and management as influential factors that influenced the organizational environment. Generally, most agencies were past the stage of a cultural shift to electronic means. However, if there were a discrepancy between ease of submission and system or data security, “Then it just won’t happen,” a participant commented. One agency representative commented that “we’ve done a lot to change the way we disseminate information, and we’ve used the web effectively.” The person reported that the Federal Register was concerned that their documents were first published on the web. On the other hand, stakeholders had more time to review “rules and comment.” One person shared that with higher comment volume, the agency would need to become automated, but this would go against the grain of the agency’s culture. This person noted that their rule writers would be “uncomfortable with the idea” that their contractors would be reviewing these comments instead.

Two individuals mentioned that the “general counsels amongst the various agencies” have a huge impact on present “cultural barriers.” In regard to high volume

comments vs. substantive comments, one participant pointed to the mismatch between the goals of political officials and their technical staffs. Within an organization, a person noted that there are vast differences in the management of fiscal resources when “preparing their data for publication.” Those who mastered the system and received “a much bigger discount from the government printing office” were rewarded with “raises.” This individual reflected that even today this practice has not been “adopted agencywide.” One agency representative reported that monthly staff meetings help disseminate information to various components in the entire agency. In this case, a successful departmental process is adopted agencywide.

#### ***eRulemaking: Public Participation & Stakeholder Outreach***

Several agency representatives discussed the challenges faced by public participation. The influx of comments appeared overwhelming at times, but it was reported that some agencies have instituted proactive strategies to reach out to stakeholders. Several participants noted authorship differences in comment quality. One participant related the success of requesting e-mail submissions. The person said, “Just a year, year and a half ago, my agency established one e-mail address that’s in every federal register notice. . . . Now that gives us an on-line searchable database of almost everything.” One participant discussed the challenges of being a contact for a major rule. The participant stated, “His voicemail box fills up every 15 minutes. And his e-mail, he got between 2 and 2000 a day.” An abovementioned respondent also shared, “I’ve gotten, e-mails back from folks that are using it [edocket] in their Ph.D. dissertations. An individual suggested that there are occasions when a high volume of comments is useful but need to be separated from substantive comments. The participant stated, “When it

comes to driver behavior or driver impact, they can't readily test that." Therefore, numerous comments on headlight glare are valuable information.

Three participants discussed outreach to stakeholders. For instance, one participant indicated, "In the last 5 years or so, we've become . . . more proactive . . . about trying to go out and notify people about the availability of a rule for comment." This individual indicated that listserves were often used. In addition, one agency held "on-line public meetings on the web." For this agency, a complementary method of gathering information was "consumer complaint hotlines." Another agency representative indicated that once a decision had been made to write a rule, they search through databases to identify business owners. This is followed by a correspondence requesting "information back, and we compile it and use that to actually determine what the rule should be," said one respondent.

Two agency representatives indicated that general paper comments tend to be lengthier, research-intensive documents that "cover the whole spectrum of issues." On the other hand, electronic comments tend to be more opinion and focused "on a particular issue or a bone they want to pick with the agency." One of these participants noted that in regard to electronic means, "They will come in and just read the docket, but they won't actually comment because somebody's already made the comment." A participant indicated that written comments submitted by "Joe Public" are "brief and to the point." One person suggested, "If that rule is going to impact the commenter's livelihood, they are going to take the time and effort to do a pretty detailed comment." It was suggested that regardless of the method of submission, a commenter who has vested interest in the outcome will write a more persuasive document.

### *Questions for Interest Groups*

Several questions were generated for interest groups including their motivations and strategies, selection of submission methods, willingness to use a government-run website to submit form letters, and receptiveness to guided comments. Some agency representatives were inquisitive about the “motivations behind the writing campaigns.” One person hypothesized that their “motivation might be fundraising, or increasing their profile, or simply winning the issue.” Another person questioned whether interest groups were motivated to “make a political point” or a rational argument supported by data. In addition, a few agency representatives pondered how strategies were chosen. An abovementioned participant inquired if interest groups lobbied members of Congress, state legislatures, government agencies, or the executive branch in the context of rulemaking.

Some agency representatives also asked why interest groups chose electronic or paper comments. There was an interest in why more citizens were not commenting electronically. Some agency representatives speculated whether interest groups would run “writing campaigns . . . off of the government site.” This person reasoned that if interest groups could not gather the information they wanted on commenters or provide “enough involvement for their members” they would not “use a government website.” A person suggested that perhaps “they [interest groups] want the letterhead and signature on it. It looks more real that way.” Two people expressed an interest in “interactive commenting discussions” and wondered if interest group representatives would be open to it. Three participants wanted to know if interest groups would consider structured commenting.

Another individual indicated that not all comments could be pigeonholed and stated that some of “the best data to help guide my rule” may crosscut several issues.

### ***Research Topics***

Some participants proposed parameters to guide social science research. These individuals recommended gaining the support of management in order to conduct a small-scale, real world experiment and offered several research topics. Four participants stated that a promising research agenda hinges on an agency’s leadership and its explicit and implicit support of the initiative. Several agency representatives offered that research should take place “in the real world,” and experimental studies should be limited to a particular agency before applying it to the whole system. Three people suggested, “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.” In regard to sampling issues, one person commented, “You are going to have to know which rules . . . are going to peak public interest.” It was suggested that the sampling frame should include comments designed to support both legal and technical arguments because they are vastly different writing styles.

One individual listed four research interests: (1) “Is this eRulemaking going to help write better rules and how do you measure that?” (2) Can IT tools “help me do my comment response task better?” (3) Most importantly, “Is there a way that this eRulemaking can help me get better information?” (4) In regard to leadership, “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?” In regard to guided comments, one person stated, “I wonder whether Joe Public is going to use that facility . . . or the interest groups are going

to want to use it, feeling that they don't want to be put into these little boxes.” One person was skeptical about the project's research findings being implemented across agencies. A participant said, “If one agency does it and they do it well . . . whether or not that translates into the entire government . . . I don't know if you should expect that because each agency is so different.”

### *Summary*

Some agency representatives reported that their aim was to write quality regulations but were hampered by legislative and legal challenges, which have added layers of requirements to the rulemaking process. Several participants remarked on the need for IT tools to reduce the burden of searching for “nuggets” of information in mass form letters. Many noted numerous tools that would help them collect, manage, and slice up a comment database, so they could meet the dual objectives of writing good rules and providing interest groups with requested information. In addition, it was reported by a few that when it came down to it, security issues trumped ease of comment submission. Some participants were concerned that eRulemaking may impede the collection of citizen comments. Several participants were inquisitive about motivations behind writing campaigns (i.e., fundraising, political or substantive commenting, etc.). While mass form letters are an important strategy for interest groups, most agency representatives prefer substantive comments supported by data analysis. Several participants were supportive of research in the areas of guided commenting, encouraging better rules, educating citizens, and helping agencies deal with the avalanche of comments. Many agency representatives were open to a discussion with interest groups to find common ground in the rulemaking process.