

*Group A -- Session 2 -- June 2, 2004*  
*The George Washington University – eRulemaking Workshop 2.0*

**M: Moderator**

R: Respondents

**M1: The initial question is very general. Based on what you heard today, and what you know from your own personal experience, what do you think the costs and benefits are of applying information technology to the rulemaking process? By information technology, or IT, we mean the wide range of information and communications technologies that are used in eRule.**

R2: Obviously, from a rulemaking person's point of view, the benefits are that we'd be able to process larger amounts of data. Actually, it would assist with record analyses and record summaries. On the other side, it is a plus and a minus, and we actually ran into this with our agency's docket. There are a lot more write-in campaigns, with absolutely identical comments. IT will help to sort a lot of that out. On the other hand, it is volume that the docket system has to handle. I'm not sure that it will increase the quality of the comments. To be quite honest, sitting down and putting something down on paper, and putting it in an envelope, and their putting a 37 cent stamp on it, and mailing it is not exactly heavy lifting. You can say the same things in a comment like that as you can electronically. I think one thing that IT will need to do is to make whatever forms they use really user friendly, so that somebody who wouldn't otherwise submit a meaningful comment will, in fact, submit comments.

R8: Yet, when those things get litigated, as some of them do, the courts will cite how many positive and negative comments there were without regard to the quality of the comments.

R2: Right. Fortunately, in the history we've had in our agency's rulemaking, courts have gone past that. We have substantial evidence tests for our rules. So, the courts will look and see if we've met that. They don't focus on numbers as much as they focus on substance. Other agencies may have different situations.

R3: I can think of two things. One is the obvious - that it will become cheaper for people to participate in commenting.

**M1: Is that a benefit or a cost?**

R3: From our point of view, it is probably a benefit. I can see where from other people's point of view it might not seem like a benefit. So, there is a possibility for an increase in public participation and awareness. Some of our lawyers have mentioned, with regard to legislation, that in the past people who were located here in DC had a particular advantage because they could run over to Capitol Hill and get a copy of something, and find out exactly what was going on very promptly. As more things become available on line, there is the possibility that people who are not in the district can actually find out what is going on. We may not be able to act on that in terms of lobbying people because we would actually have to be here to do that. But, we

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can at least have a more informed sense of what is happening from the outside. So, I think that is an advantage. Kind of continuing on that, it can be difficult to understand, whether you are in DC or not, exactly what people have said that the agency's going to be looking at, that you, as a commenter, need to respond to. So, I'm encouraged that we may be able to get more and better information and organize it better to lay out our reply comments.

R4: In terms of benefits, I think that, by and large people have known that rulemaking exists and how it affects everyone's lives. You can pick up a major newspaper and look through the first couple of pages. And, almost every day you'll find some reference to a rulemaking. People don't know it exists. They simply don't know that the Administrative Procedure Act gives the public standing to make comments, and that if you make a substantive comment, there is a legal responsibility of the agencies to pay attention to it. So, having more people learn about the process is a benefit. In regards to the costs associated with it, I think, realistically, to have an influence in the process we need to understand at a fairly high level of expertise. This may be difficult for individuals. It is possible for groups of citizens. The Internet is an extremely useful medium for organizing groups like that. So, you see the combination of Internet communities of interest with electronic rulemaking is something that can very much change the level of participation in the process. The cost on the side of the government, I think depend crucially on what the system architecture is and how things are put together. One of the ironies I've found in observing the development of this system is that one of the expressed goals of the eRulemaking system is greater transparency in the whole rulemaking process. This project is not in the least bit transparent. There are no specifications for what the system is. No one really knows what Lockheed has been asked to do. How that whole process unfolds is very, very murky. My gut feeling is, it is impossible to build a transparent system if you deny transparency to the process. I think that in the long run runs the risk of running the cost up enormously, and basically it could be an un-functional system in the first go-round. There are major issues like, "Is the system reliable enough to abandon paper?" which are not being clearly addressed. Or, if they are being clearly addressed, no one is being told about it. The Department of Transportation has documented their cost savings, and it is entirely in the area of number of file clerks and warehouses they no longer need. If the new system is not reliable enough for other agencies to get rid of their paper, those cost savings vanish. So, I think there are a lot of issues which are very, very hazy in the present process, so it is hard to address those. It would be interesting, if it is possible with sessions like these, to highlight some of these so that you get a little more attention. I have no idea whether the murkiness is because there has just not been enough public interest and not enough spot light has been shed on the process, or whether there is a real reluctance to share information. Certainly, on a personal level, people seem to be open.

R5: There are certain benefits. Right now, EPA's policy is if they get written comments, it takes the time of X number of individuals to scan those documents in, so that they are available electronically. Just the time and resources to handle like a hundred page document, to scan that, versus getting it electronically; that right there is a huge savings. Also, being able to compare documents electronically, you will be able to catch the ones where individuals have added personal and specific information. When looking through hard copies it would likely be easier to

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miss that kind of information when it is added on to a form letter. Those are the major benefits I would see.

R6: On benefits: 1) ease to submit comments; 2) the public review of the document will be much simpler, assuming that the sorting process could be accessed by the public in the same way that the federal government accesses it. It would be very interesting to know how many comments are submitted and what form they take. Not just for the regulators, but for the public that is commenting. I think there is an opportunity to get specific questions answered. While I'm concerned that form letters would be discounted, I thought [name - R5] made a good point that the system could pull out the ones with added information. We do form letters, but they have a big chunk where the person has to explain economic impact, so I think that is good point. But, I think there is a better opportunity on the benefits side to get some specific questions answered. In every rulemaking that is done well, they have specific questions that they ask. There may be a good way for the system to be set up, so that for every rule there is almost like a form question: "Are you being regulated?" "Are you being impacted?" So you could have a system of that Q&A. They could bypass that system and just submit their letter. But, it would give the agency an opportunity to get specific questions answered. Economic impact is often overlooked by the commenter, in any specific way. There would be an opportunity to provide that specificity. But the cost of all that, on the agency's end, would be the frontloaded costs of having to program every rule to ask those types of specific questions. But, if you want a system that is more meaningful, and you are not just relying on the computer to go through and look for words, you might get specific questions answered that are in the preamble that half the time nobody reads. That's one of the things that I've tried to get my constituency to do. I think it would be a good way to maximize that system. But there is going to be cost associated with that. That is all just one more thing the agency would have to do, to figure out what questions should traditionally be asked in order to try and generate better answers and get away from form letters.

**M1: One of the things you may have noticed is that some research being done is for unstructured stuff that comes in free form. When we raised, last fall, the idea of structuring along the lines that you said, there was a great deal of concern that that structuring should take place outside of the federal government. That the intermediary organizations, like your own...**

R6: Yes. I understand that, because there is a bias that we face. When an agency has invested all this energy in a rule, they want the answers to be "yes, this is a great thing." So, it is like poll. The polling question can predispose the answer. And, that is a risk.

R4: I think the trouble with the kind of technology [name - R6] is talking about is that for a computer scientist, 85% success rate is terrific. Unfortunately, if the agencies can be subject to a lawsuit for misinterpreting the information, then that is probably fatal. I'm not sure how you balance that. The advantage of the structured things, it is more reliable. But, people can make mistakes and then can sue and say, "the form is confusing, there were too many boxes to check".

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R6: I wouldn't suggest checking boxes so much. In many preambles of rulemakings, they ask questions of the public, such as "Would this rule be feasible in this way?" And then they have alternatives for small businesses. Those questions are always in the preamble, so they are already predisposed one way or other potentially. But, a lot of times they are pretty open-ended. You could even say "Would you like to participate in the forum?" And people could rant and rave if they want. You might get some answers to some specific questions.

**M1: One of the murky details that I learned recently is that it will be a centralized system, but some responsibility will still devolve to the agencies in terms of what aspects of the elements of the system they want to use. So there will be some customizability. I think that if enough people articulate, in a coherent way, why a structured system, whether it is the Federal Docket Management System, or structuring the Federal Docket Management System to incorporate batch imports of comments that were structured by intermediary organizations, such as some of the ones that are represented here. If that was articulated as a high priority, my guess is it might have a chance of moving up the development ladder. But, what it takes is people saying it over and over again.**

R8: If we are to cast a dissenting vote, I think the structured form is, at best, a not very good idea. We have a substantial shot to do economic analysis of regulation. We read the preambles, and we see the questions in there, but the questions are stupid questions. That is to say, the agency asks the questions that it wants answered. But, I am not ready to defer to the agency as being the arbiter as to what the relevant questions are. So, while we frequently answer the agency's questions, the remaining ¾ of what we have written have to do with posing what we think are the relevant questions, why they are relevant, and why they mean that we are right.

R6: One of the things that could be a good compromise is there are standard administrative procedure questions that every agency has to have answered.

R7: I don't really have anything to add in terms of benefits, but I'm kind of concerned about the way they can get information from the rules without actually reading the rules – this kind of automated taking of language to see what people are concerned about without actually reading the comments. That is how the agency is going to see the results of what they are getting from what is being submitted, as opposed to what the person is actually presenting, and how they are presenting it.

**M1: The types of tools that we are working on and proposing as potentially useful aren't substitutes for reading comments.**

R7: But, I think the potential is still there for that to happen.

**M1: It may inadvertently result in people treating the tools as those that do analysis rather than tools that do categorization. I think maybe we are not doing a good enough job explaining these tools. You don't just push the button, let the application run, and consider the analysis done. It is a way of doing a rough cut through to sort and organize, and in**

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**some places, create the time to do the reading that might not be there if you were spending more time sorting duplicates from original comments. It is a common concern, and I'm glad you raised it.**

R9: I'm sort of here on a learning capacity, to try to develop and facilitate an identification system that you would be able to integrate data across all the media. It is to determine how to make a better system to integrate all the data across media. It is not totally there yet. I was very interested in the types of ways to integrate the data. The accuracy is one problem we have encountered when we've talked to the different businesses.

R10: I'm here as an observer to help design a system that not only supports the needs of the agencies, but also supports needs of public stakeholders, so I'm here to listen.

R11: I won't have to assume that the system has taken into consideration all the agencies' needs, from all the people that actually use the dockets, so that we have a really great system, so that I can answer this question. So, what are the costs and benefits to applying IT? If you've got a really good system that works, I think the benefits are that you've got a more common, intuitive process that everyone can use. Because, of that, it levels the playing field for everybody. I think those are two very important things. For costs, in my experience with anything to do with databases on the Internet, anytime they say, "We'll make it electronic; it will save you money," if you make it electronic, and you do a really good job of it, you get more customers, and then it costs you more money. It's a good thing, but it could cost more.

**M1: In a very generic way, how might IT improve the rulemaking process? In your answer, give your definition to "improve" as regards process and possible outcomes.**

R3: There is the general issue of public participation. People would probably feel the process has been improved if public participation is enhanced. Although, there may be controversy over what constitutes public participation. For example, if 5,000 people were to write to the Federal Communications Commission, "We agree about your 230 docket," someone might say that is not the kind of public participation they were hoping for. So, I guess there is some controversy over that. In terms of outcome, we are looking for public participation in the same way. We've seen a lot of dockets as a matter of big business against big business commenting in the docket, hiring professional lobbyists and attorneys to draft comments. As we heard today, small businesses can't afford to do that frequently. Perhaps their trade associations can, but not necessarily the individual small businesses. And also, individuals can't afford to do that. And, the individuals may be concerned, but they can't afford to hire lobbyists and lawyers. If the cost of their participation, in some way that turns out to be meaningful, is reduced, it may be that agencies will become more responsive to their concern. There is really a question about what would actually make the agencies notice and take these things as seriously as a more elaborately researched comment from a lawyer or lobbyist. I don't have enough experience with that process yet to have a really definite opinion on that yet. I wish I did.

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**M1: There was a study in one of the Administrative Law News magazines about rulemaking under the Patriot Act, concerning financial institutions, in which the bulk of comments were concerns about privacy but were commonplace comments rather than well developed arguments from the financial institutions made. The numbers didn't carry the day. The quality of the comments carried the day. Quality comments, as defined by administrative law, were those that were prepared by lawyers who understood all the components of writing a good response. This is definitely an issue that's been studied by some of the scholars.**

R3: So, there is a lot of difficulty about this. We are concerned that if you can't afford a lawyer, that the agency may say, "These people have a general concern about privacy, but that doesn't rise to the level of an argument that we can consider or that a court will force us to consider, so oh well."

R2: Yeah. A lot of it will depend upon what your statutory mandate is. If you have specific types of evidence that you need, or you need to make a particular demonstration of a finding that you need, and that doesn't really rise to that level, then the agency will take note of it, but there may not be so much more done with it.

R3: That gets back to whether people's comments about their own experiences or desires may be rejected as anecdotal and not scientific. That is a concern.

R4: I see the long term benefits as raising the level of discussion around rules, both in terms of having a larger audience and having a better educated audience. I see the ability of the Net to provide background materials so that individuals may not be able to compete on all the terms that [name - R3] mentioned, but groups of individuals will be able to. I see that through a bunch of processes. I think the electronic comments and replies to those comments will become more of a discussion or dialogue online than traditional rulemaking has been. I think agencies may want to encourage that, because it allows alternative views to be laid out and debated. It takes the agency off the hook to some extent, because argument A may be shot down by somebody else, and the agency doesn't have to do that. I also see IT making available tools which have not been available traditionally. In particular, I'm thinking about computer models that are often used as a basis for data supplied in comments. Those models can now be put online rather than completely obscured. In some cases, commenters will say, "This is the result of a proprietary model; here it is." It is very hard to know what that means. I think it is hard for the agency to know what that means. It is certainly hard for an opponent to be able to respond to that. So, access to various tools, both analysis tools, as well as technical tools for computing and transporting data and that sort of thing; this is something IT can provide. The outcomes that we are searching for, I think, would be better rules, in the sense of being more enforceable and less likely to being overturned in court by challenges.

**M1: It's been a struggle for us to come up with a consensus on what better rules are. Does everyone sort of agree that enforceability of a rule and likelihood of its survival is a good way to measure?**

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R2: Where you stand depends upon where you sit.

R8: I don't think the purpose of this is to serve the agency, because the agency is the servant. The agency is supposed to be serving the public. It doesn't help to make a rule more enforceable if it is a bad rule.

R3: Yeah. I would have a similar reluctance to join such a categorical definition. We're a party to a challenge of a rule in the DC circuit, and I wouldn't necessarily say that rule is better if it is proven to survive our challenge. We are hoping that that rule will be found to be capricious, and poorly drafted, and all of these things, so that it will fail.

R8: I guess the definition, since you are asking for one, is "does it promote the purposes of the act? Does it fulfill the intent of Congress?"

R2: Actually, that is what the agencies are looking for too, even though it doesn't really seem that way.

R8: I think that is true in some agencies more than others.

R5: I'm relatively new to the rulemaking process, so some of my opinions are more idealistic than others. One thing that I see as an improvement will, I think, come with the greater transparency. I think, a lot of times, when people provide comments, they are negative. I think with the greater transparency, what you might see, are individuals who might actually support what the rule has in it, can see that there significant numbers of comments, and will actually be encouraged to send in more supportive comments. That way, I guess, that agency should be able to get a better feel for how the public as a whole feels rather than just one sector of the public.

R6: I don't have anything to add to the other benefits I mentioned earlier.

R7: The only thing that I have is that not just it improves by making things available just because it is there, because if you can't find it, it doesn't do that much good. So, being able to actually get to what you need and what concerns you is a big technology concern.

R8: I have two points regarding what could be done to IT to improve the process. One is to incorporate an older information technology, which is the telephone. Put a phone number on the pages where you can talk to somebody, who doesn't say, "If you would like to press 1, press 1 now." OK? So, you can talk to somebody and get a person, because at some point, this understanding is complex, and you need somebody to explain what is happening. There are a number of agencies that I've had to deal with, that I could not find a telephone number. The second point is if you had a great system, then that is nice, but this is not like pizza. If pizza is great, it is really great, and if pizza is not great, it is still pretty good. If it is not great, then it is more like wheelchair access. In order to have wheelchair access, you need to have it everywhere. You can't have it on half the corners. It needs to be on every one, or it is not there at all. In

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order to have this electronic system, it has got to be extremely thorough. To give an example from, I was trying to track down an eDocket at an agency's Web site. And, there were tons of documents they received. When I clicked on the link for the eDocket, it said, it told me to call a number to get a copy via snail mail. So, you can still get it, but that is not an eDocket in the sense that I think we are really looking for.

R3: I have a slight concern about the telephone, which is with the rules about the disclosure of *ex parte* communications. I think it would be very helpful if you could call someone up and get support, get someone to explain things to you; however, agencies generally have rules, in my understanding, requiring that people who lobby in certain ways and times have to actually publicly disclose that. I just want to be sure, especially for us not being in DC, that we are actually going to find out when agencies are being lobbied, so that we could respond.

R8: I'd like to be able to ask for documents and records without filing FOIA.

**M1: Would a decline over time of FOIA requests be an observable implication of a better eRulemaking system?**

R8: That is an interesting question. At first glance, it sounds like something that could be.

R3: There are a lot of other variables there though. For example, if a group manages to educate people about the existence of FOIA, FOIA requests might then increase, even though the agency isn't actually being more secretive.

R8: And they actually may fall, because people discover that they are fruitless, that they are not going to get anything anyway.

R3: Yeah. People have that experience with FOIA. They might just give up.

R9: One of my pet peeves is, how many Web sites you go to, and you can't find the address, zip code, or phone number of anything. They only provide for email contact. I was thinking about the different tools, that we heard about, for pulling out and classifying the information. I think that will be very helpful, but I think you guys need to look at the rules you have to follow once those tools are available, so that it is standardized across the agencies.

**M1: An interesting question that came up last fall is that if these tools did become a part of the analytical packages that rule writers have on their desktop, to what extent do they need to make transparent their use of the tools? There is probably nothing in the APA about natural language processing algorithms.**

R3: But someone might file a FOIA request.

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R2: It might, in most cases, be part of work products. If you are doing record analysis, for example, and you are analyzing these materials, and you say, "This one supports this particular position for this reason," this is all internal before it goes out as an agency product.

R8: If that is your decision-making policy, then that is subject to review.

R2: But if it is part of your policy, and you state it in the Federal Register Notice, that is what your final position is. This is all preliminary.

R8: Yeah, we'll send a data quality petition inquiry.

R11: It sounds like there are a lot of problems out there in the government. I don't know that this one system will ever solve all of those. FOIA is one of them, for example. I don't know that the system can solve that problem, because there are many things you have to FOIA now. We might have a document sitting right on our shelf that we mail out and somebody FOIAs that document. The electronic system is not going to fix the FOIA system. That is a policy decision that needs to be fixed somewhere. I think one of the problems is, if the system is built in isolation of other systems, which I think happens often, that is usually when they fail. They may not fail immediately, but they often fail on down the line. So, you really have to look at it holistically. You have to look at this holistically, and then you have to look at whatever else it might interact with. The big thing that I think it will improve, since natural language is getting better in systems, I think it will help with the back-end analysis. I think that is a very important thing. If it does nothing more than give better statistical information, then that is a big plus.

**M1: One of the things we are interested to find out is, how effectively stakeholder groups use IT currently to affect rulemaking outcomes, and how that might change in light of some of the things you know about, what is coming down the pipeline in terms of eDocket and the federal-wide system.**

R6: On the rules that we strongly believe our members have a general consensus on, we use our grassroots network. We use a system called CapWiz. With this they can fill out their information. While it is a form letter, we have very specific questions we want them to answer, a lot to do with economic impact or feasibility of a rule. Things I think I would change, if this system were implemented, is I would find some unique words that I would want in my form letter so that it could get sorted out and someone would read it. I would, quite frankly, play the system. I would do some things similarly. I would still have them do the specific questions and have them answer specifically. My concern is that while I think form letters may be suspicious in some cases, they do show there is a group of people that have a common opinion. They have value. They are not cheap. It still takes effort to sit down at the computer, type out your name and some other comments. My concern is that form letters would be discounted, because the psychology of a bunch of papers sitting in front of you versus the psychology of your computer screen telling you there are three hundred letters is very different. I thought the comment made that there could be better analysis of what they actually said was interesting. That would be valuable. So, I would definitely change my behavior. Another thought is that I may not ask my

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members to write comment letters. I would ask them to send them to me. I would then send one comment letter. It may be 800 pages long, but it would be my association's analysis with the backing of what my members told me. So, I would think about what to do there.

**M1: Just to follow up, CapWiz is a commercial product?**

R6: Yep. There are lots of competitors.

**M1: It structures, but you have some flexibility to create content.**

R6: Yeah.

**M1: Has your association, or your contractor who supplies that product, done any analysis of the effectiveness of that product?**

R6: No, but I can never read the mind of a federal agency. I could have the exact same behavior, but frankly, who is in the White House affects what the rule is. There could be a rule that comes out, and we don't like it that much, so we oppose it. There would be modifications for it, generally, in a Republican administration. With a Democratic administration, there probably wouldn't be as many modifications. That is just a fact of life. I don't think, honestly, the number of comment letters for our organization makes as much difference, unless I think I can get data from my members. I never ask my members to write wet blanket letters. I want them to give me some facts. I don't honestly believe that it numerically makes a difference. If I can make a rational argument, people who know me will know that I didn't just make the stuff up; I did some homework.

R8: We do our own economic analysis, so we depend, in one sense, upon IT a lot. Because, we use a lot of census data, a lot of BLS data, a lot of BEA data. We hire consulting engineers to give us the changes in technology, and then we estimate the supply of the economic impact. I think our organizations are mirror images. We are a confederation, so it is kind of a bottom-up kind of thing. We supply the comments for the members. We have involved members who may supply some comments of their own. Usually they figure that is why they are paying us. So, we use the IT for that. We use the IT to read at least the table of contents of the Federal Register every day. I go to the OMB page every day. Different people within the organization will be signed in to newsletters for the various agencies. So, we go into that stuff a lot. We are very computer driven.

**M1: Can you see your adaptation five years down the road, based on some of this stuff you saw today? Will your mission or method change substantially?**

R8: Only if it becomes interactive. I would like to see more the direction that OSHA has gone (*tape skip*)...made other comments on line during the comment period. So, we could find some polite way of saying, "that's a bunch of horse crap." If life were a picnic, I'd be one of the ants.

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I sort of look for something to disagree with or for things that need support that are standing alone.

**M1: So, some of these slice and dice tools would help you with that if you want to find things to disagree with or to comment on.**

R8: If they work. Just the contrarian streak in me wants me to dissent from encomiums that are being heaped on information technology. It is not that great. I think there is a lot of benefit for it, but I don't think it will replace people.

R6: Give and take does not make in the way federal rules are now made in the current system, and it never will, unless that changes. I never file a comment before the deadline. I don't want a rebuttal, because I can't rebut the rebuttal.

R2: Right. IT will not stop the flood of comments on the last day.

R6: No. Flood of comments on the last day is the only way to do it. You don't want to give the chance to rebut.

R4: There are agencies that have a formal reply comment.

R6: Yes. The FCC is an exception, not the rule.

R4: ... is the mechanism that sort of puts some order in that process.

R3: But with the FCC, the initial comments are all filed on the last day of the initial comment period, and the reply comments are all filed on the last day of the reply comment period.

R2: It is the same with our organization.

R6: I just don't want anybody having illusions about there being this great community with us all talking.

R8: Many people do not file comments because they are attempting to influence the regulation, or because they think we are going to reach some kind of community consensus and sing Kumbayah. Many people are filing comments primarily for the purpose of preparing a record for litigation.

R6: I think you are perceiving that because you are with a big organization.

R8: Maybe.

R6: Yeah. 99% don't even think litigation. That is you and me.

R3 also in session 3B (R1), 4B (R4), 5A (R6);

R4 also in sessions 1B (R6), 3A (R2), 4B (R2), 5A (R7);

R5 also in session 1B (R4);

R11 also in session 1B (R11).

**M1: Is this all ringing true for you, [name - R11]?**

R11: Yes. Since our contract is to the government, it affects us, because we can't do our job if the IT part doesn't work. So, we get it from all sides. If the IT doesn't work, we hear it from the customers. Then our own staff is unhappy. It is just integral for us. We are in that middle ground of the operational things. We just want it to work well.

R2: This is interesting. Being in the government is of interest to the stakeholders.

**M1: But the reason we are glad to have some government people here also is to find out about what people who you regulate use for IT. Have you seen, in the short history of eRulemaking, evolution in the strategies, or substance, or nature of the process?**

R2: Not really. You'll have some trade associations that will solicit information from their members, and then they will file their big comment on the last day. They'll have their technical and legal staffs, and they will throw everything at the rule, with the intent that if the rule goes out in a way they don't like, then they'll go to court, and they will argue there. There are trade associations out there that do things a little bit differently. They don't tip their hand as to what they are going to do. They all use the IT no differently than they use telephone or written materials. It just makes it easier.

R3: This question was directed to effective stakeholder groups. I do think it has been a long time since an agency actually ruled in our favor. I think that if we learned more about how agencies were going to be processing things, we might target our advocacy to that. When they do give us guidance, we use IT to try to follow the guidelines. I would just agree that advocates are likely to just try to keep up that way.

R4: I think that a big change is likely to happen when there is a standard rulemaking system government-wide, and when there are machine interfaces available to this, like Web services. I think when that happens, the larger stakeholder groups and the consortia of the smaller groups, are going to construct alternative interfaces to the rulemaking system. What we are seeing in discussions from the rulemaking teams is that it should take no more than 3 clicks to get where you are interested. Well, I'm interested in the docket and all 1000 items. I don't want to click 3000 times. I want to just download it. I'll want to have my own analysis tools to run on my computer and analyze the whole docket. I think that is a more likely mode of operation that all big stakeholders and consortia of the smaller ones will move into. It will very much change the dynamic. It will be used, both for analysis of comments and looking at what is in the docket, and it will be used in a much more sophisticated way for submitting information. The example [name - R6] gave with the customized form letters, where you would like to synthesize the sense of your members and construct a compelling argument for the agency, is something that a Web service interface would allow a way to submit that. Perhaps, the way you would submit that is, you'll do your synthesis, you'll submit your single 50-page document, which is the sort that serious participants do. Then, simultaneously, you'll submit the 100,000, or so, comments which back it up. You'll have a way of managing all that and keeping it coherent. Any of your

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R11 also in session 1B (R11).

100,000 will be keyed to a sentence, or paragraph, or something in your larger draft. So if somebody really wanted to look at one of the individual letters, they could. I can sort of see a much more sophisticated operation created by IT. I see a transformation. The key to it is in developing these machine interfaces.

**M1: One of the questions asks whether or not any of this technology can level the playing field. Is any of this likely to do this?**

R8: It may level the playing field between businesses. It will not level the playing field in terms of the Reagan analysis in which people view the government as the problem instead of the answer. It won't level the playing field between the citizen and the agency, if you view that as a contest. Many people do view that as a contest, and this won't change that perceived distribution of power.

**M1: Folks in the agencies have a lot to lose in a more transparent system, in terms of the prerogatives they currently enjoy, I think, with regard to the power imbalance you are describing.**

(end Side A...flip tape)

R8: ...they can just come in, put in their time and go home. I think the people who are working in agencies, because they want to serve the public in this way, will continue to try to serve the public in this way. I don't see much effect in agency behavior that way.

R6: I don't think eRulemaking is going to change behavior very much for most small businesses, because there has already been enough software out there long enough for groups like us to have our members participating in some sort of eRulemaking, even if they were writing letters and we were receiving them and sending them in paper form. I think those that want to comment will, and they are already hooked into organizations that are sorting information. I think that it has a lot more potential in other arenas outside of business, like groups that are more public or consumer oriented.

R2: This isn't going to do anything. I view the IT revolution as being more productive in the other direction. I think the agencies can be more productive in promoting their own mandates. They will be able to get more information out. Agency Web sites have just exploded. This administration has done a lot in that area. So, I see the real impact as beyond rulemaking.

R6: Right.

**M1: Let's talk a little bit about compliance assistance. Is that a place where you see substantial gains resulting from the IT developments?**

R4: There is a necessary oversimplification sometimes with these things. But, if you take somebody who just want that, I mean, we've joked over the years in rulemaking – one group

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R11 also in session 1B (R11).

says they want specifications, they want to know exactly what they need to do and they tend to be the smaller employers; then you get a lot of the larger employers and they will ask for performance-oriented standards; tell us what the goal is, and let us decide how we will do it. There is always going to be a tension there in writing rules. We've tried various approaches by doing performance-oriented rules with more specification. These e-tools are an example of that type of thing where it is a step-by-step approach for those who want to be told what to do.

R2: The other thing, that I think is wonderful, is that there is a need to check that the language of the rule is internally consistent. You are laying it all out in a flowchart, and if you come around and end up in different places, you realize there is conflict.

R4: Developing rules, I do a flow chart for each one I'm working on.

R8: For one thing, it can be very difficult to know whether you are violating the law or not with some of the rules I work. The vast majority of our members don't know if they need a permit or not. A more accessible way of finding out when they need permits would help. It would be nice to know what is required.

R2: A lot of times the same association will have large companies and small companies, and you will get conflict.

R8: The same firm will tell you different things on different regs.

R6: That's because it depends upon their expertise in-house for that particular reg. If they don't have an expert on a particular aspect of a rule or reg., then they just want to know what to do.

**M1: Anything else on compliance?**

R8: By compliance, would this include reducing the number of forms?

**M1: You tell me, you folks are the experts.**

R3: I'm not sure you can call all these things rulemaking issues. It seems like some of them are more generally, use of IT in government issues, like whether you have to file a particular form that is a rule. The electronic or non-electronic nature of creating that rule does not necessarily determine whether there is a form.

R8: Most of the citations that our members get are for violations for paperwork requirements.

R6: And the forms do have to go through the rulemaking process and the OMB review.

R3: I'm just talking about people who talk about reducing paperwork with IT. Maybe they are saying they wish there were OMB standards or something that would reduce the paperwork, not necessarily that in the rulemaking process it should use IT differently.

R3 also in session 3B (R1), 4B (R4), 5A (R6);

R4 also in sessions 1B (R6), 3A (R2), 4B (R2), 5A (R7);

R5 also in session 1B (R4);

R11 also in session 1B (R11).

R8: They just want to fill out fewer forms.

**M1: There must already be some equivalent to the auto field mechanism in the Google toolbar. If you've used Google toolbar, when you come to an electronic form that has standardized fields, it will populate those fields for you. I would imagine that one aspect of regulatory compliance that a sophisticated system would offer is; if you are a regular user of these forms, the standard information would populate automatically.**

R8: It could do that. But, it hasn't.

R4: The idea of a small business one-stop was to go way beyond that and say, "Let's identify these fields in a standard fashion, by all the federal, state, and local agencies involved." So, you really submit the information once, and then it shared. This again has to do with having systems which are modular in nature. You've got some sort of front-end information, some sort of identifiers, and then some back-end information. So, you fill out that one form, and part of it may get sent to a federal agency while part goes to a state agency. That sort of thing can provide real time saving for small businesses.

R8: Maybe online is as good as onsite in regards to some of the permits and regulations.

R3: In a disaster situation, however, the ability to have hard copies of regulations could be important. One of the drawbacks that people mentioned for IT is the increased dependency on infrastructure.

R2: That concern has also been raised in the context of eRegs. If something goes wrong, then none of us have access.

R3: People may start saying, "I couldn't submit my filing on time, because I got a virus," and in a less IT dependent world, they wouldn't have excuses like that.

R8: Two agencies of which I have no experience with, but which might provide a lot of insight, would be the IRS and the FCC.

**M1: We are very close to finishing up. I'd like to give anyone a chance to address anything that you think is the big gorilla in the closet that you think hasn't been brought up here, or just anything else you'd like to get on the formal record.**

R6: The fact that the public dockets are now online, it is very easy for anyone to go in and mine information. I'm not so concerned about a business, but I am concerned for the average citizen, who has got their name and address. Of course it has always been public information, and even though there are laws against it, my members get solicited and sent faxes. It is a concern for me. The second thing is an IT security issue. All this data that is online could be tapped and

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R11 also in session 1B (R11).

downloaded. For the average person who has commented, their information is much more accessible than before.

R3: We did have an issue with that too. Someone complained to the Library of Congress that they were publishing their home address. The Library sent it back to us, so we wrote to that person and explained how we had had a large notice at the top of the page, which they must have missed.

R5: They post a similar warning in the big system.

R3: We were kind of apologetic.

R6: On the other hand, you were diligent to let them know.

R5: I think on that issue you run into two problems. One, I know for EPA's eDocket, it is an anonymous system. People do have the option to provide personal information, but the default is anonymity. At the same time, sharing personal information may be encouraged in order to provide for back and forth communication.

R2: There is a provision of the eGov Act that says you have to provide an opportunity for people to supply things electronically, but you can't require them to submit things electronically. I'm a little concerned that if we go with these systems that are promoting more and more electronic submissions, that people who would rather just sit down and write something might not do it. There may not be that many people, with more and more people becoming computer literate. It may just take care of itself. But, there is nothing that will replace that basic letter that somebody puts together. We just have to encourage people that they can include these as attachments, or they can use their word processors and send them in that way.

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