

*Group A – Session 5 -- June 4, 2004*  
*The George Washington University – eRulemaking Workshop 2.0*

**M1: Moderator**

R: Respondents

R7: I was just saying to [name] I wish we could talk about RSS. More generally I think it might be interesting to talk a little bit about the opportunities for innovation that will be present in the system under development. Flexibility changes, adaptations; the successful systems are ones which can evolve, which can structure. What kind of architecture you use which has made you as flexible as you are. I'm interested in that aspect. I think it is very, very hard on day one to say, this is what the system should look like and have something which is really right. [speaking very softly can't understand] this idea of some spiral [?] process...

R4: It's clearly a mistake to think that you are going to get it right the first time; obviously a lot of planning is helpful but at least in our experience the amount of feedback that we have gotten from agencies; the quality of that feedback has improved significantly as they have utilized the system. As good of a designer and planner as you are, you are not going to be able to envision all of the scenarios until you start doing. That's true of enough systems, if not all of them. Quite frankly, a lot of our input from agencies is only generated under the stress of actually having to use the system; forcing them to think about it more critically than they ever had otherwise. They are presented with this and they start to see it they realize that they are going to be dealing with it and begin to start thinking more creatively about the possibilities; hopefully and at worst they will be reacting to the things that they don't like and saying in a negative fashion; at least you [can't understand].

R3: Two ideas that kind of came up to me in terms of somebody brought up [?] things that could happen this morning. One is in regards to analyzing comments; everything that was talked about was assuming that we get 1 block of text, what ever it is, and then running the technology through analyzing and understanding; which is I think fabulous. What about taking that a step further and since we are doing electronic rulemaking, maybe we could add some parameters when we are collecting the comments; almost like a comment wizard in a way. Where you can give people the option of collecting one block of text, but supplement that with maybe getting some more information on them like maybe the industry that they are coming from, or maybe what is their feeling towards a rule. And I was kind of envisioning this from: as every rule is being put out for comment, the agency can kind of go through a little wizard set up type of program where they say, this is the kind of specific information I am looking on. Then when it goes onto the website and people can comment on it, they can either give the free or follow the wizard. Just an idea I was wondering what people's reactions were.

R4: One thought that occurs to me is that a lot of the conversation is; how do we structure this plethora of comments that we get; all sorts, handwritten, written, how do we bring some structure to it using this technology. Just to second what [name] was saying, it seems that an opportunity exists to use the technology to encourage, certainly not force, but encourage better structured, better thought out comments. There are a number of ways that that could be done and I know that some of the papers out there are probably into this. It seems minimally we are talking about

R6: also in sessions: 2A (R3); & 4B (R4)

R7: also in sessions: 2A (R4); 3A (R2); 1B (R6); & 4B (R2)

tagging a piece of a comment to a section in a regulation. Well, it's helpful when a person cites the section of the regulation; that frequently and certainly in my state experience does not happen. But certainly by encouraging the comment writer to include that information preferably in some systematic way that you could tag it or stick it in the database and connect it to that part of the comment; would perhaps encourage a little bit more discipline on the part of the commentor in thinking about what sections it is they are commenting on, perhaps encourage them to structure their comments around specific areas in the regulation; specific sections. That could be a very significant benefit right there in making good use of tags.

R7: You're thinking of tagging things just by paragraph 2, paragraph 2, and so on, not by content tags?

R4: Well, at the most elementary level. Several years ago there was an agency in VA that did a very rudimentary experimental comment into the comment system. This was a wildlife management regulation; hunting management regulation which generates a whole lot of comments from all the hunters out there. They got a lot of comments and one of the things that they did was, and again this was very elementary, but they went through every major decision in the regulations they made and they structured some questions around it. Some of the questions were multiple choice; do you prefer this, this, or this? Then there was also space in there for your free formed comments that could be made. But again, this may have been overly hyper structured, but it did offer some opportunities of more free form comment and it allowed for the agency to provide tabulated results very relevant from the database. They just popped in and certain answers multiple choice; again to do that well requires a certain amount of upfront investment of time rather than...investment of time upfront to be able to write the structure and the questions and do it correctly. But also hopefully leave space for open ended ness because if over structure it would obviously lead to concerns and arguments that the agency is over structuring comment; getting answers that they want to get by structuring the comments, so there's both sides of it; you have to be very careful.

R8: Following up on that, someone mentioned when [name] was talking about the list of obscene words and mentioned that [name] had said that wouldn't have constituted a legal document, however, they were filtering out the...Well there are a couple of issues here that I think we are actually talking about. One is; what constitutes a legal document that can be posted as a notice of proposed rulemaking? And what has to all go into that? So from EPA's perspective they know this has to follow a certain outline; a certain analyses: the regulatory impact analysis, the regulatory flexibility analysis, and then all of the other impact analyses, and in the proposed ruling that has to follow a certain form; so how do you post a legal document and still help the commentors to kind of filter through all of that and get to the gist of the big questions that APA wants them to answer. From the commentor's perspective, that's where they get overwhelmed. They pull down the pdf version of a rule and they just think, oh my gosh, how am I going to read all of this stuff and figure out where the meat is in all of this. So I guess my question would be: how do you structure the questions for the commentors while maintaining the legal requirements that APA and other executive orders now have imposed on APA? To me they're almost conflicting mandates. Is that a fair assessment?

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R2: Yes, it is. Each agency; we are working with designing the system, we are working with between 20 and 40; then we have a couple of more groups going on what can be posted on the Internet as far as an electronic docket. And as far as all these agencies, it spans the gamut. DOT posts everything and their electronic docket is also their official system of record versus EPA and a couple of other agencies who...EPA does right now post everything that a commentor; if they don't redact anything, but the electronic system is not the official system of record. FDA redacts certain things because their might be personal information popping in. There are other legal requirements that they can't post up there so as far as what is considered the legal record I think that our legal workroom is, not struggling, but they are trying to work through those issues on: is it going to go back, are we going to have a [can't understand] federal something that says, this is what the policy is on the federal level; and I think that would actually have to go to Department of Justice and having it; this is what the federal government has to do. Or going back to the agencies, making sure it just meets all of the agencies needs. That's what is kind of...each agency has sort of different policies that the docket system is going to have to meet and make sure that the system is going to meet all of the federal agencies' needs on as far as what can be posted and what's allowed to be posted.

R8: Just a quick response to what you are saying; I don't want to hog the conversation up. My concern actually is not what is legally...what needs to be a part of the rulemaking record, but what constitutes the legal document in terms of the notice of proposed rulemaking that is posted in electronic form under the regulations.gov. So if I go to rules open for comment and I click on it and it downloads this huge Federal Register; 50 pages and the first part of it are all of these executive order; regulatory impacting and cost benefit flexibility. So I am reading through all of this and then I'm finally getting to the rule and then there's the background, and then there's the scientific background. Finally, like 50 pages in you get...all of that has to be part of the proposed rule by law, by executive order or by legislations; all got to be in there. But if I'm a local jurisdiction in Nebraska I'm not going to wade through all of that. Your point [name] was that, if there was some way to structure the proposed rule so that people could quickly see what the big questions are; and my concern is that you can't really do that and maintain...

R2: The requirement to meet SBPRA, you have to put in...

R7: One of the suggestions which was made is in addition to whatever the primary web interface is for the eRulemaking system; that there be some sort of machine interface through web services or something of that sort. And that means that myriad groups can act as intermediaries and basically put up a comment submission form on their own website which would then feed into the federal system through these web services. It seems to me that's a way to do the sort of thing [name] suggested where you might have some sort of wizard or expert system which would focus on particular aspects of the rule; would present the material on the official site might be presented just as a pdf file copy from Federal Register or something very dry and difficult to follow. The interest groups might take the same material and say, here's some footnotes and some additional stuff you might want to look at which has all these required filings, but the thing that affects municipalities is this: be sure to read this paragraph and in fact, maybe this is the only one that you want to comment on and if you want to fill out this box we'll generate the comment for you which you can read and it will say, I am particularly interested in paragraph 17 and my comments focus on that. This idea I think presently there is action centers; nonprofit

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groups use software which generates comments to the agencies; typically form letters and I think sort of the electronic version of handing out postcards to members. This could be made much more focused; maybe more effective and more sophisticated and might address this sort of crisis.

R6: So the FCC has this odd thing. They have their docket management system; the Electronic Comment Filing Systems (ECFS) which I slightly put down yesterday for not having all the features that I want. It has your contact information and your party name, and the name of the person drafting the comments, and the docket number, and all of these fields that you are suppose to fill out and then you are suppose to upload the comment; which is suppose to be properly formatted with the caption and people were complaining that this was too hard. So they created; I think in order to stave off these comments that ECFS was too hard; they created something called ECFS Express; which is very funny. You can go and look at it; they have the top 10 dockets that people comment in which kind of changes over time and they have some informal process; I don't think there is any formalized thing by which they say, oh let's put that in ECFS Express. Someone goes and writes a very, very unofficial summary of the issue; I actually think someone will sue them over that someday because the summary is so unofficial and it may be biased and everything and someone may say, that wasn't an accurate characterization of that docket. They have the one line summary with the question that most people care about. You can just type your name into one box, type your brief comment into another box and click submit. The problem is when those comments get in the docket it is real easy to see who commented using ECFS, and who commented using ECFS Express because the comments in ECFS Express are formatted by the FCC in an ugly mono-spaced font with no caption; with just like: I hate you, please stop doing this, don't do this please, thank you. Like some very non-targeted to the issue kind of comment. Then you have the ECFS comments which have the proper caption and the party name, before the Federal Communications Commission in the matter of this thing, table of contents, index, really nicely laid out. It is hard to imagine that the people who are reading the comments don't have a bias to the things that were submitted through ECFS Express; both in terms of the brevity and the tone and the format. When they format them for you they don't really make them look very nice; they just get your comment and the docket. So that's a particular way in which an agency has tried to make it easier for members of the public to comment quickly and easily, but I kind of don't think it has been very successful. I would encourage people who are curious about that particular issue to go to the FCC website and look at the difference between ECFS and express.

R7: Wouldn't you agree that something like web services would create an open market for this sort of thing and you get some that were really good.

R6: Oh, yes. I actually meant to start by completely agreeing with you and then saying an existing way that an agency did it that's not as good as what could be accomplished in the way you suggest is ECFS Express where the agency took it upon themselves to make the quick and easy version. I think it could be a lot better, but their incentive was let's satisfy all of these people who are clamoring to comment quickly on broadcasting decency or media consolidation and just give them a box to type and click.

R5: To go back to what you were saying about people wanting to comment directly but it contradicts somewhat with the need of the agencies to satisfy these requirements; learning from

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what people like to do on the web which is have a link, click on it; have that be what they are responding to. If you had the actual regulations and have those particular parts be color coded and some be html links. Box pops up to comment on what you just clicked on; that would be pretty direct. You are not filtering the information which was the sort of useful thing you were describing; the sort of translating it, but at least it's a direct connection. That might be another way to do it.

R7: Is this like the annotation software that's...there is document annotation software which gets used by for group editing of documents; where you want a note on paragraph.

R5: Yeah

R3: I think you made a point; a real good one, which was; people just aren't going to read all of this information; it's just overwhelming. I think it's a bigger issue. Ideally they'll read everything, figure out what part they want to comment on and do it. But I think the first part doesn't even happen which is, gosh I have to read all this? I'd rather go to my association and say this is the issue; this is what I have to worry about. One idea I had kind of going along with web services is maybe for every rule every association can put in kind of their abridged version of the document or their interpretations. They already do this on their own websites, but what I'm kind of thinking is there's a rule on ACTS and I go there and there are 10 associations that are interested in this where I can see all their abridged versions of the rule.

R7: Scary part I think is if they misrepresent it and it generates a lot of comment which maybe all gets thrown out.

R3: They are already doing this. I'm just saying they are already doing this on their own websites. What I'm saying is you kind of consolidate them all in one place so I can read association A's point of view and association B's point of view on the same list.

R6: Nonprofits that are not trade associations would certainly love to have a legal right to your access of the agency site to publish our point of view. That would be really great; I really doubt that it would happen. If we could say on the FCC website, well this is a foolish rule to impose burdensome regulation on technology; we would love to be there saying that. A lot like the ballot simplification issues where there may be a ballot question and in some jurisdictions there may be a rule, but the ballot question has to be presented in a simple summary, as well in the full legal text. There maybe someone who is responsible for trying to write the simple, short version, but that process could be very politicized because people may say, you're simple, short version doesn't mention the real illegal part, you just mentioned the good part and you left out the problematic part. If you said that any organization could have its point of view presented on the agency site; like all of them side by side. That would be nice except then there might be the accreditations issue; like what threshold do we need to meet in order to become an organization that gets to have a point of view? And if individuals what to write their own summaries would the agencies accept those?

R7: You could always link in the other direction.

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R6: Well a lot of people used to talk about the problem with the web; that it doesn't support reverse links. So when I link to something, people who come to my page can see that I am linking to you, but when people go to your page they can't find out who's linking to you. So a lot of people have wished that there were bi-directional hyperlinks, so whenever you were looking at any web page you could find out who had commenting on it, even if the person who wrote the page, who published the page, didn't care about that or didn't want people to know. So for example, if the entertainment companies against whom we frequently advocate, posted a document; it would be really nice from our point of view if there were a technical means by which interested people reading that document could discover the fact that we had linked to it and commented on it. And that might be a more general mechanism. I mean it's kind of beyond the scope of rulemaking.

R5: I think we are not going to get away from the fact that it's going to be parallel; there's going to be two parallel things going on. The agencies are not going to allow other organizational [can't understand] but I just really don't see that happening. It opens us up...it really couldn't. The threshold issues you talked about -- are two people an organization? -- all those things. You are going to have the organizations with their point of view and their interpretation and their html, their link to their comment; and you're going to have the agency...

R3: Build another organization that basically duplicates the docket and then just post everyone's opinions on it or everyone's short version of it.

R4: Sure that's probably going to take place at some point. I'm sure there are already organizations that already have their own dockets that they use to help people...

R7: I think [name] mentioned that business models are changing and the roles of intermediaries are changing. I think the intermediaries in the past have either said, we'll represent our members and we'll do the commenting or in some cases they said, we'll organize our members and we'll have a mass submission; most of it kind of all the same. It's now possible to do things which perhaps have more impact in the process because it generates more reasoned, more detailed comment from the members and it's not all identical. So I think that's sort of intermediary role where comments come through other websites and the other websites may provide their own summaries of the rule; or at the very least focus on particular sections of interest.

R4: Isn't this characterization issue that we are talking about already going on or already enabled by eRulemaking, the very fact that I can see someone else's comment instantaneously when it's done? It may be relevant to me who made the comment; for me to say, well this comment was made by the Sierra Club or by some trade association. The very fact that anybody can do that allows any organization to go there and put their own summary of the rule and the comment.

R6: I think that it's really difficult to use dockets that way. When people are writing to agencies, ideally they are really writing to the agency so they're writing...I mean people have used commenting for many different purposes, but the ideal maybe that they are commenting to the agency. So the ideal is that they are making a very careful, detailed response to specifically what the agency asked or what they think the agency should have asked. So for example, in the

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docket I'm most familiar with, the FCC, one of our allied organizations filed a really long comment which started off with 20 pages of discussion about whether the agency had jurisdiction. If you were a member of the public looking to try to understand the rule or try to figure out what is this agency talking about; is it a good idea. And you go and see, oh, [org. name] I like them, they are pretty good people let's see what they said about this and then there's 20 pages of discussion of does the agency have jurisdiction followed by maybe 5 more pages of legal argument. If people are really writing to the agency, their writing is likely to be very complicated and very legally oriented and very technical; probably not ideally suited to enhancing a non-specialist's understanding of an issue.

R4: Well it seems that an organization may choose to write 2 or 3 or 4 comments. Some that are designed specifically for consumption by the technicians of the agency and just given the reality of these dockets where there is going to be some interplay between the comments that are being made; people commenting now can actually see comments that other folks have made more readily. They are certainly one of the audiences of the comment is going the other commentors and try to influence the other comments that come in. I think it's an inevitable outcome of this.

R6: Well some agencies, I was told over the past three days, don't have a reply process by which people can submit formal replies to other people's comments. Most agencies also have deadlines, so there is a phenomenon where people in order to avoid people replying to what they have to say, will file at the last minute; in order to avoid tipping their hand or giving away their evidence. I've seen that in a number of dockets; people have prepared very detailed arguments with various legal discussions of things and they might have prepared them right up at the beginning, but the deadline was a particular day. On that day all of a sudden 80 people filed. Obviously, what they were concerned about was that other people would respond and they wanted to avoid that. From the point of view of the agency, it might be desirable that people respond to each other, but from the point of an advocate you might not want to use the docket to provoke other people to respond to you because they might undermine what you have to say.

R7: What I've been told is this differs enormously from agency to agency. That because it technically is an informal rulemaking process, that the agencies can and often do read comments received past the deadline. The idea of a rigid cut off, and ignore everything after that point; some agencies might do that but I think many have a tradition of looking at things that come in late. Groups who feel, I'll file at one minute to midnight and nobody will know that everything I'm saying is inaccurate; will find themselves, they lose the next day with people who have read it and said this is [can't understand]. So I think it's less of a problem.

R6: But that does mean there is an issue about the agencies practice and about the perception of the agencies practice. I can find a number of dockets where people did file at one minute to midnight on that assumption. So if you wanted to talk them out of that practice in order to have more discussion, you might have to persuade them that the agency is actually going to be reading past the deadline.

R7: I like rebuttal comment periods because they encourage that sort of thing and reduce the game playing.

R6: also in sessions: 2A (R3); & 4B (R4)

R7: also in sessions: 2A (R4); 3A (R2); 1B (R6); & 4B (R2)

**M1: We have about 20 minutes left and some of you folks I haven't heard too much from so I would like for the rest of you who are sitting on the sidelines to make sure that you get your input in here.**

R8: I just want to make sure that all of the comments that I'm hearing are really, really important. I'm not sure they are all going to be applied to state and local government stakeholders, so I just want to make sure that we are trying to stay as focused as we can on that topic. My colleague here, we were having a conversation earlier today about, just before we came in actually, about if the member associations that "represent local jurisdictions" only track legislation and if their understanding of participation is mainly through the legislative process, how do we encourage them to participate in rulemaking stage; policy making? In many of the states that participate in scope, they work very closely with state executive branch agencies that pass through state rules that implement federal rules. So we were just talking about, is there a way that we could involved them more in passing on information to local jurisdictions about proposed rules. Because our local jurisdictions across this country really don't understand the rulemaking process and they don't understand how to play the game. Although I think a lot of it too is that they're afraid that once the rule is in proposed form all the deals have been cut and they are not going to have much impact anyway. But setting that issue aside; how do we just let them know that these rules are out there and that they should be involved in the process.

R9: Our association represents the state [identifying information]. The state people that we represent; and we obviously work very closely with EPA because EPA passes the environmental legislation that the states end up implementing so we are kind of co-regulators with EPA along all the environmental issues. I think our state people, and departments of environmental quality, places like that; do a pretty good job with public outreach to get into the local communities and that type of thing. When I hold public hearings on the super fund site and everybody's backyard, you're going to generate a lot of interest and people are going to be much more aware, I think, of the environmental things that are going on in their community. May not be the same with a housing project that HUD's going to be funding or something like that or some agricultural thing, some farm thing out in the country lands; you know the public may not be aware of. So I'm not sure exactly what kind of mechanisms there are out there to alert the public or the local people of some of these rules beside putting an ad in the paper which is next to ad for sale going on at Wal-Mart or something like that; it can certainly get lost in the shuffle of that type of thing. I think as more and more people discover the Internet and get onto the websites and that type of thing, that's obviously one mechanism that everybody can use as a notice of a rulemaking; this is coming down the pipe. I don't know how you do that; if there's a central depository.

R5: Do you think the people who go to the public hearings and are involved in the process; do you think they generally find out about that in the local paper? What is the usual mechanism form that?

R9: I think it's a variety of things. I know on the environmental side you've got all sorts of local groups; Citizens against XYZ Landfill. There are activists out there that really keep tabs on that type of thing. I'm not really sure how the word gets out to folks. I know the states; they put ads in the papers, they do public radio announcements, and TV ads and all sorts of stuff I think, to put the word out. Obviously post stuff on their state web pages; the agency web pages.

R6: also in sessions: 2A (R3); & 4B (R4)

R7: also in sessions: 2A (R4); 3A (R2); 1B (R6); & 4B (R2)

R8: Our administrative procedure act in Nebraska requires state agencies to keep a list of the interested individuals or groups who want to be notified about rules affecting them; so they have to send separate notices out to them as well. So we are talking about pass through rules, but it should be possible for them also let people know about federal rules. When we did our focus group discussions; not this round but the previous rounds of [org identifier]; I've always had somebody from state environmental or safe drinking water in the room. They were very careful to play a neutral role, but they were there to answer technical questions; like if we're required to do a sanitary survey of our drinking water system every three years instead of every five years what is that going to mean for us? Answer: nothing because we don't redo it every three years. There is a lot of interaction already between local and state jurisdictions; it wouldn't be too much of a jump to bring them in a more systematic way into the eRulemaking initiative so that they can let folks know that this is happening at the federal level. Now how much that would generate interest at the local jurisdiction level, I don't know. But it's got to be better than what we have now because if we didn't tell them through [org. identifier] that EPA is regulating certain areas they wouldn't know.

R2: We are thinking about that as we...once the system is up and running; great there's the system, but the public and state and local governments, as far as the federal regulatory process; people don't really know what the federal regulatory process is. People know what a law is because they grew up with Mr. Bill and [name] the direct [?] is bringing that analogy into play. I think it is so true what a law is and how that comes; what a regulation...and we want to increase public participation but we can't do that unless the public understands this whole process and gets notified of what's important to them. There are several federal regulations: Department of Transportation, EPA, that will affect you and me as citizens, but how would we know that. So we are definitely thinking about how to market that and educate the public when the system does get launched. It's a big task to me I think.

R8: But it's so critically important because here's what happens if they don't get involved at the rulemaking stage; they find out about the rule after it's been finalized through the state agency and they go "there they go again. Just beating us down and we have no opportunity to participate." So it's the vicious circle.

R9: There has to be...I guess one way to do it would be to have some sort of marketing initiative to all of the public interest groups, the special interest groups. This town has thousands of associations that represent everything from environmental officials, to pipe fitters, to labor folks and all of that stuff. That's the next layer I think, and that's how you get that word out through their membership and that type of thing. And some of that will filter down to the locals through city managers, association of counties; those types of organizations.

R8: Right

R9: But I don't know how you get to Mr. Joe Blow out there at 216 Elm St. in Padunka, Arkansas who doesn't belong to any sort of an association or union or something like that through his occupation or whatever that that word is going to get out. I don't know how you do it.

R6: also in sessions: 2A (R3); & 4B (R4)

R7: also in sessions: 2A (R4); 3A (R2); 1B (R6); & 4B (R2)

R4: Over the next 5 to 10 years the organizations ability to organize the structure of their state is going to become immensely cheaper than it is now and that it was 5 years ago. Just most automatically it is going to happen because the structuring of the stuff is going to be cheaper, it's going to become more common that awareness that there is a federal regulatory process; one is going to go way up. Two, to the extent that it really impacts people and the ability to get structured information you need about what's going on is bound to go up. That's not going to solve all of the problems obviously, but it is going to increase awareness I think almost inevitably.

R8: On the other side of that, one of the things that [org. identifier] has tried to do is to increase the quality of the comments that EPA is getting. Because we were involved at the early constitution stage, EPA really needed some baseline information and real important information on cost because that was part of the reg flex analysis. You know, how is this proposed way of addressing ground water contamination going to affect the financial implications of the small community because that was a SBPRA requirement. Somehow...I know that the rule writers are going to want to hear from the public participation; the plebiscite angle is important, but from the rule writers perspective they can only rely on certain kinds of comments that are going to hold up in court if a rule is challenged. So if the comments aren't of a certain quality they are not going to be of any good to them, so we've tried to think of ways to help from their perspective, how to improve the quality of the comments so that they can be useful to people. So if a rule is going to be a burden on a small jurisdiction financially, can you quantify that? Can you give us specific numbers so we can aggregate that information and put it into our reg. flex analysis. Rather than just saying, "I don't like it. I don't like the federal government. I don't like regulation." That's the kind of thing that you are going to get when you first start talking to small rural communities.

R5: I think that's one of the reasons why, teasing apart the actual regulations; because I think you are going to have to have two different...you are going to have people who are going to interpret it; the associations or whatever, and you're going to have the EPA website that's going to have the proposed rule, and whatever mechanism there is to comment. I think that it's going to be important to tease apart in some way without actually translating it; that proposed regulation. Whether that's color coding: this is background, blue is background; yellow is a question with an html link to a box that comes up and you can write what you think about it or something like that. Because my perspective is that EPA wouldn't have the opportunity to kind of say the simplified version of what we are asking you is...or the simplified, because the lawyers would never allow that. It's translating it; it's somehow slanting it so there is going to have to be some way of kind of parse it and make it...whether it's a combination of a wizard, like you were talking about. Like you have a bar across the top of the screen that tells you where you are in the process and then kind of pulls apart the different things and says, this is actually a question. We would like to know what you think about this is yellow. Or this in blue is background; optional reading. Just to make it simple without that sort of problem with the translation. Also, to make it...if you have these boxes or these fields for writing comments on particular parts; that would make the analysis even more possible and useful. You would know where to tie that too; that could potentially be one way to address that half of the equation. The other half of the equation; translating is another issue I think, altogether.

R6: also in sessions: 2A (R3); & 4B (R4)

R7: also in sessions: 2A (R4); 3A (R2); 1B (R6); & 4B (R2)

R6: You know the Secretaries of the State actually do simplify ballot questions and somehow...

R7: Legislative analysts kind of tear it apart.

R6: Yeah, they have this proposal that is actually legal text but somehow there is an official government endorsed simple version.

R5: Plain text, or what is it called, plain writing.

R6: It's called different things in different states because it is on a state level. At least it seems to exist and doesn't seem to be subject to routine successful court challenge. So I wonder why conceptually agencies couldn't do that. I mean I know...

R5: At the federal level you mean?

R6: Yeah. I know they may not currently have authority to do that or they may be afraid of court challenges or whatever. But conceptually it seems like something that is not impossible. Maybe there would have to be legislation that would say agencies actually can simplify things to facilitate better commenting.

R8: Since its OMB; isn't it whose funding and coordinating the portal? They are also the ones who are responsible for most of the executive orders that add complexity. Maybe we could just get these folks to talk to each other a little bit about how to overcome some of these...those impact analyses are very technical. It's OMB that is saying the agency has to include all that; it's not the rule writers.

R6: But if we assumed OMB likes everyone to produce more paperwork all of the time, then they could say, "well, you have to publish all this technical information, and all this detail, and all of this flexibility analysis and everything. And in addition you have to publish even more paperwork in the form of a simplified version."

R8: The ultimate irony or paradox or something.

R6: But they could actually do that because the theory would be that different things are published for different audiences. So the regulatory flexibility act is published for the benefit of people who like to be flexible and the small business impact statement is published for the benefit of small businesses and the simplified version is published for the benefit of individual commentators who don't have the legal staff or the engineering staff.

R7: Or you could say in the sense of presenting material online; you provide a simple summary and you provide a link so you can drill down to the entire thing. The same audiences that the first thing you see is the simplified summary and then to get all the gory detail, click here.

R8: The irony is that...have any of you read the stuff on the ossification of rulemaking? The original purpose of notice and comment was to make it really brief and simple. The last 30-40 years it has become so darn complicated. The basic notice itself is only 10% of the Notice of

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Proposed Rulemaking. Everything else is all this other stuff that OMB adds on or that Congress has added on.

R9: The actual rule itself; the legal language is 2 pages and then you've got 60 pages that explain what those two pages say, plus all the other garbage that you have to put in there.

R6: Arguably a benefit of technology; expanding on one thing that [name] has been saying about linguistic technology; many people feel that the benefit of computers is that you can have more and more information. You are constantly collecting and expanding the pool of information, yet you may be able to deal with it with the help of a computer. So for example, when they have structured text or tagged data; you can collect more and more and more detail and get the computer to be instructed to only show you the part that you are interested in. So it shouldn't be that, agencies publishing more and more paper inherently means, that actually finding the part you care about has to get harder. You can argue that if it does get harder, that's a failing of the way the agencies have laid it out or the way that the technologists have failed to present useful information display tools or information navigation tools; not with the volume of data. We have phonebooks and the phonebooks get longer and longer and longer but it doesn't actually get harder on human times counts to search the phonebook.

R8: I don't disagree that there is a way to make it easier to navigate, but the agency is probably constrained legally in how much it can do that. That's my only point. They can't start parsing out these notice of propose rulemakings; they are required to present it as a package. So I just think that they would have to discuss how to achieve the goals that [name] was articulating at the beginning of this discussion about structuring it in a way that local government or a state government agency could easily understand; yet also meet the structural constraints imposed by the courts, executive orders, legislation, whatever. They are two inherently contradictory sets of requirements.

R4: You can have lengthiness and still make it understandable. The agency doesn't always have an incentive to want to make clear what it is that they are doing. And that opposition can occur either because you've got too much data with a lot of red herrings that are not really relevant to what the central issue is. It can also occur because you have a simplification which is an oversimplification and leaves out certain preferable details. So I'm not sure the volume of data in and of itself is the right indicator; it's something other than that. It's right clarity. Part of it is just making sure the incentive, nobody has a solution to this, but it's being able to change the agency incentives. This is something where OMB may perhaps have some requirements that are not always useful for disclosing but when you have an organization like OMB that is a specialist, they do tend to change...as well as professional organizations out there watching what the agency is doing; they can help encourage better disclosure. An agency is dinged for not properly disclosing what's going on or not making it clear.

R6: also in sessions: 2A (R3); & 4B (R4)

R7: also in sessions: 2A (R4); 3A (R2); 1B (R6); & 4B (R2)