

Group B -- Session 1 -- June 2, 2004
The George Washington University – eRulemaking Workshop 2.0

M: Moderator

R: Respondents

M1: [not on tape, but question 1 is as follows] What are some of the costs and benefits of applying IT to the rulemaking process?

R7: Part of the problem is we don't know that. Before this project began OMB and EPA had to develop a business case where they laid out the costs and the benefits that they anticipated as result of the eRulemaking initiative, and those haven't really been made public. They've done an analysis of that, but as far as I know and I know there is a request now from Senator Collins and Senator Lieberman to ask for copies of the business case. They are asking [org] to get copies and [org] has been now waiting six months to get a copy from OMB and EPA. From a less rigorous perspective...from the agencies perspective, particularly one of the costs, the costs depend on which approach you take. Whether it's a centralized, top-down system or whether something that each individual agency develops. The agencies are trying to develop those costs and benefits estimates themselves. Does it make sense for example for the Dept. of Commerce to develop their own electronic docket system or to buy into the government-wide system? They are trying to weigh that right now. How much would it cost for us to develop our own? What are the costs if we don't in terms of loss of control? If we can build our own system we can build a system that meets our particular needs. It seems that every agency thinks they're different. In some sense they all have the same basic need, which is to give the public access to both the regulatory supporting materials: the cost-benefits studies and the reg-flex studies and those kinds of things that are done and to give the public access to the comments of others so that the commenters can know what other people have said and in some sense comment on the comments and have almost like a dialogue as part of the process so that everybody becomes more informed. Not just by reading the supporting materials, but also seeing what other people say. That's a basic need, I think, in every one of them; so the agencies are trying to figure out, what are the costs and what are the benefits of going one way or the other. It looks like they aren't going to be given the opportunity to do that sort of analysis because it is already being decided for them.

R1: You mean that they have to go on a central system?

R7: Exactly

R1: I think that is something that the government ought to look at. It is hard to argue about a central system, but I started with central systems at [org]. We did planning and programming and budget. I've done zero-sum budget. There are more government systems. The problem is a lot of times they never get in. What I'm worried about with this eRulemaking initiative, I support and I can see why they want a central system but I don't see any fallback system. I think OMB or somebody put out the word that any incremental change to your existing system has to

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R11 also in session 2A (R11);

R5 is a principal investigator

be approved by OMB prior to your making the investment. What I'm concerned about, we may look here 3 or 4 years from now and not see anything substantially change from what we have now and maybe some kind of retrogression because of lack of investment because we are putting our eggs in this one basket. I'm sure the government must have looked at that when they did this balancing. I've seen a lot of these big macro things never come to fruition and I'm a little concerned particularly since I don't see the timeframes or any public accountability of what you have to do at a certain point in time. As a result of this big initiative we could go backwards.

R8: Who is it, is it EPA as the lead agency? Are they comfortable with that?

R6: They want a competition. My impression is they are very proud of the fact that they beat out other agencies in this. Unfortunately, this competitive spirit has not lead to the feeling, ok let's get the best of all systems and combine the best features. I think that is a big loss. If it was possible to get the best of the existing systems, I think there is enough knowledge within the various agencies to come up with an excellent system. With regard to what they are actually building, my impression is it's just taking the EPA docket system and applying it government-wide. The whole architecture discussion, as [name] summarized it, has been phrased as centralized versus distributed. What I haven't heard and don't understand how it fits in with the EPA's eDocket system is; is this modular software? I fear, though it seems terribly antique, I fear it's going to be a big monolithic system and either it works or it doesn't work. As [name] was saying such systems often never get deployed. It's too big and complicated.

R1: I understood that EPA wanted to have one system and did not want to have these marginal add-ons by the agencies. I'm a little concerned, as they say the culture of agencies is important in a rulemaking. I can go into an agency and it's like going from the Jones to the Smith family. They are really different cultures that grow up in agencies and you can tell them. It's not knowing the people and the process, it's knowing the culture of the agencies. I will tell you the FCC's culture on eRulemaking will be 180 degrees different from DOT's. These big massive systems don't allow cultural differences to come up so much. Not my job, I'm out of the government but I think it is a real concern. I would hate to see 5 years from now and we look and we have less than we had when we started.

R6: Let's see, the question was on costs and benefits. Transportation has claimed cost savings of 1 point something million dollars a year. If I understood their argument correctly, basically was they had fewer file cabinets, they had fewer file clerks, they had fewer warehouses. Very tangible cost savings on throwing paper away. A key requirement to be able to do that is that you trust your electronic system enough. Last time I talked to [name] his answer to the question: will this system be reliable enough? His answer was: yes. I think it is worth talking about that. This gets back to the whole business case argument, I gather that the business case that was made did not say we are going to throw away the paper and save the money that way.

R1: Why, because the agencies want some hard copies they said?

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R6: Well some agencies want hard copy. I think that at the time the discussion was taking place EPA's eDocket system was not viewed as reliable enough. I don't think EPA was shredding the paper. I presume that has evolved. I think that is a key issue, because that is real cost savings. The arguments I've heard at [org] is along the lines of, "well if 100 agencies built new systems and cost x dollars it would cost 100x dollars". And x is whatever you want it to be so you can come up with a great argument. However, if as [name] said, OMB is forbidding even improvements on existing systems that might mean save doesn't exist in that sort of argument. I think that the money saved from moving from paper to electronic form is real, but it requires a very solid system. People are going to be unhappy if they throw away all the paper and the electronic information disappears.

R1: A forum where they debated this about a year ago, eGovernment; I don't think there is going to be a cost savings, nor do I think there should be. You want to know why? I think the level of service is going to be so much better with this new system, if it gets up, than what you have. So how can you look at, if you compare...

R?: Do your job better.

R1: Yes. The fact that I can comment on everyone's comments and the fact that I can have them in real time, the level of service I think is going to be so much greater I can't see that you are going to get a cost savings.

R8: It's like when we all started using email, we all thought this is going to require us to throw file cabinets away. What it was is, we all did more work.

R1: I talked to people in OMB when they were doing these numbers, and I said, I don't think you can judge from the existing amount of money that you are spending now and try to justify this program on cost savings because I think the level of service is going to be so much better under the new system that I don't see a cost reduction. I see a cost increase because I'm going to get a lot better service. I don't know, it might have been the same way that they estimated Medicare costs

R7 or 8?: Or weapons of mass destruction. We have rationales going in and rationales going out.

R1: I don't think that that is the right calculus.

R7: There are two types of cost savings and one of them [name] was talking about which is, the paper versus the electronic. And that's not even in the early version of the business case; that's not even a factor. They came up with this 100 million dollars that this initiative was going to save, and that wasn't a factor. Their savings estimates were predicated on the notion that it is more costly for each individual agency to develop their electronic systems to meet the eGov Act requirements than it is to build a single central system and let everybody sort of collectively pay

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for it. But the cost comparison was predicated on the notion that the DOT has 17 systems. There are 17 agencies within DOT, but there's one system. But their cost comparison was predicated on the notion that it cost 800 thousand dollars per system to maintain it and there's 17 systems within DOT and therefore it's going to cost 13 million dollars to maintain the DOT system alone. That was a big surprise to the people at DOT, they said, "it doesn't cost us 13 million dollars to maintain the system". The cost comparisons that are made between a centralized system and a delegated system; a system where you could have a link off of the existing Regs.gov system that says, "if you want to know more about this rule click here" and it takes you to the DOT system. The public would never know.

R8: If you listen to [?] talking you would know it was a religious issue on the basis of numbers.

R?: Religious issue?

R8: I mean the facts were a matter of belief. They believed upfront that this was the right way to do it and they justified it within the process.

R1: I'm not suggesting [can't understand]. What I am concerned is that we don't have a fallback system and it may not work. I think the idea of making it cost less is...

R7: The question is, you could achieve that level of improved ability in either system, why not choose the one that doesn't cost the most?

R1: They are arguing though, that by a central system it costs less.

R7: Right, but then we are back to the issue of which one then? If you agree on the notion of what the end game is, then you are into a cost effectiveness issue.

R1: You could argue this...if 17 agencies had to hire a Lockheed, it would probably cost more to do it.

R7: Agreed, some agencies that don't do a lot of rulemaking, it doesn't make sense. They should collectively develop a single system.

R1: There's a cost of centralization; culture the innovativeness of the agencies. Systems have to change as things change through time. I'm a little worried about one massive...I remember we had program planning, budget, defense; we went government-wide, said we were going to save money, we are going to change it. It was a mess. You lose all the innovation. When you change the budgeting system, the agencies say you have new budget concepts why are we going to try? You guys are running it from the top, you just do it. So there is a cost to that too.

R8: So what about this notion of building a distributed system by paying attention to the interface. And building it based on standard. I don't know why that wasn't given more

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credence. The idea is, instead of building a large system where everything is in that system, you specify what formats the data is going to be and you pay attention to the interfaces of individual agencies with each other with a central idea.

R6: I think that is a good way to do things. One of the paradoxes in this is, among the religions at OMB these days, is one federal enterprise architecture which tends to be all in the direction of modular systems and standards; a framework. When I've asked people doing the federal enterprise architecture about eRulemaking, they said there are other initiatives which illustrate FEA better. There is that whole push within OMB and if there was some way to harness that; there actually is a voice within OMB that favors what [name] was suggesting, but it hasn't been brought [can't understand]. Part of the problem was the timing, that the 24 eGov initiatives started ramping up and along came the federal enterprise architecture. The more flexible of the eGov initiatives said that this is a good framework and let's do standards. A lot of things built on exactly this sort of interface between modules, but not eRulemaking, as far as I know.

R8: The big advantage of the central system, or one of them, is you can point to someone and say; make it work, you are responsible for it.

R1: I can see the concepts of it. I would even live with the downside, I just wonder if they'll get it up.

R7: It also has privacy problems and security problems when you have a single system.

R1: Isn't that against the whole idea...like the Internet; I do a lot of work with a group [org] and I deal with them around the world and the whole system is all decentralized. You don't have any control in one big place.

R7: That's why the Internet works

R5: Yes, but those are harder to design. Distributed systems are tough, especially as they get complicated they add...when you start out with 200 agencies all doing things differently it is just harder. It is easier to build a centralized system out of the gate. That may not be a good long-term solution.

R7: If you have 5 agencies that comprise half of all rulemaking activities.

R5: If they could work and play together, that would be the way to do it. If you could get DOT and EPA and a few other agencies to all come together...

R7: That already have electronic docket systems.

R5: But they are competitors, they don't work together.

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R7: You have an existing base from which you could start. Right now you are going to wipe out all of those systems.

R2: Do you think those systems all talk to each other now?

R7: No.

R2: Do you think it would be easier to come up with standards they all would agree on, on how to talk...it has been my experience that that hasn't been the case. That it is not easy to get large agencies to cooperate or even talk about standards because they all do believe they have the best. And that is not a very easy thing to do.

R7: For over a year, we talked to 24 agencies in one room and no one said that they would disagree with the notion of having a single set of standards. Basically there would be a single face to the public. It would look the same to the public, but they just don't want to give up what they just built.

R2: Of course everyone would agree to that. Can you name me one system that works that way?

R7: What, that is interfaced?

R2: A government system that relies on five major agencies to cooperate, to come up with standards...

R7: Regs.gov

R5: Regs.gov is really just a pass through. The stuff comes in and they just feed it straight out to the agencies.

R7: But there had to be agreement there as to what the format would look like to the public.

R6: Some of the eGov initiatives were very consciously constructed.

R7: Rather than even accept that as a possibility, the notion was thrown away and say, no we don't want to do that.

R6: Business one-stop was another one that was built that way.

R5: Are they complicated?

R1: No, one business is not too complicated.

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R5: Is there anything of the complexity of the rulemaking process where we could point to a group of agencies collaborating?

R7: What is the complexity that is so stymieing here? You basically want a system that gives you access to the supporting materials and the comments of others.

R6: You want a database which is maintained very reliably and securely. You want certain tags on the database {can't understand} and that's the negotiation that has to take place I think. I'm actually optimistic about such a negotiation because the outcome is not, how do we adopt the same business process, it's more along the lines of, we've all got to agree; do we call it "last name" or "family name"? It's the minutia of the various fields which are being maintained. I think it is possible.

R1: That horse is out of the barn right there. They are committed to doing it. I'm not suggesting not do it. I'm just worried if we have a fallback position if it doesn't work.

R7: This is as of April Government Computer News article that said, EPA is waiting approval for the centralized approach from OMB which is expected soon. They are going to test the system with 4 or 5 agencies with a full system launch in 2005.

R4: As a [org] employee, I know for a fact that in April EPA made it mandatory that now in all of your regulations, in your preamble you actually list Regulations.gov first and EPA's eDocket second. So they actually are encouraging people to go through...

R7: This is what we recommended last September when they agreed to do it.

R4: We did implement that in April. So EPA is taking the steps toward more of the centralized system than the eDocket.

R8: So then there will be two paths into the EPA. One of them sort of routed through a central activity, and the other directly via the EPA. Both continue to be active.

R4: We list them as the people have the options of how they submit their comments. First option is Regs.gov, second is eDocket. Then we go into if you want to do it hard mail, or if you want to have it hand delivered. Those are just the options in the order they are laid out and therefore the way to encourage it.

R7: The problem that we had identified was the EPA, the lead agency for the eRulemaking initiative, didn't identify Regs.gov as a commenting option in most of their proposed rules last year.

R4: Now it's required for all new NPRM's effective April.

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M1: You've been touching on actually three questions, we talked a little about culture and dialogue. I'd like to go back to culture and talk about, will information technology result in a more collaborative process? Is there a mechanism to encourage agencies to talk to one another?

R6: I think there is great opportunity for this, but I think that it's not good that an initiative of this sort, one of whose goals is to increase transparency in government, is not in the least transparent itself. Nobody knows what Lockheed was doing actually. I forget which one of the other speakers who said, "where do the timelines, objectives, and so on. What is going to be done by what date?" This is all closely held. The architecture of the system has never been publicly described. There are occasionally meetings in which stakeholder interests and features is solicited by the rulemaking team, but without much information to go on. In some of those meetings some people started saying, "well what are you going to provide actually, what is the architecture?" They say, "well, that's for our contractor to figure out". It is sort of hard to talk about functionality without some framework. I think that this project...maybe one way to put it, [name] you were saying we might never get there. If it gets there it will be a vehicle for collaboration. My feeling is, if the interagency discussions never take place you are not going to have a functional system. One of the nightmares that I have in mind, and this has happened in the past many times, is you will have an electronic system which in principal is great and everything is going into that. The way most agencies will function is they will turn it all back into paper and process the paper because they understand that and the electronic tools are either not good enough or not familiar enough. That is sort of a nightmare possibility. It would work and the agencies are under a lot of pressure to keep churning out the regulations.

R1: I'm not sure what the interest of this project is. I understand the culture of the agencies, what I don't understand is why an objective to measure the success of this project has to be, or should be, that agencies have more collaboration. Why would that be a metric for measuring the success? I'm more interested in them just getting the system working, then it is...I mean that's a nice objective, that the agencies talk to each other, but I could care less if the system works and I can get access to the data. That seems to be a second order thing. I'm not sure why I would want the agencies to talk more. You hear these stories of the government; the right hand doesn't know what the left hand. I think that is overblown. I think that if OSHA moves into EPA territory or EPA moves into Agriculture there's collaboration. These ideas that the government does these really crazy things and one regulatory agency doesn't know the other, is over fetched.

R7: 4 years ago we had a meeting at [org] were we invited 13 agencies in. DOT sort of did a presentation on their docket management system. I still remember the EPA folks handing out their cards saying could you give me a call; we need to know more of your system. I don't think they do know what each other are doing.

R1: In eRulemaking or in the substance of the rules?

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R7: Well, in eRulemaking in particular. Now in this project there is an executive committee and there is an interagency advisory board and an interagency work groups. There's an infrastructure that has been established to allow that communication. For example, the executive committee, according to the April news letter, is comprised of the chief information officers and senior rulemaking managers from the agency. From what I've heard, the schism is not agency to agency, it's within an agency; the rulemaking people talking to the CIO types. There is not a whole lot of common ground there. The decision to go with the centralized system, from what I heard, the CIO people met in advance of that meeting and decided it and walked into that meeting and presented it as complete.

R8: Are there many instances where one would like to be able to work one set of comments against another set of comments? Bring them together? Is that an important thing to be able to do that you can't do now?

R5: Oh yeah.

R7: From different agencies you mean? Or different rules?

R8: Different parts of agencies.

R1: Within a docket there is huge mining of information. If this works we are going to double the GDP of attorneys in this town and that's not a good objective. When you get into some of these dockets and you have two businesses on the other side of a regulatory issue; if you have easy access to those things and can comment than it is super imposed upon and the government can't use it because of the Data Quality Act. You are talking about heavy stuff that is very important within a docket. Now, there is one agency that people do this all the time, they do it by hands, the FCC. If you ever follow FCC rulemaking it never ends. They issue, and that is going to be a problem with the government; cross comments. Rulemakings go on line charges for twenty years.

R5: So is this going to make things worse?

R1: There is a downside to this. I don't think it will in the long run. I think in the short run it is going to cause a problem for the feds because you are going to have all these cross comments trying to pull down the rules. That's why putting it in some aggregate form is going to be very important. In the short term it could because I think the regulated community and the NGO's will fight it out. I also think it is good because if you are sitting in the government and you have limited resources you get tons of this stuff. Some of it is garbage, I mean garbage data. The idea that there is a competitive thing to sort that out in the long run will be very beneficial to the government. The short run could cause a problem.

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R5: Last September there was a debate among the people about the extent to which that would work. There was a concern about gaming the system; people releasing their comments at the last minute so that people couldn't challenge them.

R1: I think that is a false thing. These are informal rules and at the end of the public comment period you have people do that all the time. They rush in and try to get them in, in the last ten minutes, which is nonsense because these are informal rulemakings, nothing stops you. After the rulemaking you can still offer another comment on someone else. Because under the informal rulemaking process it says that the government is not mandated to review it or respond to it. If you have something meaningful they are going to look at that and say I am going to read it.

R6: I think the gaming the system in another sense is inevitable though because there is some level at which it is a game; your objective being to maximize your input. I think it is sort of interesting to think about. Suppose you have software...the agencies adopt some sort of software that does some sort of automatic analysis; is there a mandate to publish what all those rules are so that a submitter can take advantage of whatever it is? If agencies ever have some weighting scheme for these, is there a mandate to advertise what it is? One of the questions which comes to mind for me is, if the agencies are soliciting specific information why not create an electronic comment form which asks for it up front? If they really want to classify stakeholders with 10 categories, why not just have a drop down menu with say, optionally, you can select one of these and identify yourself. I think that gets around what becomes a trivial computer problem to deal with certainly. I think one of the worries in all of this is that they may have algorithms that statistically work very, very well, but if a company with plenty of lawyers submits something and their submission is misinterpreted than the agencies could get sued. It is specific ones are important. One of my concerns in this whole process is, do you end up with really two categories of commenters: the serious ones with whom the agency reads and the other ones to whom the agency has traditionally farmed it out to the contractor and said, give us a summary of the stuff and tell us if there is anything interesting. That can be automated but it is still disturbing if it becomes the really separate categories.

R1: But there is now, right?

R5: Yes.

R1: If you sit in the government, you might have a small staff and you are going to look at the heavies that come in and the others I'm not going to read through. I think it is natural, I don't know how you get away when you have a limited amount of time and a limited amount of staff. Know the issue and know the heavy players on either side and read those, the rest sit taped.

(Laughs)

R1: The outside thinks that the constraint on the system is, so much money they get to write comments. They don't think that if you are in the government that there is a limited amount of

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time to read it. In this electronic stuff I think people are going to have to make priorities. Feds can't read all this. And I love these lawyers that bill \$500 per hour and some low cost bidder wins the bid to read and summarize the comments at 11 dollars per hour.

R5: One of the things heard from the agencies in September was, they do exactly as you say, they sort the comments into two piles. What they are worried about is the stuff that ends up in the "general public we are not going to pay close attention to pile", that they should have looked at because there was something substantive or a study that was tied in.

R6: They should have...I presume that somehow it will pop up and bite you; that somebody is going to sue you. Isn't that right? That you really regret if you miss...

R8: Like senator's wives.

R1: Those don't fall through because they get the ole man to sign them. I think that is going to happen, but if you made them open to everyone and some member of the general public wrote a good comment, the person that could benefit from that comment will count it.

R5: But will that \$11 per hour contractor find that comment?

R1: No, but if it were all available so that I could read it online real fast, staffs... if all the comments were available people would pick them up. I remember one time there was a gentleman, old pilots over 65, wrote a comment on a rule and it was just a public comment and one intern was going through this big docket and this ex-pilot had a great rule of this rulemaking. He was contacted and helped write this petition to the DOT. If your system was really open, where you could really read it, I think there will be a market for those because people that says there is nothing better in Washington than to find somebody that is not paid by somebody saying an issue. {left out personal identifying comment} I think there is a market for that and people on one side of the issue will go shop for those. But we have to have access to them in an easy way. We can't spend time sending staff over to look at millions of pages. I think this will help that.

R2: So, you say this is a great service for lobbyist and lawyers to scan private citizens' comments and use them for their own purposes.

R6: Another way of saying it is, it is a way of amplifying the voice of individuals of public...

R2: What it is saying is, the government is paying for a service that is going to be mainly used by the private sector to emphasize their point of view.

R6: I think that [name's] point was different and certainly represents my experience. I commented on an FCC rule back 8 years ago and called up and talked to a staffer about my comment submission. He said, if you want to make an *ex parte* presentation, if you have

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something to say come on down to Washington. I asked a lawyer friend, what's that all about? He said, call them back and say yes. So I did and when I showed up there was the Federal-State Joint Board on this issue, it was an eReg proceeding for the FCC for wiring schools and libraries to the Internet. There were 15-20 people and I made my little presentation, interrupted repeatedly by people saying, you really don't work for a phone company? You're not a lobbyist? We see so few citizens, it is very interesting to hear from people. Part of my interest in rulemaking came from that recognition that there is sort of, at a human level, an interest in having a public voice. My feeling is, using IT, that there is a way of somehow sorting this out so that it is not exploitative; it's giving a voice to those individual viewpoints which have very valid data.

R2: But you just said those agencies will throw away the public comments and only listen to the...

R6: My fear is that that might happen. I could also imagine a system...earlier as I said, it is a game in a sense. If the rules of the game are public and the process is all public then I think we can devise tools which could enable groups of citizens to organize in such a way that they provide their viewpoints, distilled somehow or the other, by mutual agreement to the agency in a way that the agency doesn't have 250,000 separate comments; it has one 50 page document. That's what they like; which represents the views of this constituency in a very well informed way. I hate to think that the effort it takes to get the million comments and if it is just, then just, throw in a pile and say one million; if you could harness that same effort and have one or two or five well reasoned comments which would carry weight with the agency, I think everyone is happier all around.

R1: Remember, a big subset of those are electronically prepackaged, whether for or against the issue, so if I'm in the government I'm not going to read all those. It's a question of priority. Also, if I have to base a rule on fact, I can't base it on; I like this or I don't. I think there is a subset of the public out there that know an issue, that take time in an issue, and they are going to as a cost effective way get in this swell stuff as public comments. Now to the extent people like me use it, that's the American system. You're darn right it is going to be used and I don't think the people out there that care if their comment gets heard and if I help them get their comment used, that is the American way. I'll be in there with both feet. If I find out some doctor in Peoria, IL agrees with me on something like that, who is not on the payroll of some industry, yes I want to use him. I think anyone I've ever contacted on that doesn't care as long as I don't mischaracterize what they said.

R7: Does it make a difference whether it is an electronic comment or a paper comment as to whether or not the agencies view that comment as useful? I remember two years ago when the Bush administration published their rule to overturn one of the Clinton {can't understand} rules on the use of snowmobiles in the National Guard and they got 300,000 comments. Close to 80% were, "don't do this". I remember the article in the paper where the Interior Department official was saying, well those are just people, we are going to go ahead with the rule anyway.

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R1: I'm very familiar with that rule. The environmentalists contacted us and asked us to give a legal opinion. There were two rules; they overturned a rule. Judge ruled one circuit for them and one against. They asked the senator to make a legal opinion on which the precystal (?) rule had relevance. And we wrote it and came out on the environmental side. I went to the Interior Department, and you can't just say because they are electronic or paper they are the public. What I'm saying is, which ones they read. In that case they read them because there were only a handful of industry people who wrote on that rule and there was a bazillion people opposed to it. In that case it was sort of a Gallup poll time; I think it had a big impact. They got thousands of comments or hundreds of thousands of comments against use of snowmobiles. I think that correspondence from the general public in that rule made a...it didn't change Interior's but it changed a lot of other people...

R?: It becomes a vote almost.

R1: It was a vote. It wasn't any substantive stuff. I think that is meaningful in some rules. It sure affected {name} and the FCC rule; he got hundreds of thousands on that. The FCC was {can't understand} was we don't want all these big radio stations, tv stations.

R7: Has there been any sort of any academic work looking at the impact that the comments have on rulemaking?

R?(maybe 5): I've never seen anything that systematically said, that because of the public comments this is how the rule has changed. Or, if we get a lot of comments that come in, that that tends to make the agency change its mind, as opposed to only a few comments.

R11: I have a comment that is not on that. I think this has just sort of worked out my brain. [identifying comments] have some very hands on experience with docket management and how the public perceives it. After listening to a lot of the comments at this level, it is interesting to me that first; I think the public actually believes they have a voice in government, they believe that. Second of all, I don't think 80% of the people in this country have probably not one idea that they could do this.

R?: 99% may be.

R11: Even better. It sounds like we are developing a system not for that public; we need to market to those people. This is a system for the regulatory agencies, for people that are regulated. I agree with what you said, what I'm hearing is we are not thinking of the public, the real public.

R1: I think they are very heavily thinking of the public, I'm the one that is not. Because I think this eRulemaking activity is putting priorities very heavily on the public. What I am saying from a cost-benefit analysis, I don't see a lot of people commenting on rules; the general public.

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R11: No, they don't.

R1: And I am questioning whether the initial big amount of the money should be on a public...I'm not saying they never should comment on it, I'm just saying from a cost effective standpoint, I don't see them playing a lot.

R11: When you get 250,000 comments or 500,000 comments those are just the mass mailings. It is one person who is either for or against something that 250,000 people are now a part of that group.

R1: It is so rare that you get the average person to comment; why? People have two jobs, they have television; they have all this stuff.

R8: I think that this project will result in some facts around these arguments and that's one big thing it can accomplish; put some real facts on the table.

R5: It is also, the NGOs see themselves as an important player in this process and they are the focusing mechanism for the public participating through their labor unions, through their interest groups of various comments. Those people are the phone by which these comments come in.

R6: [name's] comments started me thinking along a line, which you may have something to say on. If the focus is going to be on the stakeholders; the industry groups, the regulated entities, and the NGO's, should the primary interface be one for individual users? Or should it be a machine interface? Something that we have been pushing for some time is, the idea of constructing a system around web services so the larger stakeholders or commercial groups who see business opportunity can construct whatever interface they want; whatever analysis tools they want. When we started talking about resources, I was thinking in the interest of the architecture that [name] was talking about; modular system. Construct the database with a web service interface as the first thing you do and perhaps then implement the front end of basic reference module. Proof of concept to show you can do this, but make it completely bare bones. Make it functional and then say to the groups outside of government, we've got the data standards and the specifications, you can construct commercial analysis tools or interfaces. I'm curious whether this sort of thinking is getting around within EPA or whether it is more of a monolithic system, and we have our definitions and it's "user clicks here" and gets some results.

R5: So, the response we got in September when we raised this idea with them was, that they're scared of anything that will increase the pipeline of stuff coming in to be analyzed. So they viewed the NGO's as the enemy in that process.

R1: The NGO's speak for a lot of people, so they are efficient.

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R5: That's true, but if the stuff that comes in, if it is not exact duplicates, if they actually have to consider it in any way than that increases the difficulty of their problem. So they need tools that can handle the volume and then they would be more open to it.

R6: The problem with that answer is...

R8: Those tools aren't just available to the agencies. They are available for everyone and you can take the tools and add to them and now we begin to have some real analysis.

R5: I completely agree with this idea...

R6: The problem with that response, and I've had this discussion with people in eRulemaking as well, is they say...we'd like a web service, and the example I gave is, I said I just want the entire docket. I'm going to get [name's] tools to analyze things. I run it on my own computer. I just want all the comments. And they said, well horrors, the bandwidth for everybody dumping the entire docket...of course, it's not everybody, it's a small number of people who would do it, but that was their response. The trouble with that response is, if they don't provide an efficient way to dump the entire docket it is going to be done inefficiently, because odds are someone else would write a program which simulates making 10,000 mouse clicks and downloading individual documents.

R8: This is text. You can ship a lot of text over the net. It's the multimedia stuff that kills you. The rest of it had no performance impact at all.

R7: What you are talking about though, is for a miniscule sliver of the people that are potential commenters on a rule. Agreed, these are the more sophisticated people and the ones that are likely to provide very interesting comments. As [name] said, that 99% of the people...first of all, the threshold question is: Do they even know that they can comment electronically? Do they even know that there is a rule that they can comment on?

R11: They don't know that.

R5: They know when there is a link on a Sierra Club web site that says "click here to register an opinion against this issue" or...

R7: But agencies have an obligation, on a couple of different levels. One is, to let people know about the availability of that functionality; to let people know that, first of all, they have an electronic system that you can comment on. Secondly, to let people know when there is a rule that is of interest to them; listservs. Practically pushing things out to the people so that they know, hey there is a rule here on mad cow disease and you said that you were interested in things related to mad cow disease. Letting them know that it is there. I think that we can't start from the presumption that we should focus only on the NGOs and only on the regulated interests people and only talk to them. But even if you did that, the people that are running the

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eRulemaking initiative right now, when you ask them why are you going to a centralized docket system? They say, well, because the public wants the ability to be able to search across dockets. And I say, well how do you know that? You've never done a poll, you've never had a public meeting; you've never had anything.

R8: This is a two-part problem. One of them is simply teaching civics in high school. The second one is...and that may or may not be solved by time. The second one is having people be comfortable and knowledgeable about how to use email and the web. And that's something that we could solve over time because I know what my kids can do. I know that when they grow up these won't be hurdles to them. We can work through some of these things by trying to get a handle on them fairly early in the process.

R7: But for example, in designing the architecture for the current system, shouldn't the public be consulted as to what it is they want? What is it that they want?

R8: The public probably doesn't know.

R7: If you have...to presume that is so elitist.

R8: How would you reach the public though?

R7: Make an effort, have a meeting.

R1: Isn't the NGO's a good...I mean if you look at the range of NGO's in Washington...

R7: No, we don't just rely on them. Certainly they are welcome to attend but don't limit it to them.

R1: Yeh, but who would you talk to?

R11: Think about this, 99% of the people in this country never attended an auction and look at the traffic on eBay. So, it has to do with how you get out and market to those people. Put signs on the side of a bus that says, "You want to be a part of government? Go to this web site."

R1: Can't they do that now, if you advertise this eGovernment web site, can't you comment on...

R5: It is too time consuming though. Who's got time to do that?

R1: That's what I mean. Did you ever read the preamble to a short rule? And then offer meaningful comments on it; you're talking about some big time. Maybe they'll do it. I'm not saying they won't, I'm just saying, as a question of priority, I'd like to get the other two working

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before you spend all your time trying to get people, that I don't think in the short run are going to spend very much time on it.

R7: I can guarantee you that they won't if they are never asked.

R5: So the NGO's...some of the people we've talked to they say...labor union; a guy that we talked to in September particularly sticks in my mind here, said, if I write a 5 page discussion of an issue my membership won't read it. One page they'll read it, maybe two, that's it. They are busy. I have to distill it down to something that's short, that they can take in quickly and decide whether they agree with it or not and then they'll click on that button to register an opinion or not. But, it has got to be a very fast process...

R7: Every rule has a summary that is no longer than this.

R5: But can it be understood by the average person?

R7: It is what is on Regs.gov right now.

R5: Can it be understood by the average person?

R7: It is enough to at least pique the interest. If it said, here's something that has to do with...it's going to outlaw everyone whose last name is Toesie; than that is going to pique your interest. That's enough to know.

R11: I think I only tuned this out because I am concerned about building a short sighted system. You can build anything you want, but once people do want to be in there with the electronic era; today they are not there and tomorrow there are 7 million people there or they want it. So if you are short sighted in how you build it then...

R1: Well, they are building it to have this capacity, as I understand it.

R8: Is it a difficult problem to build a system that the back end of which is multiple functionality? So that it can serve the NGO's sophisticated community, it can serve the agencies that have to do the analysis, and it could serve the public. I really don't think we could get very far down into that, but if you build the back end right can you not have multiple purposes?

R6: And if you are going to have a system which 100 different agencies with very different approaches to these things to use, you are going to have to resolve that problem. So, if I think, if the system ever works it will have that flexibility.

R7: We are talking about public commenting systems but we don't want to design the system that we would get too many comments because we don't want to have that...huh!

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R8: Well, I agree I see that as a problem.

R1: Yeah, but the correction is, we are not there yet. How many rules, there are some, that we get hundreds of thousands of comments, but right now we don't have the basics...

R7: How many rules get no comments? None.

R6: I think we are building a computer-mediated public commenting system which we want to have be transparent enough, so if we get very, very large audiences that people can see how their input is being distilled and being used. It's just throw away because it's a postcard, and we ignore all postcards. People aren't going to be happy with that and in the long run they aren't going to do that. I think the million postcards are done because they have an impact of sorts. And because all this stuff is connected together and there's a lot of competing power available at each of the intersections, that it should be possible to shape the system which achieves those goals, in terms of satisfying the public and not having people choke.

R5: The only thing the tools are going to do is organize the comments for the regulators to look at.

R6: I mean that's their big concern, is that they'll get one hundred thousand comments.

R5: If they get 100 thousand postcards that's easy right...we can say we got 100 thousand of this. Read that one postcard and you've 100 thousand of those. So from a voting perspective you know that, but in terms of the workload, that's a more manageable process.

R1: What is the big problem with that electronically? If you get 100 thousand postcards you'll say, here's the answer and I got 100 thousand.

R5: In the postcard era they were really easy because they were all the same.

R1: Even emails.

R6: The thing that is harder now is people can, and they do, edit them so they don't submit the exact postcard. They go in and they say, well I don't agree with that part, and so that's the part that has made it much more difficult.

R5: One of the examples that was cited last fall was some professor of biology or something, took one of these form letters and just added on a paragraph at the end about the research he had been doing in this area and how it related to this. And they almost missed it because the \$11 per hour person just sorted it into the form letter pile and they kind of found it by accident. But that was one that there was actually scientific evidence that they needed to pay attention to. So those are the kinds of things that they worry about in the electronic form letter era. Paper is much easier, because it is harder to do that.

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R1: Because they wouldn't have changed it; they would have just signed it.

R5: They wouldn't have changed it; they would have just signed it and sent it in.

M1: The only thing that you haven't touched on is; what role should information technology play in improving regulatory compliance?

R7: It's the advisor program, is probably the prototype of that. If you have ever been to the OSHA web site they...

R6: Mechanize the rule.

R7: Yeah, we did a report on that three years ago. If you need to know, for example, whether you are covered by OSHA's confined space permit, you go through a series of questions. The analogy they used is, it is just like talking to a labor lawyer at OSHA. These are the kinds of questions they would ask you, walk you through: Where's your business and how large is your firm because if it is below a certain level than you are not covered? Do you have a confined space? Is it of these dimensions? Does it have a hatch way? At the end of it, it says, yes you are covered or no you're not covered. There is another one there for posters. Do you need to have a poster up for Veteran's employment or for disabilities or whatever. And, if at the end of it it says, yes, you are covered, you have to have a poster; click here if you would like to get a copy of the poster.

R8: I think we can broaden that definition of what compliance means. I have a couple of grants and one of them takes a look at compliance with...let me pick a topic area...handling of radioactive waste. Looks at the local regulations and state regulations and the national regulations and pulls out differences and conflicts among those areas. That's a very interesting one. Another thing is take CAD drawings for new buildings and ask whether wheelchairs can get through those corridors. And does it by modeling a wheelchair and its movements as it goes through the corridor, so there is no way to describe it by saying, you must have 22 ½ inches because the turning radius of wheelchairs are different. So it is able to approve compliance or noncompliance of a particular building for that particular access issue. That's not a matter of text, that's a matter of modeling along the lines of what [name] was talking about. If you are going to do a simulation you ought to be able to make the simulation be on board and allow people to tweak.

R2: I liked the idea you just talked about. If we are designing this for the public, which I believe we are, as opposed to special interest groups and lawyers, if we could come up on the front end of a rulemaking or a proposed rule; do you qualify? Here's a rule that we are talking about, there is an automated checklist and you have 10 questions. And said, you will be affected by this rule, or you won't be affected by this rule. I think that would encourage a lot of people to take the time to fill out that sheet before they even add comments. But it would give them a lot of

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information and say, well I need to worry about this because...you just saved the public, could be \$700, of going to a labor lawyer or any kind of expert advice to find out [tape break]

R6: [comes in in the middle] click on any of these items if you say, why do I need this and it drills down to the laws and the requirements which applies so you could look in detail. And I'm thinking that it should be possible to do something like that on the input side of the rules. Where rather than having a postcard saying, I favor this, that's it; you could say, I favor it, I support the analysis that the Sierra Club has done or this other group has done. And again, you could drill down so on the agency side it's not, it's just a vote; it's somebody saying that they are drawing your attention to certain scientific studies.

R8: What do agencies do when comments include URLs? Do they just ignore it?

R6: Can you include URLs in Regs.gov?

R7: Sure, but whether they follow them or not is the question.

R6: No, I mean are they done in a way that they are hot actually?

R8: Could be hot, but that doesn't answer the question of whether they click on it.

R6: Does Regs.gov allow attached documents?

R7: No.

R6: I mean, that's a whole issue for these commenting systems because nobody is going to prepare a 50 page comment on a HTML form.

R7: It's 4,000 characters limit.

R5: USDA is allowing Word documents, for some of their regulations you can submit your comments on Word documents.

R6: [org] has this history with their system of learning how to do attached files that they can read at the other end. That took years to figure out. It's great now that it works.

R7: But to go back to your compliance question, the thing that we heard from business community is that, the threshold question and the big, scary thing for businesses is, that they don't know what they don't know. They don't know what it is they have to comply with. The compliance part is the relatively easy part, it's knowing whether or not you have to have a confined space permit or not. Or whether or not if you are a dry cleaner and you're six blocks from where we are sitting, what is it that you have to do in order to be consistent with EPA and OSHA, and much less the DC government requirements. IT can give you a real leg up, in terms

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of letting people know what it is they are covered by. Both from the federal government and the state and local government; sort of integrating all of that stuff. Then also giving you the tools needed to comply with it.

R8: Or to work across various rule sets.

R1: That's different from commenting on rules. Restaurant people would love to go in, and it's not Fortune 500 companies, it's midsize and down that really have the problem because they don't have the resources. That's different than commenting on rules. If you set up compliance program for a certain OSHA reg or a group of OSHA regs that says, this is how you do it; that would be great. I think restaurant owners would...they don't even have enough time to prepare their menus, let alone comment on rules, but they will go into a compliance schedule where it says; you know I don't know all these OSHA rules and if you would run me through it; that I think they would use.

R8: We had a couple of grants that look at the permitting process for buildings because it was a terrible, twisted path to try and go through as someone who wanted to build a building; to know that you asked all the right questions and to know what you don't know.

R1: If you did them around little small businesses, I think they would use them very heavily.

R8: Part of the problem is that those requirements and those laws are enforced by different agencies and ...

R1: They can't interpret them. It is very hard to go through an OSHA reg and know what technology, and what you are suppose to do and also the exemption for the size of the business. You've got to really spend a lot of time, and some agencies have done a really good job.

R7: Some states have also done a lot in this area. The state of Washington has done a great deal in terms of identifying what it is that people in the states, or what rules are covered by. The Florida Department of Environmental Protection has the permitting...you can get every environmental permit that you need to do for any function. If you are building a boat dock for example, what permits do you need in order to do that? They said: Where are you? How big is the boat dock? How deep is it going to go?

R1: Would that be part of the eRulemaking?

R5: But, you would want to know on a proposed rule how it is going to affect you.

R6: Isn't there another issue, that these things are cyclic in some sense. You have a rule, it gets enforced, there are problems in enforcement; either it is impractical or a lot of noise or whatever. Then other rules get issued which expand upon that. One of the things I am wondering about in regard to the design of this current eRulemaking system, is there records that the agencies have

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before the notice of proposed rulemaking is published and are there all sorts of records on the enforcement and compliance end which come after the final rule has been published? I think it's important to think about how this larger set of electronic records gets handled. That goes back to the cost-benefit question at the beginning. If an agency has set up a system for electronic record keeping, which goes beyond from the notice of the proposed rule to the publication of the final rule, and if that gets carved out and thrown into the centralized system they may still have to keep the same database and maintain all of the same IT infrastructure. So, it ends up duplicating the system, I guess.

R7: DOT has an adjudication system that is running parallel to the rulemaking system. Even if they get rid of their rulemaking, they still have their adjudicatory database that they are still going to have to maintain.

R1: But, that's not in eRulemaking.

R7: It's part of the DOT eRulemaking; the DMS system. They have adjudicatory stuff...and they are going to have to maintain the DMS system just to keep the adjudicatory system.

R5: It is part of the lifecycle of the rule. The comment is just the first part of that.

R7: And that's the part that is going to go away.

R1: Actually, if you are complying with, you want to read some of those adjudicatory decisions because they interpret what is in the rule.

R7: And the next rule that comes along could maybe be part of the basis. So I think considering the system which, lifecycles may be a bit [can't understand] is large enough to encompass all of that.

R8: One of the things [org] is going to be interested in, is the whole notion of sensors. Do not make a rule that water has to be a certain cleanliness. There is going to be a ton of data...

R6: Automated monitoring.

R8: All the ways you can...I've got a grantee working on little tiny chip about this big that measures whether a particular disease is in a river for deployment in Africa. That little thing has an antenna on it and it pumps data out to a centralized antenna gatherer and eventually all this stuff is going to result in tons of material being available to government agencies who have compliance questions they have to answer. If you start to look at the broad...we are talking about only the little peaks of the front, which is all we are concerned with here, but if it is a natural lifecycle rule and the end part of the rule is going to be highly informed by data in ways it never was before. I haven't heard any agencies really talking about that, but I think it is going to come down in major ways. Just like I think is going to come around is, the issue of

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multilingualism. More and more we are getting a diverse country. More and more we are getting to where Spanish is almost equivalent and more than equivalent in some places, yet we continue to serve only in English.

R1: Let's take that example. We have a finite amount of resources and what I'm saying is I still think they have to look at the priorities and if this system could try to solve every domain...

R8: I'm not suggesting...

R1: No, but it's a real issue. I think a lot of people are going to say that the eRulemaking should be bilingual. And I think certain segments of it, and I think it is an example that I think this program could turn out like most government programs; no priorities. Trying to solve everyone, to every political constituency and you end up with a mass of nothing. And if there are no priorities set, you may disagree with mine, but I think that certain priorities ought to be set. I could come up with every interest group, every group that wants something in eRulemaking and I'm afraid that the government, as opposed to making tough decisions, are going to sit back and try to be a master to everyone and you are going to end up with garbage.

R8: I think it will wind up being driven by a case in court. Some individual coming in and saying, I've been disenfranchised in my ability to meaningfully contribute to the discussion process because I only speak Lithuanian or Spanish or whatever.

R1: That's a real issue. If you are in a Hispanic community you are dealt by some rules, why shouldn't this be in your language? I would have the same concern.

R8: All of this to say that, I think this is an extremely rich research area and I hope and intend, in a sense, this at least continues to solicit the kinds of research projects that contribute to this kind of thing.

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