

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

M1: Moderator

R: Respondents

No beginning question on tape, notes indicate moderator may have asked about presentations.

R2: I was struck by...maybe this was an echo of something I was thinking earlier and I just projected into your presentation [name], [personal identifying comment]. I was struck by the fact that the first two presentations focused on deriving benefit for rule writers in terms of comment analysis, which I view as toward the end of the rulemaking process. [name]'s comments, although not really focused on the rulemaking process, focused on the rules themselves; the outcomes of the rulemaking process. You were asking for better rules and the first two presentations were focusing on how to sort through comments like yours when they are presented in volume. Those are not entirely the same thing.

R5: I would agree to that too. It seemed like...both were very interesting but one was aimed more at how can we create ease for the small business and the other was how can we create ease for the regulatory officer and getting all the data together.

R2: And ease for the regulatory officer at a particular point in the process. Once you've generated whatever document that you are going to post and it's been posted and a whole bunch of people have noticed and decided to provide you with feedback; then what. But there are so many steps in the process that went before that really to impact [name]'s concern, which is give me rules that are clearer, easier, simpler, and more well integrated so that if I respond to rule A, don't ask me to respond with identical information to rule B. You are not necessarily going to get all that focusing on the step that the first two presentations focused on.

R8: My sort of reason for being up there was to talk about...the whole point of this eRulemaking process is to in the end create better rules that better reflect the realities out there. And, how we go about getting those who are doing the vast majority of implementation out there; in our case small businesses. How to get them engaged in the process. And to me there is a whole series of steps before you can get them engaged in the process to the point where they will actually get engaged in the process. It will take a lot because there is so much pressure on them to do other things that contributing to the process itself is very low on their list of priorities.

R3: My question is: what's the purpose of this study? I mean I know what the paper says about the grant and where you want to go with this and there is a lot of social information you are trying to get; what makes people comment, and what do they say in their comments. That's what I got from one of the presentations, but is this particular project trying to basically, trying to figure out just how to sort data? Or is it trying to figure out how to get small business more involved in the government public commenting process?

M1: I think it is both.

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R3: I agree with that statement in the sense of the presentations today; they don't mesh because we had...the data that was very interesting to me, hearing all the ways that people...that is definitely a social science and it's very interesting from an academic point of view. It has absolutely nothing to do with the small business owner. There is no way you are going to get the small business owner to get interested in submitting public comments, even if it's on an eRegulations; the computer because they don't do it on paper now. Their focus is on getting their business done. They don't...if they are aware of regulations or government its may be one particular issue that hits them, such as email. For example, when you saw the huge email rumor go around like wild fire that the post office was going to tax email or something like that; that impacted everybody because they use their email. That caught their attention, but there is a rarity of subjects that will actually generate that much interest from anybody. So this project I could see where the scientific, how do we sort data, I can see where that's helpful and that would help the regulators. But I'm having a hard time seeing, I don't see how this project can do both based upon the presentations this morning.

R6: I was thinking about that because really I think the piece that's missing is probably what the eRulemaking initiative is doing. And it occurs to me...I heard [name] and the others make presentations lots of times; they didn't actually tell people that much today about the sort of basics, what's already there and what's coming along in Module 2 and Module 3. I'm kind of curious about that, but I think it is probably one of the reasons you are getting that impression and I think it does make it hard to talk about in the sense that you're saying; ok, are we talking about the project that [name] is describing or are we talking about the eRulemaking initiative, or are we talking about the public involvement question of how to get people excited about it? Some of the things that people have touched on; that's one of the problems, it's kind of complicated, but I have a feeling that some of the things that are coming along with the small business one-stop may speak to that question of always having to enter the same stuff. I know that that kind of thing is happening with ePermitting, but that is a whole different thing that is outside this project.

R3: Based upon just this short summary that was provided in our packets, it says this project is basically a small grant to explore the possibility of a larger grant to develop a rule writers' workbench. That's in boldface. Which provides a variety of analysis tools to help them figure out how to sort through this data. That's great, that has nothing to do with getting the small business person and getting more public comments in. I just don't see that as being aided by this study.

R1: [starts with identifying comments]...we also have the luxury of being a part of the interagency review process, so we work with EPA and other agencies, so we get both views of it. We get to look at the decision making being made and how information from comments is synthesized into that "ignored", "incorporated", "addressed" and different things. There are two issues you've identified: one, getting more comments, which could be in the form of more form letters, which I think have value. That's one way of quantifying public interest, popularity. Let's be honest, this is all political. Congress gets involved at the point the agency is deaf to the public sentiment. But there is also the question of, once those inputs are there, whether they are a form letter, a trade association, a law firm, or whomever, that you then have to look at that data and get your arms around it. The problem can be that if the agency goes into it with one

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perspective, they may only look in that one area for the data and that's what was interesting about doing this; where the search generates what are the terms. There maybe things that you never thought people would be commenting on. But the other thing is, eRulemaking is one part of the whole process. You still have to comply with the EPA, you still have to comply with the Regulatory Flexibility Act, you're still supposed to do small business outreach, you're still suppose to do an RFA analysis. So to get to a notice of proposed rulemaking, the agency should have done a lot of things before they are there, then we all in the trade association and regulatory community turn up the interest. And one of the things about the first level of eRulemaking is, we can't currently link the upfront page on Regulations.gov. We have a web site; a regulatory alerts. We have opportunity for people to submit comments directly to the agency through our reg. alerts page. We have to ask the agencies to give us a separate email address because we can't link directly to the eDockets without having 10 steps and our boss has decided 5-10 steps is too much for small business. You either give them a direct link, and on Regulations.gov you can only link to the first page. So we can't drill down to the proposed rule, you can't drill down to the commenting. So that is one way if you are thinking easy, a trade association could send out a link; here's how you comment directly to the agency. Right now you can't do that through Regulations.gov. At the next phase, I think you will be able to. And at the data analysis phase, I think it will be interesting to see what can the rule writers, the reviewers, general councils and others do with that information to look for trends they weren't expecting, information they hadn't gleaned. I guess one of their limitations is the self identification. We had an instance where OMB did a call for regular forums; they identified what people said, it was a small business. There was a comment from [org name] who pretty much only represents small businesses, but since they didn't identify it as a specific small business issue, small business wasn't referenced. So, self identification can be helpful, but you have to enter judgment into that process and see what if a person didn't specifically say it was a small business issue and small business, 5-7 employees or the SPA size standards, which can be 500 employees, 50 employees depending on the NAICS codes. So all those search queries the rule writer has to think about, what are my other statutory and agency practice obligations?

R2: And really something that before we get to the step of analyzing what has been input, something that would help people structure their input that's not too burdensome, might be helpful. A simple 3-4 question thing that says, are you commenting as an individual or business? If business, how many employees do you have? What do you do? And then move on. Something like that could provide the analysts with a whole lot more information, and not leave it up solely to the unstructured judgment of people who have better things to do, to remember to identify themselves as small business or something.

R1: And it could discourage some members who want to leave out that information. They have to be careful with that. A lot of the submissions now for the eDockets are anonymous right? Most eDockets allow you to do it anonymously. If you do a separate email address you're disclosed.

R2: Actually, I think EPA does, but DOT doesn't. I don't think DOT permits anonymous filing.

R4: I'm almost positive EPA is optional.

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R8: To answer the question, I think the reason why we've been called in as small business representatives is to help those who are creating this product create a product that will be small business friendly in the end; something that will be useful. So my introductory remarks were all about sort of the scope of the problem and I think while we are sitting around here, just sort of talk about how we might help them surmount that problem.

R4: I've worked on Reg-flex stuff for about 5 years, so I came to this session because of my small business interests. To make it real for small businesses, the reason why this is important is if you can lower the barrier to their participation, even if just at the comment stage. While the tools that [name] was talking about may not be employed by an actual small business owner on many occasions, if ever, people like you, their advocates, maybe these tools will be available. Maybe we have a semantics problem, we are calling it a rule writers' workbench or tool box, maybe some of those tools will eventually become available to the general public so the advocates, for whomever the interest groups are, can also download, like comment datasets or maybe do it online and use some of these tools to sort through and see. You can make use of that yourself. You can say, look I happen to know EPA, that 10 thousand small businesses commented on this rule. It may not be, right now we are calling it rule writers' workbench, but maybe that language...so we can make it real for people like you, so you can see the value to you. That's how I see it; we do these small entity review panels on rules that may have a significant economic impact on small entities; businesses and government. We hear back from them and a lot of times it is hard to get small businesses involved because they are busy doing their jobs. And I'm thinking that with e-access you can lower that barrier to entry for them so they can get on, maybe even after work, they go home and do a lot of their work from the home computer. They might take that opportunity to spend 15 minutes to submit a comment on a rule, if they have heard from your organization; "There's a rule out here, you need to comment on it". If they got that email, they can click on the link you will probably give them; they'll go there. They can submit a comment very quickly about it and on to their next thing. Then their voices will start getting heard more than the big businesses who hire the staff and legal people to advise.

R8: I was just thinking, just in terms of sort of practicality and stuff, that sort of an eDocket might entail. It's not part of the EPA and maybe it is sort of outside that scope and maybe its not appropriate then, but you don't get a lot of businesses voicing concerns about a regulation until after it's in the implementation phase. There maybe some point down the road, where agencies might want to consider having a separate docket for post implementation comments on regs. Which would be helpful for all of us, in terms of putting up regulations that are ripe for review at the OMB comment period or when new administrations change hands, new administrative agencies come in, and I'm thinking specifically in terms of the spam-faxing. We've gotten a lot of comments on that and it would be great if there was a central repository over at the FCC. You know, a docket that we all could sort of examine because I only know what my members have sent over there, but it would be great to know if...I'm sure you guys have members who have sent stuff over on spam-faxing. So anyway, sort of a post-docket docket or post implementation docket.

R4: One thing, I've been looking at this now for a few months and so it is unfortunate I think, the background you got today wasn't as broad because they were trying to do things relatively quickly and you didn't get the full sense. Even the briefing package, I think, was attached to the

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confirmation, these are the things that the eRulemaking overview, gives a little more sense of it. I'm thinking about in the eRulemaking context more generally, that there will be pre-notice of proposed rulemaking opportunities through electronic exchanges. There are opportunities using e-based tools to do what EPA did when they just revised their public involvement policy. They did a two week public involvement forum on the Web, where they had identified a couple of experts and what topics would be coming and they sent out as much as they could to get as many networks in advance. That on day one we are going to cover these general topics and these two experts are available all day long by their computer to have online chat. At the end of the day all that stuff was posted. They went through this for two weeks.

R?: What was the volume of participation?

R6: There were about 1,000 people who signed up. They were really well distributed across the country. There were about 1200 messages. A lot of people don't necessarily comment. They may feel like somebody else has commented, they may just come in on one day and come in and out and read the summaries. So, not everybody that signs up comments, but a lot of them sort of stick around and read.

R2: Are you familiar with what the FAA did a month or two ago on the National Air Tour rule? They did a two week long open chat session. I heard it wasn't a uniquely happy experience, do you know more about it?

R1: There were some emails back from the agency that didn't really take to heart some of the concerns raised by a certain small entity and it kind of created a little of a...

R6: That's an interesting comment because one of the unfortunate things about that is the way we do it avoids a lot of that, but it is expensive. Some how or other you need to have a whole process that sort of lets agencies learn how to do that because people's tendency is to act just like in a public meeting and get defensive and shoot back an email. Where if you sort of wait, a lot of time somebody in a group will say, hey the agency is not that bad. Look they are spending their time and their talking to us. And that actually happened in the EPA discussion. I think there is a lot of potential for it, but I have to say it is way outside anything, I know of, that they are doing now with the eRulemaking initiative. So I think it is a great idea, in fact when [name] was saying that, I was thinking, if you could push some of that forward, if you could have some of that interchange before the rule and have it online and get a lot of people interested, then you could avoid some of the problems.

R1: Your stakeholders' dialogue that EPA is doing or just did regarding TRI. There is a rule that has gone final, TRI and others, where there is a real push for burn reduction. Small businesses have said for years, and they are very frustrated, they are getting success now but they are frustrated because it has taken this long to get there. But EPA put a stakeholders' dialogue on their web site, you could submit a comment; this is pre-notice of proposed rulemaking. So they are getting input to help them craft what the notice of proposed rulemaking will be. And then you get your normal, official bite of the apple with all the APA, RFA protections. That was, I think, a successful forum. By not having sort of the real time back and forth, I think you avoid some problems. And the other thing, in a meeting I had with the IRS, some information they

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have is people have a negative connotation of the IRS and they had no contact with it other than writing a check. Where as, people who actually interact with the agency, are much more positive about the customer service and the interactions. You've got burden, which is one issue. And you've got rulemaking process, which is another issue. You've got compliance assistance. So there are a number of different ways to approach this and "e" has some element of all of it, but in some ways, you almost have to deal with them individually to a point because otherwise we all just get overwhelmed by the sheer mass of it.

R2: Let me slice the pie a little bit differently for a while. It is becoming more clear to me that there is a certain irony in the situation, or at least in the presentations today. What I am hearing from the sort of industry advocate types is; you want better and easier ways of impacting a regulation maybe a little sooner. One thing I'd throw out is, if agencies would do ANPRMs and engage in that kind of discussion than that is a way to do it right, through the APA, it's not that hard. So what I am hearing from the industry types is, you want more and faster and earlier input. What I am hearing from the academics is, and we want to build tools that will allow the rule writer to analyze all that input once you've had an opportunity to have it. So they really are kind of sliding by each other. From the agency's perspective, and mine is a little bit unique perspective perhaps; it is different from EPA's anyway. EPA is a mature agency, they have been doing this for years, they know what they are doing and they are, in some sense, the model for today. I'm a brand new department and a brand new agency more or less. And the department is composed of 21 other agencies all of which bring some kind of culture into the mix, but not all of whom have a whole lot of regulatory experience. We're looking for a tool set that will allow us to do the job from the time that we think that we might want to do a rule until the time we get done with it. Toward the back end we have this need for comment analysis, but we are looking at, how are we going to create the regulation all the way from step one. So we really have three sets of tool kits to think about. A tool kit for public comment and there is probably a shared piece of that, there are probably shared pieces of that for government and for registry and for government and the public. And there's a tool kit for rule writing, the middle piece where we actually put it on paper. Then there's the tool kit for comment analysis and sort of document refinement and stuff that comes after.

R1: Compliance assistance could be your next one.

R3: One of the questions posed this morning was, one of the questions in this project is: what would it take to get small business people to go to an e-portal; e-government portal to submit comments? My question...we have always advocated, and I know that EPA knows about this one, is industry specific categories and the fact of, if you want someone to sit down, small business person in particular, who's got better things to do with his time; say we get his attention or her attention and say this is important; just that aspect alone is a huge hurdle to get over. Say we do get their attention and now they are willing to go sit in front of their computer and make a comment; then they go to this big regulations page, even if we give them a direct link. They are looking at it going: "why do I care?" Part of what [name] says, because when they see it, even if they look at it, they are going; "I don't understand this, but ok I'll trust [name]. She says it says this, so I'm going to comment". One of the ways I think, if they can...small business relies and it takes the advice of their industry colleagues. They listen to what their industry colleagues are doing. What are they concerned about? What issues are being impacted? What is their industry

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colleague done about this? And if there's a way where they could say; "I want to see what my industry is saying about this rule or other comments", and be able to click and say, sort by industry. Sort comments by industry; printing industry. This is what this rule does for the printing industry. And that may be a huge hurdle down the road, of actually being able to sort who says what. But if you do it by category then the small guy looking at it doesn't have to rely on just [name] who says this is an important rule. He can go and say...real easy click by the way, not a let me try and find this type of thing, real easy industry comments, and then find the list of industries, whether it be by NAICS codes, SIC, whatever. Just a way that they understand, and then they could actually see Joe Schmoe from printing industry in Maryland said this; and "oh my word, I have the same problem"; and you can comment this way. That might be more of a way to get their attention. Narrow it so they can see how their industry is specifically impacted by the regulation and it's not just this big government thing from Washington.

R2: Is that a service you would provide?

R3: We would do the direct link and yes that's what we end up...

R2: Even the analysis, even to the point of saying; this is how you will be impacted.

R3: Yes. But then if you're asking them to comment and actually sit in front of the computer and actually type out and submit. If you don't want the form letters, which form letters are ok, but to be honest we are not large enough to provide huge access to these form letter things. I know a lot of companies are. We represent small business, we are a small...our government affairs team consists of 2 people. So we don't have that type of resource, but if you want to get comment from the small people, we can say; this is what it says and this is why you need to impact it. Get them to sit behind the computer and they might say; "[name] says, I trust [name]"; we should write this and maybe we will get someone to spit out verbatim what we say. But if they see that actually this guy here from this industry, maybe he commented on his own; if they see from their industry what their industry colleagues are saying, how they believe their industry colleagues are going to be impacted by the rule, it gets them more engaged because it becomes more personal now. It's not some Washington regulations that just is. We might be able to get their attention, where as I would guarantee more than half don't even know what the Federal Register is. So that would be our job, to get out there and say; "hey look guys" and that's what we did with HAZCOM. We said, "Hey look, Bush has got this new guidance out for and this is what is in it". We sat down and read it and said; "these are what we think are concerns, what do you think?" Now, this is a huge thing for our members; HAZCOM impacts every one of the small printers, they all have MSDS's, yet how many responses did I get—3.

R6: It sounds like that might be the kind of service that a small business association would want to be able to provide to its members in the long run. I mean eventually it should be possible for an association to, like yours, to actually download stuff from the docket.

R3: If that would be possible, we could do that, yeah.

R6: And have on your site that group of comments.

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R3: If it was made public, yes.

R6: Now, I don't know, [name] may want to comment, the way that you all are talking about it, about being able to extract all the printers by that kind of data mining, that is one possibility. Another possibility might be for people to actually be asked to code their submissions a little bit themselves, so that you could easily pick out, even before the data mining and the more refined stuff is possible.

R3: That's what I mean. If there is some sort of little file, little link that they have to fill in information, the way the computer files do it. And they either type in their code, their industry code because most of them know it, and then that automatically sorts it. What I am saying is, when you actually get the person to sit down in front of their computer, this eRegulation thing and actually use the computer to submit comments, you have to make it...part of making it friendly might be having as a list of options, not just the comment block and here's my code and submit; would be "here's an industry link; click here, what's your industry?". It's not to classify themselves, it's a link to then take them to the comments of people who have identified themselves as being in that industry. And then they could actually look, instead of at about 1,000 public comments from Joe Schmoes everywhere, they can see 20 comments from printers that they can actually look at and say, "oh my". We are talking about ways to garner interest by the small business person to actually comment. And there's only so much a trade association can do. They take the most, they get the most interest when it becomes personal. And by seeing what their colleagues in their industry are doing, or how it is impacting them; then that garners interest.

R6: I've got a URL I can send you, I just accidentally ran across something, some transportation trade association; they actually had all the comments from a particular docket on their site.

R3: That's good for associations that have a lot of money, but you are talking about...

R6: It may become the millennium but eventually it will become easier.

R4: But the kind of tools you were talking about should make that sort of thing possible.

R11: Yeah, we could probably do by industry, instead of by profession. You know, different ways of detecting that kind of stuff that is mentioned in the comments. I can see that that would be useful. Getting people to fill in things like industry codes is hard to do, people don't do stuff like that. And you guys have mentioned 3 or 4 things you would like to do, but I have sat in other sessions with other stakeholders who have a different set of 4 or 5 things they would like to collect. Not burdensome at all, but focused at their group and so it's hard for everybody to agree.

R7: There is also an architectural problem, in that everybody wants their data to be 3 clicks away. It's impossible to do that.

R11: That's a challenge for these systems. And then there is...as far as whether you would ever be able to download all the comments, that's really a policy decision that the people who make

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these systems will have to make. From a technical point of view, it's easy; it is a small amount of data. Text is not big and so you can compress 50,000 comments and shoot that across in a zip file; it's a few megabytes, it's really no big deal. It's really a policy question, of whether they want to share that information and what the privacy issues are and it will probably be decided on that basis, more than a technical basis.

R7: The policy for Module 2, as I understand it, is that all comments are going to be publicly available within the Module 2 system, except for those that contain confidential business information and other things that we normally redact for now, in terms of the public record.

R2: That makes the next question is, will there be a batch download capability?

R11: Right, publicly available, different things to different people.

R7: I know they are already going to do that.

R11: I thought so too. My impression is that Module 2 includes the batch down capabilities.

R1: The comments are going to be posted as they are submitted; they are not waiting until the end of the comment deadline, correct?

R11: Right.

R1: Because the one thing...we were talking today about people replying to other people's comments or using comments to inspire their own; then you just have to keep in mind the concept of comment deadlines and wanting to encourage...a lot of people don't submit their comments until the last day. We all know that perfectly well. And the FCC has the process of the initial comment period, the reply comment period; and that may work for some, but that is much more expensive for small business because that way you need multiple bites of the apple. So, it's in my view, having the initial comment period where everyone gets their comments in and if I want to substantiate what I did before, or if I want to incorporate into my comments reaction to someone else. But I don't think you want to get into a point, counter-point. Although, there is a tendency, of course, if you see other people's comments that may bring to mind something else you want to add to the record.

R2: Institutionally too, I think, some point/counter-point is not only inevitable but probably healthy. When you get professional advocates like [name], who presumably have counterparts in some other interest arena; they are going to sharpen one another's points of view. And you want that to occur.

R1: The only thing that we've seen problems with it; the agencies aren't fully transparent with what, here's the proposed rule. Larger businesses have an advantage, in the sense they've got a team of people working on it who can kind of comb out what's going on. Monitor the rulemaking process on a regular basis. And really get their advocates, both in the agency, to talk with people, as well as, commenting. Where small businesses very often, you get one comment in, you're shushed.

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R2: And for that reason, I guess, two points. One, we can't envision whatever sort of eSystem we are talking about as being the total solution for all the problems in the rulemaking process. So if we just look at, sort of define goals and the goals that seem to be emerging are; sort of enhanced public participation, so everybody kind of do anything. Enhanced comment analysis, which is new to me, but sounds like a really good idea. And the one that I come in needing, which is, enhance the rule drafting; the management and accomplishment of rule drafting. If we take those as the goals, it seems like those are pretty manageable chunks, you can do those. Now, the fact that if one of [name]'s members puts up a comment that somebody in some other interest group, whether a professional advocate or some individual, sees and says "I disagree with that" and they throw a zinger at it; to me I wouldn't want to avoid that, I would want to let that happen. Particularly when it's a dual of more or less equals. When you've got two big enough organizations happening, then let them fight it out because they are going to sharpen my understanding of the rule. But to be honest with you, even if it's a dual amongst unequals; if I see a great big trade association taking on little Joe Printer from some little town, I'm thinking "ooo, Joe Printer said something very important. Wow, what did he do to get that reaction?, and Why is this happening?". And it's really sharpening my understanding of the implications of the rules, at a level in the regulatory structure I can't otherwise touch.

R6: I like the rebuttal comment idea too and I think the idea of the organized rebuttal comment period, as I understand it, is that otherwise people, and maybe particularly the big players who are always there and who know how the system works, come in at the last minute when there's no time for somebody else to reply. And if you have an organized rebuttal comment period and you say that is going to be a separate period, then that doesn't happen anymore. You always have time to read that comment even if somebody got it in at the last minute and say what you think about it.

R4: I guess when I...what that makes me think of is, if you feel like you need to have sort of a...more than one phase of comment period, you didn't do your work, at the agency level, before you put out the proposed rule. You should be doing stakeholder involvement through some form or fashion, whether eBased public hearings, public meetings, whatever; to make sure you know what the stakeholders think. Then you...the public comment period on a proposed rule shouldn't be full of surprises.

R?: I agree.

R4: You should have enough information before you publish that thing to have a pretty good idea to what the camps are and what you are going to get back. There will be some surprises inevitably sometimes, but if you've really done a good stakeholder involvement process before proposal, you are not going to get a lot of...because even the stakeholders know what positions have been staked out in advance.

R2: Maybe so, but looking at it from a slightly different perspective, I'm sure we are both familiar with organizations that will routinely...most organizations wait until the last minute to file their comments just because; "I don't have to do it today, I'll do it tomorrow, today I'm going to lunch." I've got a PhD that's hanging on incompletes. But even so, so from our

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perspective, I think you are exactly right [name]. I could turn it around and look at it from the commenters' perspective, especially the ones who are not the professional advocates. They are going to see at the last minute some big organization, or some individual for that matter, walks in with some, what they perceive to be some silly thing that just demands a response. And just part of the process, part of the sort of customer satisfaction, is the ability to feel like you got it off of your chest. You got it in there in a way that somebody has a potential of recognizing that you've got the diamond in the rough. If we could provide, as [name] suggests, a fairly routinized manner of doing that, it just enhances people's satisfaction because they know they are not going to get surprised. We may never get surprised if we've done our homework right, but they know they'll never be surprised because they'll be able to come in and have, if not the last word, at least a word.

R5: I think while ideally that's a great idea, your average small business florist is going to say; "ok [name] is harassing me, I want her off my back. Ok, I'll go ahead and type up this letter, here you go leave me alone, I'm done." And that's it. The florist is not going to go back and see what US Chamber said, they are not going to go back and look at what [name]'s organization said. They are doing their payroll, hopefully figuring out some health insurance options for their employees. I think that's a great option, but I think you're going to get me and [name] going back and forth a lot, but not the small business people going back and forth.

R1: ...is probably one example where there was probably was a lot of back and forth, but that's a rulemaking that an industry's fearing devastation from.

R: Well, it's also a very energetic industry segment and those folks know how to work the process better than probably a lot of industry segments. They have been down that road a lot of times.

R1: I think there wasn't a level of outreach out front; that they felt as though, they feel like they were being closed out, so to a point, a lot of it may have been maybe just getting it off their chest. That process has a benefit to it, I don't mean to discredit that, but I think from our perspective, from advocacy, when we looked at the Regulations.gov we were excited that one central place where you could go electronically, but then we found some problems. Not all agencies are listed; you can't do the below layer links. Too many clicks, sometimes, to direct small business. Some agencies have lots of rulemaking going on, overlapping 6 to 8 periods, so it's not always easy to find what you are looking for. But getting to the point of data analysis, or later generations, we see some real potential for us being able to analyze all the different comments and also the agencies being able to do so. But we also want to make sure that it doesn't create any barriers; like for people who want to send in hand written comments, that should always be an option. We have to make sure there aren't technology barriers that keep small businesses from participating. And I do think the form letters, you know is something that I think are important, they shouldn't ever be discredited; I think they should be looked at. It's a vote, someone communicating their view, just didn't write the letter, doesn't mean it has less importance. But I do like the ability that, if you can search out how many are form letters versus how many aren't. But then again, if you just do that to encourage 10 different varieties of form letters, what are we accomplishing? So I do think the agencies have to exercise their judgment to

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know that, that is a letter writing campaign; what does that mean to us, as far as, what we should or shouldn't have done with regard to this rule and the different [can't understand] through that.

R4: One of the things why EPA, having had 3 rules over 100,000 comments and some of those are subjected to letter writing campaigns, as being able to look at uniques even within a form letter. Because what attorneys are worried about, and maybe he mentioned it during the presentation, somebody plants a bomb. Not a literal bomb, but it looks like a form letter except they change one sentence and it's substantive. And so the people down at the docket that are printing these off and put it in a box, "oh this is another form letter" because they are not reading every word and the first two paragraphs are exactly the same as the last 50 they saw, but maybe down in the third paragraph there is a new line that's substantive. And if the agency doesn't address that substantive comment in the way that the person who wrote it wanted, they could litigate on that. That one sentence and that's why we need these kind of tools. So the number of form letters does express the interest, but they also can, they may be an interesting vehicle that people will exploit very soon, we assume, because there are a lot of federal folks out there that have seen that eLobbying is an emerging profession.

M1: I'd like for you to talk a little bit more about what specific things that we could do to make the eRulemaking process more transparent and accessible. You all touched on it a little bit, but what specific suggestions do you have?

R1: Searchable, I guess, by having comments posted. I'm trying to think, when I go to FCC's docket when I search, if I'm just searching who submitted it or if I can actually search in the text of the comments. Or if I have to just go select a comment and view it and select individual comments. So, from my view, making them available online and searchable, without having to go through each individual comment.

R2: DOT's docket provides an image of the comment itself, but it is not searchable; only the summary of the comment, which is sort of a descriptor of it. You can search by file entity; by the person who filed it, the organization and such. You can't search the text or the comments. It's my understanding that EPA's docket is the mirror image of that. You can't actually see the comment itself, but you can do some searching on it. Anyway, it is my understanding that...

R7: I thought you could get the image but they had OCR underlay on the image, so that you can actually access it, like if you're in a pdf file...

R2: It's my understanding that Module 2 will do that.

R7: Yes

R2: That Module 2 will have the image and OCR so that the entire text will be key word searchable or optical character recognizable. If it is submitted in a non-machine readable format, it will be machine read, so text will be generated. And if it's in machine readable format than that's just there. And you'll be able to download both, what it looks like, and you'll be able to key word search it. So it will be very flexible module tool. Do we all have a basic understanding of what Module 2 is going to be? It just occurred to me...I heard some comments

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about “gee, it would be nice if we are going to have..” and I think we’re going to have that starting in February or June, so they probably ought to get that out. Unless that’s counterproductive, it’s not my meeting.

R3: I think your question goes to the heart of what I said at the beginning though. How to make it better depends on which audience you’re talking to. The regulators want specific things for how they can search, to extract the information that they need to make a better rule. But if you’re talking about the small business person and encouraging them to use eRegulation to submit comments, it’s going to be a lot different, as to what we could suggest to make it better. And that’s why I would say, my suggestion of making it industry specific. Some how finding a sort criteria, something that can bring it home to them, make it easy for them to understand how this big Washington regulation actually impacts what their profits are going to be or what...if they are going to go to jail or not type of thing. You’ve got two completely different audiences here and I don’t see right now how they are being meshed. And you can’t say, how do we make this better in one because what the regulators want to make it better is going to be very different than what the small business needs to make it easier, I think.

R6: I think the question is also how to make it more transparent. I think that what [name] is saying is that, there is not much point in making it really, really transparent if people can’t use it. That sort of makes me think that, maybe one of the very most basic things is usability testing, which they are now planning. Apparently, Lockheed is going to do some of that but I don’t know how much. But that seems like a really key thing, but beyond that, to me, the transparency question is partly just, what’s there? How easy is it to get? Are they going to put up, not just the comments, but are they also going to put up the background material so if somebody in an association or members or an individual or whoever, if they really wanted to try and understand the issue, is the information going to be there? Can you get to it?

R?: Yes.

R6: Well, it’s a big question for the agencies...

R3: Trade associations like to provide; we want to be the source of information. My boss is notorious for telling the agencies, “that’s my job” and “we want our members coming to us to get information”. And I can see this tool, here that we are discussing, as being extremely effective for the regulators. For those who say, “ok, I’ve got 2,000 comments here, how the heck do I figure out what is being said in them?” And from that perspective and that usefulness I think it’s great. That’s for the regulators; it has no applicability to small business.

R11: What about to you?

R3: To the professional advocate who could do it, if we were allowed to search it, it would be useful. In that in itself, that would be a good thing, a positive thing. I think this is a great...being able to search like that, these tools; it’s a great idea and seeing it progress is going to be a very good thing. But if you got...if somehow there is an implication that this is suppose to make it easier for the general person to make a public comment; I don’t see that here.

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R11: No, I don't think...I certainly didn't mean to imply that we would necessarily presume that the average citizen would ever use any of this stuff. If I could believe that activist and trade organizations would and the sincerely dedicated citizen might, but probably not the average person.

R2: To be clear about that, when you say the average citizen won't use this stuff, are you referring specifically to the analytical tools?

R11: Any kind of analytical tools. I think most of the time, they probably don't want to see...

R3: They don't care.

R11: Don't care, right, what everybody else has said or don't have the time to care.

R2: But I think you are right, professional advocates might find that useful. Let me draw back to one thing. I think [name] made a good point, we could probably work really hard to find ways to make it easy to deposit comments, but there is sort of a limiting factor that I have heard [name] and others talk about, which is that small business people just don't have the time. I'm not sure we can pull those ends together and make them overlap. I'm not sure we can make any system that is going to be comprehensive and effective, so simple that it gets within their willingness to do.

R11: Sure we can. I'll tell you one way of doing it that I think they are considering for Module 2, but I don't know for sure so don't quote me because I'm not involved in that. If there's a web services interface, than organizations like trade associations can develop their own interfaces which are one click designed for their members, tailored to capture whatever information is appropriate. And then package that all up and they shoot that across and it's submitted as a package into the system. So it's an API levels of interface; your commenters, your communities never see the real system.

R3: They just go to the...like for example the trade association web site?

R1: And you've got the link built in...

R11: It's buried.

R3: They never even switch out to anything else?

R?: No, they just push a button.

R3: It's like they are submitting the comments to us?

R1: Right.

R3: See that would work.

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R2: But, it also raises some really significant policy questions.

R11: Absolutely.

R1: In what way?

R2: Well, for example...one real clear example, I'm not a member of a trade association. I don't belong to her association. How am I going to comment on this thing that is going to affect me?

R1: Oh no, not exclusive.

R11: You have to go use the ordinary interface.

R3: You can make it in the public area.

R2: Next question, I'm a member of three trade associations.

R1: You can submit comments all three times.

R2: And they are all going to be separately evaluated, right?

R1: But what prevents that now? I belong to the Sierra Club, or what ever it would be, and I go to the web site 25 times.

R2: What we see is 25 clicks with my name on it.

R1: Right, but some of them are anonymous. Some of the web sites allow you to do it anonymously. You can always gin the system to send multiple forms. And that's what makes form letters of a little lesser value. Because people realize the same person could be sending and even in different people's names. You never go back to find out if [name] really sent that letter to you.

R4: And you [can't understand, but laughing]

R3: I would see what [name] just said as being the key. If that could be done, in the sense that the average guy; he'll go to his trade association, he'll go to a magazine, whatever, to find information on his business. Our trade association is basically a technical association, government affairs is just a tiny little part that was formed out of necessity. Our members come to our association for, how do they run their business? What's the new technology out in printing? So, they'll come to our site for information. Now if there's an interface like that where it looks like, "oh", it catches their attention.

R1: You have to make it. Your web person will have to make it.

R6: They'll be a vendor, trust me.

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R1: The government is not going to make it for you.

R4: The Federal Docket Management System is not going to have that.

R3: What you are saying though is, we put up the web page that says, “what do you think about this rule” and maybe we’ll have a link to the rule or whatever, it’s all public information. Then say, “what do you think about it?” They think they are commenting...submit it to us or we could pass it on. Whatever the rules are, you’re more likely to get Joe Schmoe to actually say, “this sucks”. You’re going to get that. You might also actually get some real opinions that can be...get a real idea of what this regulation might actually do.

R1: The way [org. identifier] did it or was seeking to do it, would be, we have a description, five sentences description of the rule, then we have the link to go straight to the proposal if you want to look at it more. You have the contact names for the person in our staff that is handling it. We have a “click on” to send it directly to the agency, which can’t go through Regulations.gov now; it has to go through a different mechanism. Then we also have, “if you want to submit comments to us”, because if they just go to the agency we don’t get to see what they are. If they just go to us, then we just incorporate into our comments and the agency doesn’t...so we encourage people to send it two ways. And we weren’t able to develop a way that could be a one shot deal; where they get to us and the agency at the same time.

R3: And I think that goes back to looking at what the industry colleagues are saying and seeing that, because our members are not going to go to [org. identifier] even though [org. identifier] is for their interest.

R1: You could link to [can’t understand]. I’m just saying this is what we did, as though we were a membership association, we are, we are representing small business and here’s where small businesses go to. But the people who go to us and the [name] and [name] of the world who then may copy our page or whatever. It’s the same mechanism.

R5: But we link to you all the time for different regulations. If we could get this idea to work for everybody else the way your regulatory alerts work for me, [name] and [name] that would be outstanding.

R3: Right, I go back to my boss. We have an aversion to linking to government sites because we want to be the source of information; I mean that’s our job. Our people look to us as being “ok, you’re one of us, you’re regulatory”, they give you a lot of flack for that, but jokingly because they know that you are one of them and you know their interests, so they’ll go to you. They’ll go to us and say; “what does this really mean?” versus going to a government site and saying; “oh, yeah, I’ll comment”.

R4: Even right now, I think you could on your site, if you are giving them an alert about a rule, an EPA rule that you think they would want to comment on; you could say “click here and it will link to the eDocket site” and then give them the docket number. You could just tell them, “click

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here, put this number in the search bar, and click and you can see what your colleagues are commenting”.

R3: They wouldn't do it.

R11: Some of that is so...this came up last fall when we talked to a different group. One of the guys from one of the labor unions, which of course have a lot of money to devote to these things, they've got this working now. If you have smart people, who really know what they are doing with web stuff, you can get this working. The comment that he made, which was very appropriate for you guys, is the barrier to doing this kind of stuff is way too high right now. And if Regulations.gov would cooperate, it could be brought right down to where any small organization could do this kind of thing. But the large organizations are doing this already.

R4: What [name] was saying about usability testing, I think during a presentation that [name] did, I think near the end he showed what the comment page looks like. Well, I think what the comment page should look like is what a lot of us are familiar with now in doing online catalogue shopping. Where, “what kind of industry are you?”. And have a list on the side or “if you don't see your industry, your NAICS code here”. So that it would slice and dice it, so that if you want to make a comment there would be some menus. So it would look familiar, would allow you to find the information you want, and; “if you want to know what your colleagues said you can click here”. Then it will take you to another page that would allow you then to go into a database and search it by what your colleagues are. You could put in “printers”, you could put in a NAICS code. Those kinds of things would make it really usable. So I think usability testing is going to be really critical because some of these things are so drab and so unfriendly. You come up on a screen, there's a bunch of words at the top and a bunch of blank fields. A lot of people sort of stop there, but catalogues have figured out how to do it in a way that sort of keep you going. “What are you looking for? How can we help you? How can we help you?” If it's got that kind of mindset; “how can we help you? How can we help you?” Not; “it's not my problem you figure it out”. I think that that is easier said than done.

R6: That's an interesting thought. The challenge of writing a reg. in eBay style.

R2: You know what, [name] has a really good point. There is some professional expertise out there on how to get people to interact with the machine and complete their task.

R4: When you think about the number of products Amazon is marketing at any given time, certainly more discrete products that they are trying to sell than we have regulations. There's tens of thousands of titles, not to mention they branched out to toys and everything else.

R?: Tens of thousands of vendors on eBay.

R4: Never been on eBay, so I don't know how it looks and feels. But, my point is still the same.

R1: I recall that [name] mentioned, if you go to certain web sites, like the way it has been kicked around is; people might be talking about fax spam or they're using the Do Not Fax Rule. Well, FCC will never call it the Do Not Fax Rule, it's like the Fax Advertising Restrictions. And if

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you go in and type “Do Not Fax” on their web site, are you going to find what you are looking for?

R6: Actually, one of the first things I tried at Regulations.gov was “mad cow”. Not a hit.

R?: Even if you type in “spam”, you don’t get anything for spam.

R1: Some of it is anticipating the vocabulary and how it will be searched.

R8: That’s the whole metatag thing, where they can handle that with metatag.

R11: Well, it’s easy to do, it’s that they don’t care. Amazon and eBay and all of these organizations care passionately about every person who doesn’t go to the next screen. And they analyze that stuff and they look at their web logs to see what did people type and what did it return and if it wasn’t what it was suppose to be, they change the system. It’s well known how to do this stuff, but it’s part of the culture of those organizations and it’s not something that’s been a part of the culture of the government.

R3: Gee, you don’t think the government could adapt that quickly?

R?: I think the government should go out and hire ecommerce people. I think [name] is exactly right.

R4: It’s the, “How can we help you? How can we help you”, mentality. That’s what I heard in the popular press just recently about the new pharmaceutical stuff; if you don’t type in the exact spelling of the medication that you are looking for, it’s blank. No, mad cow. But it doesn’t allow you to search by...it doesn’t say “did you mean?” You want to search by alphabet. You know your drug starts with “p” but we don’t do that.

R6: We may have read the same one. There was also a post article, there’s a bug in the system such that, if you know you have to search for it under this spelling you get the answer. If you use the usual thing, you’re out of luck.

R4: It the same idea. If you don’t know exactly what the rule is, the title, you just...it will appear that it is not there and there’s no help after that. EDocket has some of those problems. You are trying to search...you know that somebody commented and you want to see their comment, if you don’t put in the exact right thing. We had a rule where, we were actually working on this, trying to figure out why it’s not popping up. We knew there was a comment in there by the state of Alaska; trying to find it was really tough. And the agency has made the decision not to do anymore enhancements of the eDocket system because the Federal Docket Management System is coming out and we are spending a lot of money on that, but in the mean time some of the users are suffering with some of the inadequacies and there’s no more investment in the system for now, but we are hoping...

R2: That’s right around the corner

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[tape break—side 2 did not record]

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