

Small Group Discussion -- Interest Groups
Group Two-- September 5, 2003

M: What are your main goals when your organization or its members participate in rulemaking?

10: We work with many organizations, and our goal shape regulation. When it comes to regulations, what we do is develop a campaign of outreach to large bodies of people who have a relationship with the organizations we are working with, in order to get them involved on a grass roots level.

9: We are also very interested in ensuring that more people get involved in the whole process. We try to give the opportunity to have more of a chance to input. Obviously, we are also very concerned with affecting outcome. At the end of the day, we have an opinion on how the rules should be formed.

7: The rulemaking process is an opportunity to educate our members about how government affects them. There is some opportunity to influence, not so much the outcome of the rules – we see that as very politicized – but the whole governing process. We can influence decision members in Congress. It is an opportunity to mobilize our members, educate them about something, and get them to take action. We are actually hired by our members to educate them and be on guard and notify when stuff is happening that affects their lives and the lives of their families.

4: The goal of our organization is to advance the interest of our members. That is done within the context of notions of the public good. We don't advocate positions that are recklessly an advantage of our industry at the expense of the public. There is always an understanding that there is a balance there. Both of those goals are held importantly by the membership.

2: We try to influence the process, as other people have said, but also, since we represent average Internet users, our goal is also to make it easier for them to comment directly. It depends upon the situation.

1a: Our goals are usually to ensure the voices of the environment, especially wildlife are heard in the process and that those needs are taken into account. We work a lot on getting more than just numbers, but substance in record, and working with the scientific record and such.

M: How do agencies facilitate or make it difficult to attain you goals?

1a: They help us when they make commenting easy. For instance, I have just been overwhelmed by the edocket. This is the first time we've responded to an edocket, and it's been a learning curve to figure out how it works to figure out how it works and what we can do and use with it. Next time it will be a lot easier. That is an example of when an agency has made easy and efficient as possible to be involved in the process. When they are not, an example would be the Corp. of Engineers saying "we will not accept email submissions." We delay to the last minute, because they give us an extremely short period of time to analyze extremely complicated data. We have to take scientists out and stuff, and it makes it very hard to have to drive out to the mailbox in the middle of the night at the deadline, because we do not have the opportunity to electronically comment. They try to discourage numbers by cutting down on the means of delivering comments.

2: I think we've had good experiences and bad experiences. The good experiences have been those that provide a lot of options for us, and when they make it very easy to contact the people who are putting together the comment period, so we can figure out ways to work within their standards, get directly submitted to their database. That's the type of thing we've done with the FCC and the FEC in the past. Bad experiences we've had are those that don't accept certain types of submissions; those that put a lot of requirements on to what you have to do to submit – requiring names and addresses and very specific types of fields on submission makes it more difficult to get a larger number of submissions; and then those that are not responsive are probably the most frustrating.

4: With our association, the agencies frequently reach out to us. They usually contact us early in a rulemaking process, in the public participation part. At one level the agencies view our association as a resource, because we are usually involved in debates on Capital Hill and involved early in rulemaking processes that affect our industry. We also are very active in a lot of consensus bodies and things like that, like health regulations, building codes, fire codes, things like that. So at one level we are viewed as a resource. At the same time, we fight with the agencies about lot of things. They often will reach conclusions we don't agree with, and we get in disputes. We often say "we will sit down and negotiate this one issue with you, but we are also filing lawsuit against the people across the hall." It's not personal. It is just the way the process works.

7: Any move toward limiting ways to contact during comment process is a bad trajectory. If you cut out the email address or cut out standards for allowing

commercial web action centers to submit comments, that is bad. The majority of comments are going to be generated by constituency and advocacy groups. The success of any software to help analyze those comments will depend upon our ability to get our comments in there, because otherwise it won't be analyzing the bulk of the comments. Another problem we've run into is that the infrastructure of these agencies sometimes is inadequate to receive mass comments from citizens. When members comment, and the infrastructure fails to receive them, members don't even know and it is not satisfactory. I would say, under this current administration, I would say the outreach to stakeholders is very poor, because they are obviously biased in their outreach to one set of interest-slanted interest groups. In previous administration, there was outreach to both left and right. We will hear about stuff that not only regulates our membership members, but also directly impacts us but where they won't reach out to us. On the helpful things, there should be a standard that allows advocacy groups to submit comments that directly interfaces with any databases that are being developed. For efficiency, we will be submitting the vast majority of comments to the agency. There are very few people out there who will go through the trouble to look up in the Rules of Federal Rulemaking to figure out how to submit a comment on their own. They will turn to an available intervening organization to help facilitate the delivery of comment. Regarding feedback, it is helpful for us to get counts, to know how comment volume is going, and to have access to read comments. I think that same principle should be extended to electronic comments in the best way possible.

9: My organization makes comments on not just rulemakings of different agencies, but a lot of different actions. Something helpful would be to make the availability of the docket on the web to access in order to make comments. I think the availability of people to answer questions is also helpful. Getting anything off the DOI website, is impossible. A harmful thing is when agencies try to shut down the public. For example, shortening the comment period to 30 days instead of 60, agencies try to get around process so that they don't have to be as responsive to the public. That is shutting down the democratic process.

10: Because we end up working for a wide range of clients, we see the reality that so often different rules and regulations are different with each agency for rulemaking. And some of the requirements are just ridiculous. With one example, a requirement on a particular rulemaking was that all comments were to be filed in triplicate and hard copy. The agency required the 3 copies be together, and we had to collate separate piles of 3 for each person. With email they could print as many as need.

3: I'd like to just comment. I think about users of software and it seems there are 2 basic types of users: One-time users, who are citizens coming to site for first time; and regular

users who submit comments for a living. It seems to me there are very different design issues for these two groups of users. You want it to be transparent and bullet proof, with lots of help, clarification, and explanations for the one-time users. But for the regular power users, you want shortcuts. Do you see these as at odds with each other? Do you think separate systems should be deployed?

2: I don't think it is that different. I think they should make sure there are a lot of options open, but that the process is standardized. Therefore, regular users will know what the standards are when they go to each different place, but also, there are many options for the new user to choose from so that they can submit in a way that is easy for them.

10. We design advocacy web sites. One strategy we've been incorporating with the front page is a button at top based on who is accessing the site, be it citizen, consumer, policy. etc. They then make a choice, and the front-page tools and content change to a design that should fit their more specific needs. That model could be applied. I like the idea of coming to the front page and having the option to have guidance. That means you have to be really careful about how that guidance is written. It needs to be clear and concise.

7. I don't want to force or encourage any of our people to use a government-run web form. It's inimical to the whole concept. With advocacy groups, we are facilitating a process for our membership. There are all sorts of trust issues and reasons for people not wanting to interact with a government form. That's very important. So, if we aren't going to interact with the government web form, how will get the data into the government database?

10: The Capitalist Tool has actually made arrangements, because the majority of Congress has switched over to web forms to replace public email addresses. We've actually negotiated directly with each of those offices to integrate into our interface their requirements. Not just email, but if they have a fixed list of pull down subjects you must use in order to use their web form, we actually feed that into the interface. When you feed that into the interface - when you put in zip code and up pops your senator and you want to send a message, if he requires a particular subject line, it is there - the message will not be allowed to be sent by our system if you don't fill it all out. The tool is also set up to send regulatory comments, and to the extent of regulations.gov creates a standard interface, then it is just one interface to program into it.

7: There's a logical error there. We have 435 members of house and 100 senators, and not a lot of change with them. Regulations are published more frequently, so you can't

expect a vendor to write custom programming to write to each particular regulations.gov web form. I want the Notice of Federal Rulemaking to include some information that I can plug into my web action center tools so that the stuff is much more standardized. Then I won't need to call up my vendor every time. Give me a code or whatever to access the information to plug in. Then I can have my vendor build me a product to use just once to meet the requirement.

10: That is the reason we need one standard interface on reg.gov for any comment on any regulation.

6: If you wanted guidance, you would need regulation specific information.

7: Yeah. The Notice of the Rulemaking Process is the where the government says "here's the rule, and here's how you submit comments on it." That's standard for every regulation. I know the regulation I want to comment on. So if it had a code, I could cut that code out, paste it in my web action center, and it could become part of the post process for me to submit a comment to that agency.

M: What tools or methods (electronic or otherwise) would be most useful in achieving your goals?

9: Something of concern to me, is the disparity between written and email comments, and how those are going to be processed in the system. As they are doing this development, they have got to be thinking about how they are going to deal with the comments as well. I think it is important to make sure there is parity between what the analysis of what the two are, because otherwise you are cutting out an entire segment of society. We need to make sure the written, or non-electrical voice is heard as much as web comments.

7: I would defer to what I said earlier.

6: We have talked about comments that are primarily textual in nature. Is it common to have comments submitted in other forms such as excel, etc.?

2: Usually we would footnote things with a link to somewhere elsewhere, but I think it would be nice to be able to include that in there.

1a: You are required, especially when setting up a legal case, to include all your attachments. We've been kind enough, in the past, to scan everything and provide a disk with all attachments. Not everyone probably does that, which probably gets confusing. We're not always sure of what we HAVE to provide a copy of, so we tend to

over-provide information. They don't request that like they should. I've heard from regulators that the info was dynamic and would be very useful; however, they don't seem to solicit this type of information. And, if you go to online forms, how will they receive that type of information?

6: Could you send them technical analyses or a cost benefit analysis in a spreadsheet itself?

1a: Sometimes or "here's a picture to support our information."

4: We frequently submit detailed economic analyses and scientific studies. With the new EPA Stormwater Rules, we literally sent a box of documents. This rule EPA was proposing was not backed up by data. We did all the analysis. They had nothing. We had to do environmental analysis for them. They came to us and asked us to provide data. We went to members and conducted data gathering. That was whole record. They had nothing.

1a: we know this because we are DC professionals on the inside. Perhaps the emphasis could be put on the e-forms, asking everyone, because a lot of scientists comments on these things and they don't know it could be beneficial to include their most recent scientific papers on the issue.

5: Does the government accept URLs?

1a: If it is publicly available, technically we do not have to give them a copy, but we try to provide a copy.

2: We make anything we are linked to publicly available.

10: If you don't actually give it to them, you have no guarantee that they receive it. Unless you have a level of trust or credibility, no one is going to believe that they do or that they care. So there needs to be some way to have a receipt and confirmation.

5: If you say "here's my URL" and you click the little box that would say "receipt card requested on this particular thing," then you have at least some acknowledgement that they received your materials?

10: Sometimes, when you send attachments, they get stripped-out by the server. An automated receipt that provides confirmation of your comment doesn't necessarily

indicate your attachments came through. They may not even know that they have them.

8: In an erulemaking environment, you should be able to go look at the docket and make sure it is in there.

10: So that you'd send it and then it should be posted and you can go look at it.

8: So you send something in and the sender receives an email back with a hot link to the actual spot in the docket where it appears online.

2: I think the Dept of Commerce used to do that. I'm not sure if they still do.

8: That would be as much proof as you need.

10: You would see it in the public archives.

1a: In edocket right now it is just letter, not the attachments.

7: I would discourage a URL reference in a comment, because a URL is never constant. It is a reference to something outside of the record.

1a: We get a PDF of everything.

6: Does every submission from your organization contain this whole package, or is there just one very detailed analysis that you guys put together as part of your advocacy efforts and then your members submit their own comments?

1a: We usually work in concert with many other groups to produce extremely detailed comments. We encourage our member groups to do a detailed comment on their local level. Then we encourage our members to do the form letter with added personal information.

7: You give a lot of specific examples. That's a big part of lawmaking. We are probably asking writer to block a regulation. So we are asked by the center what to say when the agency says "this". So we point to the example the agency has in its comment file. That disproves their claim.

10: It's nice to have a public record to point to, in case they're lying.

7: And they'd put it that they didn't read it yet.

M: What aspects of your organization's culture either support or work against eRulemaking?

7: As the AFL-CIO, we represent 13 million workers and 45 million people in households; therefore some would intuitively think that our members have greasy hands and not have access to computers, however, according to our surveys, members are actually more likely to be on line than the general public because they make a third more than the general public. They are more likely to have computer. Aside from that constituency of workers who do well, income is a huge deciding point in the digital divide. Age is another deciding factor. It is known that income, age, and ethnicity impact the access to tools used to comment on the Internet. I would also add where you live, because access to Internet is a long distance phone call because there is not a pop in your area to make it a local call.

10: I think that is becoming less of an issue. The latest numbers I've seen show that about 64% of the population has Internet access, and another 18% have one person removed from Internet access. So that is well over 80% of population with at least access. Then, when you roll into that whole thing of who votes as the predictor of what percentage we really need to worry about who would actually use the technology, we are way beyond those levels of participation.

7: Age, race, income are important because of Constitutional protections. If there was evaluative criteria that was bias toward one type of comment over another, that would be a problem.

1a: Our culture is very much pushing the electronic. We've always got to deal with those who do not and will not have it. We have to keep responding to them, but our culture is very much pushing e-activism. We've beat it into them over the years that they need to do individual mailed letters to congressman, because they are so much more effective than electronic. Now it's hard to pull them back for rule making, and say for this it is better to do it electronic.

2: We have exactly the same issue. People write us and frequently ask "why can't I just email this in?" And we have to tell them they must pick most effective avenue for that tool. I think that is a major barrier for us right now.

1a: We are getting that across, but having a hard time getting them to go back to electronic for rulemaking.

10: Is it true? Is it really ineffective to send emails to Congressmen?

2: Yes. Several studies have been.

10: With the studies that I am aware of say that my constituent email is ineffective, but that constituent email is...

1a: Well, it's weighed but not same.

1: It's shifting right now.

1a: It depends on the member

1: A lot of it depends upon the member.

10: All ways of communication combed creates the effect.

2: I think for getting people to comment directly in the regulation process, it is easier for them just to fill it out and send it via email.

10: On the executive side, there is a statutory obligation to process it, they do not have a statutory obligation on the congressional side.

2: In that case clear, but not all cases are clear.

1: It depends on what the issue is and the particular member. Since anthrax, we have more interest in email than regular mail. Also, the technology has improved: we are now able to integrate email systems with correspondence management systems in such a way that things are meshed very well. It's also a blitz issue: something where they are really just telling "yes" or "no.". What they take in is a little bit different than if the issue has a lot more substance to it.

5: I was struck this morning by your comment that as soon as make new technology, you will predispose some profile of comment over another. I prefer for that to not happen. Is there a way to wipe out the effects? How bad is it, and how can the predisposition be minimized?

1a: It is our job to get out and get people to send email. The lower the quantity of written materials that come in, the easier for the government entity to receive them, scan them, and treat them as equal. When they are overwhelmed with the written stuff, they tend to ignore it and pay attention only to the electronic. I don't know if we can ever overcome the predisposition to deal with the easily accessible information. I know they can deal with it quicker with email.

7: With large agencies, there is someone who goes in and scans it while someone else will then read it.

5: It is a cost issue too. They spend a lot of money doing the scanning, and the scanning is not perfect.

1a: We are perfectly willing to try and push electronic usage, because we want to make this more efficient as well.

10: It is interesting with the cross dynamics, because on the regulatory side paper is becoming a burden because of the scanning requirements. On the legislative side, that burden actually translates into "look at me." The fax and phone makes noise. They can't push it aside. Email is silent. Sometimes you want to be heard.

1: Email also doesn't always include address.

10: With most advocacy software, the comments will not go through unless they have an address.

7: You'd hope our elected leaders would give the constituents the benefit of doubt.

1a: They don't.

1: Not if someone has a site set up just to dump on them, like during the Clinton impeachment hearing. They just got inundated with everyone.

7: Or if you're a senator from California.

1: That does make a difference. Members from smaller states seem to be keener on technology, because it is more manageable than with the larger states.

2: There's also this question of a burden of doing too many rulemaking on hot topics. We feel we can only do a few a year to really make the kind of impact we want to have

to be effective. Therefore, we're selective about what we bring the public in to comment on. Even if there are 10 issues worth doing it for, we'll only pick 3 or so a year to make sure that we are engaging our activists effectively.

5: For archiving, these guys have to store the paper somewhere. Some like e-storage, because it really made their lives easier. Some hated it, because 100 years from now no one can read Microsoft Word any more. But if a court case comes through, and you need to go back and read all related information, electronic is a lot easier. Is that an issue for others?

4: I'm not going to be practicing in 100 years. I think you raise a huge ethical point: What are we going to do when we go back and reconstruct what happened in our government and we don't have access to the stuff? That might be beyond this conversation

10: I don't think it would be 100 years.

4: 10 years maybe.

8: That issue is a bit beyond the topic of our conversation, but something that isn't is: What is the role of a manageable administrative record in this day and age? I think the Judges that rule are upset at the quality of record. Could you comment on what having a more unified and seamless official record would mean to rulemaking in general?

4: I'm not sure that I'm the right person; I feel out of touch with most of this stuff. This is the kind of work that I do, and my concern is the substance and basis of rules. It seems like a lot of this conversation is around how to easily generate a lot of comments from members. A lot of my members are not qualified to make opinions to make comments on amount of lead in child. That is a medical, scientific question, and we need agencies to be able to make these opinions in a transparent way.

(flip tape)

4: And they need to be shielded to some degree from all the politics that seem to inundate the process

2: I think you are focused on one type of regulation. Things we deal with are different; they tend to be things that more effect every member of the public, or every Internet user. For example, know your customer banking rules, transfer of money.

4: These are less scientific questions? There are no huge debates about what something means. They are more political in nature.

8: There was something that was written in the Administrative Law newsletter. There was a very important rulemaking that had to deal with anybody who has a bank account. They got only 180 comments altogether. 70% of them were from individuals saying this was terrible, but not giving any suggestions about what to do about that. About 30% were from the usual suspects: well organized, well established, financial institutions, trade organizations - they wrote their long comments and concerns and end up getting them all addressed. Here was a major regulatory intervention into the world of citizens' lives and it didn't generate a substantial amount of meaningful comments.

2: We don't really do the bank and privacy stuff. The first time that went through, it was under the Clinton administration. Banking regulators usually only get 200-300 comments on anything they do. And the first time they did this, they got 250,000 comments. The next time they did it, it was part of the Patriot Act, and people weren't as focused on the banking stuff. It is a well-known documented example.

4: If 249,000 of those e comments are "this is an attempt for the government to take away our rights," they are of little value compared to comments discussing viable options.

2: But it's not. There would be one group, like KATO, that comes in and gives their comments, that represents this group of 200,000 who do not know how to articulate their concerns well. They would show there is a mix between the Lefts and the Rights, and thus have a large number of concerns. The fact that 100 banks wrote in as well to articulate their concerns shouldn't be matched up to the fact KATO had 200,000 comment about it that are really passionate about it. It's not a good example, because the banks are concerned as well.

M: In your opinion, what should be the main goals of agencies in using IT tooling in rulemaking?

10: That they don't miss any substantive comments.

7: Maximize access and opportunity for citizen participation in their government. I think the substantive comment thing is very important. We do both. We hire dozens of lawyers to write, and we do studies and stuff.

10: Even with citizens, there are substantive comments from them. There needs to be technology that can pull out those comments.

1a: It should not try to accomplish all of their record building by putting the burden on the public to come up with the data. It shouldn't be on nonprofit organizations or homebuilders to do the research. The federal government should have that research completed as a basis before they even begin these rulemakings. We should be supplementing good information they already have, but we shouldn't have to be the ones who go out to get it. It is an unfair burden on the public.

10: How often does it happen that they make regulations without doing any research?

7: All the time. It is a political process. It doesn't matter who in white house. A set of Interests ask for change. Then, a regulation is created, often without backing. They will cite that current regulation is outdated as the basis for changing a law. But if it was good 70 years ago, why go backwards?

2: I'll give the agencies a little bit more credit than you will. For 7/8 of cases that's true,, but for the others, Congress tells them to do something but gives them no money to do it. Therefore, they have to act, but can't do the research.

9: I would say a goal should be to encourage citizens to participate in democracy. The process should be giving ordinary people opportunities to put comments in. We have a tremendously apathetic society, so the more opportunities they have to get involved is good. If they think it is important to comment on, that means they had to stop doing something for a while and felt they had to comment. Its crucial agency take notice that people take the time to do that, and then they need to think of how those comments should impact in rulemaking.

8: On the one hand, administrating rulemaking as if it is a unique opportunity for democratic input; on the other hand, the administrative law scholarship says it is supposed to be a technocratic process. They say it is a political process when it is on the Congress side of things, but when it comes down through the regulatory process, these are trained experts who are supposed to exercise discretion and judgment. In the context of that split, between looking at it in a more democratic versus a technocratic process, where does IT fit in finding the balance? Where does IT allow to both feel that rulemaking is part of a democracy, but also something we've developed over time, which is the bureaucratic state?

4: That's a great point you make, because I have written down here for the question about the purpose of the IT to develop a comprehensive objective record, so the agencies can make rational decision. The Congressional side is for the politics. That is why I've been talking about sound science and good data. If we can use the technology to really get to the quality of the information upon which these decisions are based, I think we could get both sides to agree a little bit more. Then we wouldn't have all these factions in the regulatory process. Right now, there is limited information and people fight over implications of the studies, or whatever they might be, and there seems to be no consensus on that. Hopefully we could use the technology to sort out the information and maybe arrive at some consensus about what something means and what policy implications flow from it.

2: I agree that's true, but I think we should also recognize that Congress, a lot of times, purposely doesn't make a decision about something, and puts it off to the agency, because they couldn't figure it out in their own realm.

10: There's a second factor that inevitably makes the notion of the technocratic decision making process inherently political: Despite all the talk about basing everything on sound scientific evidence, nobody seems to remember that science is built on degrees of uncertainty. There is no such thing as "hard science" that is irrefutable. Unfortunately, the mainstream is not trained to distinguish between those subtle differences within science. You look at the way people in courtrooms deal with science. They don't want to know there is a margin of error plus or minus 20%, they just want to know what's scientists' opinion. That is, in some ways ideologically political. And it always will be.

1a: Yeah. There have been situations in the past where your organization and our organization have taken the exact same science and argued two entirely different things.

4: But that's different for us to argue as advocates. It's up to the agency to listen to both sides, and to make reasoned judgments. That's why they are given a huge amount of discretion by the courts. Essentially, the decision they make, if it is rationally based, will be upheld.

8: Is IT, electronic commenting, and online discussion, and all the other things wrapped up in this whole transition, the proper place to debate how to interpret sound science? Does that seem like a better place to have a debate, if we're going to have these competing interpretations?

1a: I don't see it as being any different. I think it is just a better forum to get things into the record.

4: It is much more transparent. You can put on a web page the related studies, and you can send them around the whole world with the click of a button, as opposed to the old days when they would be in a docket room in Abilene, TX where you are welcome to go look at them. The technology will drive the process, drive how people operate.

10: It does cut both ways, because just putting the scientific studies out there for the mass public to consume doesn't guarantee that they will know how to consume it. When the EPA passed their second hand smoke regulations for work places, they based their decision on 11 of 13 studies where they looked at spousal relationships rather than work relations. With those 11 studies, they took 11 completely different samples, with different sample processes, and combined them into 1 sample, thus violating all the research rules. Then they lowered the confidence interval from 95% to 90% and still couldn't get it to be statistically significant, but they passed the rule anyway. Having sent all those studies out to the population, most people would look at those studies and go "wow, science supports their decision." But a scientist would look at those studies and say "this is crap."

4: That's why Congress passed the State Equality Law that is intended to try to address things like that. The agencies should not be manipulating data to reach a political outcome.

10: In fact, one of the rulemakers was overheard in a restaurant saying just that: They don't care about the science as long as the rule got out anyway.

4: The transparency hopefully helps alleviate that problem.

M: Considering everything we have talked about at the workshop and your own experiences, what types of IT tools would be useful for citizens participating in the eRulemaking process?

7: I learned a couple things. Mostly I learned about the evaluation rulewriters go through, and what in the comments can contribute to that, especially things that might be relevant to a citizen making a comment - adding an ID to a letter, as a mother, as a teacher etc. Going back to the legislative requirements for the rulewriters, that they seek comments from certain interest groups or stakeholder. Make sure we check to see what that is, and comment representing that interest group or stakeholder could be helpful. Mentioning the section number in the comment is easy to add and can immediately

make an impact once small sliver of the regulation that could have a big impact on us. The PDF issue is easy to solve: No PDFs. The evaluation practices need to be open to scrutiny. Obviously, the whole rulemaking piece is evaluating criteria, but people need to know who's doing what and how they are doing it. What key words are you looking for that they found. It is almost like having a camera watching them.

4: I'm encouraged that the government and people around the various industries and associations have taken time to think about these problems, and that this is an effort to achieve a more open and transparent. I think this whole initiative good. It cuts across the administration. People in government realize there are problem and are trying to correct them.

2: I like the E-file idea. And I like the real time comment idea. I think the concerns can be overcome, and make sure we don't overly influence process in one way or the other if it is done correctly. I also like idea of pre and post promulgation tracking. I think it would be a good idea to get the agency people and interest people together in one room and let us duke it out.

1a: Importance of e-filing. I don't know that I would tell them to put section numbers in there. I'm still very concerned vast sections of comments would be left out as they would only pull sections they choose to be relevant. I think there is a lot of strategy that we'll have to be thinking about because of the way they analyze rules, but we definitely have a better understanding. Often times we don't think the scope of their questioning related to the rulemaking is sufficient, so often times we are providing answers to questions they didn't ask, but they have to consider in order to continue with the rulemaking. If they just choose to look at sections with responses to questions they asked, they are not getting the additional information that we think is critical.

3: If there was some procedure for soliciting other comments not pertaining to something that was in the rule, would that satisfy you?

1a: Yeah, but those tend to be "oh yea," the "other category," and marginalized. We tend to write very logical, progressive comments. And often times they are bridged between sections too, there are overlapping things in there many times. I don't know how to make it easier for them. I don't want to make it hard for them, but in many ways the only way they can really get it is by reading whole thing. We are not going to get them to read it every time, so it's a conundrum.

10: I thought the whole thing about providing access to the database of comments was a very useful concept. It goes a long way towards giving people a feel for process of

what is being considered and what is not being considered in the rulemaking, and to help develop better comments down the road.

8: Did you think the tools that E and J were talking about had applicability in your organization?

10: Those were tools that rulemakers use. Anything that facilitates the rulemakers ability to effectively process information and organize it in a way that they can actually use it in making their decision is good.

8: If in that toolbar on the homepage there were tools for drilling down into these comments, do you think that would have some traction for users outside the beltway?

10: I think as someone advising on strategy for a campaign, absolutely. To see what people are saying would help us develop a message that not only presents our client's perspective, but does so in a way that responds to the competing concerns noted in the comments as well.

1a: I think it helps us but not the public. It is not a complete record. They will get on there and think "this is what everybody's saying" without realizing many people have not made it in yet. It is great for me, because I can get in there and see what everybody else is saying. You can do that now with edocket.

2: Only edocket. Homeland security sent it out to OMB watch and OMB watch posted them while they didn't put them up themselves.

1a: But that is different. That's a PDF. You can get in and see what so and so said about this and you can get into their comments, but you can't search and see who has the same opinion as you. Then you might as well be an online polling thing.

7: Raw numbers are helpful for feedback to our list. I don't care what website it is on, it is useful for me to be able to say in my email opening paragraph "more than 80,000 of you have already submitted your comment." It's like high school rah-rah, let's go. It is classic feedback marketing.

9: I like the concept of edocket, and having the opportunity to have that with other agencies I think these meetings are really good, but if you are also looking to broaden it, you might want to have more average people - not just people who do it for a living or who work for universities. Have the meeting with agency folks, with people who do

it for a living, and also get together a focus group of “average” people who participate from time to time in the process.

3. There are other sorts of studies where we look at how well the users of these systems can use them. Do you think you or members of your organizations would be willing to participate in these? They might be laboratory studies with videotaping.

9: I think that is a good idea, but another idea is to go to a place where a lot of groups would pick up grassroots – go to the shopping malls, the fairs, places where you would normally staff tables and give out postcards. Then, find a couple of people, just average folks, and see what they would actually do with a system like this on their own.

1a: Unstaffed grassroots organizations would be good.

3: Do you think your organizations would help in the recruiting of your constituents. While there is a mall intercept...

10: Do at conferences. All these organizations have conferences. You could probably set up a panel at them all.

8: One think about looking for average people is that if you comment in rulemaking, you are already not average.

1a: But we are talking about average people who respond to rulemaking.

8: Which is why I think (3) is saying could we go through you. Suppose we set up a usability test, and it was all done on the web. So, they could do it from the home, they could do it from a meeting or conference. They could do it from anywhere. We would use session cookies or whatever, track their clicks and...

1a: I have a better idea. Could you do it through edocket? Look at a recent rulemaking and contact at random 100 people who had commented on that. At least that is random.

8: We are actually doing that.

7. Usability data is useful to me too.

2: I’m still with the idea of going to the ALA’s government document group and talk to them about setting up in specific public libraries somewhere to get people coming in

and have them comment. That way you are getting real people – a very small percentage of whom will comment.

1a: We could help through organizations with the Clean Water Act, which has member groups which range from tiny groups to large nationals. Just ask for volunteers who have commented on a rulemaking in the last year. Then go to the Homebuilders and everybody else and ask for the same thing.

9: For some of this, you don't even need to have someone who comments.

8: For some of the research we are doing, it would be very useful to be able to say: "We are a research group; we are doing this work; we need to find users who use electronic or traditional means to participate in rulemaking; your participation is voluntary; everybody who goes through a feasibility study will have their name entered in a drawing; somebody will win a gift certificate for dinner; it will take 20 minutes."

3: You may also want to recruit people who have never submitted a comment, because you want to design systems that are usable by one-time users.

8: We've been working on trying to figure out how to get lists together of people who have used either traditional or electronic forms. There are privacy rules. But, we could contact agencies to see what they suggest we could do to find people to tell us what they know.

M: Are there any questions that any of you have? Are there any issues that we didn't have time to cover that you would like to comment on?

5: I have one question. The idea of having a web site to enter comments, the ownership has to reside with the government, because they have to put the comments in, make the docket, and show you where your comments have gone in. But before that, there may be another website, perhaps co-owned, where you may be able to put in your own comments to guide other people, your constituents or anybody else. So it's not just what the government chooses or somebody chooses, but where you can search and find all kinds of other stuff there evolving as the discussion goes on. Is the ownership of that site something you guys would want? Or do you think somebody else should own it? Or would you not want something like that?

1a: I think it raises a lot of issues.

10: In a way, an association's or advocacy groups' web site which provide policy pitches, alerts, and tools for sending the regulatory comments, is exactly what they are doing. Each one presents its own stuff.

5. With respect to rulemakings on smoking legislation, there would be the Phillip Morris website and anti-tobacco organizations' websites, and the government's position. As a citizen, I want one place where I can see each of these groups and learn from them all.

7: I would say "No." The process of getting people to participate in the comment through our web forms is not just about "I don't want the government touching it," it's "I don't want the government touching it, because those web forms are one way our lists grow." They are connected back to our database. It's a cycle. We engage our list, they are our recruiters who tell others about our stuff, who then go to our web form, submit their comment to the agency, and through that process they join our list, and our organization grows. That gets directly to the heart of every organizations' intimate interests.

9: Who's the gatekeeper for who gets on that page? Can anyone get on?

8: Blogger dot com. Anyone can go to blogger.com and it allows you to create a weblog, where you start a discussion, frame it any way you want, and anyone can come and add to thread. I'm not saying this model becomes a template for that, but suppose there was something that allows anyone to create that guided interface.

2: If give up standard, if you give up the code, you are basically doing that anyway. With the FPC's Do Not Call list, that is basically what we did. We let anybody come. 99% of the people that sent in, of the 20,000 people that wrote in through our website, were in favor of it, and 3 or 4 telemarketers wrote in using our form as well. We didn't care that those 3-4 people did that, because we got another 20,000 people to comment through our page.

7: It already exists, but not connected to the regulatory process - Petitiononline.com - where anyone can go and create their own online petition. I've seen some of these get up to a couple hundred or a little over a thousand, but you have to connect a web form into list, otherwise you nothing is going to happen to it, there will be no traffic passing through. The list holders are the interest groups and citizen associations. We connect our list through the web form and it works for us. Would it be useful to have the opportunity to set up your own page? Maybe, but in truth, I'd rather just have it all go

through my page with my branding and connects directly with my database. I don't have to figure it out or think hard about it. I just have to press a button and it's done.

5: What I'm asking for is pointed it backward. If I have a list of relevant people to get info from I would know where to go.

2: That's what I see as the advantage of doing the public comments. That's where you get an advantage from filing early that you don't have today in most cases, because the comments aren't put up online. That does that for you automatically. But I don't see the advantage of creating a side portal. I think agencies would be reluctant to seeing that.

1a: How do you file early, when you are talking about 30 day comment periods that are extremely scientific? You may file early, but you will not have substantive comments that way. The pressure on us would then be to just get something up. The comment periods are ridiculously short.