

eRulemaking and Local Governments in Nebraska: Initial Results of May 2004 On-Site Discussions

Small Communities Outreach Project
for Environmental Issues (SCOPE):
NASPAA through a Cooperative Agreement with
U.S. EPA Office of Policy Economics and Innovation

Christine M. Reed, Principal Investigator in Nebraska
School of Public Administration, University of Nebraska at Omaha

Purpose of SCOPE

- Engage local government elected officials and administrators more effectively in regulations development.
- Bridge the gap between federal regulators and local jurisdictions by enabling participants to better understand the rule-making process.

SCOPE Outreach Network

- NASPAA member schools and their Public Administration faculty
- PA faculty networks with local governments (outreach mission)
- Local elected officials, city managers, municipal and county clerks
- Local Advisory Board (League of Nebraska Municipalities, Nebraska Association of County Officials, Nebraska Municipal Clerks Association)

US EPA Office of Policy, Economics and Innovation

- Provides NASPAA with scientific and technical background for rules in the early stages of development.
- NASPAA staff summarize and simplify background, issues, alternatives open for discussion with small local jurisdictions.
- PIs hold informal discussions with local officials and administrators about specific issues and alternatives identified by EPA.
- Local officials and administrators submit their feedback to EPA.

Previous SCOPE Projects

- Since 1998 team members have met with >350 small community elected officials and staff in 20 states.
- Discussions addressed clean air, safe drinking water rules, and lead bridges and structures rules.
- Local concerns: cost of compliance and availability/expertise of staff.

Small Business Regulatory Enforcement Fairness Act

- 1996 law designed to include small business and small government in federal rule-making at the pre-notice stage.
- SCOPe began in 1998 as voluntary approach by EPA to extend the “spirit” of SBREFA early consultations with small communities.
- 2002 Executive Order 13272: “Proper Consideration of Small Entities in Agency Rulemaking” promotes compliance with early consultation requirements of SBREFA.

Early Consultation

- SCOPe discussions typically held prior to NPRM.
- SCOPe discussions expose local officials and administrators to the federal rule-making process.
- SCOPe discussions help to overcome constraints to participation in federal rule-making.

Institutional Constraints on Local Participation

- Small size affects staff and financial resources available to monitor and participate in federal rule-making.
- Small size affects sense of efficacy – small local jurisdictions rely heavily on member associations for “alerts” about new rules.
- Small size affects understanding about the scientific basis for federal rules (e.g. in small communities the groundwater operator might be the school custodian.)

The Consequences of Institutional Constraints

- Small local jurisdictions tend to spend more time seeking expert advice on interpretation and compliance with existing rules than on monitoring rules in development stages.
- If sent an “alert” by a membership association are more likely to contact congressional delegation than send comments to agency rule-writers.
- Sense of alienation from federal agencies is palpable – in Nebraska fiscal crisis, drought add to this feeling: Washington is insulated.

Bush Administration's eRulemaking Initiative

- 2004 SCOPe discussions held in Nebraska during May at 16 local sites across state.
- Local Advisory Board identified participants from a diversity of geographical region, size and form of government.
- Purpose of discussions: is there an urban-rural digital divide? Will it widen the gap between small local jurisdictions and federal agencies that EPA is trying to bridge?

16 Discussion Sites

- Six 1st Class Cities (>5,000 pop)
 - Three 2nd Class Cities (>800 pop)
 - One Village (<800 pop)
 - Six Counties (<50,000 pop)
-
- Six sites in north east Nebraska
 - Two sites in north central Nebraska
 - Three sites in north west Nebraska
 - Four sites in central Nebraska
 - One site in south central Nebraska

Discussion Participants

- Five City Administrators
- Five Municipal Clerks
- Six County Clerks

- Eight Mayor-Council form
- One Council-Manager form
- One Village Board of Trustees form
- Six County Commission form

What is the IT Capacity?

- All 16 sites use high speed internet: fiber optic cable, DSL or wireless. Six sites have staff person dedicated to supporting IT.
- All 16 sites have web sites that vary in their sophistication: from basic information about city or county; to names of local elected and appointed officials and contact information; to meeting agendas and minutes; to web-based transactions.
- All 93 counties in Nebraska use separate internet service provided by Secretary of State for specific purposes (UCC searches) and password protected.

Reactions to eRulemaking

- After viewing a demonstration, virtually all participants said use of “regulations.gov” would overwhelm them because of time and expertise needed to monitor and understand scientific and technical aspects of NPRM.
- All participants agreed on need for some “neutral” entity to highlight salient issues, summarize major alternatives/questions, and to help put issues in context.
- Virtually all participants believe rule-making system is biased against small entities.

Conclusions/ Implications

- Urban-rural digital divide less of a barrier than small organization size: the internet is *NOT* likely to “level the playing field” .
- Early consultation with small entities may be more important now because eRulemaking likely to increase organized participation.
- Web-based focus group discussions at the pre-notice stage are one way to extend the eRulemaking Initiative to encompass the letter and spirit of SBREFA and EO 13272.