

Give the People What They Want: Research Notes From the Hunt for Better Electronic Rulemaking

Stuart W. Shulman
University of Pittsburgh
121 University Place, Suite 600
Pittsburgh, PA 15260
+1-412-624-3776
shulman@pitt.edu

Mack C. Shelley
Iowa State University
E005 Lagomarcino Hall
Ames, IA 50011
+1-515-294-7009
mshelley@iastate.edu

ABSTRACT

This research note highlights salient findings from a web survey conducted during 2004 as part of a multi-year effort to better understand the views of diverse stakeholders in the development of a government-wide electronic rulemaking system. We report both quantitative and qualitative results that indicate a rough consensus about the desired scope and nature of electronic rulemaking tools and systems, as well as some of attitudinal differences between those who completed the entire web survey and those who did not.

Categories and Subject Descriptors

K.3 COMPUTERS AND EDUCATION

General Terms

Human factors, design, management

Keywords

Regulations, rule writers, survey results

1. INTRODUCTION

As part of an exploratory study, the eRulemaking Research Group convened a series of six workshop sessions at The George Washington University, in Washington, DC, June 2-4, 2004. In conjunction with the workshop, a Web survey was launched in early June, 2004. This instrument will be deployed periodically over the life of the project, allowing for structured longitudinal studies of attitudes about electronic rulemaking as well as open-ended feedback to guide both researchers and developers of electronic rulemaking applications.

A total of 390 potential respondents visited the Web survey introduction page between June 1 and October 7, 2004, of which 130 declined to proceed and one entered no data. Ninety-four respondents completed at least one question and 165 completed the entire survey. Of the 259 respondents who completed all or part of the survey, 107 answered at least one of the open-ended questions. This research note presents salient findings from both the quantitative and qualitative analyses of the Web survey. It suggests that a rough consensus exists about the path electronic rulemaking research and practice should take over the years to come.

2. QUANTITATIVE ANALYSIS

There is minimal to no disagreement with the propositions that: a future e-rulemaking system will require more interactive features, priorities must be set among desired features, background and training focused on the rulemaking process itself are needed for

successful widespread implementation, cross-agency capabilities are needed, and there is a need to be able to access previous rulemaking dockets. The only one of these items that shows any hint of disagreement is the proposed additional training. In addition, the results suggest substantial concern with the possibility that identifying information could be made public, and overwhelming agreement that such information should be removed for responses to sensitive issues. Of course, opinions will differ regarding what constitutes a sensitive issue.

Additional analyses were conducted to ascertain whether any relationship existed between participants who completed the Web survey experience (225, or 57.7% of all online participants) and hence are assumed to have greater interest in the outcomes of e-rulemaking, and the remaining participants (165, or 42.3%) who failed to complete the online survey experience and hence are assumed to have less interest in the outcomes of e-rulemaking.

Complete/incomplete participation is related significantly to the following questions: 1) Have you ever submitted a formal comment to a federal agency during the public comment period of a regulatory rulemaking process? 2) How many times have you submitted formal comments during the official comment period? 3) Have you ever submitted a formal comment to a federal agency either before or after the official comment period? 4) How extensive do your comments tend to be? 5) If a federal-wide docket system were to be constructed, what types of searches should users be able to conduct? The strongest effect size is .317, for the docket searches question.

Those who completed the online survey are significantly more likely to have submitted a formal comment, a larger number of formal comments during the official comment period, and a formal comment either before or after the official comment period. In addition, online survey completers are significantly more likely than non-completers to submit more extensive comments and to prefer searches conducted using keyword by comment text, but less likely to prefer to conduct Boolean searches or to have no opinion about search methods.

3. QUALITATIVE ANALYSIS

3.1 Sorting & Indexing

Many respondents called for better sorting and indexing in future electronic rulemaking systems. Typically people are looking for the ability to sort by commenter, topic, organization, references, governing authority, or opinion. Several asked for auto-sorting features that would "identify form letters and tease out unique comments," or else separate "one-page nonsubstantive comments from those that are more substantive." One person called this a

“tool that will screen out astro-turf comments” and another talked of identifying “carbon copies” that are essentially the same. Yet another called for a “filter to screen out inaccurate cost-benefit analyses.” A number of respondents noted the commenters might be encouraged and enabled by the interface to apply a system of “self-assigned metatags” to ease the sorting of large-volume public comment datasets. All told, respondents seemed to agree that improved sorting and indexing “will be mechanisms to control what may be an overload of responses.”

3.2 Search

A number of commenters focused on better search techniques as a solution to problems with information overload. One person called for [a]dvanced textual searching of the sort available in Westlaw—same paragraph, same sentence, within X words, and nested combinations of these and others that enable very focused searches.” Others called for search by phrase, idea, concept, or similar comments. Still others asked to be able to search “specific parts of a proposal and proposed regulatory text.” One clearly frustrated respondent noted: “I have no clue what Boolean means.” One search skeptic noted that “[b]rowsing a docket index is essential,” and continued: “A commenter will often have a mistaken belief that they have retrieved all the necessary documents.”

3.3 Navigation & Integration

Many of the comments linked the desire for improved sorting, indexing, and search to an overall desire for enhanced navigation in the electronic rulemaking environment. One person noted it is “too difficult to move around in the docket.” Others spoke to the need simply to devise systems that “run faster” and provide easier and “more direct navigation to the substance of the proposed rule,” with “rapid and intuitive” navigation. Several respondents discussed enhancements allowing third parties to build their own navigation tools, such as an RSS (XML) feed. Others listed a number of database integration tasks that would link electronic rulemaking systems to the *Federal Register*, semiannual regulatory agendas, regulatory impact analyses, commenters’ home pages, lobbyists’ filing reports, case information in U.S. District Courts, and related bills, legislation, hearings via Thomas, or cross-jurisdictional efforts by other agencies.

3.4 Alerts and Public Awareness

There was widespread agreement that alerts and other tools for increasing public awareness and knowledge of rulemaking could be highly beneficial. One respondent linked the use of self-delineated alerts to achieving the full potential of enhanced sorting, indexing, searching, navigation, and integration. Another described “[v]alue added features” akin to e-commerce sites that offer prominent links to “what’s new” or “what’s popular,” with personalization options at every level. The personal “My eRulemaking” vision is pro-active, so busy participants avoid wasting time “reading information that doesn’t match your interests.”

Public awareness also was thought to benefit from plain language translations of regulations and scientific studies underpinning them, as well as a comprehensible time-line. “The agency should provide a user-friendly, non-technical explanation of the purpose and functioning of the docket/commenting system,” noted one person. Another called for agency-written “tutorials” on the process of rulemaking, and stated that “explanatory web sites like

the organic foods and roadless rulemaking sites should be standard.”

Agency replies to comments and “some notice of the final disposition of the issue” were other ways in which alerts were seen as enhancing public awareness. Alerts should target all interested parties as the rulemaking passes through critical stages, especially formative early deliberations in which the scope and nature of the rulemaking agenda are constructed. One respondent noted: “The rulemaking process is far from transparent and the agencies are not accountable. Rulemaking success should be measured in terms of compliance with democratic norms. Interest groups and powerful lobbies ... are invited to regneg [negotiated rulemaking] sessions at the exclusion of the public. The public is not informed on the process and therefore not able to participate effectively. It is also clear that there is little substantive change from the proposed rule to the final rule. This suggests to me a fait accompli process where ... the real decision is made before the public is really actively involved.”

3.5 Human-Computer Interface

Many respondents could imagine improvements to the human-computer interface resulting from the careful integration of tools and databases useful in the regulatory process. One poignantly called for a “different, more intuitive way of visualizing the process.” Another envisioned an electronic rulemaking system “configured to ... reject dumb rule proposals.” “Rule compliance wizards would also be helpful,” if they allowed “regulated interests to see how the rule would impact them.” A few respondents took time to note their hopes for future systems, and the process by which they are designed. One stated: “I would like to be able to teach other intelligent, concerned citizens how to use the system easily, without expecting any technical expertise or great familiarity with the Internet on their part ... I would like regular citizens, not just agency staff, legislators, and lobbyists/activist organizations, to be invited to participate in site development and usability testing.”

4. CONCLUSION

In this research note, we report tentative findings about current and future users of electronic rulemaking systems, how the systems can be made most relevant to users’ needs, and how best to interface that system with changing societal issues and demands. Whether expanded e-rulemaking is better able to enhance democratic governance depends critically on how well federal government and other public and private sector entities respond to rapidly changing issues, events, and opinions. The results presented here suggest much work remains to be done to design an online commenting system that is sufficiently user-friendly, powerful, flexible, and scalable. Whether it will allow government rule writers to handle anything the public can throw at it, and visa versa, remains the issue of the moment.

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