Crafting federal regulations imposes significant information demands on government agencies. Agencies such as the U.S. Department of Agriculture, Environmental Protection Agency, Federal Aviation Administration, and Nuclear Regulatory Commission collectively promulgate more than 3,000 new regulations each year.

Before adopting a new regulation, agencies are required to publish a notice of proposed rulemaking in the Federal Register and allow an opportunity for the public to comment on the proposed rule (Kerwin 1999). They also need to complete scientific, engineering, and economic analyses, as well as sort through and respond to the public comments they receive. It is not uncommon for the federal rulemaking process to require three or more years before an agency issues a new regulation (Johnson 1998). The demands of analysis and information processing can strain limited agency staffs, as well as limit the public’s capacity to review and comment upon major regulations as they are developed.

Electronic rulemaking, or e-rulemaking, offers the potential to expand and enhance the public’s involvement in the rulemaking process as well as make the rulemaking process more transparent and manageable for federal agencies (Johnson 1998). E-rulemaking harnesses the power of advanced digital technologies and represents an emerging approach to rulemaking. In recent years many agencies have constructed websites containing agency documents related to the rulemaking, allowed citizens to submit comments electronically, and offered systems for interactive deliberation (such as chat rooms and listserves) over pending rulemakings. Prominent examples include the Nuclear Regulatory Commission’s RuleNet project, which relied on Internet technology in all facets of the agency’s rulemaking process (Ferenz & Rule 1999); the Bureau of Land Management’s use of scanning and network systems to process more than 30,000 public comments on a proposed rangelands rule (Kerwin 1999); and the Federal Aviation Administration’s on-line rulemaking for small-scale rockets (FAA 2000). The General Accounting Office has optimistically predicted that the use of information technology in rulemaking will both improve the transparency of the regulatory process and reduce the burden of rulemaking to agencies (GAO 2000).

Public officials appear to be embracing e-rulemaking. Electronic government is one of five elements in President George W. Bush’s Management and Performance Plan (OMB 2001). In October, the Office of Management and Budget (OMB) released an e-government plan that included, among 23 initiatives, a plan to increase e-rulemaking by federal agencies (OMB 2001a). In addition, OMB is incorporating e-rulemaking into its own regulatory review process,
committing funds to create a computerized tracking system which will include the capacity for members of the public to submit comments on regulations electronically (OMB 2001b). Last July, the Committee on Government Affairs of the U.S. Senate held hearings on S. 803, the E-Government Act of 2001. This legislation calls for numerous federal initiatives to promote the use of information technology by federal agencies, including on-line publication of agency adjudicatory and rulemaking proceedings (Senate Committee on Government Affairs, 2001).

In order to ensure that the growing interest in e-rulemaking leads to effective and meaningful innovations in the application of information technology, any new computer technologies will need to be appropriately integrated into the institutional design of the federal regulatory process. Furthermore, the development of new applications and technologies will need to take into account the legal and political dimensions of the rulemaking process. In addition, the existing structure of the rulemaking process may itself potentially need to be modified to take full advantage of new e-rulemaking technologies. Expanded reliance on information technology in the rulemaking process also raises important issues of privacy and security.

To develop and advance a research agenda on the technological and institutional issues related to e-rulemaking, the Kennedy School of Government will host a research workshop at Harvard University on January 21-22, 2003, that will bring together academic experts from computer sciences, law, and public management, along with key public officials and representatives from the IT industry and nongovernmental organizations. The purpose of the workshop will be not only to learn from recent experiences with rulemaking and information technology, but to launch a forward-looking research agenda needed to accomplish improved e-rulemaking efforts in the future.

The workshop will begin with a discussion of how information technology is currently being incorporated into existing rulemaking processes. An opening session will explore best practices in the deployment of information technology in rulemaking and how existing technology can support the needs of agencies and facilitate public involvement. This session will provide a foundation upon which subsequent discussion will build.

Participants will be asked to look five to ten years beyond the current best practices of e-rulemaking, exploring possibilities for reengineering technologies or rulemaking processes (or both) in a new generation of e-rulemaking. How can the quality and legitimacy of rulemaking be improved? What problems will likely remain, and does information technology create new problems? How might the rulemaking process be transformed to maximize the benefits from innovations in information technology?

Much of the workshop will be devoted to breakout sessions in which participants will be asked to identify research issues related to two overarching needs: public participation, and agency management of the rulemaking process. Agencies can use information technology to provide those who will be affected by a new regulation with better information about how a
proposed rule will affect their businesses or communities. Agencies can also use new technologies to scan, analyze, and organize the hundreds of thousands of public comments they receive each year. How might technology need to adapt to meet these goals? What research strategies might lead to implementations in technology and rulemaking practice? A plenary will follow each breakout session to share and discuss the findings of each small group.

The ultimate goal of the workshop will be to identify ways to use and evaluate information technology to improve the responsiveness, efficiency, and manageability of the rulemaking process. By integrating the perspectives of various academic disciplines and the needs of a number of governmental agencies, the workshop will develop a research agenda that will shape the future of information technology and the management of the rulemaking process.
References


