

Withdrawal/Redaction Marker

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. list	[Personally Identifiable Information] [partial] (4 pages)	05/10/1994	b(6)

COLLECTION:

Clinton Presidential Records
Staff Secretary
Paul Richard
OA/Box Number: 3024

FOLDER TITLE:

Electronic Rulemaking [1]

2019-0846-S
rs3283

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
- P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
- P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]
- P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

RR. Document will be reviewed upon request.

Freedom of Information Act - [5 U.S.C. 552(b)]

- b(1) National security classified information [(b)(1) of the FOIA]
- b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
- b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
- b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
- b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
- b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
- b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

TASK FORCE ON USING INFORMATION TECHNOLOGY TO IMPROVE RULEMAKING

May 10, 1994 Meeting

1. David Lytel opened the meeting with a 5 minute presentation on the NII, followed by a demonstration of the Welcome to the White House program given by Jock Gill. Jock's presentation emphasized two points: the development of forms-based correspondence, and the connectivity of mosaic servers.
2. Peter Weiss led a 10 minute discussion on the legal aspects of using information technology.
3. Mark Schoenberg of OMB then described plans for electronic updating of the Unified Agenda of Regulatory Actions. His comments raised the issue of system compatibility, and whether or not the government should develop duplicate systems or move toward interoperable systems. Gill/Schoenberg agreed to have the Unified Agenda posted to the Internet.
4. Following the presentations, we held a general discussion for approximately one hour. Among the issues raised for further exploration were:
 - implementation of electronic comments would cause overwhelm the system with to many comments and not enough staff to read and respond to them; however, there was a suggestion that increased access to the regulatory process would decrease the chances for and costs of litigation;
 - development of compatibility and connectivity standards across agencies and industries -- there was some discussion about "imposing" a standard, but most felt that one should be allowed to emerge, as in the case of the bar code;
 - development of master system to refer to Federal Register documents to interface with the Archives and agency record-keeping.
5. Meeting participants were requested to identify 3 projects at each agency that might be candidates for the pilot demonstration. We identified three criteria that should govern selection:
 1. Support from agency infrastructure (staff, hardware, software)
 2. Appropriate scale
 3. Non-controversial subject matter
6. Next meeting is scheduled for the end of June.

Withdrawal/Redaction Sheet

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MEETING ON ELECTRONIC INFORMATION
TECHNOLOGY AND RULEMAKING

TUESDAY, MAY 10, 1994
EOB Room 450
10:00am

Ault, Tom

(b)(6)
Dept of HHS

Barrett, Larry
SEA

Berger, Michael
DVA

Carro, Richard
Treasury

Cohen, Dan
Dept of Commerce

Cook, Randall
Dept of Commerce

Cooley, Claudia
Dept of HHS

Kenneth Denton ***
DOD-Army

Diaz, Romy
DOE

Drake, Robert S.
DOD

Droitsch, Roland
Dept of Labor

Meeting in Room 450
Old Executive Office Bldg
10:00 am
May 10, 1994

From:

R. PAUL RICHARD
x62702

Dumaresq, Thomas

(b)(6)

SBA

Dutra, Edwin

FDA

Eisner, Neil

DOT

Francis, Walton

Dept of HHS

Jenson, Bill

Dept of Agriculture

Jones, Kevin

DOJ

Kelly, Dick

Dept of Agriculture

Kelly, Richard

Dept of Agriculture

Kelly, Thomas

EPA

Kroll, Steven

Treasury

Lew, Ginger

Dept. of Commerce

Lubbers, Jeff

ACUS

Miller, Tim ***

HHS-HCFA

Motise, Paul

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FDA/HHS

Murphy, John

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Dept of HUD

Neal Robert

[REDACTED]
SBA

Olmstead, William

[REDACTED]
NRC

Ferritt, Henry Y.

[REDACTED]
Villanova Law School

Pritzker, David

[REDACTED]
ACUS

Radloff, Gwyneth

[REDACTED]
DOT

Richards, John

[REDACTED]
EPA

Rogers, Kenneth

[REDACTED]
NRC

Roussel, Judith ***

[REDACTED]
SBA

Schatken, Steve

[REDACTED]
Dept of Educ.

Spotila, John

[REDACTED]
SBA

Taylor, Michael

[REDACTED]
FDA

Thompson, Jerry

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DOE

Thurm, Kevin

Dept of HHS

Troanovitch, Mary Ann

Dept of HHS

Vincent, William

DOI

Weaver, Jane

DOI

Zeutenhorst, Richard

DOL

*** Not added to Task Force List

E X E C U T I V E O F F I C E O F T H E P R E S I D E N T

03-May-1994 01:03pm

TO: (See Below)

FROM: JOHN RICHARDS 202-260-2253

SUBJECT: May 10 Meeting of the Task Force and Revised Roster

RFC-822-Headers:

Return-receipt-to: RICHARDS.JOHN@epamail.epa.gov

Registered-mail-reply-requested-by: RICHARDS.JOHN@epamail.epa.gov

MR-Received: by mta CARINA; Relayed; Tue, 03 May 1994 12:30:47 -0400

Alternate-recipient: prohibited

Disclose-recipients: prohibited

X-Envelope-to: paul.richard@eop.sprint.com, peter.weiss@eop.sprint.com

MIME-version: 1.0

Content-type: TEXT/PLAIN; CHARSET=US-ASCII

Content-transfer-encoding: 7BIT

Posting-date: Tue, 03 May 1994 12:21:00 -0400 (EDT)

A1-type: MAIL

Hop-count: 0

Distribution:

TO: 1=US@*RFC-822\perritt(a)uscis.vill.edu@3=internet@2=telemail@MRX@E
TO: 1=US@*RFC-822\dpritzker(a)acus.mhs.compuserve.com@3=internet@2=tel
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TO: 1=US@*RFC-822\jweaver(a)ios.doi.gov@3=internet@2=telemail@MRX@EOPM
TO: 1=US@*RFC-822\kcr(a)nrc.gov@3=internet@2=telemail@MRX@EOPMRX
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TO: richard
TO: weiss
TO: 1=US@*RFC-822\rcook(a)doc.gov@3=internet@2=telemail@MRX@EOPMRX
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CC: TOM KELLY

TO: Members of the Inter-Agency Task Force on the Electronic Enhancement of the Regulatory Process. Walt Francis asked me to lend a hand in getting out the revised membership list, and passing the word on our next meeting.

The next meeting of the Task Force will be Tuesday, May 10, 1994 at 10 a.m. in Room 450, Old Executive Office Building.

In addition to including the revised list of attendees in this message it is being faxed to all members. Any additional changes/additions/deletions should be sent to Walt Francis.

Thanks.

John

TASK FORCE ON ELECTRONIC INFORMATION
TECHNOLOGY AND RULEMAKING
May 3, 1994

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94 MAY 3 P4:40

EPA ELECTRONIC MAIL MESSAGE

Date: 03-May-1994 12:07pm EDT
From: JOHN RICHARDS
RICHARDS.JOHN
Dept: (OPPTS,OAA,OPMO) (E)
Tel No: 202-260-2253

TO: See Below

Subject: May 10 Meeting of the Task Force and revised roster

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Thanks.

John

Distribution:

TO: Remote Addressee (perritt@uscis.vill.edu@IN)
TO: Remote Addressee (dpritzker@acus.mhs.compuserve.com)
TO: Remote Addressee (drakeb@ssdpost.whs.osd.mil@IN)
TO: Remote Addressee (jweaver@ios.doi.gov@IN)
TO: Remote Addressee (kcr@nrc.gov@IN)

CC: TOM KELLY (KELLY.TOM)

Use the SH option to view the entire distribution list.

TASK FORCE ON ELECTRONIC INFORMATION
TECHNOLOGY AND RULEMAKING
May 3, 1994

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

94 MAY 5 P3:39

May 5, 1994

Jonathan P. Gill
Office of Media Affairs
The White House

John Podesta

Dear Jonathan:

The attached draft letter is being submitted to the Inter-Agency Task Force for the Electronic Enhancement of the Regulatory Process for consideration at the May 10, 1994 meeting.

On behalf of EPA, I am requesting that the Task Force endorse the letter, and forward it to Trudy Peterson over your signature as chairperson of the Task Force.

The adoption of the proposal contained in the letter will result in a wider application of advanced technology to the regulatory process, and play a major role in reducing the barriers that graphics and unique characters create in the implementation of the Task Force goals.

I have asked Walton Francis to place this item on the Agenda, and copies of this material have been distributed to members of Task Force.

Thank you for assisting EPA in bringing this Federal government-wide issue to the table.

Sincerely,

John A. Richards
John A. Richards,
EPA Representative
to the Task Force



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contains at least 50% recycled fiber

May 10, 1994

Chairperson, Administrative Committee of the Federal Register
c/o Director, Office of the Federal Register
National Archives and Records Administration
8th & Pennsylvania Ave. NW.
Washington, DC 20408

Dear Trudy Peterson:

Advances in electronic communications technology have stimulated a re-examination of the entire regulatory process. The Inter-Agency Task Force for the Electronic Enhancement of the Regulatory Process has brought the Federal Executive Agencies together to identify ways in which the process can take advantage of these technological advances.

The release of an electronic edition of the daily issue of the FEDERAL REGISTER is one more step in the acceptance of electronic files for legal citation.

Several members of our Task Force have identified the requirements of incorporation-by-reference, under 1 CFR part 51, as another area that requires review and updating to meet the challenges of electronic files. Currently, 1 CFR 51.7(b) excludes many scientific and technical publications on the assumption that Agency control taints their independence and role as cited material in an open rulemaking process.

The fact that published Agency material is often approved when printed by the Government Printing Office and submitted to the Director of the Office of the Federal Register for incorporation is an indication that paragraph (b) is not an absolute. To determine acceptance for incorporation-by-reference, the Agency must first print the material and then seek approval by the Director of the Office of the Federal Register.

Agencies plan public release of referenced material prior to the publication of the proposed rule and are forced by the structure of the process to insert full text into the daily issue and ultimately the Code of Federal Regulations because an incorporation-by-reference review and determination is not made by the Office of the Federal Register until just before the document is ready to publish as a final regulation. For most Agencies, this is far too late in the process to adjust a public release strategy in the event of a negative decision.

2

A second related category of information that encounters difficulty being incorporated-by-reference, and can be remedied by a change in 1 CFR 51.7, is State Plans required under statutes that become Federally enforceable when incorporated into Agency regulations. The ability to release these plans electronically and incorporate-by-reference would in no way jeopardize the regulatory process since these plans are submitted by State governments in compliance with existing Federal regulations. A uniform electronic release approach would facilitate full text public access, which is not the standard practice now. This revised full text file system would actually be of considerable benefit to the regulated community and the public in general.

We on the Task Force suggest that the availability of electronic files through a third party, with print on demand support, opens the door for Agencies to release their technical and scientific studies, reports, guidance and other materials, without losing their ability to incorporate-by-reference technical material needed in support of the regulatory process.

Release of full-text electronic files of State Plans requiring Federal review and approval should also qualify for incorporation-by-reference.

The wide dissemination of such electronic files would preclude any possibility of the Agency making changes without public review, and at the same time would create greater access to the information.

In the spirit of Streamlining and using advanced technology to enhance the Federal regulatory process this issue should be openly presented to the public for comment. Therefore, the Task Force is requesting that as the chairperson of the Administrative Committee of the Federal Register you prepare and issue a Notice of Proposed Rulemaking to amend § 51.7 as follows:

§ 51.7 What publications are eligible?

(a) * * *

(5) Scientific models, test methods, or laboratory procedures that have been initiated by an Agency as part of its regulatory responsibilities or State Plans submitted to an Agency in response to established regulatory requirements are exempt from the incorporation-by-reference restrictions under paragraph (b) of this section, if the material meets all other requirements under 1 CFR part 51 and is available electronically and in paper copy through a third party prior to its use in the rulemaking process.

* * * * *

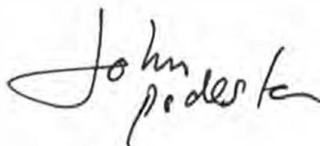
3

Adoption of this modification to part 51, after an opportunity for public comment will set the stage for Agencies to release test methods, and other scientific and technical materials, that are now creating a majority of the graphic problems being encountered by the Government Printing Office in developing a fully electronic daily issue of the FEDERAL REGISTER, and Code of Federal Regulations, and will provide the needed flexibility for Agencies to meet their regulatory requirements using the full potential of advanced technology.

We believe archival and filing policies are administrative decisions that do not require a change in part 51.

Thank you for your assistance and cooperation in this matter.

Sincerely,



~~Jonathan Giff,~~
Chairman.

EPA ELECTRONIC MAIL MESSAGE

Date: 05-May-1994 12:23pm EDT
From: JOHN RICHARDS
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Dept: (OPPTS,OAA,OPMO) (E)
Tel No: 202-260-2253

TO: remote Addressee

(jgill@nsf.gov@in)

Subject: Incorporation-By-Reference item for May 10

Jock-

This is a copy of what I am faxing to all Task Force members for the May 10, 1994 meeting. I have also attached a copy of the current text of 1 CFR 51.7 to the fax version for everyone's convenience.

Thanks.

John

**TASK FORCE ON ELECTRONIC INFORMATION
TECHNOLOGY AND RULEMAKING**

May 10, 1994

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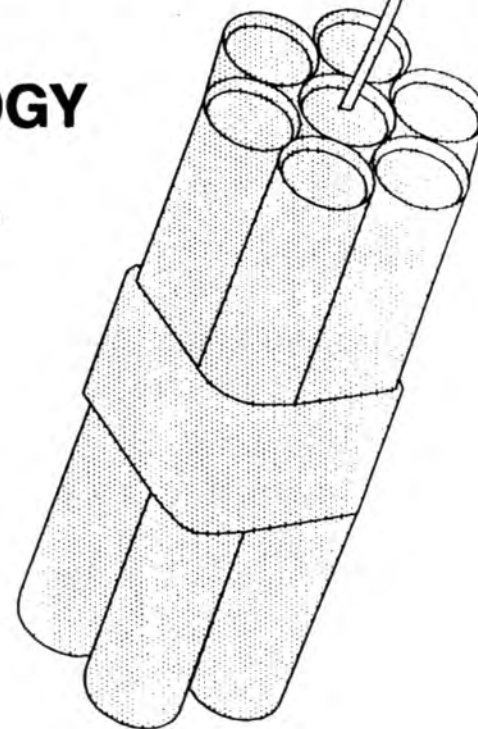
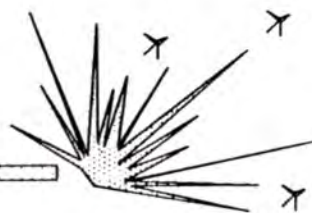
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APRIL 25, 1994 DRAFT

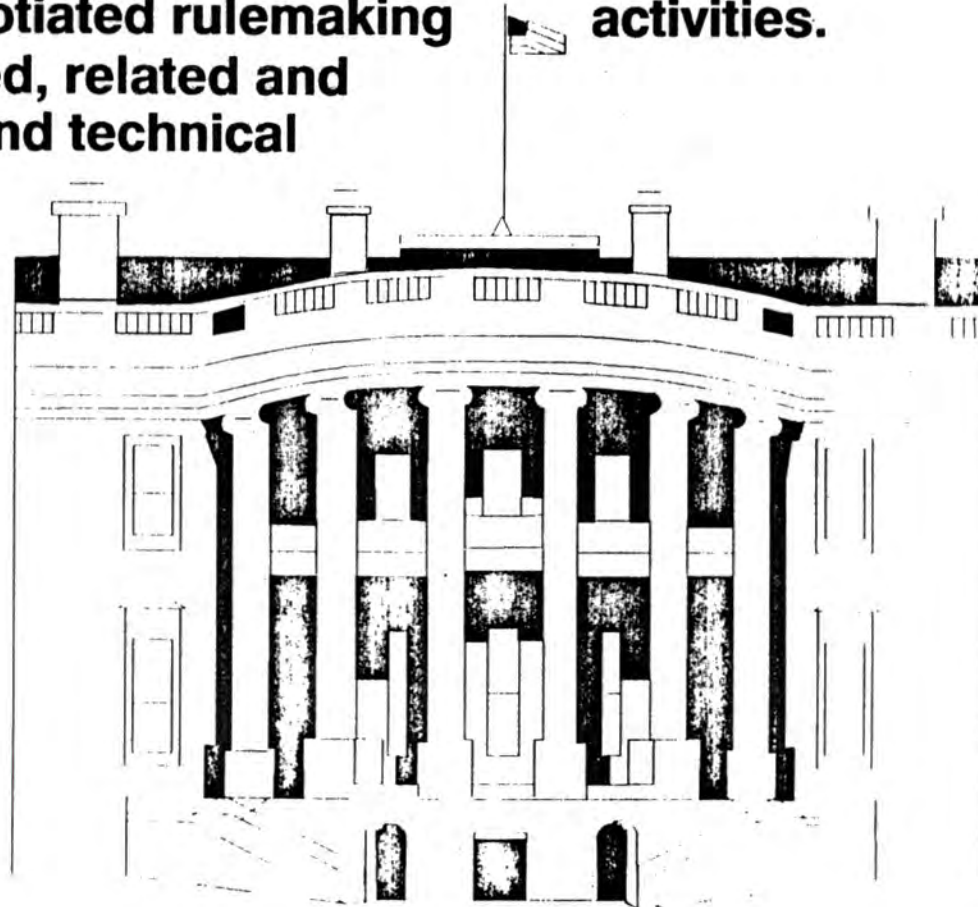
ENHANCING THE FEDERAL RULEMAKING PROCESS

**ADVANCED ELECTRONIC TECHNOLOGY
POTENTIAL TO OPEN THE FEDERAL
ADMINISTRATIVE LEGAL SYSTEM**



DIRECTIVE:

To expand access to the Federal regulatory process at all stages using advanced technology, and to enhance public participation in the rulemaking process. Open the notice and comment phase of proposed rules to electronic interactive exchange. Create an electronic structure for negotiated rulemaking activities. Provide access to referenced, related and support reports, scientific and technical methods and guidance, and accompanying public materials.





**EXPAND AGENCY USE OF ELECTRONICS
TO INCREASE OPEN ACCESS TO REGULATORY
INFORMATION AND RULEMAKING PROCESS**

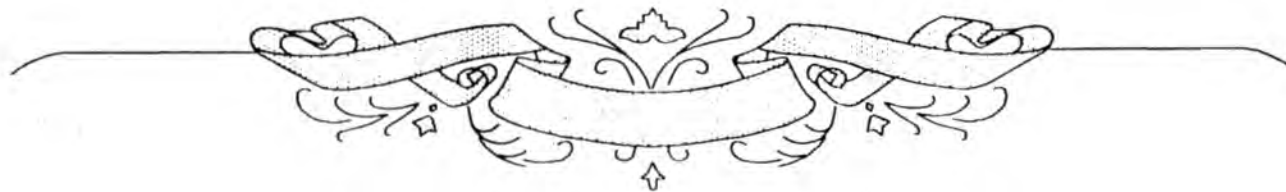
INTER-AGENCY TASK FORCE ON THE ELECTRONIC ENHANCEMENT OF THE REGULATORY PROCESS

- THE EXPANSION OF ADVANCED TECHNOLOGY INTO THE REGULATORY PROCESS IS INEVITABLE.**
- MANAGED INTEGRATION OF NEW TECHNIQUES AND TRADITIONAL PRACTICES IS NECESSARY TO MAINTAIN ORDER AND STRUCTURE IN THE REGULATORY PROCESS.**
- THIS PROPOSED PLAN OUTLINES A PROCESS FOR PHASED IMPLEMENTATION OF STANDARDIZED CONCEPTS TO ACHIEVE REALISTIC PROGRESS TOWARD THIS GOAL WITHIN EXISTING RESOURCE ALLOCATIONS.**

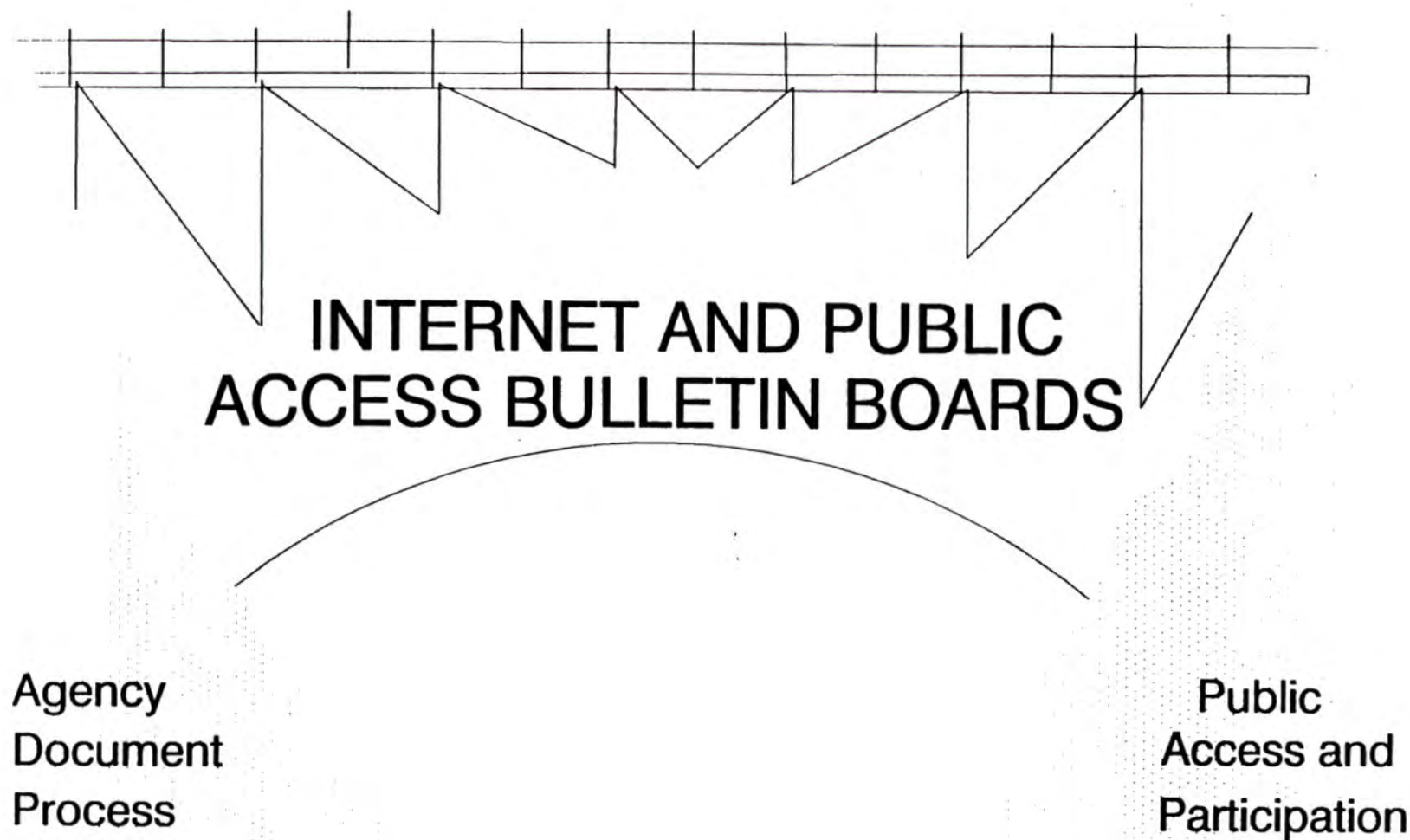
**John A. Richards
EPA Representative**



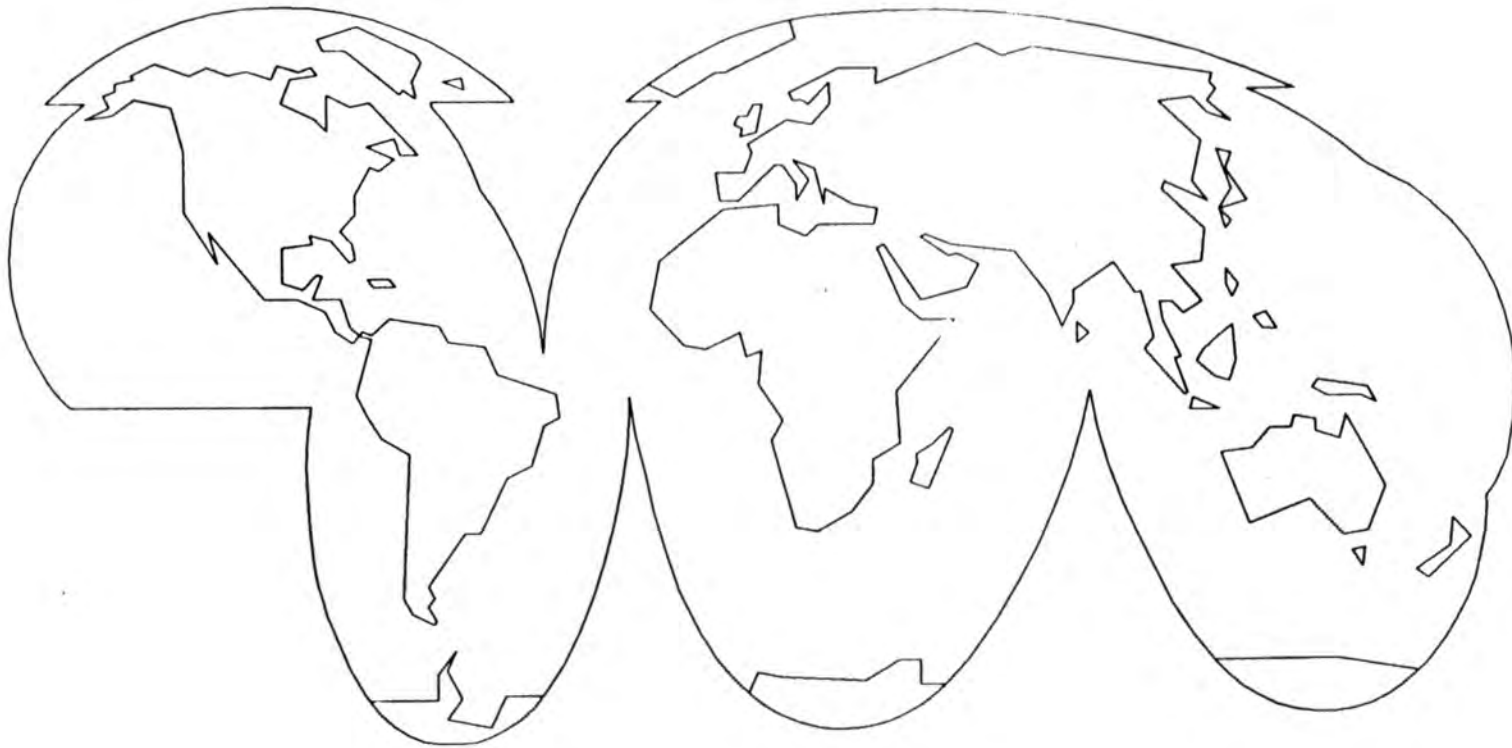
ADVANCED TECHNOLOGY OPTIONS



BRIDGING THE FEDERAL REGULATORY TECHNOLOGY GAP



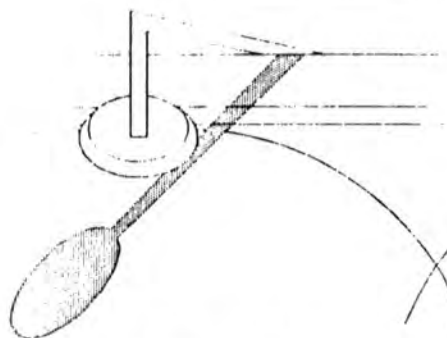
PUBLIC ACCESS TO EPA THROUGH INTERNET



**Creates Forum for Global Environmental Dialogue
and Electronic Access to the Regulatory Process**

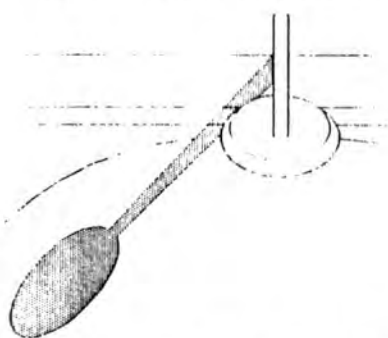
AGENCY INFORMATION RELEASE BULLETIN BOARD OPTIONS

Electronic Access with Print on Demand



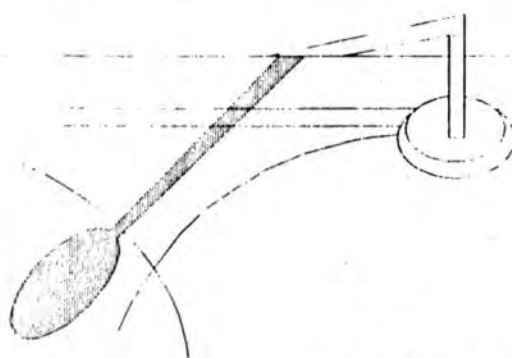
THE FEDERAL BULLETIN BOARD

**Supported
by GPO**



FedWorld BULLETIN BOARD

**Supported
by NTIS**



Agency WAIS Server

**Supported
by EPA
Programs**



PRIMARY ELECTRONIC FORMAT OPTIONS

ACCESS FORMAT

ASCII - Utilized to view material on line and permit access by Non-DOS based equipment.

FILE TRANSFER FORMATS

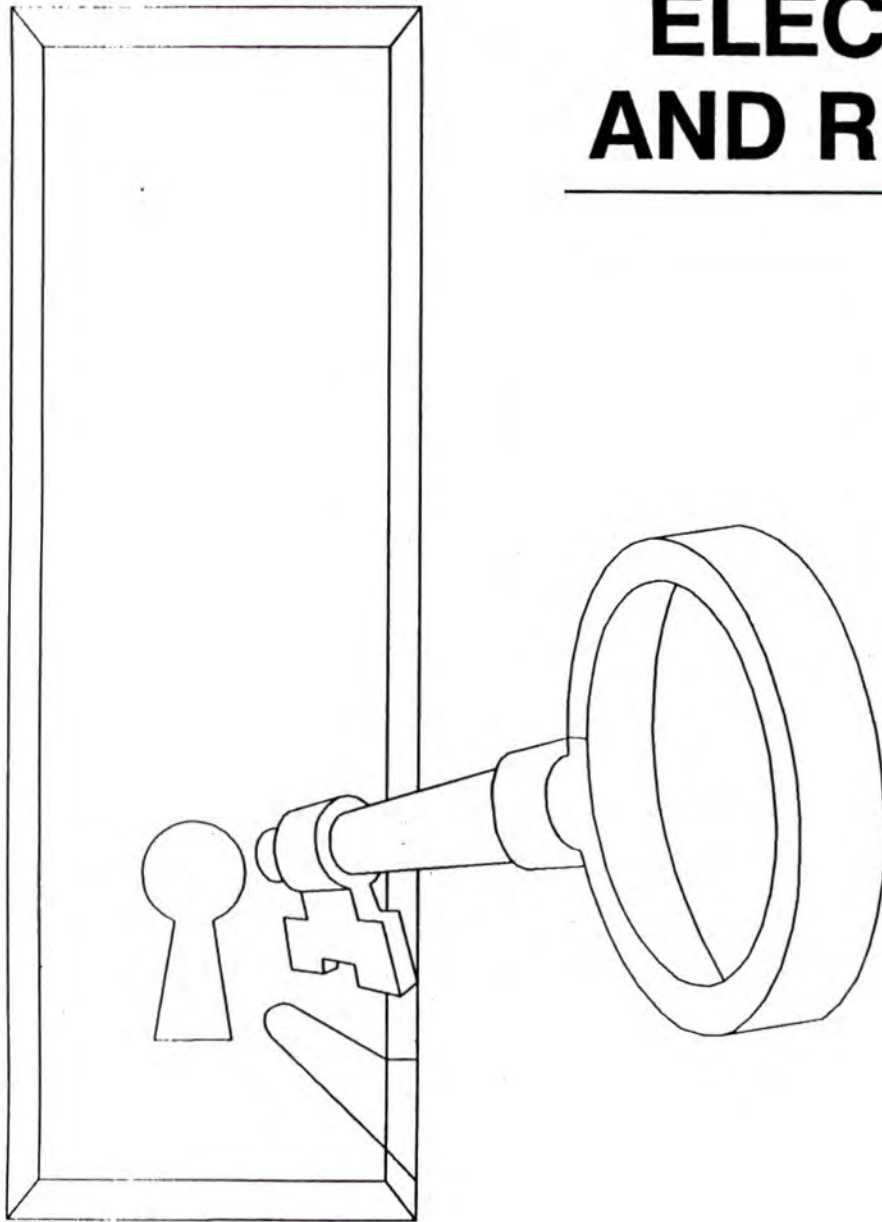
WP 5.1 - Wordprocessing software with table structuring using cells and graphics import capability using standard printers.

PostScript - Encapsulated postscript files create typeset pages in FR or CFR format.

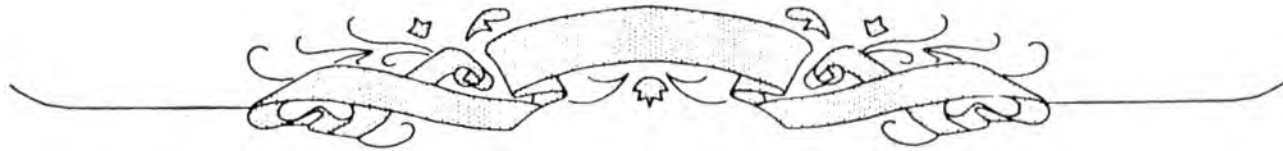
Dbase and Lotus - These file formats transfer data in the selected format for data manipulation.

PDF Files - (Portable Document Format) platform independent, view and print original format.

ELECTRONIC ACCESS AND RELEASE ELEMENTS

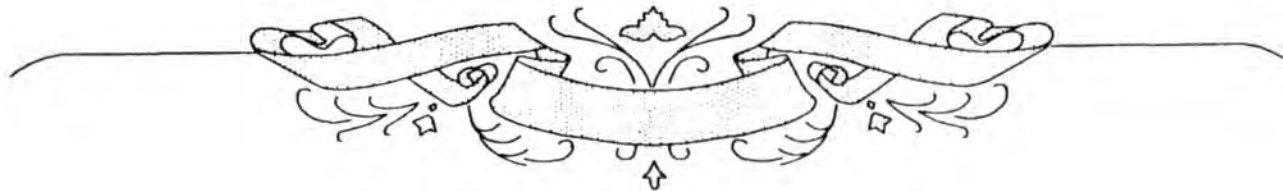


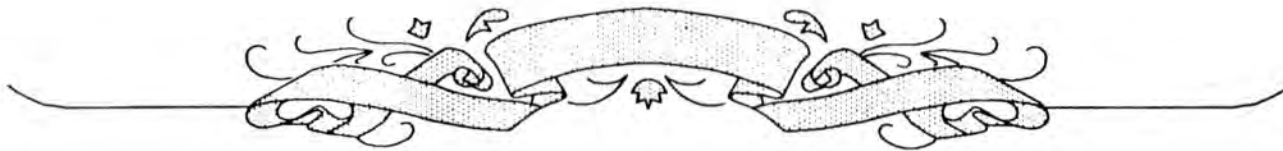
- **FR DOCUMENTS**
- **SUPPORT MATERIAL**
- **COMMENT EXCHANGE**
- **PUBLIC NEGOTIATED
RULEMAKING**



ELECTRONIC FR DOCUMENTS

ACCESS AND CONTENT ISSUES

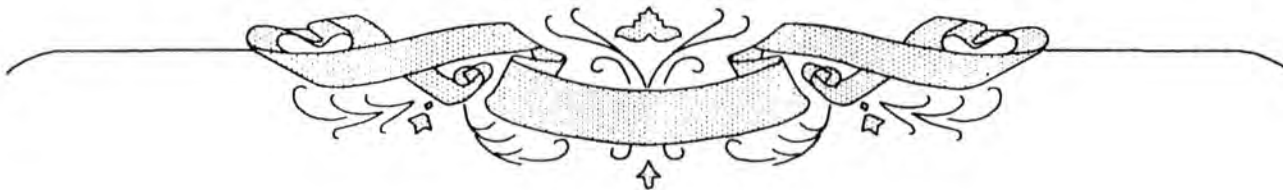




FEDERAL REGISTER

ELECTRONIC ACCESS TO FULL TEXT ON JUNE 8, 1994

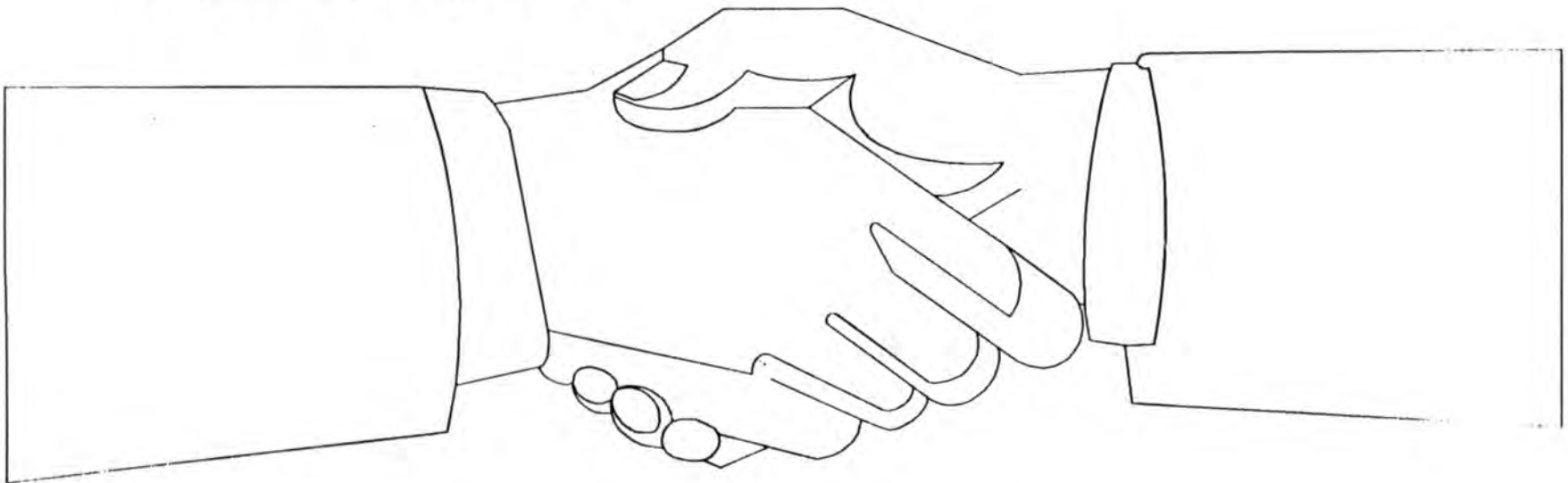
**"GOVERNMENT PRINTING OFFICE ELECTRONIC
INFORMATION ACCESS ENHANCEMENT ACT OF 1993"**



PARTNERSHIP

Agency document quality focus forms a natural partnership with the electronic FEDERAL REGISTER being released by the Government Printing Office.

The primary mission of the Agency should be clarity of regulatory requirements and direct communication of public policy intent.



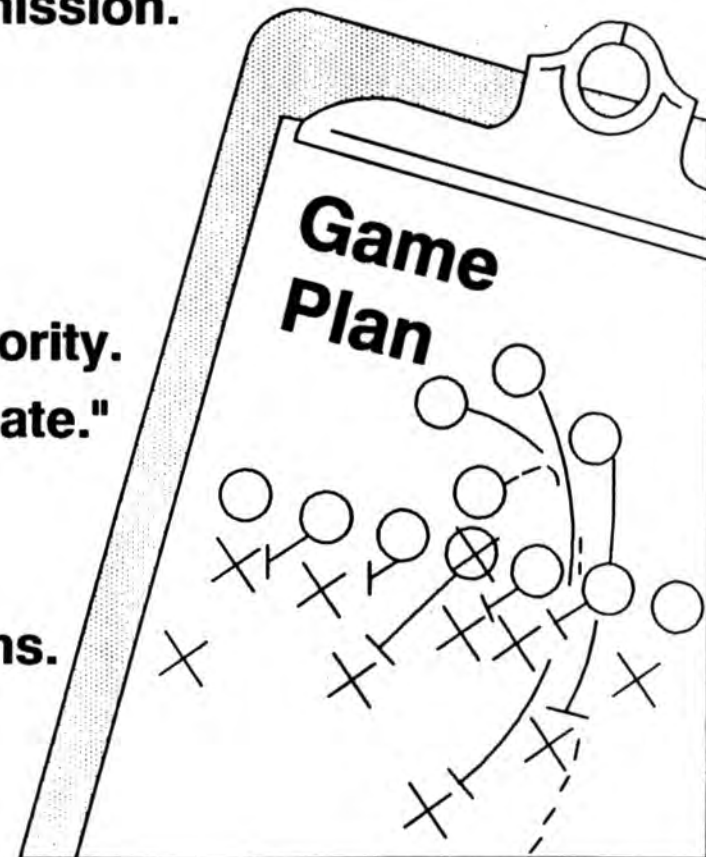
APPLICATION OF TQM TO THE DOCUMENT PROCESS

BASIC ELEMENTS

- 1. Establish control over the document process.**
- 2. Improve document quality and cost effectiveness.**
- 3. Require complete electronic file submission.**
- 4. Fix historical CFR problems.**

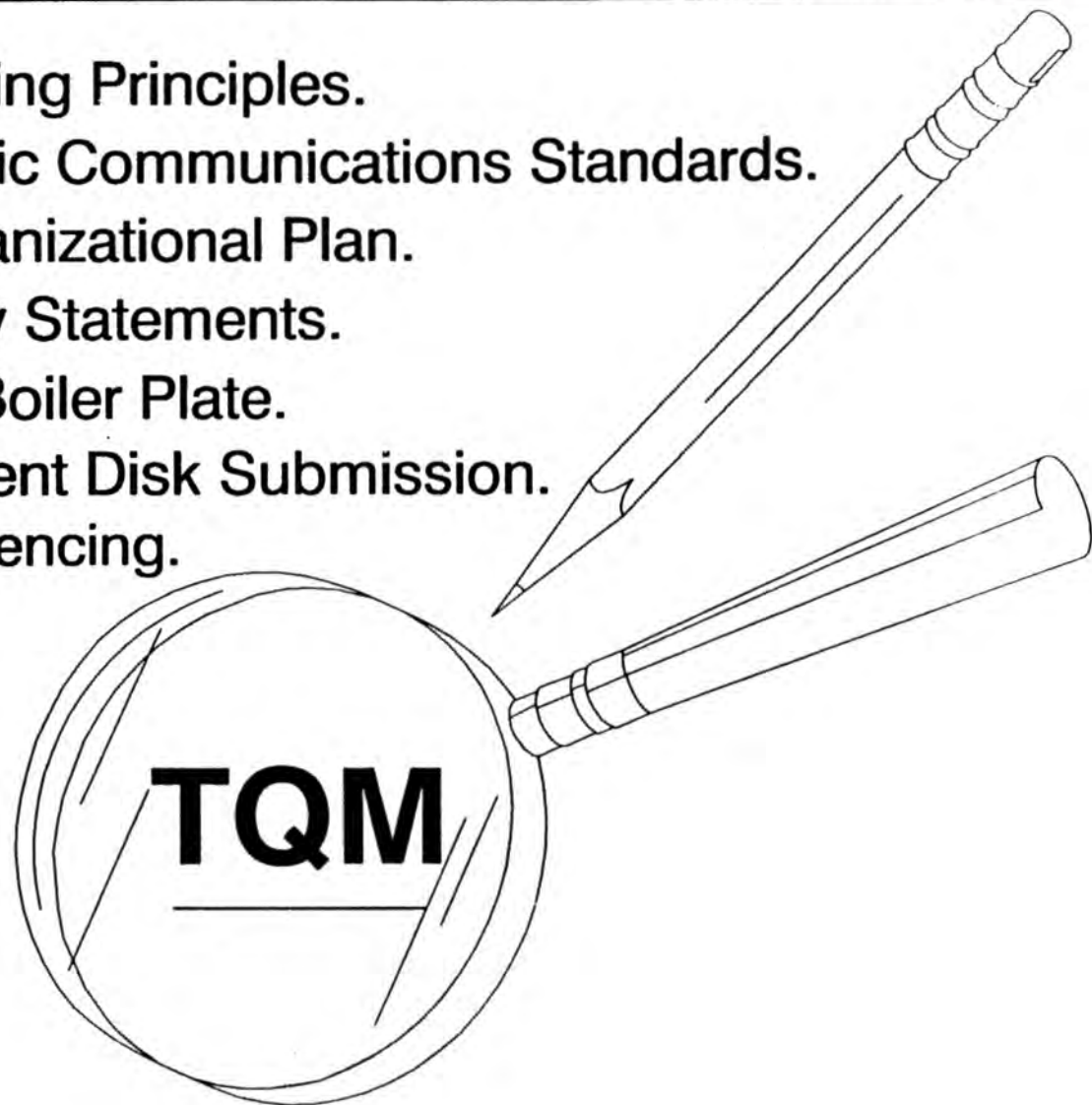
BASIC CONCEPTS

- 1. Make cost containment a program priority.**
- 2. Consolidate actions and cut "boiler plate."**
- 3. Focus preambles on decision.**
- 4. Maximize docket referencing.**
- 5. Remove full text forms and instructions.**
- 6. Identify and remove CFR structural flaws and redundancies.**

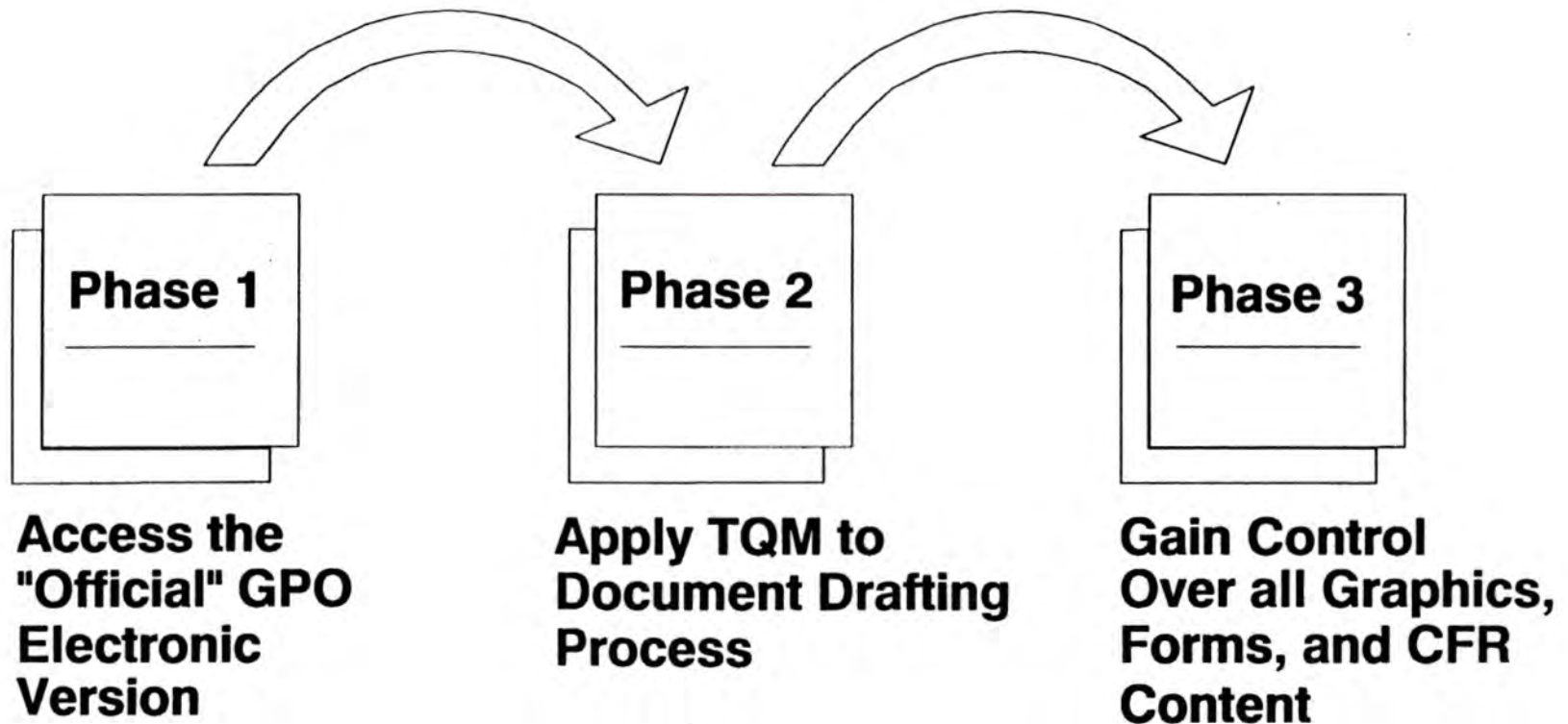


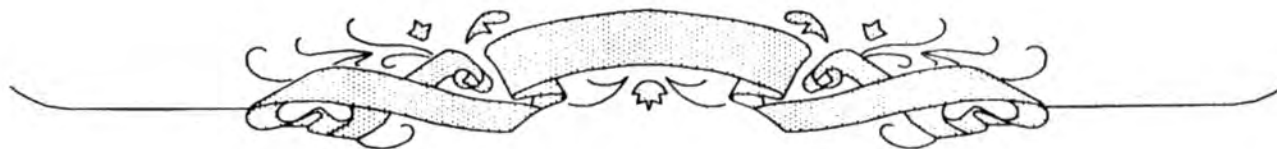
INDIVIDUAL DOCUMENT QUALITY IMPROVEMENT

1. Adopt Specific Drafting Principles.
2. Establish Clear Public Communications Standards.
3. Develop a CFR Organizational Plan.
4. Codify Critical Policy Statements.
5. Reduce Document Boiler Plate.
6. Enforce "All" Document Disk Submission.
7. Increase Cross-Referencing.



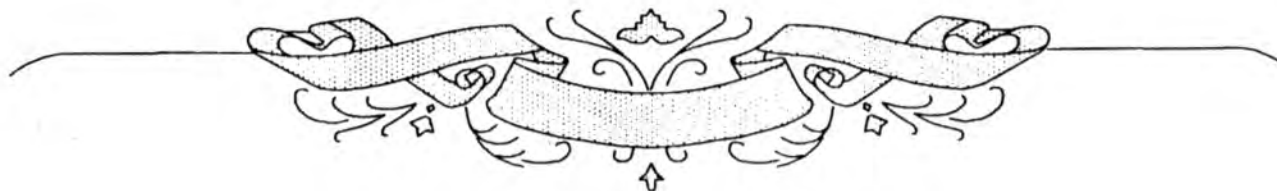
FEDERAL REGISTER DOCUMENT ACCESS AND CONTENT IMPROVEMENT IMPLEMENTATION PLAN



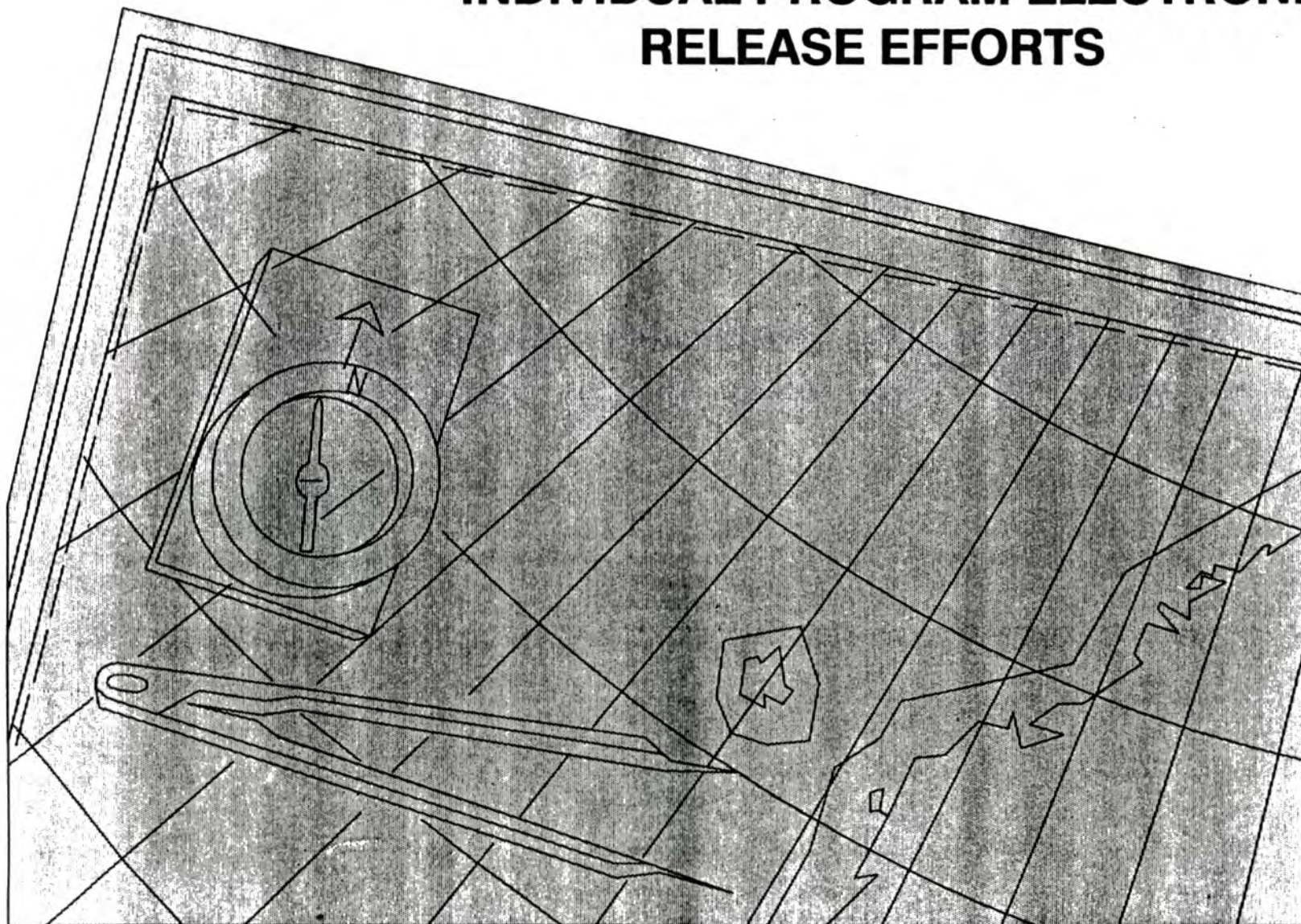


SUPPORT MATERIAL

AGENCY ELECTRONIC RELEASE PROGRAM

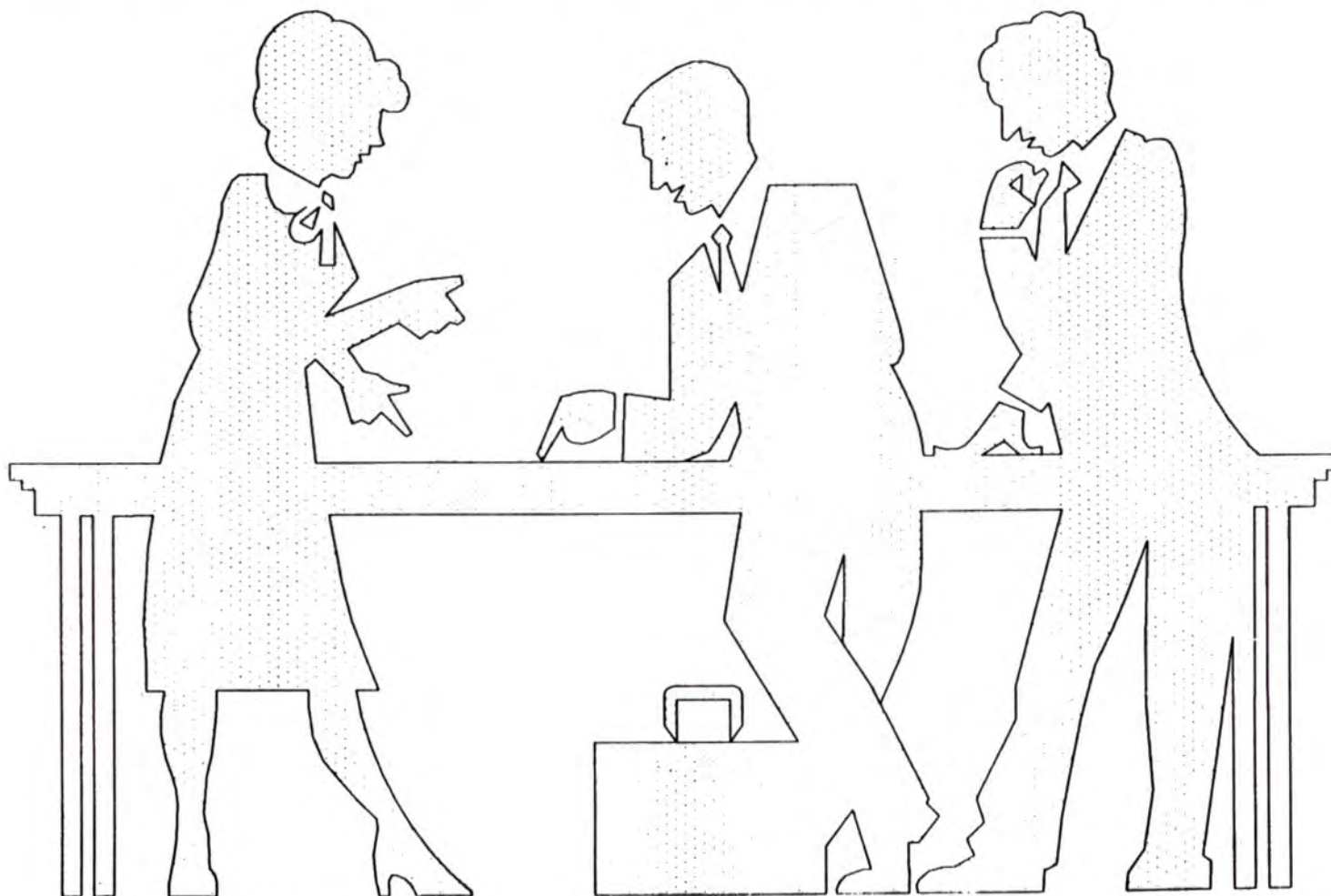


AGENCY-WIDE POLICY SUPPORTING COORDINATED INDIVIDUAL PROGRAM ELECTRONIC RELEASE EFFORTS



IMPLEMENTATION REQUIRES A TOTAL TEAM EFFORT

**IDENTIFICATION AND ASSIGNMENT OF FUNCTIONS
IS CRITICAL TO SUCCESS OF THE AGENCY-WIDE SYSTEM**



AGENCY PUBLIC INFORMATION ELECTRONIC RELEASE POLICY

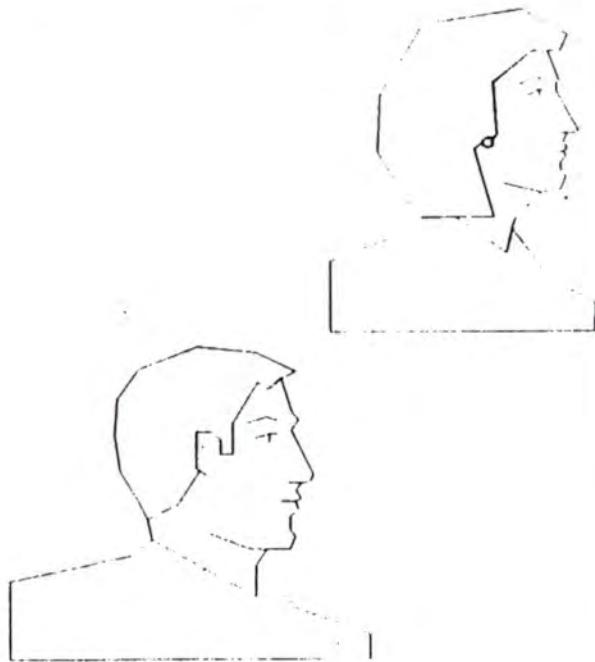
TECHNICAL AND SCIENTIFIC
REPORTS, GUIDANCE,
STUDIES AND GENERAL
PUBLICATIONS



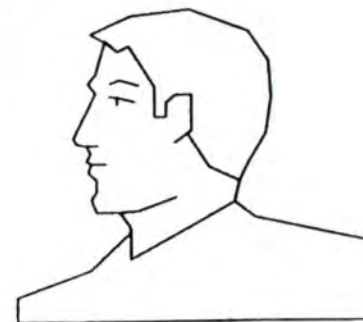
REGULATORY DOCKET
SUPPORT MATERIAL



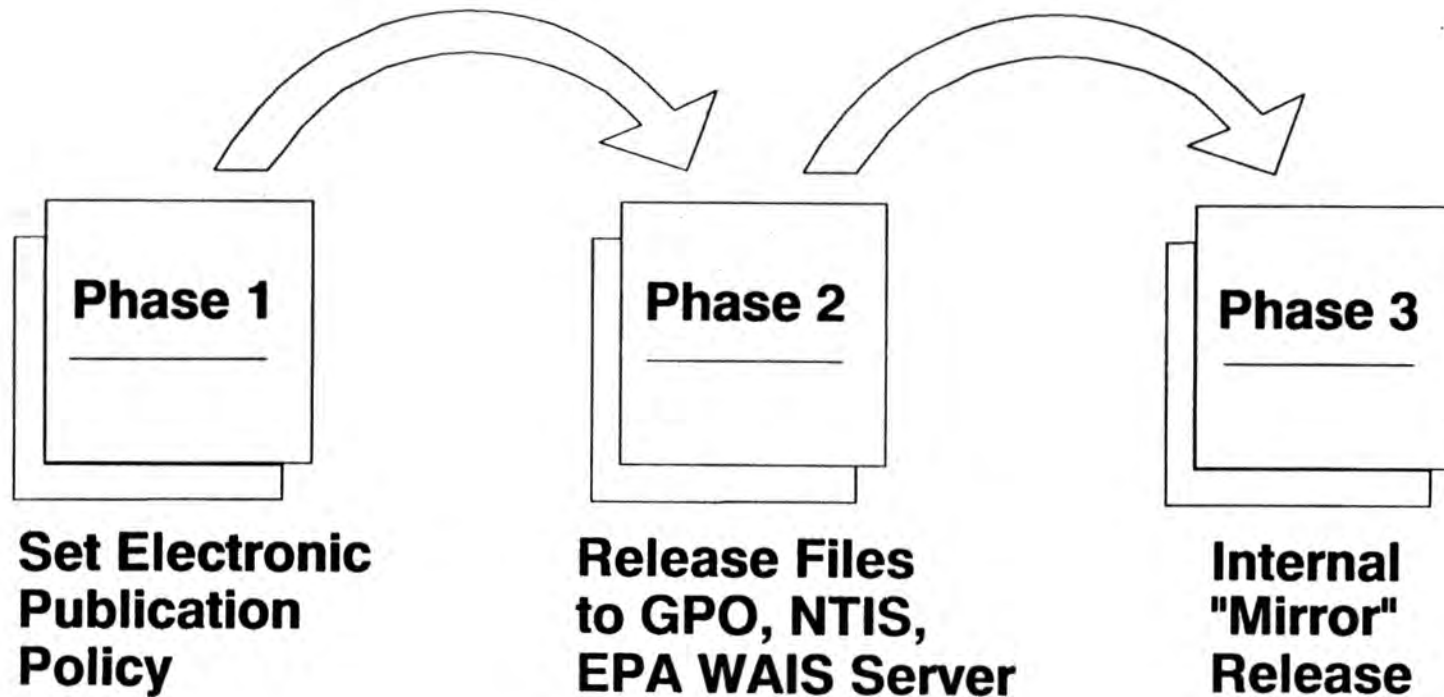
**EPA "MIRROR"
INTERNAL ACCESS**



**EPA "PUBLIC"
ELECTRONIC ACCESS**



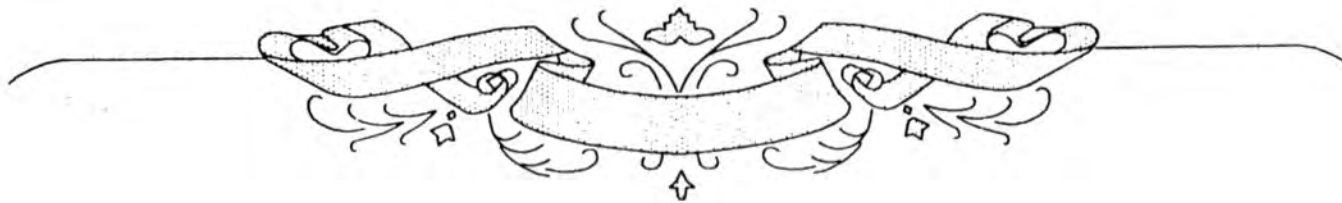
AGENCY ELECTRONIC PUBLIC AND INTERNAL INFORMATION RELEASE IMPLEMENTATION PLAN





COMMENT EXCHANGE

ELECTRONIC INTERACTIVE RULEMAKING PROCESS



Public Right to Submit Any Comment Electronically

Dictates Universal Docket Access



TECHNOLOGY vs. TRADITION

(Electronic Comment Advantages)

**Barrier
Between
Paper
Copy
and
Electronic
Filing**

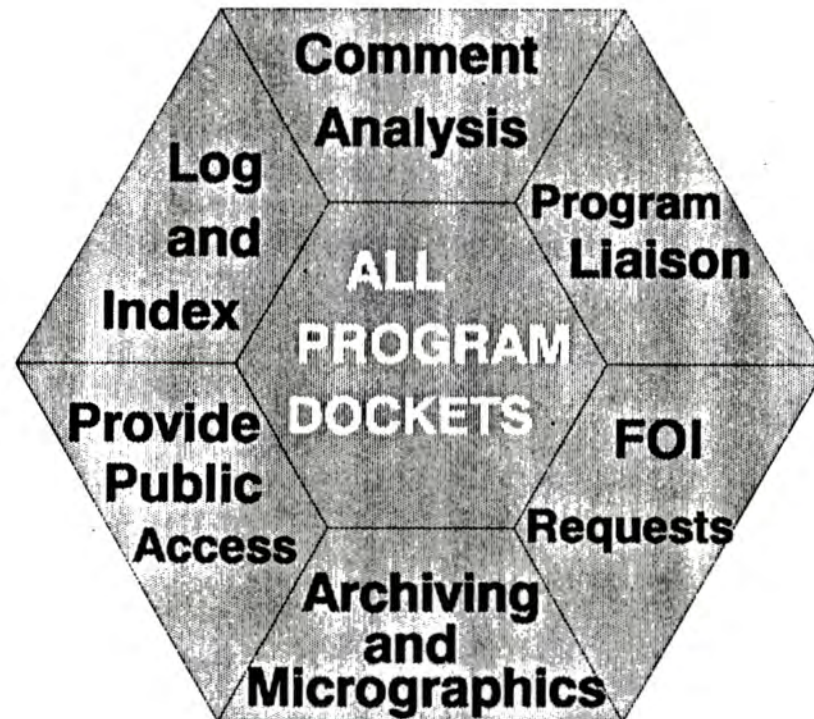
PUBLIC PARTICIPATION ADVANCES

**Expanded Public Access
Enhanced Public Interaction
Improve Information Release
Facilitate Agency Electronic
Docket Initiatives
Greater Response Structuring
Aid to Comment Response**

AGENCY ADVANCES

**File transfer and print on
demand support paperless
work environment**

BASIC DOCKET FUNCTIONS



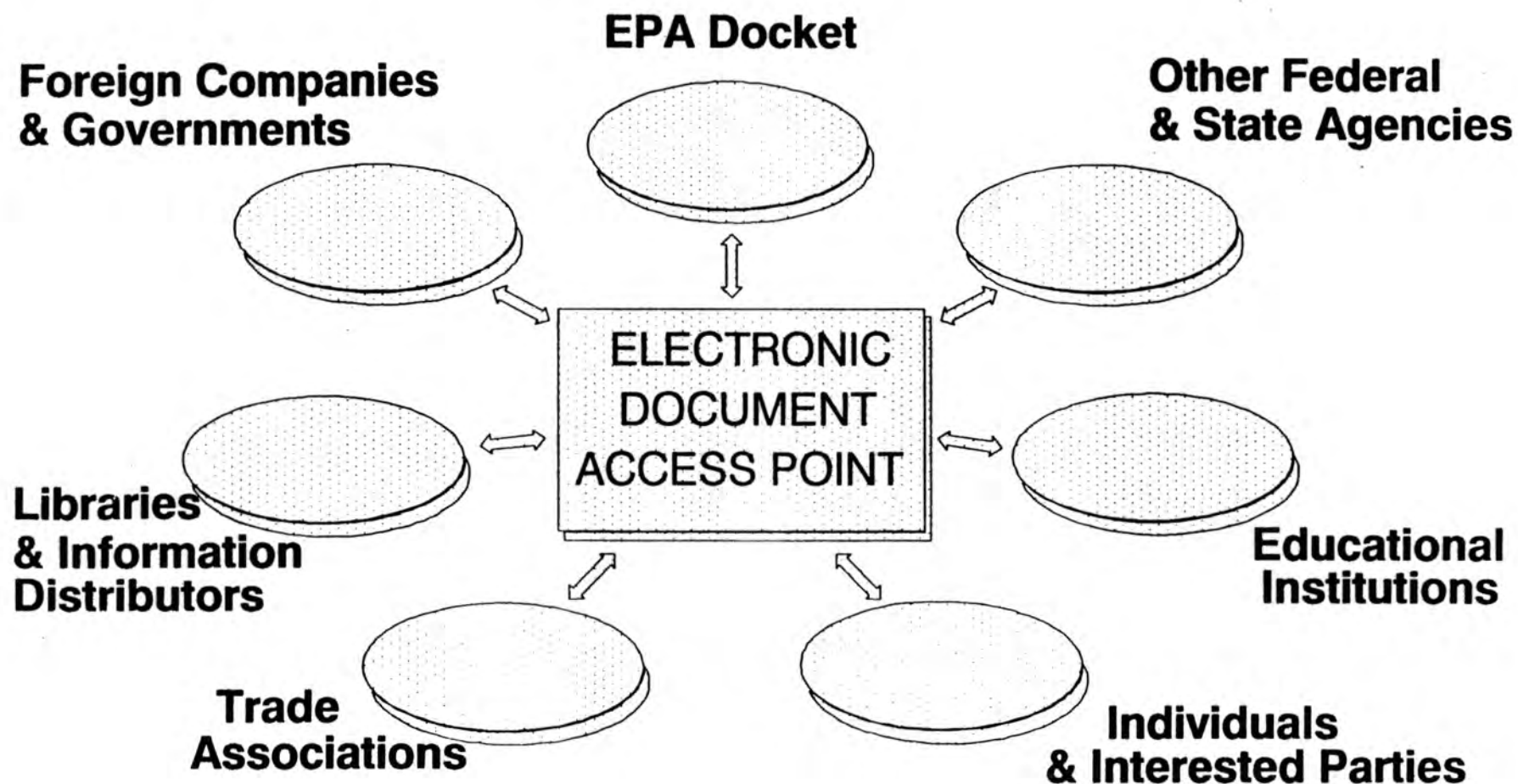
ALL REQUIRE ELECTRONIC INTERFACE

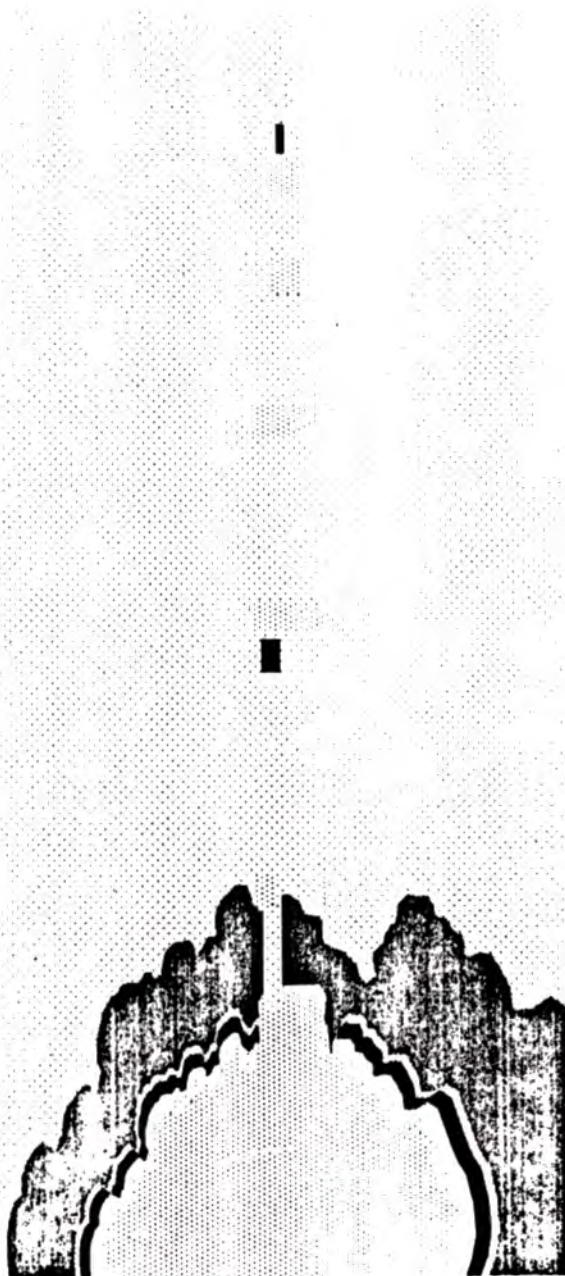
PROGRAM DOCKET PERSONNEL ARE THE ELECTRONIC IMPACT POINT



TRADITIONAL PAPER DOCKET MANAGEMENT

INTERACTIVE COMMENT CAPABILITY



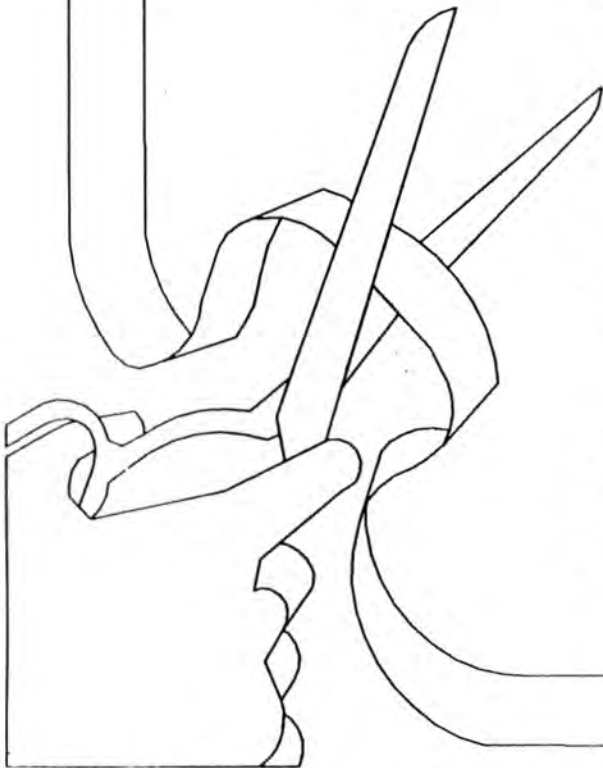


LAUNCHING AN ELECTRONIC COMMENT PROGRAM

BASIC STEPS TO IMPLEMENTING AN ELECTRONIC PUBLIC COMMENT INITIATIVE

**Critical elements needed to accept and process
public rulemaking comments successfully:**

- **Standardize the FRL Number as the universal EPA docket file identifier.**
- **Add text to the "ADDRESSES:" unit of all FR documents as appropriate. Establish "All Documents" standard.**
- **Standardize on a single approach. Standardize on a file structure.**
- **Communicate the process to the staff.**
- **Communicate the policy to the public.**



EXTRA!!! The Times EXTRA!!!

**NEW FEDERAL REGISTER DOCUMENT
LANGUAGE FOR ELECTRONIC ACCESS !!**

ADDRESSES: . . .

Comments may be submitted on disk in Wordperfect or ASCII, and electronically to e-mail address: _____. Electronic comments and support material relating to this document may be viewed or filed at any Federal Depository Library.

[illegible]

PRINCIPLES OF ELECTRONIC COMMENT SUBMISSION

- 1. Submissions must be orderly and identifiable.**
- 2. Exchange of comments and public access must be automatic.**
- 3. Release of Agency docket support information in the comment system.**
- 4. Structure of submissions should assist final rule drafters.**

**EVERY EFFORT MUST BE MADE
TO MINIMIZE PROGRAM PERSONNEL
ANXIETY LEVELS**



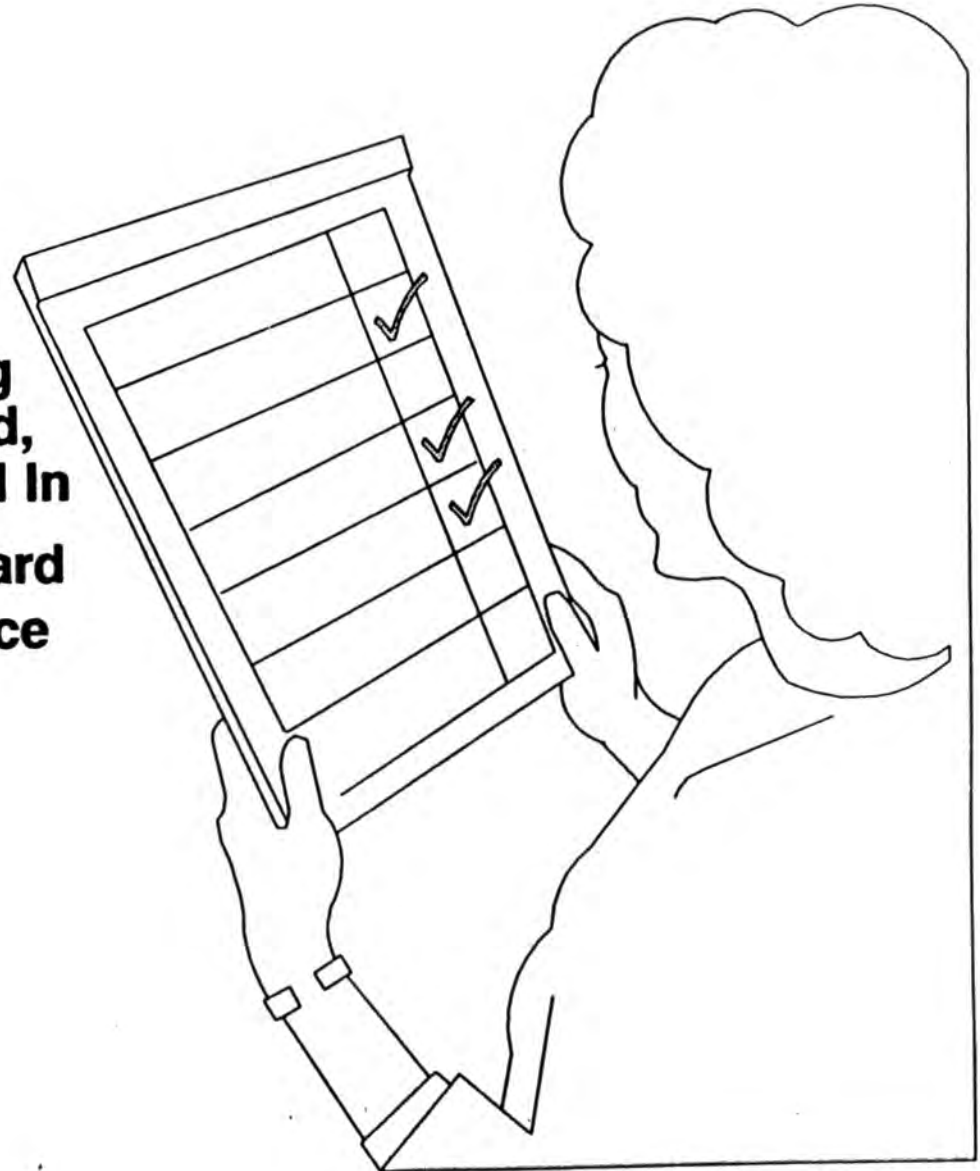
ELECTRONIC COMMENT EXCHANGE PILOT OPTIONS

PILOT APPROACHES:

- 1. ListServer on Internet**
- 2. Electronic Conferencing
Using a Bulletin Board,
Internet, or Direct Dial In**
- 3. All-in-1 and Bulletin Board
Using Internet Interface
and Direct Dial In**

EVALUATION STEPS:

- 1. Access and Test**
- 2. Close Test**
- 3. Public Pilot**



BURNING ISSUES OF ELECTRONIC COMMENT EXCHANGE

- 1. Automated Acceptance and Exchange Process**
- 2. Ease of Integration into the Paper Docket Process**
- 3. Indexing and Filing of Comments on Comments**
- 4. Miscellaneous Message Processing**
- 5. Electronic Archiving Procedures**
- 6. Technical Support and Personnel Training**



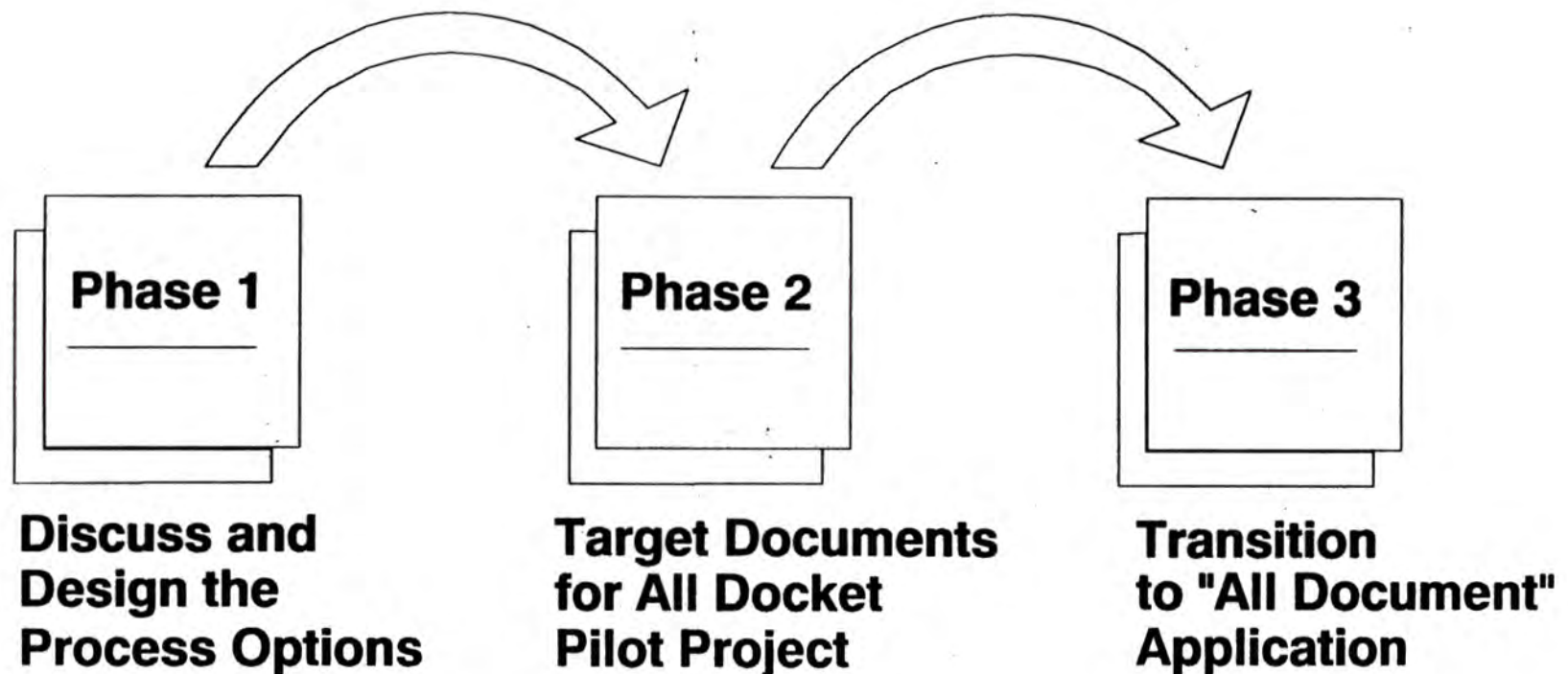
ELECTRONIC ACTIVITY INTEGRATION

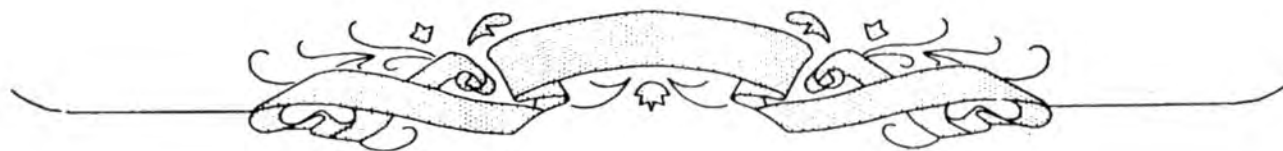
INDIVIDUAL WORK STATION BASED ACCESS TO INFORMATION -

- **Establish Specific Task Assignments**
- **Coordinate Process Steps**
- **Implement Documentation and Backup Training Program**



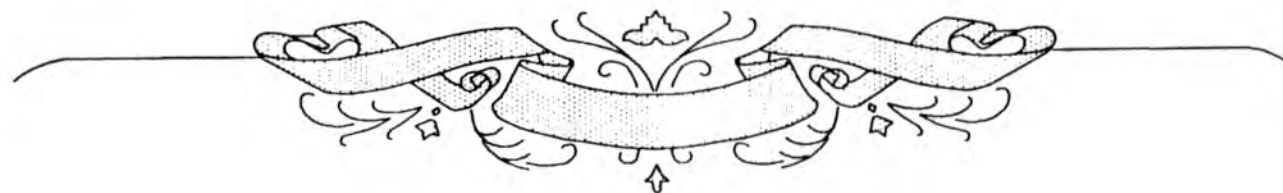
AGENCY ELECTRONIC PROPOSED RULE COMMENT EXCHANGE IMPLEMENTATION PLAN





CONFERENCING

ELECTRONIC NEGOTIATED RULEMAKING PROGRAM



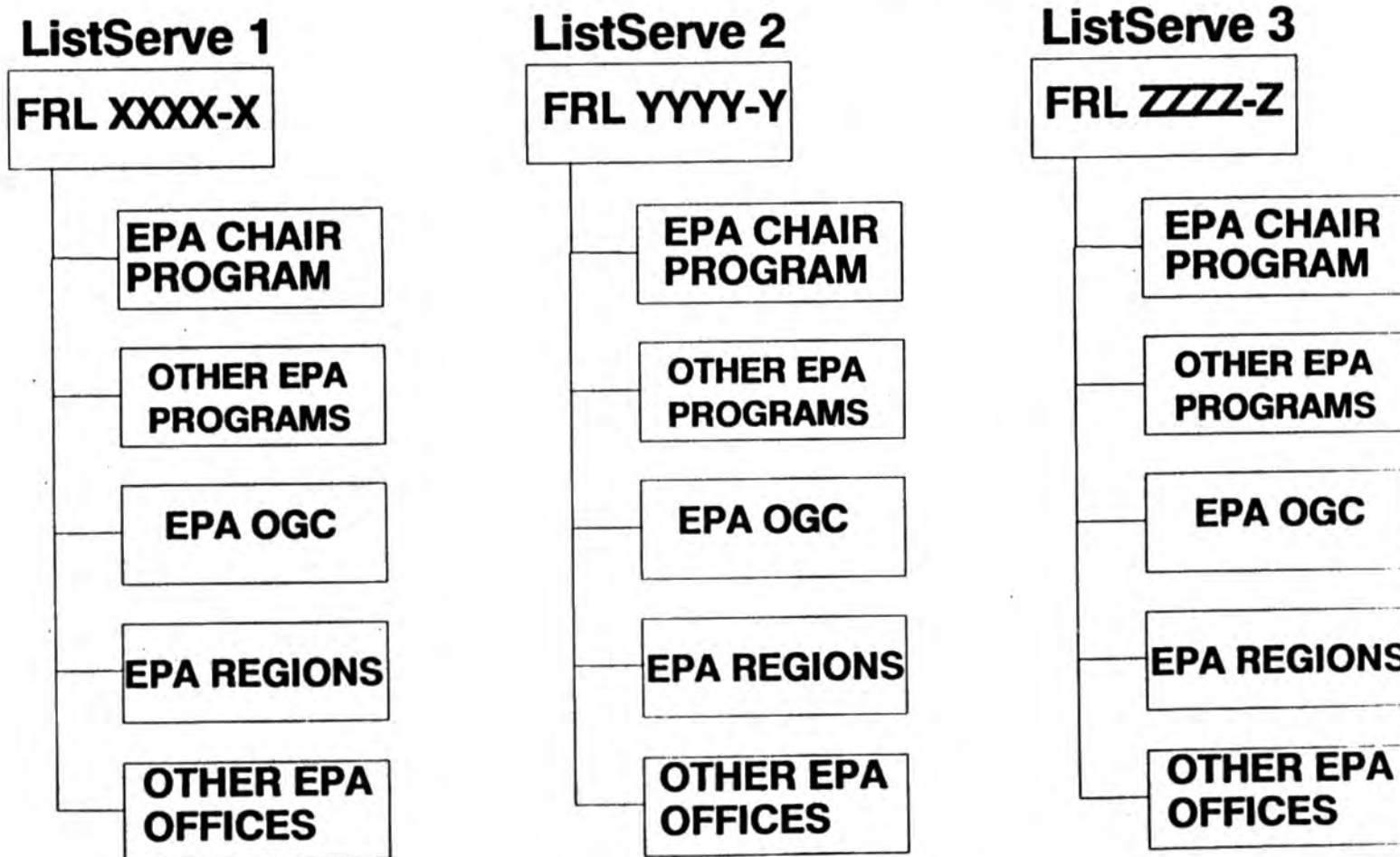
ELECTRONIC NEGOTIATED RULEMAKING

- 1. Establish Participation Procedures**
- 2. Use Agency Workgroup Pilot**
- 3. Evaluate Internal Pilot**
- 4. Pilot Open Access to a
Negotiated Rulemaking**
- 5. Conduct a Complete Negotiated
Rulemaking Electronically**
- 6. Evaluate the Public Pilot**
- 7. Open the Entire Negotiated Rulemaking
Process to Electronic Exchange**



SIMULTANEOUS DOCUMENT REVIEW AND ELECTRONIC WORKGROUP CONFERENCING

Expedited Review Process With Full Participation



PUBLIC NEGOTIATED RULEMAKING ELECTRONIC CONFERENCING STRUCTURE

Based On The Internal Document Review Experience

ListServe 1

ISSUE A

**AGENCY
FACILITATOR**

**IMPACTED
EPA PROGRAM**

EPA OGC

**ALL PUBLIC
PARTIES**

**PUBLIC
OBSERVERS**

ListServe 2

ISSUE B

**AGENCY
FACILITATOR**

**IMPACTED
EPA PROGRAM**

EPA OGC

**ALL PUBLIC
PARTIES**

**PUBLIC
OBSERVERS**

ListServe 3

ISSUE C

**AGENCY
FACILITATOR**

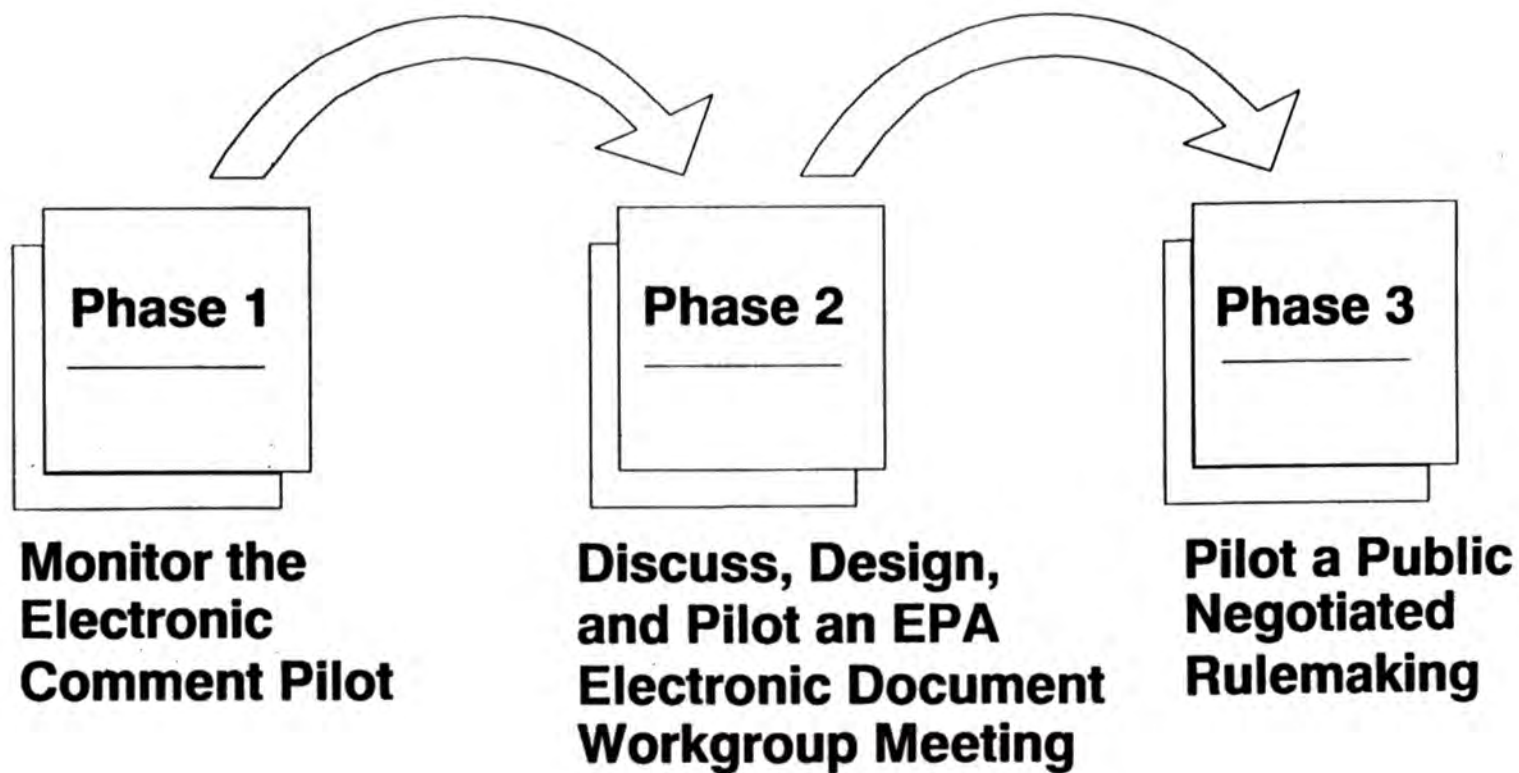
**IMPACTED
EPA PROGRAM**

EPA OGC

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PARTIES**

**PUBLIC
OBSERVERS**

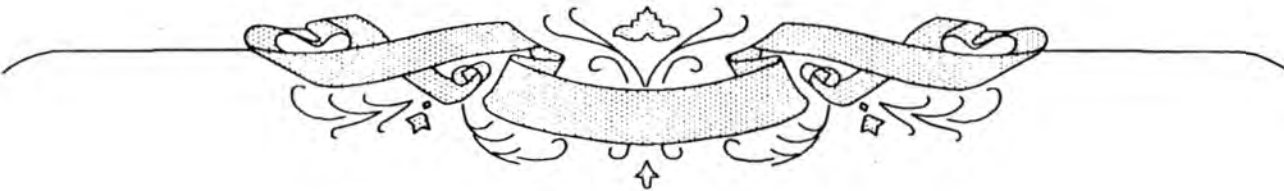
AGENCY ELECTRONIC CONFERENCING AND NEGOTIATED RULEMAKING IMPLEMENTATION PLAN





RESOURCE ISSUE

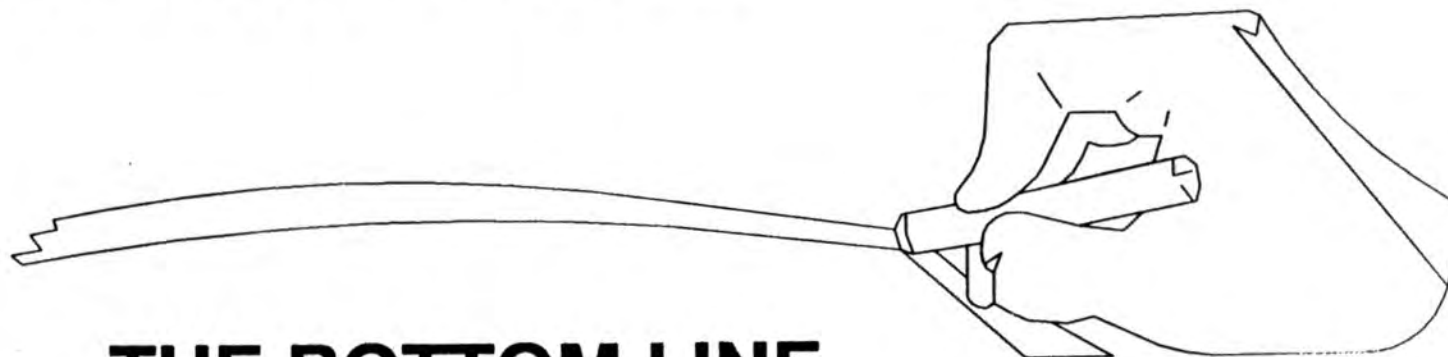
Necessary Support Requirements



RESOURCE ALLOCATION

THE TRANSITION OF ELECTRONIC ACCESS AND INTERACTIVE EXCHANGE MUST BE INTEGRATED INTO THE EXISTING PRACTICES AND PROCEDURES OF THE AGENCY.

THE UTILIZATION OF ELECTRONIC COMMUNICATIONS TECHNIQUES SHOULD BE IMPLEMENTED WITHIN EXISTING BUDGETS AND PERSONNEL CEILINGS.

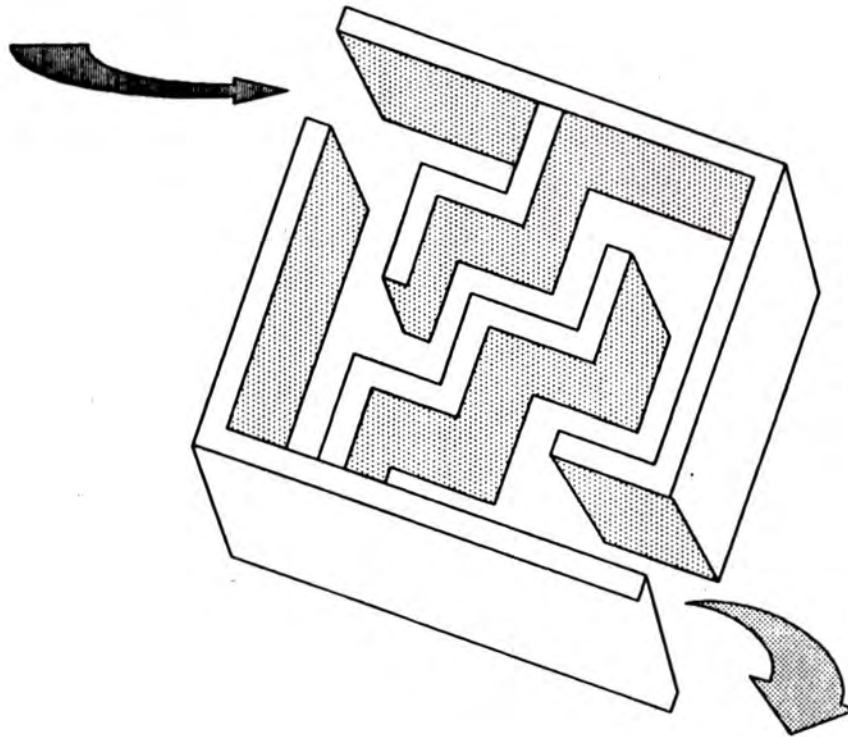


THE BOTTOM LINE

RESOURCE REALIGNMENT NOT NEW RESOURCE ALLOCATIONS !!

Paced Implementation

**Existing
Paper
Process**



**All Major
Program
Elements
Achieve
Electronic
Interface**

In The Same Direction



Timetable

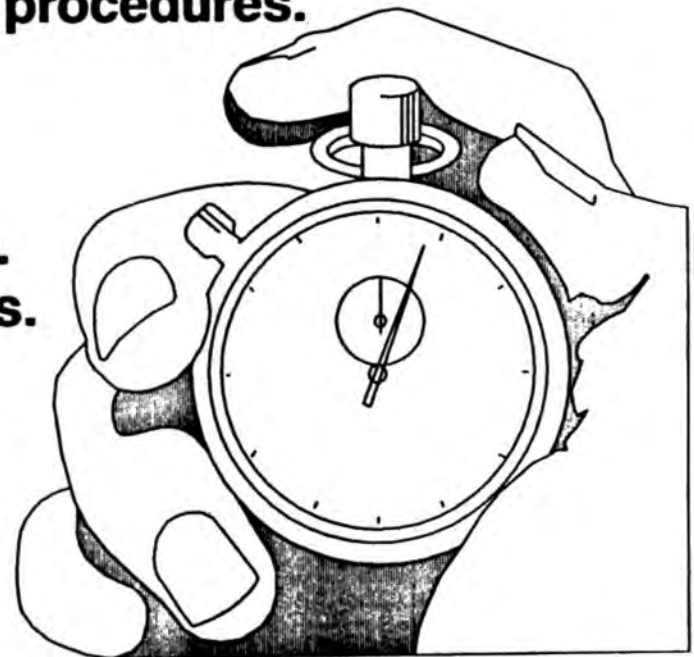
PHASED IMPLEMENTATION

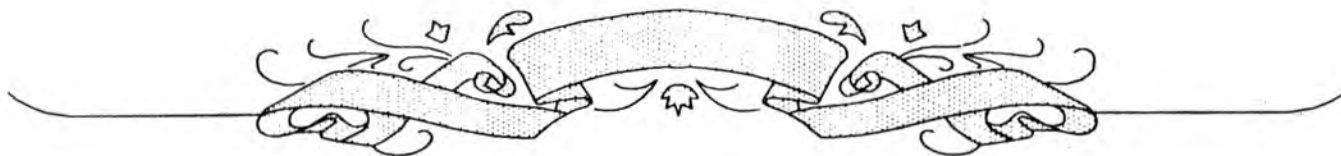
Immediate:

- 1. Release increased volume of support material electronically.**
- 2. Create structured electronic information ports in the Agency.**
- 3. Pilot and expand an electronic comment exchange program.**
- 4. Implement a document quality improvement program.**
- 5. Establish standard graphics and forms procedures.**
- 6. Address structural CFR issues.**

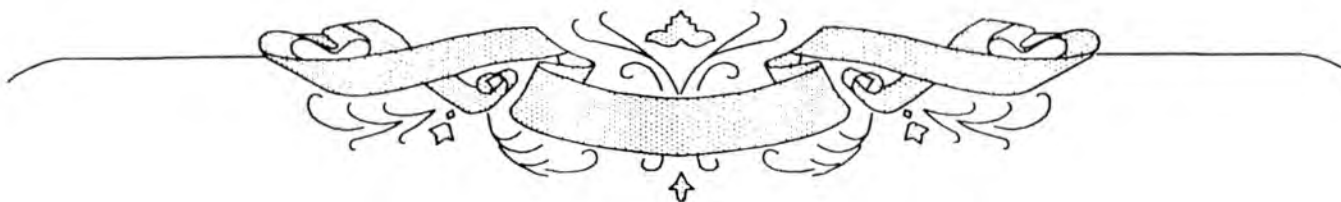
The Future:

- 1. Develop electronic workgroup process.**
- 2. Provide electronic access to all dockets.**
- 3. Develop a master CFR plan.**
- 4. Expand public electronic submissions.**
- 5. "Mirror" public electronic information inside the Agency to develop toward a paperless workplace.**





THE END



Notes on Electronic Government

Henry H. Perritt, Jr.

Professor of Law

Villanova University School of Law

1. Introduction and summary: Electronic government

Information technology not only promises an electronic marketplace for information; it also promises electronic tribunals and legislatures. The time is right for further explicit demonstration of electronic rulemaking, electronic adjudication, and the use of electronic mail for informal interaction between government decisionmakers and affected citizens. These demonstrations need to be highly visible so that agencies with rulemaking authority, congressional bodies, courts, and adjudicatory hearing officers and the participants in these governmental processes can take full advantage of information technology. There are no significant legal or policy impediments to immediate implementation of available technology.

- Agencies should begin as soon as possible to make electronic technology applications such as electronic bulletin boards, electronic postings of notices, and orders, and receipt of electronic submissions, a regular part of their regulatory proceedings.
- The regulatory planning and review process established by Executive Order 12866¹ should be a model for how information technology can be used to make the regulatory process open to the public. OMB should set an example by placing its regulatory review agenda, dockets, and documents on the Internet.
- The Congress should be encouraged to make greater use of interactive electronic networking technologies, including the Internet, to ease citizen access to the development of legislation.
- The concept of an electronic citizen help desk should be developed further.
- ACUS should commence a project to develop a basic transaction set for rulemaking notices, essentially embodying the basic elements of a present Federal Register notice, cooperating with

¹ 58 Fed.Reg. 51735 (Sept. 30, 1993).

existing activities sponsored by the Judiciary, by private standards organizations and by Bar groups.

- In the long run, forms reporting requirements and actual government forms should be made available electronically.

2. Vision of Improved Regulatory Proceedings

Information technology can reduce the costs, reduce delays, and reduce the information management and scheduling burdens associated with agency rulemaking and litigation. There are no major legal or policy impediments to the development of systems with the following characteristics:

- Notice and comment rulemaking will be restored to its original flexibility, speed, and genuine broad-based public participation by giving notices of proposed rules electronically through bulletin boards and the Internet, receiving comments electronically and providing access to rulemaking dockets electronically through dialup and Internet-connected bulletin boards.
- Dispute resolution procedures for individual cases, including formal adjudication, will be improved by automating notices, access to information, statements of positions, and prehearing, hearing, and remedy-management. For example, in enforcement actions or adjudications, citizens or their lawyers will submit their positions on electronic forms and will receive agency responses electronically. Transcripts will be exchanged in electronic form, permitting computerized searching for key words and phrases without the investment of additional effort or time. Dockets and schedules will be maintained in electronic form for easy access by citizens or their lawyers 24 hours a day.
- Each agency will make available a "welcome to agency" World Wide Web/Mosaic page that will permit a citizen to go directly to subordinate agencies, to particular administrative proceedings of interest, and to other agency servers. Citizens lacking full featured Internet nodes can use the World Wide Web format through Lynx rather than through Mosaic.
- Larger bandwidth wide area networks will permit drawings, symbols, photographs, and video recordings to be accessible immediately, from anywhere, making virtual trials and hearings possible.

- Citizens lacking access to desktop computer technology can obtain notices and submitted materials by touchtone telephones or fax and can submit comments by leaving voice mail messages. These audio comments will be a part of the official docket.
- There will be a government-wide electronic help desk, which will provide assistance to citizens by directing them to the most appropriate government office. The inquiry can come via voice, telephone or EMail message and will be routed by automated message processing and touchtone telephone or keyboard and mouse selection from menu choices.
- The "record" of an agency proceeding will be maintained electronically, facilitating any subsequent review in the courts.
- Interactive, "conversational" modes of electronic participation and decisionmaking become feasible, while preserving a record of who said what; such new types of process may prove desirable supplements or replacements for conventional or more formal procedures.

3. Information technology in regulatory proceedings

The utility of information technology² in the regulatory context already is well established. OMB released the proposed and final versions of its Circular A-130 in electronic form on the Internet and solicited and received more than 100 comments electronically at an EMail address on the Internet. The Nuclear Regulatory Commission and the Federal Energy Regulatory Commission make electronic submissions a regular part of their adjudicatory procedures,³ and the Federal Mine Safety and

² "Information technology" in this report refers to desktop computers, Local Area Networks that connect such computers, somewhat larger "workstation" computers that manage gigabytes of information using either the MSDOS or Unix operating systems modems, and wide area networks like the Internet.

³ See 58 Fed.Reg. 63312 (Dec. 1, 1993) (NPRM by Federal Energy Regulatory Commission, proposing to require large steam-electric generating stations to file responses to "Form 580" interrogatories in electronic form).

Health Commission permits pleadings to be served electronically.⁴ The Regulatory Working Group convened by the Administrator of OIRA has asked some agencies to identify specific proceedings that might be suitable for further demonstration of these and other techniques.

The federal court system is testing an electronic filing system in the United States District Court for the Eastern District of Pennsylvania and the Western District of Texas. These experiments allow lawyers to file documents in ASCII or WordPerfect format using Xmodem, or Ymodem communications protocols. Use of the systems has been very modest. The President released the full text of his Health Care Reform Act electronically through the Internet and dialup access on the FedWorld electronic bulletin board, and on diskette for persons who prefer to pick it up. Many other agencies, including the White House, release informational documents like press releases through electronic bulletin boards.

The Department of Labor's OSHA, the Commerce Department's National Telecommunications and Information Administration, and the NRC already are sponsoring electronic rulemaking demonstration programs.

"Teleview" is an experiment in electronic rulemaking currently being conducted at the National Telecommunications and Information Administration (NTIA). This experiment uses an electronic bulletin board (NTIA Bulletin Board), operated as part of the Openness Program, that provides the public electronic access to detailed information on proposed changes in certain Federal telecommunications policies; and enables the public to submit comments, electronically, on these proposed changes. Connecting to the NTIA Bulletin Board is possible by using either i) the Public Switched Network (dial 202 482 1199), or ii) the Internet (telnet ntiabbs.ntia.doc.gov).

Section 104 of the National Telecommunications and Information Administration Organization Act requires NTIA to publish rules in the Federal Register that define the procedures to be used by the public to obtain information on the Federal government's management and use of the radio frequency spectrum. These rules were published on August 19,

⁴ See 55 Fed.Reg. 53430 (Dec. 28, 1990) (final rules of practice for petitions to modify safety standards, discussing electronic service provision in § 44.6).

1993;⁵ included in these rules are statements that NTIA intends to use the NTIA Bulletin Board both for alerting the public to proposed policy changes and for receiving the public's comments.

The NTIA Bulletin Board has been operational since December 1991. During this period about 3000 people have called this bulletin board at least once; the total number of calls is about 6500. These calls have come from all fifty of the United States and also from Canada, United Kingdom, Japan, Spain, Belgium, France, Holland, Norway, Australia, Palmar Station (Antarctica), and Brazil.

Initially, the information contained on the NTIA Bulletin Board was limited to radio frequency spectrum management information that relates to the work of NTIA's Office of Spectrum Management; as the board's capabilities for exchanging information with the public became more widely known within NTIA, additional portions of the board were established that now provide the public access to information regarding a number of functions performed by NTIA, including the National Information Infrastructure (NII) initiatives.

Following the public release of the "Preliminary Spectrum Reallocation Report" (Report) on February 10, 1994, the report has been available electronically on the NTIA Bulletin Board (NTIA BBS). This report is available in three forms: i) the entire 200 page document, including figures and graphs, in WordPerfect for Windows format is available for downloading to the caller's computer; ii) the text in ASCII form is available for scrolling on the caller's computer screen; and iii) the text in ASCII form is available for downloading to the caller's computer. A download of the entire report in WordPerfect 5.2 format, including figures and graphs, can be completed in about an hour using a modem operating at 14,400 bits per second; however, downloading only the text of the report in ASCII format can be completed in about 11 minutes using a modem operating at 2400 bits per second.

Both the Federal Register announcement that the "Preliminary Spectrum Reallocation Report" (Report) is available⁶ and a statement on the inside cover of the Report urge the public to submit comments to NTIA electronically. NTIA has also announced that it plans to make

⁵ 58 Fed. Reg. 44134 (Aug. 19, 1993).

⁶ 59 Fed. Reg. 6005 (Feb. 9, 1994).

available, electronically, on the NTIA Bulletin Board all the comments that NTIA receives regarding this Report.

The Animal and Plant Health Inspection Service (APHIS) in the United States Department of Agriculture has established a public electronic bulletin board to accept comments on a proposed rule for importation of logs and lumber. The bulletin board is available through the Internet as well as through telephone modem dial up. The bulletin board has the full text of the proposed rule in ASCII and WordPerfect format, the press release announcing the proposed rule, and ACUS economic analysis of the proposed rule, the introductory section of a draft environmental impact statement, and comments made at the first public hearing.

As of March 21, 1994, 26 users had accessed the bulletin board, including entomologists, state regulatory agency officials, wood industry organizations, environmental organizations, international trade groups and "welcome sightseers." A handful of substantive comments were posted -- or received on paper. It is the agency's experience that most comments arrived in the last two weeks of the comment period.

The Environmental Protection Agency has convened an evaluation of opportunities to use information technology in support of its regulatory improvement activities. The Administrative Conference of the United States ("ACUS") plans an interagency electronic network to make it easier for agencies to post notices and receive comments from the public.

A \$1,000,000 federal grant to the American National Standards Institute supports a two-year joint program between ANSI and NIST to use an electronic network to facilitate development and use of technical standards.⁷ The FCC has made available a microcomputer program on diskette for cable service providers to use in determining their compliance with cable service price limits. Such software could be made available through the FCC's existing electronic bulletin board.

4. Technology of Electronic regulation

The technology for electronic rulemaking and adjudication is well established. Basic bulletin board and conferencing technology is well suited for notice and comment rulemaking. The agency publishing a notice simply posts it on a bulletin board-like system accessible through

⁷ Network World, December 20, 1993, at page 2.

dialup connections, through the Internet or through both. Persons submitting comments mail them or post them to the same bulletin board system, and the basic bulletin board software makes comment thus submitted available to other persons interested in the proceeding.

Similar technology is useful to support adjudication, although electronic adjudication may necessitate specific procedures and scripts tailored for the particular adjudication. Also, higher bandwidths than presently are available through most end-user dialup or Internet connections are necessary before audio, graphical, or full motion video information can be a major part of any electronic adjudication system.

5. Economics of Electronic Regulation

Economics is important not only for dissemination policy, but also for using information technology appropriately in formal government proceedings. For example, using information technology to support rulemaking and adjudication activities can reduce costs both for agencies and participants. The most significant reduction in cost is in the reduction of travel time and the elimination of the need for all interested persons to be available at the same time to participate. On the other hand, some private and governmental tasks in rulemaking and adjudication would become more expensive and cumbersome if participants were forced to adopt sophisticated transactional or database systems or to change their customary word-processing and telecommunications applications.

6. Law of Electronic regulation

6.1. Rulemaking

The legal issues presented by electronic rulemaking are not particularly troublesome.⁸ While there are a variety of options for organizing electronic notice and comment rulemaking proceedings, there are no significant legal impediments. Electronic adjuncts to notice and comment rulemaking would not offend any of the requirements in § 553 of the Administrative Procedure Act, as long as notice of a proposed rulemaking is posted in the existing Federal Register and as long as paper comments were received as well as electronic ones. Eventually, of course, the Federal Register itself may be primarily electronic, and the

⁸ See Henry H. Perritt, Jr., *The Electronic Agency and the Traditional Paradigms of Administrative Law* 44 ADMIN.L.REV. 79 (1992).

practical and legal requirements to accept comments on paper are likely to diminish. Maximum utility from the technology results from automating the notice and comment rulemaking "docket". This means that all of the comments must exist in the format. One way to achieve this is to require all participants to submit comments in electronic formats unless they can make some relatively low showing that electronic submission would represent hardship.⁹ Another approach is to have the agency running the rulemaking proceeding undertake to convert paper comments to electronic ones. This probably should be coupled with some experimentation on the privilege of filing in paper to reduce the conversion burden and to reduce tactical maneuvering by commentators. The guidance provided in Circular A-130 for collection of information in electronic form is a useful starting points for electronic filing requirements in the regulatory context. In particular, electronic filing requirements are *prima facie* appropriate when the agency seeks a large volume of data or reaches a large proportion of the public, when the public expected to comment has access to the necessary technology, and when electronic filing will not impose substantial costs or other burdens on the public, state and local governments, and small businesses.¹⁰

More experience needs to be gained in dealing with the currency of electronic copies of proposed and final rules. Sometimes, Federal Register notices are changed by the Office of Federal Register. Unless procedural regulations are promulgated that define a release point so that different publishing streams can provide legally equivalent copies, it is possible that citizens may encounter electronic copies that are not current. One high technology approach to this is to use digital signatures so that a user can authenticate copies. The answer to maintaining currency when the agency itself makes changes is less clear. As § ___ explains, lack of currency on minor matters or in notice and comment rulemaking may not be a significant problem.

As the experiments and demonstration programs are concluded, OMB and the Justice Department jointly should take responsibility for communicating a cumulatively more mature and complete set of

⁹ See e.g. 55 Fed.Reg. 39530 (Sep. 27, 1990); 55 Fed.Reg. 33390 (Aug. 15, 1990); 55 Fed.Reg. 21803 (May 29, 1990) (announcing meetings of Advisory Commission on United Mine Workers of America (UMWA) Retiree Health Benefits and requiring that submissions be made electronically, on diskette or via electronic mail).

¹⁰ A-130 cite.

guidance to agency decisionmakers about the desirability of using the demonstrated technologies and the management of the legal issues that might arise.

6.2. Adjudication

Electronic adjudication could serve the basic goals of agency adjudication law. It would provide a more complete and much more accessible record of adjudications than paper processes. Formats and software could be standardized, making it easier for adjudication records to be transferred among agencies and the National Archives. As courts develop the capacity to handle records in electronic form, judicial review of agency adjudications would be facilitated.

But in order for adjudication to be automated, it must be more structured than is the case under current practice. The APA already permits the use of forms.

Also, the need for live proceedings would be diminished but not entirely extinguished. Videotape depositions already are widely accepted in civil procedure.¹¹ There is no reason that a digitized videotape segment should be less acceptable than an analog videotape, assuming that appropriate assurances exist with respect to eliminating the potential for tampering with content.

Concerns with signatures and writings¹² can be solved in essentially the same way they are solved in EDI systems, with good system design, to enhance auditability, and to authenticate sensitive documents.¹³ Good

11 See Fed.R.Civ.P. 30(b), 32(c) (contemplating videotape depositions and use of such depositions at trial); Tax Court Rule 81 (providing for videotape depositions).

12 According to a WESTLAW search conducted on February 5, 1994, there were 276 instances in the Code of Federal Regulations in which the words *signature* or *signed* appeared in the same sentence as the words *writing* or *written* within the same paragraph as the words *adjudication*, *adjudicate*, *adjudicated*, *adjudicator*, *appeal*, *complaint*, *hearing*, *petition*, or *charge*.

13 See Michael S. Baum & Henry H. Perritt, Jr., *Electronic Contracting, Publishing and EDI Law* ch. 6 (John Wiley & Sons 1991); Peter N. Weiss, *Electronic Data Interchange and the Law of Public Contract Formation: Will the Federal "Statute of Frauds" Thwart the Paperless*

electronic records systems design will ensure that audit trails are built into adjudication systems. They will maintain a comprehensive record of adjudication electronic submissions. Technical means will ensure that nothing gets into the system without being entered in a docket and having an archival copy made. The integrity of such a system would be greater than that achievable with human and paper-based systems.

7. Policy Direction for Using Information Technology to Improve Regulatory Processes

7.1. Developing experience in using information technology to improve regulatory proceedings

A number of agencies independently have begun to make use of information technology in support of their formal administrative proceedings, as noted in § ____.

Agencies should begin as soon as possible to make electronic technology such as electronic bulletin boards, electronic postings of notices, and orders, and receipt of electronic submissions, a regular part of their regulatory proceedings. Because electronic rulemaking and adjudication are still relatively new ideas, it is desirable to have further experimentation before fixing particular procedures in definitive administrative or statutory guidance. The level of experimentation should be increased, however, and the Administration should provide active leadership and encouragement. In addition, some organized way of collecting data and reporting on the experiments is desirable. This could be done by OMB, by the Department of Justice, or by the Administrative Conference of the United States. It also could be a cooperative interagency effort under the auspices of the Regulatory Working Group convened by the Administrator of OIRA under Executive Order 12866.

The action plan articulated at a March 21, 1994 White House meeting of agency representatives, convened by the Regulatory Working Group is appropriate. It encompasses four elements. First, a clearinghouse at the administrative conference will provide technical

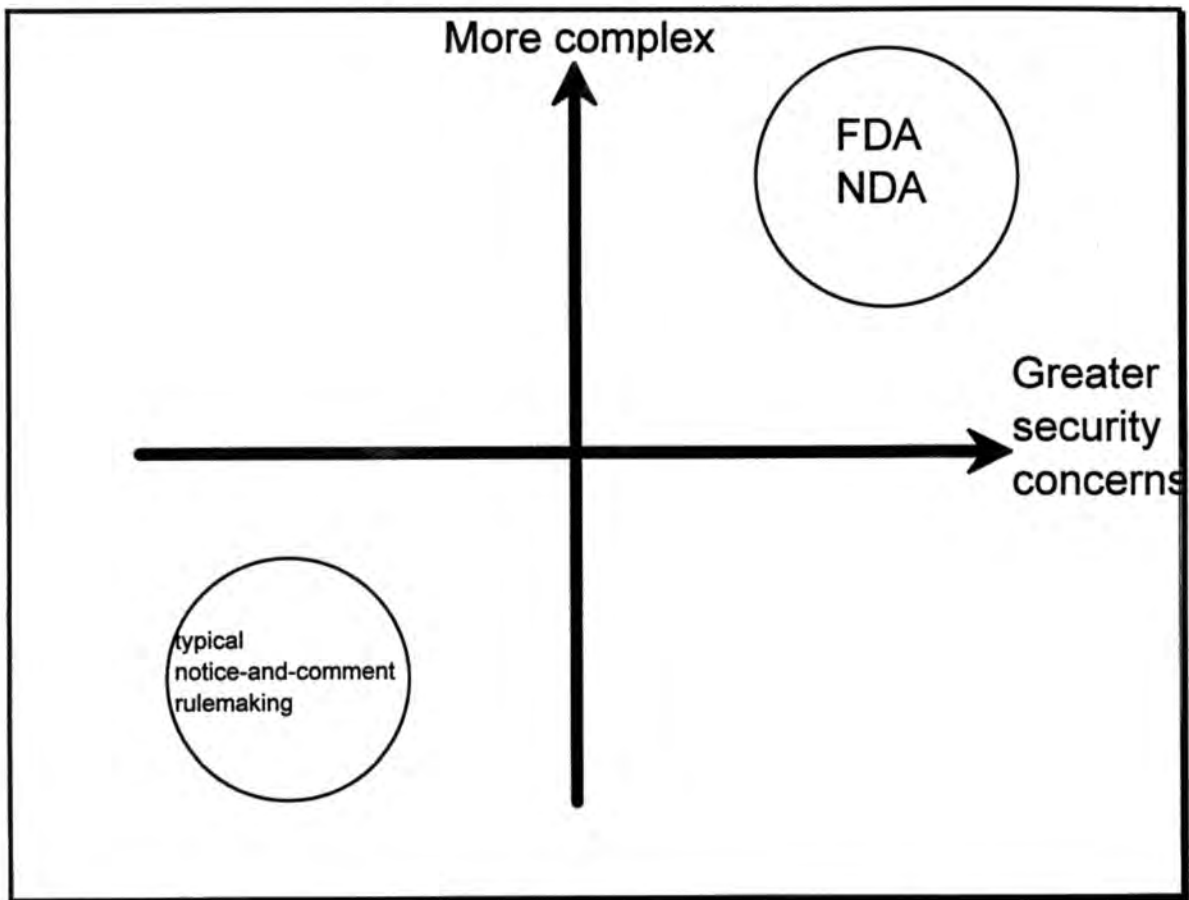
Contract?, 12 Computer L. Rep. 17 (Sep. 1990); Peter N. Weiss, Security Requirements and Evidentiary Issues in the Interchange of Electronic Documents: Steps Toward Developing a Security Policy, Information Resources Management Plan of the Federal Government (1993); The Commercial Use of Electronic Data Interchange -- A Report and Model Trading Partner Agreement, 45 The Business Lawyer 1645 (1990).

assistance to agencies establishing electronic government initiatives. Through this clearinghouse, agency technical and program personnel contemplating or placing into affect electronic rulemaking, adjudication, or regulatory negotiation activities can learn about other agency experiences. Second, particular demonstration projects will be identified for encouragement. Third, the working group will collect data on the designated demonstration programs and will evaluate them in twelve to eighteen months. Fourth, a task force will identify particular legal, technical, and policy issues that should be resolved immediately or after the development of greater experience.

It is important to understand that there are ranges of proceedings and documents for which legal, technological, and policy issues are dramatically different. Many notice and comment rulemaking proceedings, for example, involve relatively little risk of privacy intrusions, trade secret disclosure, format incompatibility, or technology inaccessibility. As to these kinds of proceedings, there is no reason that electronic tools may not be used immediately. For example, over the last fourteen months, more than 2000 presidential documents had been disseminated to more than 120,000 readers with no significant security or other integrity problems. At the other end of the range, however, there are proceedings like new drug approval proceedings before the FDA in which the risks of trade secret disclosure, of drawing boundaries between public and private records, of format compatibility, and of privacy invasion are much greater. In these areas, it may not be appropriate to rush to use electronic rulemaking and adjudication techniques until a consensus can be formed on the appropriate answers to certain questions.

The following chart illustrates the spectrum of rulemaking proceedings. The Y axis represents complexity of the proceeding. Simpler proceedings, those involving mostly textual information, would be placed lower on the chart. More complex proceedings, those involving graphical images, structured quantitative data, and executable computer programs, would be placed higher on the chart. The X axis represents degree of security concerns arising from the need to authenticate authorship, to protect privacy or proprietary information. Proceedings raising security concerns appear further to the right; those involving fewer security concerns appear further to the left. The typical notice-and-comment rulemaking would be far to the left. Proceedings placed in the lower left quadrant are most suited for immediate use of information technology. Those placed in the upper right may need to await further diffusion of digital network applications and refinement of legal and

policy guidance, or they may be suited for carefully tailored experiments with close involvement of likely participants.



Executive-branch and independent agencies are not the only ones that should embrace information technology to improve legal proceedings. The Congress should be encouraged to make greater use of interactive electronic networking technologies, including the Internet, to ease citizen access to the development of legislation. Health care reform is a high-visibility legislative undertaking that presents opportunities for Executive/Legislative Branch cooperative experimentation with electronic hearings and electronic publication of proposals and hearing records.

7.2. Electronic regulatory review

The regulatory planning and review process established by Executive Order 12866¹⁴ should be a model for how information technology can be used to make the regulatory process open to the public. OMB should set

¹⁴ 58 Fed.Reg. 51735 (Sept. 30, 1993).

an example by placing its list of agency submissions, dockets, and documents on the Internet. OIRA should declare that it will use electronic rulemaking techniques for all of its information on regulatory review. When public comment to OMB or the Office of the Vice President is solicited, comments should be accepted electronically. The GSA Regulatory Information Service should accelerate its efforts to make the existing Unified Regulatory Agenda and its indexes available electronically not only through proprietary services but also through FedWorld, the GPO electronic service and on a GSA Internet server. OMB also should experiment with EMail for policy "conversations," and integrate tracking systems for regulations and paperwork clearance.

7.3. Electronic access to OMB Circulars

The full text of OMB circulars should be available electronically, through the Internet.

7.4. Electronic Help Desk Initiative

The concept of an electronic citizen help desk should be developed further. The GSA took a useful step in that direction by announcing, on November 3, 1993, a "Government-Wide Electronic Mail Pilot Project." The project encompasses initial participation by the Administrative Conference of the United States, OMB's Legislative Reference Division, and the Office of Science and Technology Policy. It envisions a variety of joint public/private sector programs showing how information technology can enhance electronic governments.

The main problem is how to prevent such a service from being overwhelmed by citizen questions and grievances. One possibility is to implement such a service in cooperation with individual congressional and senatorial offices, so that the service becomes a kind of electronic ombudsman sponsored by individual members of Congress but implemented through a centrally coordinated electronic system.

7.5. Central point of access for electronic rulemaking and adjudication

In the long run, it may be desirable to establish an electronic equivalent of the Federal Register: a single posting system on which agencies could -- or might be required to -- post notices of proposed rulemaking and receive comments. The same access point might be used discretionarily by particular agencies and hearing officers to organize information about adjudicatory proceedings and actually send and serve adjudicatory documents. Some experimentation with multi-agency services like FedWorld or the Federal Bulletin Board would be

helpful additions to the program of experimentation and demonstration suggested in preceding subsections.

In the long run, forms reporting requirements and actual government forms should be made available electronically, probably through a multi-agency source organized along industry lines.

Exploring the utility of a central point of communication for electronic regulatory activities is closely related to the desirability of OMB taking the lead in making its regulatory review activities publicly accessible in electronic form. The same systems used to permit electronic access to regulatory review dockets and documents could be used to test the electronic Federal Register idea. It would be efficient to merge an electronic regulatory agenda with the OMB regulatory review database and with demonstration programs by agency initiatives included within the regulatory agenda.

8. Action for Electronic regulation

OMB should work with the Administrative Conference of the United States and the Department of Justice to develop and issue preliminary guidance to agencies on how to use information technology in support of rulemaking and adjudicatory activities consistent with the Administrative Procedure Act and other statutory procedural obligations. Such guidance should draw upon past agency experience, be developed with public input and input from the American Bar Association's Section on Administrative Law and Regulatory Practice, and suggest best practices for the future as public access to technology means of electronic interaction with agencies increases.

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503

March 22, 1994

LEGISLATIVE REFERRAL MEMORANDUM

LRM #D-669
DRAFT #578

TO: Legislative Liaison Officer -

OSTP - Chris Clary - (202)456-6011 - 288
NSC - William H. Itoh - (202)395-3723 - 249

FROM: JAMES J. JUKES (for) *Ji-*
Assistant Director for Legislative Reference

OMB CONTACT: Douglas STEIGER (395-3386)
Secretary's line (for simple responses): 395-3454

SUBJECT: JUSTICE Draft Bill Digital Telephony

DEADLINE: 2 PM TODAY March 23, 1994

COMMENTS: This referral contains the "transmittal letter" for
the draft bill circulated as LRM D-656.

OMB requests the views of your agency on the above subject before
advising on its relationship to the program of the President, in
accordance with OMB Circular A-19.

Please advise us if this item will affect direct spending or
receipts for purposes of the the "Pay-As-You-Go" provisions of
Title XIII of the Omnibus Budget Reconciliation Act of 1990.

CC:
John Podesta
C. Walden/J.Cerda
Ken Schwartz
Arnie Donahue
Bruce McConnell
Ed Springer
Harry Meyers
Chris Brown
Tina Westby
Jonas Neihardt
Jim Murr

DRAFT

(Justice)

Honorable Thomas S. Foley
Speaker
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Speaker:

Enclosed for referral to the appropriate committee or committees is a draft bill entitled the "Digital Telephony and Communications Privacy Improvements Act of 1994." This bill will ensure law enforcement's continued access to the content of communications when conducting court-authorized electronic surveillance and will improve communication privacy protection. The purpose of the draft bill is to clarify and define the responsibilities of common carrier (telephone companies), common carrier support services and telecommunications equipment manufacturers when providing law enforcement with the "technical assistance necessary to accomplish the intercept" as currently required under law. Further, the draft bill is intended to improve communications privacy protection for cordless telephones, certain radio-based data communications and networks, communications transmitted using certain privacy-enhancing modulation techniques and to clarify the lawfulness of quality control and service provision monitoring of electronic communications. The draft bill does not change in any way the existing statutory authority for law enforcement to conduct court-authorized intercepts of wire or electronic communications. Nor does the draft bill change, diminish or otherwise affect existing sanctions against unauthorized interceptions. We have enclosed a section-by-section analysis that explains our proposal in greater detail.

By way of background, our Nation's telecommunications systems and networks are often used in the furtherance of serious and sometimes violent, criminal activities, to include terrorism, espionage, drug trafficking, extortion, kidnapping, organized crime and racketeering. Recent and continuing advances in telecommunications technology and transmission modes as well as new services and features have impaired, and, in a number of instances, precluded Federal, State and local law enforcement from conducting court-authorized electronic surveillance on criminal suspects. These new technological developments are not intentionally being introduced to prevent court-authorized electronic surveillance and, therefore, thwart law enforcement's ability to effectively enforce criminal laws and to protect the public safety and national security. However, these new telecommunication systems are preventing the telephone companies from being able to provide law enforcement with access to all conversation of the criminal suspects who are the subject of the court-authorized surveillance, to the exclusion of all other communications.

The Administration's legislative proposal addresses this serious problem in a comprehensive and straightforward

fashion. The draft bill clarifies minimum attributes for common carriers in providing the capability and capacity for law enforcement agencies to intercept electronic communication, when authorized by law. The proposal includes clearly-stated law enforcement electronic surveillance requirements, systems security provisions, a reasonable three-year compliance period, proper enforcement and penalty provisions and, importantly, a commitment by the Federal government to reimburse common carriers for reasonable charges associated with achieving compliance.

We view this issue as the number one law enforcement, public safety and national security issue facing us today. Maintaining an effective law enforcement electronic surveillance capability is essential to fighting national and international drug trafficking cartels, organized crime, terrorists and violent criminals. Without this capability, we will not be able to protect the public or acquire the evidence needed to put society's most dangerous felons in jail. The longer this problem remains unresolved, the longer the safety and economic well-being of the American public will be unnecessarily put at risk. I therefore urge the prompt consideration and speedy enactment of the Administration's proposal.

The Office of Management and Budget has determined that this proposal is consistent with the Administration's legislative program and that its enactment would be in accord with the program of the President.

Additional information concerning this proposal can be obtained from John E. Collingwood, Inspector in Charge, Office of Public and Congressional Affairs, FBI, at telephone number (202) 324-2727. Thank you for your timely and favorable consideration of this important proposal.

Sincerely,

Sheila Anthony
Assistant Attorney General

Enclosures



OFFICE OF THE VICE PRESIDENT
WASHINGTON

March 28, 1994

To: See Distribution

From: Elaine Kamarck

Subject: Final Review of Secretary Brown's Performance Agreement, VA

Thank you for your review and comments on the draft performance agreement submitted by Secretary Brown. Attached is the final draft submitted by the Secretary. It reflects the comments made by reviewers and discussed at the meeting on March 17, 1994. The annex of performance measures, in particular, has been substantially revised.

Please review it for any outstanding issues before it is put in final and forwarded to the President for his consideration and signature. We would appreciate your comments by close of business, April 1. Please give them to Pamela Johnson at NPR, 632-0150, ext 142, 632-0390 (fax).

Distribution:	Domestic Policy Council	Paul Weinstein (7930 - Room 217)
	National Economic Council	Peter Yu (2802 - Room 233)
	National Performance Review	Bob Stone
		Pamela Johnson
	National Security Council	Jim Carman (4223 - Room 290)
	OMB	Nancy-Ann Min (Room 262)
		Herman Haberman (3774 - 10201 NEOB)
		Todd Grams
		Bob Damus
		Frank Reeder (7388 - Room 464)
	Cabinet Affairs	Phil Caplan (6280 -WW)
	Office of the Vice President	Charlotte Hayes (6277 - Room 282)
cc:	Staff Secretary	Paul Richard (2702 - WW)
	Dept. of Veterans Affairs	

DRAFT
3/25/1994

Performance Agreement

between

The President of the United States

William Jefferson Clinton

and

The Secretary of Veterans Affairs

Jesse Brown

Introduction

The Administration has identified national health care reform, Federal deficit reduction, downsizing of active duty forces, and reinvention of government as domestic priorities. Changes resulting from these initiatives, as well as changing veteran demographics, will dramatically affect the Department of Veterans Affairs (VA). Our success in responding to these changes will have a significant effect on the benefits and services provided to veterans and their families. The purpose of this agreement is to establish clarity and consensus about the priorities of the Department during this period of change.

The American people deserve a government that works better and costs less. The departments and agencies of the federal government hold vital keys to improving performance and to restoring the faith of the American people in their government. Many changes will need to take place for this broad goal to be realized. The purpose of performance agreements with senior officials is to establish clarity and consensus about the priorities for departmental management. They are intended to improve the management of the Executive Branch and are not intended to and do not create any legally enforceable rights.

VA today stands at the threshold of an era that will guide us into the challenges of the 21st century. Across the entire spectrum of VA activity, we are actively changing old patterns and routines to meet a new definition of Government service. Yet, the Department has a rich tradition to uphold. We must and will ensure that our policies, our people, and our programs never lose sight of their fundamental purpose: to fulfill the American public's sacred debt of gratitude to those who nobly served this Nation from World War I to Somalia - our veterans.

As Secretary, I have prepared this agreement to reflect the President's and my priorities to improve services to our Nation's veterans and their families. In this regard, I will undertake to accomplish the following:

Satisfy Our Customers

VA's mission is the most service-oriented of all Cabinet departments. Our customers include 27 million veterans and their families. Services and benefits are provided through a nationwide network of 173 medical centers; 357 outpatient, community, and outreach clinics; 130 nursing home care units; 39 domiciliaries; 58 veterans benefits regional offices; and 114 national cemeteries. We will establish customer service standards ensuring that VA service equals the best in business.

Become An Employer Of Choice

Solving many of our Nation's most critical problems will require Federal employees and managers to respond creatively. In order to do so, we will ensure a work environment free of discrimination with employees well trained and empowered to support accomplishment of VA's mission.

Introduce Major Service Improvements

I am committed to a thoughtful, strategic approach to examining and changing the way VA does its business in serving the Nation's veterans. We will reinvent VA in order to improve the timeliness and quality of our service delivery process. We will maintain a comprehensive medical care system for veterans, second to none. We will streamline structures, procedures and regulations, and take advantage of information management in the delivery of services. We will establish benchmarks to measure outcomes and compare our performance with other Federal and private sector organizations to ensure that VA services are truly efficient and effective.

Measurement Of Performance

VA will develop specific actions to accomplish the objectives described above. Fiscal Year 1994 actions are contained in Appendix A. Internal performance monitoring for these actions will be accomplished through the VA's Strategic Management Process. In addition, periodic external reviews of progress will be held between the President and/or his designees and the Secretary and other VA officials.

Revisions

It is expected that this agreement will be revised at least annually to reflect significant changes in budget, policy, personnel, customer needs or other factors that may affect the accomplishment of objectives. This Agreement is intended only to improve the internal management of the Executive Branch and is not intended to and does not create any right, benefit, trust or responsibility, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies, its officers, or any person. This agreement reflects our joint commitment to creating a Department of Veterans Affairs that implements common-sense approaches to fulfilling our sacred trust to the Nation's veterans and the American people.

Jesse Brown
Secretary
of Veterans Affairs

William J. Clinton
President
of the United States

APPENDIX A: PERFORMANCE MEASURES FOR FISCAL YEAR 1994

Performance will be ensured by the successful accomplishment of the following specific measures that are controlled and tracked in the VA's Strategic Management Process.

1. SATISFY OUR CUSTOMERS:

- A. Identify the changing needs of veterans by directly involving our clients and treat veterans and their family members as valued customers.
 - 1) Establish customer-based standards of service through the use of current concepts in obtaining customer input aimed at improving quality and reducing costs and waiting times by:
 - * conducting focus groups of users of veterans benefits and services, veteran service organizations, inpatients, outpatients, and long-term patients.
 - * completing the fourth National Survey of Veterans.
 - * completing the survey of users of veterans benefits and service programs.
 - 2) Establish a customer feedback system (including opportunities for complaints) which is responsive to customer concerns by:
 - * implementing a national inpatient questionnaire for recently discharged patients (*outpatient and long-term care patients in FY 1995*).
 - * continuing use of veteran service complaints, veteran assistance inquiries, Congressional, and veteran service organization inquiries at facility and national levels to identify problem areas.
- B. Institute specific methods of communicating with veterans, service organizations and other interested groups regarding planned and ongoing activities of the Department.
 - 1) Establish a Blue Ribbon Panel on Claims Processing with participants from veterans organizations.
 - 2) Establish a Secretary's Working Group on Homelessness and participate in the Interagency Council on Homelessness.

2. BECOME AN EMPLOYER OF CHOICE:

- A. Create a work environment free of discrimination and harassment that recognizes the value of diversity and offers people the opportunity to maximize what they can become.
 - 1) provide a core four-hour training program in managing and recognizing diversity for all managers and employees.

B. Empower our people and ensure that they have the tools and training to effectively accomplish their work.

- 1) Form a Partnership Council with unions.
- 2) Reinvest savings, realized through streamlining, in a comprehensive program of training and development focusing on continuous improvement and customer service.
- 3) Reduce internal directives by 10 percent in FY 1994 (*50 % in three years*) and use the VA's Reinvention Laboratories to identify overly restrictive personnel, procurement, budgetary, and programmatic regulations.
- 4) Complete a survey of employees to provide a basis for improving the quality of work life and service to veterans.
- 5) Delegate classification and staffing of centralized positions to Under Secretaries, Assistant Secretaries, and field facilities.
- 6) Train individuals in total quality management and continue support for quality improvement efforts.

C. Foster an environment where innovative thinking will thrive and be rewarded through leadership training and incentive award recognition.

- 1) Complete a Department-wide study to assess leadership and management competencies.
- 2) Provide an incentive award system that rewards innovation and creativity.

3. INTRODUCE MAJOR SERVICE IMPROVEMENTS:

A. Streamline structures, procedures and regulations and take advantage of information management and other new technologies to improve management and delivery of services to customers.

- 1) Support Government-wide and Departmental efforts toward reinventing VA and implementing National Performance Review recommendations by:
 - * participating in the DoD/VA study of disability compensation and retirement.
 - * expanding the Medical Care Cost Recovery (MCCR) to include identification, billing, and collection services for all categories of Veterans Health Administration receivables.

- * establishing a meaningful and effective MCCR gain sharing mechanism through legislation.
 - * Closing VA centralized supply depots and implementing commercial distribution directly to VA facilities.
 - * Increasing use of electronic purchases and payments and use of electronic funds transfers/direct deposits for beneficiary payments and employee salaries.
- 2) Accelerate the automation of the patient clinical record and improve medical provider rapid access to clinical information to improve service to veterans by:
- * 135 medical centers can exchange patient data with other medical centers.
 - * The implementation of the Discharge Summary, which represents a new computer information tool, at 50 VA medical centers. (Health care providers have on-line access to snapshot of a patient's inpatient episode, including planned follow-up activities).
 - * Initial implementation and training of staff on the use of the Decision Support System (DSS), a new functionality, at 10 VA medical centers. (Provides linkages between clinical and financial data bases allowing assessment of the cost of care by patient, provider, specialty, service, and/or medical center).
- B. Establish timeliness and quality improvement goals for the entire scope of the benefits claims adjudication process.
- 1) In partnership with the Department of Defense, implement customer service initiatives that will improve services to veterans, while maintaining costs and improving efficiency by:
- * transferring all separating service members' medical records directly to VA.
 - * continuing Transition Assistance programs with DoD.
- 2) Improve benefit claims processing through enhanced technology applications including integrated claims status information and reports, and customer-friendly letter writing by installing the first stage of Modernization equipment in 90 percent of VA regional offices.
- C. Maintain a comprehensive medical care system for veterans meeting clearly defined requirements.
- 1) Emphasize managed care as the VA's preferred delivery mode, increase delivery of non-institutional types of care, and implement a preventive medicine focus.

- 2) Investigate new and innovative ways to improve service to minority and female veterans.
 - 3) After passage of the Health Security Act, adjust this performance agreement as necessary.
- D. Emphasize the continuous improvement of medical care processes and outcomes.
- 1) Emphasize the use of explicit review standards in comparing VA care to competing private sector care by increasing from 96% to 97% compliance with national explicit review standards for management and treatment of certain diagnoses in comparison with standards set by board certified private physicians.
 - 2) Initiate development of baseline rates for admission and mortality for diseases such as Chronic Obstructive Pulmonary Disease.
 - 3) Identify means for assessing VA's position in the market place by developing strategies for target markets, profiles of competitors' products and primary and secondary market research.
- E. Develop and maintain automated systems that enhance service delivery and increase operational efficiency of cemeteries.
- 1) Complete the analysis necessary for new program design and modernization of processing of applications for headstones, markers and Presidential Memorial Certificates.
 - 2) Initiate automated processing of records of interment and capture 80% of burial data by the end of FY 1994.

March 21, 1994

CURRENT EXAMPLES OF ELECTRONIC TECHNOLOGY AND REGULATIONS

Proposed Rules

Federal Register

Vol. 59, No. 13

Thursday, January 20, 1994

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. 91-074-3]

RIN 0579-AA47

Importation of Logs, Lumber, and Other Unmanufactured Wood Articles

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We propose to amend our foreign quarantine regulations by adding a new "Subpart—Logs, Lumber, and Other Unmanufactured Wood Articles" to establish prohibitions and restrictions concerning imported unmanufactured wood articles. The new subpart would affect persons importing logs, lumber, bark chips, wood chips, certain wood packing materials, and other unmanufactured wood articles. The new subpart would not affect imports of manufactured wood products such as furniture. We also propose to change several existing foreign quarantine regulations that currently restrict importation of certain wood articles, to state that such articles would instead be regulated under the proposed new subpart. These changes appear necessary because there is increased interest in importing large volumes of unmanufactured wood articles into the United States, and prohibitions and restrictions appear necessary to eliminate any significant plant pest risk associated with importing these articles.

DATES: Consideration will be given only to comments received on or before April 20, 1994. We also will consider comments made at public hearings to be held on February 10, 1994, in Portland, Oregon, and on February 23, 1994, in Washington, DC.

ADDRESSES: A public hearing in Portland, Oregon, will be held at Cheatham Hall, World Forestry Center, 4033 S.W. Canyon Road, Portland,

Oregon 97221. A Washington, DC, public hearing will be held at the Jefferson Auditorium, United States Department of Agriculture, South Building, 14th Street and Independence Avenue SW., Washington, DC.

To submit comments by mail, please send an original and three copies of your comments to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 91-074-3. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are encouraged to call ahead (202-690-2817) to facilitate entry into the comment reading room.

You may also submit comments to an electronic bulletin board APHIS has established for this purpose, and review online comments posted to this bulletin board by other commenters. Printed copies of comments posted to this bulletin board will also be available in our comment reading room. To access the bulletin board via modem at 1200 through 14,400 baud, dial (703) 243-9696. Set your modem parity, data bits, and stop bits to N,8,1. You can also access the bulletin board via INTERNET with the command TELNET tmn.com. To log in to the bulletin board, use the userid "woodrule" and the password "aphis23" (type both in lower case, not capital letters).

FOR FURTHER INFORMATION CONTACT: Mr. Richard L. Orr, Senior Entomologist, Planning and Risk Analysis Systems, PPD, APHIS, USDA, room 810, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8939.

SUPPLEMENTARY INFORMATION:

Public Hearings

The public hearings will be held on February 10, 1994, in Portland, Oregon, and on February 23, 1994, in Washington, DC. The Portland, Oregon, public hearing will begin at 10 a.m. at Cheatham Hall, World Forestry Center, 4033 S.W. Canyon Road, Portland, Oregon 97221. The Washington, DC, public hearing will begin at 10 a.m. at the Jefferson Auditorium, United States Department of Agriculture, South

Building, 14th Street and Independence Avenue SW., Washington, DC.

Persons wishing to speak at a public hearing are requested to contact Mr. Richard Kelly no later than ten days prior to the hearing date, at (301) 436-5455, or by writing to him at APHIS, PPD, RAD, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782 (FAX number 301-436-8934).

A representative of the Animal and Plant Health Inspection Service (APHIS) will preside at each public hearing. Any interested person may appear and be heard in person, by attorney, or by other representative.

Each public hearing will begin each day at 10 a.m. local time and is scheduled to end at 5 p.m. local time. However, the hearing may be terminated at any time after it begins if all persons desiring to speak have been heard. We request that all persons who wish to speak at the public hearing contact us as requested above, and provide their name, organization, the hearing they plan to attend, and the approximate length of their presentation. This will allow us to determine whether we need to schedule additional time for a hearing. Speakers who register in advance will be informed prior to the hearing of the time they are scheduled to speak. Attendees who do not register in advance will be allowed to speak after all scheduled speakers have been heard. We ask that anyone who reads a statement provide two copies to the presiding officer at the hearing.

If the number of speakers at a hearing warrants it, the presiding officer may limit the time for each presentation so that everyone wishing to speak has the opportunity.

The purpose of the hearings is to give interested persons an opportunity for oral presentations of data, views, and arguments. Questions about the content of the proposed rule may be part of the commenters' oral presentations. However, neither the presiding officer nor any other representative of APHIS will respond to comments at a hearing, except to clarify or explain provisions of the proposed rule.

Background

The Animal and Plant Health Inspection Service (APHIS) is proposing to establish comprehensive regulations to eliminate any significant pest risks

NOTICE AND COMMENT ELECTRONICALLY.

THE REGULATORS

An Electronic Negotiation

Post
2/8/94

Modem Times: OSHA to Try Writing Rules in Cyberspace

By Cindy Skrzycki

Washington Post Staff Writer

Imagine: the **Occupational Safety and Health Administration** in cyberspace.

For the first time, the Department of Labor will attempt to come up with a new regulation with some of the arguing, proposing and paper shuffling done via computer.

The electronic twist in the making of this regulation, which will address "fall protections" for workers building with steel, means that the standard rulemaking process, where there is little talk and lots of paper, will be replaced by a "negotiated rulemaking" (which has been tried with limited success at OSHA before, without computers).

The "neg/reg" process allows the people interested in revamping a

rule to meet around a table and hammer out a consensus, which then becomes the proposed rule.

Their modus operandi, besides meeting face to face, will be to use computers to send messages to one another, shuttle documents around and download information.

The hope is that computers will cut the mountains of paper that pile up in any rulemaking, though some regulatory experts expressed misgivings that electronic messaging would supplant some face-to-face negotiating. OSHA said computers will be used as an adjunct, not as a replacement for meetings.

"It's likely people will try to float ideas and see where there's the possibility of forming consensus," said **David Valdeck**, director of Public Citizen's litigation group.

See **THE REGULATORS**, D5, Col. 1



BY KEITH BENDIS FOR THE WASHINGTON POST

A Labor Department computer bulletin board will add "forums" that will have a secure number and password for committee members and one for the public (OSHARULE) so it can "watch" the process and make suggestions. When the forums are up and running, OSHA officials said there may be an electronic and paper record of the proceedings.

Joseph Dear, the computer-literate fortysomething assistant secretary of labor for occupational safety and health, can't say if there will be traffic jams on the electronic highway. But just in case, the department is installing more phone lines, modems, and memory to make it easy to communicate electronically.

Click.

FEDERAL REGISTER
VOL. 59, No. 8

Proposed Rules

DEPARTMENT OF ENERGY (DOE)
Federal Energy Regulatory Commission (FERC)

18 CFR Parts 141, 375 and 385

Electronic Filing of FERC Form No. 1 and Delegation to Chief Accountant;
Intent To Act and Response to Comments; Issued December 30, 1993.

59 FR 1687

DATE: Wednesday, January 12, 1994

ACTION: Notice of proposed rulemaking; notice of intent to act and response to comments.

SUMMARY: The Federal Energy Regulatory Commission has received comments on its proposal to amend its regulations to provide for the electronic filing of FERC Form No. 1, "Annual Report of Major electric utilities, licensees and others". The Commission intends to issue a final rule pending the development and testing of the necessary software, and anticipates that this will be completed for reporting year 1994. The Commission, in this document, is also providing comments on certain suggestions and recommendations made by interested parties concerning features they believe should be incorporated in the software.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the Federal Register, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in room 3104, at 941 North Capitol Street NE.,

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the text of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208-1397. To access CIPS, set your communications software to use 300, 1200, or 2400 bps, full duplex, no parity, 8 data bits and 1 stop bit. CIPS can also be accessed at 9600 bps by dialing (202) 208-1781. The full text of the Final Rule will be available on CIPS for 30 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in room 3104, 941 North Capitol Street NE., Washington, DC 20426.

ALL FERC
RULES POSTED
ELECTRONICALLY

FEDERAL REGISTER
VOL. 58, No. 236

Rules and Regulations

ADMINISTRATIVE COMMITTEE OF THE FEDERAL REGISTER

1 CFR Part 11

Price Changes to Federal Register Publications

DATE: Friday, December 10, 1993

ACTION: Final rule with request for comments.

SUMMARY: The Administrative Committee of the Federal Register (ACFR) announces increases in the prices of Federal Register publications. The price changes apply to annual subscription rates for the daily Federal Register, the Code of Federal Regulations (CFR), the Weekly Compilation of Presidential Documents, the Federal Register Index and LSA (List of CFR Sections Affected), as well as to the single issue price of the daily Federal Register. These price changes are necessary to more accurately reflect the Government's cost of production and distribution of these publications.

The annual subscription price of the microfiche edition of the Federal Register including the Federal Register Index and LSA will be \$ 403. The price for single copies of the paper edition of the daily Federal Register will be \$ 6. The annual subscription price for the Federal Register Index will be \$ 22. As of January 1, 1994, the annual subscription rates for the Code of Federal Regulations will be \$ 829 for the paper edition and \$ 244 for the microfiche edition.

In this rule, the Administrative Committee has also revised 1 CFR 11.2, 11.3, and 11.4 to remove sales of magnetic tape editions of the Federal Register, CFR and The United States Government Manual from the regulations. The Committee believes that responsibility for distribution of this material belongs with the Superintendent of Documents under the authority of 44 U.S.C. chapter 17. Pursuant to the Government Printing Office Electronic Information Access Enhancement Act of 1993, the Administrative Committee is developing a prototype for an official online edition of the Federal Register scheduled for general dissemination in the spring of 1994. Further steps are underway to convert the CFR data base into an accessible electronic format. The Administrative Committee has already authorized an electronic pilot project for The United States Government Manual, which is currently available to the public over GPO's Federal Bulletin Board.

ELECTRONIC
AT THE
SOURCE

FEDERAL REGISTER
VOL. 58, No. 243

Proposed Rules

ENVIRONMENTAL PROTECTION AGENCY (EPA)

40 CFR Part 52

[NJ12-1-6035; NY9-1-6034; PR2-1-6036; VI2-1-6037; FRL-4815-9]

Clean Air Act Approval and Promulgation of Title V, Section 507, Small Business Stationary Source Technical and Environmental Compliance Assistance Program for Region 2 States: New Jersey, New York, Puerto Rico, and the U.S. Virgin Islands

58 FR 67383

DATE: Tuesday, December 21, 1993

ACTION: Proposed rule.

SUMMARY: EPA is proposing to conditionally approve each state implementation plan (SIP) revision submitted by the States of New Jersey and the U.S. Virgin Islands, and to fully approve each state SIP revision submitted by New York and the Commonwealth of Puerto Rico for the purpose of establishing State Small Business Stationary Source Technical and Environmental Compliance Assistance Programs (PROGRAMs).

....

New Jersey will meet the first section 507(a) requirement of developing, collecting, and coordinating technical and compliance information for small businesses through the establishment of an electronic bulletin board and an information clearinghouse to provide information on CAA rules and regulations, control technologies, a calendar of events, and directories of Federal, state, and private hotline numbers. Additional outreach methods include: mass mailings of a semiannual newsletter to small businesses; periodic public service announcements; workshops and seminars; and responses to small business requests via a telephone hotline.

STATE, AS
AGENT,
POSTING
HELPFUL INFO
ELECTRONICALLY
REGULATORY

FEDERAL REGISTER
VOL. 59, No. 11

Rules and Regulations

DEPARTMENT OF JUSTICE (DOJ)
Office of the Attorney General

28 CFR PART 36

[Order No. 1836-94]

**Nondiscrimination on the Basis of Disability by Public Accommodations and in
Commercial Facilities: Amendments to the Americans With Disabilities Act
Accessibility Guidelines (Accessible Automated Teller Machines and
Transportation Facilities)**

Part VI

59 FR 2674

DATE: Tuesday, January 18, 1994

ACTION: Final rule.

SUMMARY: This final rule amends Appendix A to the Department of Justice regulation implementing title III of the Americans with Disabilities Act (ADA) by incorporating the accessibility guidelines for transportation facilities issued by the Architectural and Transportation Barriers Compliance Board (Access Board), and by adopting the amendments to the reach range requirement for accessible automated teller machines (ATMs) and fare vending machines jointly issued by the Access Board and the Department of Transportation.

EFFECTIVE DATE: February 17, 1994.

FOR FURTHER INFORMATION CONTACT: Stewart B. Oneglia, Chief, Coordination and Review Section, Civil Rights Division, U.S. Department of Justice, Washington, DC 20530, (202) 514-0301 (Voice), (202) 514-0383 (TDD) (the Division's ADA Information Line). These telephone numbers are not toll-free numbers.

Copies of this rule are available in the following alternate formats: large print, Braille, electronic file on computer disk, and audio-tape. Copies may be obtained from the Coordination and Review Section at (202) 514-0301 (Voice) or (202) 514-0383 (TDD). The rule is also available on electronic bulletin board at (202) 514-6193. These telephone numbers are not toll-free numbers.

**ELECTRONIC
ACCESS VERY
USEFUL FOR
SOME
DISABILITIES
(e.g. translate
to Braille)**

FEDERAL REGISTER
VOL. 59, No. 22

Proposed Rules

NUCLEAR REGULATORY COMMISSION (NRC)

10 CFR Part 20

**Radiological Criteria for Decommissioning of NRC-Licensed Facilities;
Enhanced Participatory Rulemaking, Availability of the Staff's Draft of the
Rule**

59 FR 4868

DATE: Wednesday, February 2, 1994

ACTION: Notice of availability of staff's draft proposed rule and summary of comment.

SUMMARY: The Nuclear Regulatory Commission (NRC) is conducting an enhanced participatory rulemaking on establishing the radiological criteria for the decommissioning of NRC-licensed facilities. The Commission has enhanced the participation of affected interests in the rulemaking by soliciting commentary from these interests on the rulemaking issues before the staff developed the draft proposed rule. This document announces the availability of the staff's draft proposed rule as well as a summary of the comments provided to the NRC in response to its enhancement efforts.

FOR FURTHER INFORMATION CONTACT: James C. Malaro, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492-3764. FAX (301) 492-3866.

The Commission will accept comments on the NUREG/CR-6156 and the staff's draft rule in electronic format through the BBS or in written format. Comments may be submitted electronically, in either ASCII text or Wordperfect format, by calling the NRC enhanced participatory rulemaking electronic bulletin board at (800) 880-6091. The bulletin board can be accessed using generally available communications software, with communication protocol setting of no parity, 8 data bits, 1 stop bit (N,8,1) and ANSI or VT-100 terminal emulation. Background documents on the rulemakings are also available for downloading and viewing on the bulletin board. For more information call Ms. Christine Daily, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492-3999; FAX (301) 492-3866.

*COMMENTS
SOUGHT*

FEDERAL REGISTER
VOL. 59, No. 27

Notices

DEPARTMENT OF COMMERCE (DOC)
National Telecommunications and Information Administration (NTIA)

[Docket No. 940231-4031]

Preliminary Spectrum Reallocation Report

59 FR 6005

DATE: Wednesday, February 9, 1994

ACTION: Notice of release of the Preliminary Spectrum Reallocation Report Identifying 200 Megahertz for Public Use, a request for public comments, and a meeting to introduce the report.

SUMMARY: In accordance with the provisions of the Omnibus Budget Reconciliation Act of 1993, title VI, Communications Licensing and Spectrum Allocation Improvement, the Secretary of Commerce will release the Preliminary Spectrum Reallocation Report to the public and submit it to the President, the Congress and the Federal Communications Commission on February 10, 1994. Interested parties are invited to submit written comments (10 copies) by May 11, 1994. The report will be available on February 10, 1994, at NTIA in hard copy form and on NTIA's Bulletin Board at (202) 482-1199. Comments can be provided in written form or via the NTIA bulletin board.

*COMMENTS
SOUGHT*

A meeting will be held at the Department of Commerce at which the report will be introduced and the press and interested parties will have an opportunity to ask questions. The meeting will be on February 10, 1994, from 9:30 to 11:30 in room 4830 at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: The person to contact to obtain copies of the report and provide written comments is: Norbert Schroeder, Program Manager, Spectrum Openness, National Telecommunications and Information Administration, room 4092, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, Telephone: (202) 482-3999, Fax: (202) 482-4396.

FEDERAL REGISTER
VOL. 59, No. 28

Notices

ENVIRONMENTAL PROTECTION AGENCY (EPA)

[FRL-4836-7]

New Source Review Reform Subcommittee; Meeting

59 FR 6257

DATE: Thursday, February 10, 1994

ACTION: Notice of public meeting.

SUMMARY: On July 7, 1993, the EPA gave notice of the establishment of the New Source Review (NSR) Reform Subcommittee (Subcommittee) (58 FR 36407) under the auspices of the Clean Air Act Advisory Committee (55 FR No. 217, 46993) which was established pursuant to the Federal Advisory Committee Act (5 U.S.C. app I). The Subcommittee's purpose is to provide independent advice and counsel to the EPA on policy and technical issues associated with reforming the NSR rules.

Inspection of Committee Documents: Documents relating to the above-noted topics will be publicly available at the meeting. Thereafter, these documents, together with transcript of the Subcommittee's meeting, will be available for public inspection in EPA Air Docket No. A-90-37. The docket is available for public inspection and copying between 8:30 a.m. to 12 noon and 1:30 to 3:30 p.m., weekdays, at EPA's Air Docket (6102), room M-1500, 401 M Street, SW., Washington, DC 20460. A reasonable fee may be charged for copying.

The transcript of the upcoming meeting will be available to the public through EPA's Office of Air Quality Planning and Standards (OAQPS) Technology Transfer Network (TTN) electronic bulletin board. For assistance in accessing the OAQPS TTN, contact the systems operator at (919) 541-5384 in Research Triangle Park, North Carolina, during normal business hours.

FOR FURTHER INFORMATION CONTACT: For questions concerning the Subcommittee or its activities, please contact Mr. David Solomon, Designated Federal Official to the Subcommittee at (919) 541-5375, telefax (919) 541-5509, or by mail at U.S. EPA, OAQPS, Air Quality Management Division (MD-15), Research Triangle Park, North Carolina 27711.

**MEETING
RECORD ON
FILE
AVAILABLE**

FEDERAL REGISTER
VOL. 59, No. 34

Rules and Regulations

DEPARTMENT OF THE TREASURY
Foreign Assets Control Office

31 CFR Part 580

Haitian Transactions Regulations; Extension of Assembly Sector Licenses

59 FR 8134

DATE: Friday, February 18, 1994

ACTION: Policy statement.

SUMMARY: The Office of Foreign Assets Control is extending until March 31, 1994, the expiration date for all current assembly sector licenses issued pursuant to the Haitian Transactions Regulations.

EFFECTIVE DATE: January 31, 1994.

FOR FURTHER INFORMATION CONTACT: Steven I. Pinter, Chief of Licensing (tel: 202/622-2480), or William B. Hoffman, Chief Counsel (tel.: 202/622-2410), Office of Foreign Assets Control, Department of the Treasury, Washington, D.C. 20220.

SUPPLEMENTARY INFORMATION:

Electronic Availability

This document is available as an electronic file on The Federal Bulletin Board the day of publication in the Federal Register. By modem dial 202/512-1387 or call 202/512-1530 for disks or paper copies. This file is available in Postscript, WordPerfect 5.1 and ASCII.

*THIS AGENCY
PUTS ALL
REGULATORY
DOCUMENTS
UP ELECTRONICALLY*

FEDERAL REGISTER
VOL. 59, No. 35

Proposed Rules

OFFICE OF PERSONNEL MANAGEMENT (OPM)

5 CFR Part 300

RIN 3206-AF80

59 FR 8419

DATE: Tuesday, February 22, 1994

ACTION: Proposed rule.

SUMMARY: The Office of Personnel Management (OPM) proposes to amend its regulations to reflect that agency heads must ensure that employees and applicants for employment at their agencies are notified of the recently enacted provisions in the Hatch Act Reform Amendments of 1993, which prohibit individuals from requesting, making, transmitting, accepting, or considering political recommendations in effecting personnel actions.

Accordingly, the Office of Personnel Management proposes to amend 5 CFR part 300 as follows:

....

Methods of notifying employees and applicants of these provisions include, but are not limited to:

- (a) Posters displayed in prominent places throughout the agency;
- (b) Pamphlets for distribution to employees and applicants;
- (c) Notices printed on vacancy announcements or posted on computer bulletin boards; or
- (d) Notices printed on application forms, examinations, or each employment form used in connection with appointment actions.

*MANY SUCH
BOARDS
EXIST*

FEDERAL REGISTER
VOL. 59, No. 39

Notices

DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS)
Public Health Service (PHS)
Agency for Toxic Substances and Disease Registry (ATSDR)

**Revised Priority List of Hazardous Substances That Will Be the Subject of
Toxicological Profiles**

59 FR 9486

DATE: Monday, February 28, 1994

ACTION: Notice.

SUMMARY: The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or Superfund), as amended by the Superfund Amendments and Reauthorization Act (SARA), requires that ATSDR and the Environmental Protection Agency (EPA) annually revise the Priority List of Hazardous Substances to include additional substances most commonly found at facilities on the CERCLA National Priorities List (NPL). This announcement provides notice that the agencies have developed and are making available a revised CERCLA Priority List of 275 Hazardous Substances, based on the most recent information available to ATSDR and EPA. This revised priority list includes newly listed substances which have been determined to pose the most significant potential threat to human health at or around NPL hazardous waste sites. Each substance on the priority list is a candidate to become the subject of a toxicological profile prepared by ATSDR and subsequent identification of priority data needs.

This is an informational notice only, and comments are not being solicited at this time. However, comments will be placed in a publicly accessible docket; therefore, please do not submit confidential business information.

Electronic Availability: The 1993 Revised Priority List is available as an electronic file on The Federal Bulletin Board the day of publication in the Federal Register. By modem dial 202-512-1387 or call 202-512-1530 for disks or paper copies. This file is available in Wordperfect 5.1, Dbase III, and ASCII.

FOR FURTHER INFORMATION CONTACT: Quality Assurance Branch, Division of Toxicology, ATSDR, Atlanta, GA 30333, telephone (404) 639-6308.

NOTICE
DATA
BOS

FEDERAL REGISTER
VOL. 59, No. 42

Notices

DEPARTMENT OF COMMERCE (DOC)
National Telecommunications and Information Administration (NTIA)

Advisory Council on the National Information Infrastructure; Open Meeting

DATE: Thursday, March 3, 1994

ACTION: Notice is hereby given of a meeting of the Advisory Council on the National Information Infrastructure, created pursuant to Executive Order 12864, as amended.

SUMMARY: The President established the Advisory Council on the National Information Infrastructure (NII) to advise the Secretary of Commerce on matters related to the development of the NII. In addition, the Council shall advise the Secretary on a national strategy for promoting the development of a NII. The NII will result from the integration of hardware, software, and skills that will make it easy and affordable to connect people, through the use of communication and information technology, with each other and with a vast array of services and information resources. Within the Department of Commerce, the National Telecommunications and Information Administration has been designated to provide secretariat services for the Council.

FOR FURTHER INFORMATION CONTACT: Ms. Sarah Maloney (or Ms. Alison Andrews, alternate), Designated Federal Officer for the Advisory Council on the NII and Chief, Policy Coordination Division at the National Telecommunications and Information Administration (NTIA); U.S. Department of Commerce, room 4625; 14th Street and Constitution Avenue, NW.; Washington, DC 20230. Telephone: 202-482-1835; Fax: 202-482-0979; E-mail: niintia.doc.gov.

Any member of the public may submit written comments concerning the Council's affairs at any time before or after the meeting. Comments should be submitted through electronic mail to nii@ntia.doc.gov or to the Designated Federal Officer at the address listed above. Within thirty (30) days following the meeting, copies of the minutes of the Council meetings may be obtained through Bulletin Board Services at 202-501-1920, 202-482-1199, over the Internet at iitf.doc.gov, or from the U.S. Department of Commerce, National Telecommunications and Information Administration, room 4892, 14th Street and Constitution Avenue, NW.; Washington, DC. 20230; Telephone 202-482-1835.

*COMMENTS
ON
SUBJECT
(NOT A
RULE)*

FEDERAL REGISTER
VOL. 59, No. 43
Notices

DEPARTMENT OF COMMERCE (DOC)
National Telecommunications and Information Administration (NTIA)
[Docket Number: 940118-4018]
RIN 0660-AA04

Telecommunications and Information Infrastructure Assistance Program (TIIAP)

DATE: Friday, March 4, 1994

ACTION: Notice of availability of funds.

SUMMARY: The National Telecommunications and Information Administration (NTIA) announces the availability of funds for planning and demonstration projects to promote the goals of development and widespread availability of advanced telecommunications technologies; to enhance the delivery of social services and generally serve the public interest; to promote access to government information and increase civic participation; and to support the advancement of an advanced nationwide telecommunications and information infrastructure.

FOR FURTHER INFORMATION CONTACT: Dr. Charles M. Rush, Acting Director of the Office of Telecommunications and Information Applications, Telephone: (202) 482-2048; fax: (202) 482-2156; e-mail: tiiap@ntia.doc.gov Information on the program may also be downloaded from the NTIA Bulletin Board. Modem should be set at either 2400 or 9600 baud, 8 data bits, 1 stop bit: (202) 482-1199.

NTIA announces a competitive grant program, the TIIAP, created to advance the goals of the Administration's National Information Infrastructure (NII) initiative. Major goals of the NII initiative include: The promotion of private sector investment through appropriate tax and regulatory policies; the extension of universal service so that information is available to all at affordable prices, using the widest variety of appropriate technologies; the promotion of technological innovation and new applications; wider access to government information; and guarantees of information security and network reliability.

For details of the NII initiative, see The National Information Infrastructure: Agenda for Action, 58 FR 49025 (September 21, 1993). This document is available on Internet, in ASCII format through both FTP and Gopher. The FTP file name is "niiagenda.asc." Address: "ftp.ntia.doc.gov." Login as "anonymous". Use your e-mail address or guest as the password. Change directory to "pub." The Gopher address is "gopher.nist.gov." Login as "gopher." Choose the menu item "DOC Documents." Choose "ntiaagenda.asc."

*GRANT
APPLICATION*

FEDERAL REGISTER
VOL. 59, No. 44

Notices

**COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS
(CITA)**

**Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile
Products Produced or Manufactured in Indonesia; March 2, 1994.**

59 FR 10613

DATE: Monday, March 7, 1994

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: March 9, 1994.

**FOR FURTHER INFORMATION CONTACT: Jennifer Tallarico, International Trade
Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202)
482-4212. For information on the quota status of these limits, refer to the
Quota Status Reports posted on the bulletin boards of each Customs port or
call (202) 927-6704. For information on embargoes and quota re-openings, call
(202) 482-3715.**

*SOME BULLETIN
BOARDS ARE NOT ELECTRONIC*

FEDERAL REGISTER
VOL. 59, No. 45

Notices

DEPARTMENT OF EDUCATION

[CFDA No.: 84.117D]

Education Research and Development Centers Program; Notice Inviting
Applications for New Awards for Fiscal Year (FY) 1994

DATE: Tuesday, March 8, 1994

Purpose of Program: To support research and development centers to conduct research and related activities.

Eligible Applicants: The following are eligible for a new award under this program: institutions of higher education, institutions of higher education in consort with public agencies or private nonprofit organizations, and interstate agencies established by compact that operate subsidiary bodies established to conduct postsecondary educational research and development.

Deadline for Transmittal of Applications: June 8, 1994.

Applications Available: March 17, 1994.

For Applications or Information Contact: Dr. Joseph Conaty, U.S. Department of Education, 555 New Jersey Avenue, NW., room 610, Washington, DC 20208-5573. Telephone: (202) 219-2079. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260-9950; or on the Internet Gopher Server at GOPHER.ED.GOV (under Announcements, Bulletins and Press Releases). However, the official application notice for a discretionary grant competition is the notice published in the Federal Register.

///
*ALL EDUCATION
GRANT NOTICES
AVAILABLE ON
THIS BBS*

FEDERAL REGISTER
VOL. 59, No. 048

Proposed Rules

ENVIRONMENTAL PROTECTION AGENCY (EPA)

40 CFR Part 63

**National Emission Standards for Hazardous Air Pollutants; Proposed Standards
for Hazardous Air Pollutant Emissions From Magnetic Tape Manufacturing
Operations**

DATE: Friday, March 11, 1994

ACTION: Proposed rule and notice of public hearing.

SUMMARY: The EPA is proposing standards that would limit emissions of hazardous air pollutants (HAP) from existing and new magnetic tape manufacturing operations that are part of major sources. The proposed standards implement sections 112(d) and 112(h) of the Clean Air Act as amended in 1990 (the Act), which requires the Administrator to regulate emissions of HAP listed in section 112(b) of the Act. The intent of the proposed standards is to protect the public by requiring new and existing major sources to control emissions to the level corresponding to the maximum achievable control technology (MACT), taking into consideration the cost of achieving such emission reductions, any non-air quality and other air quality-related health and environmental impacts, and energy requirements.

SUPPLEMENTARY INFORMATION:

The proposed regulatory text is not included in this Federal Register notice, but is available in Docket No. A-91-31 or by request from the EPA contact persons designated earlier in this notice free of charge. The proposed regulatory language is also available on the Technology Transfer Network (TTN), one of EPA's electronic bulletin boards. TTN provides information and technology exchange in various areas of air pollution control. The service is free, except for the cost of a phone call. Dial (919) 541-5742 for up to a 14,400 bps modem. If more information on TTN is needed call the HELP line at (919) 541-5384.

TEXT
OF
PROPOSAL
NO COMMENTS

Clinton Presidential Records Digital Records Marker

This is not a presidential record. This is used as an administrative marker by the William J. Clinton Presidential Library Staff.

This marker identifies the place of a publication.

Publications have not been scanned in their entirety for the purpose of digitization. To see the full publication please search online or visit the Clinton Presidential Library's Research Room.

federal register

**Friday
July 2, 1993**

Part III

Office of Management and Budget

**Federal Information Resources
Management (Circular A-130), Revision;
Notice**



United States
Department of
Agriculture

Animal and
Plant Health
Inspection
Service

Federal Bldg.
Hyattsville, MD
20782

Input for First Meeting,

"Task Force on the Use of Information technology to Improve Rulemaking"

ONGOING PROJECT: APHIS is currently operating a public bulletin board to accept comments on a proposed rule, "Importation of Logs and Lumber." The BB will run until April 20, 1994, when the comment period closes.

SEE THE ATTACHED SAMPLE SCREENS FROM THE APHIS BULLETIN BOARD.

We will then evaluate the experience, in terms of both its benefits for the particular proposed rule and its utility as a pilot for a new regulatory development tool. Anyone who wants to discuss the project, or who wants a copy of that evaluation - call me.

To date, the BB has attracted 26 users from outside APHIS. They include entomologists, State regulatory agency officials, wood industry organizations, environmental organizations, international trade groups, and a number of welcome sightseers from other Federal agencies who are more interested in the BB process than the particular rule.

Very few substantive comments have been posted to the BB to date - but neither have we received many substantive comments by postal mail. Traditionally, most of our comments arrive in the last 2 weeks of the comment period.

SUGGESTIONS FOR THE TASK FORCE:

1. See what's already available out there (e.g., the attached list of U.S. Government Gophers) and arrange the sharing of platforms, programs, and resources.
2. Have the Regulatory Working Group members send a memo to the (1) regulatory development chief and the (2) IRM services chief in their agencies, telling them that developing regulatory IRM products is a priority and making resources available.
3. Establish an on-line presence for the Task Force.

FOR FURTHER INFORMATION:

Richard Kelly
Reinvention Lab Coordinator
"Simplifying Rulemaking in APHIS"

voice: 301-436-5455
fax: 301-436-8934
e-mail: rkelly@tmn.com



APHIS - Protecting American Agriculture

An Equal Opportunity Employer

**LOGIN PROCEDURE
FOR THE
APHIS PROPOSED RULE BULLETIN BOARD**

Dial-in access: Any modem speed from 1200 through 14,400. Use standard bulletin board settings - 8 data bits, 1 stop bit, no parity. Dial (703) 243-9696.

Internet access: Telnet to the board using the following command:

telnet tmn.com

Login procedure: Whichever access method you use, login as follows. Use the userid "woodrule" and the password "aphis23", both in lower case. It will then ask you for your last name, register you, ask you to pick an individual password, and let you into the BB. (You will have to shorten your last name if it's more than 8 characters.)

```

*****
*****
      AA      PPPPPPP  HH   HH   IIIIIIII  SS SSSS
      AA A    PP   PPP  HH   HH   II        SS      SS
      AA  AA  PP   PPP  HH   HH   II        SSS
      AA    AA PPPPPPP  HHHHHHHH  II        SSS
      AA AAAA AA PP      HHHHHHHH  II        SSSSS
      AAA      AA PP      HH   HH   II        SS      SSS
      AAA      AAA PP      HH   HH   II        SSS      SSS
      AAA      AAA PP      HH   HH   IIIIIIII  SSSSS
*****
*****

```

WELCOME TO THE APHIS PROPOSED RULE COMMENT AREA

OPEN FOR PUBLIC COMMENT ON

"Importation of Logs, Lumber, and Other Unmanufactured Wood"

Docket No. 91-074-3

Supported by:

Metasystems Design Group, Inc.

2000 North 15th Street, Suite 103

Arlington, VA 22201 USA

Support: 703-243-6622 or 800-277-0414

The CANCEL key is Control-C

Unseen items are:

3-5 7

No new responses

APHIS WoodRule Top-level Menu:

- 1 - Register your name, position, organization, address, etc.
(Please do this ONCE -- the first time you log in.)
- 2 - List all discussion "items" in this "electronic conference."
- 3 - Read all NEW "items" and NEW "responses" (comments).
- 4 - Read a particular item AND its appended responses (comments).
- 5 - Enter your own response (comment) to one of the items.
- 6 - Read info about other persons in this WoodRule conference.
- 7 - Change or update your self-intro, phone, or password.
- 8 - Download a copy of the proposed rule from the file library.
- 9 - HELP
- 0 - QUIT and log off

ENTER NUMBER OF YOUR CHOICE:

CHOICE 2 - List all discussion "items" in this "electronic conference."

(# of
comments)

Item	1	(	3)	Welcome and Instructions.
Item	2	(	0)	Comments on Definitions.
Item	3	(	0)	Comments on General Restrictions and Prohibitions.
Item	4	(	0)	Comments on Permits and Other Documents.
Item	5	(	0)	Comments on Universal Entry Alternatives.
Item	6	(	1)	Comments on Treatments.
Item	7	(	0)	Comments on Port of Arrival Activities.
Item	8	(	2)	Comments on Risk Assessment Standards.
Item	9	(	2)	General Comments and Other Topics.
Item	10	(	2)	Feedback on usefulness of this electronic comments system
Item	11	(	4)	Names, Mailing Addresses, and Phone Numbers -- of Participants.

CHOICE 8 - Download a copy of the proposed rule from the file library.

FULL listing of files available for download

NAME: ruleasc.exe SIZE: 72185 TYPE: binary
BY: woodmgmr ON: Thu Dec 30 10:49:17 EST 1993

DESC: Rule text - ASCII format - compressed, self-extracting

This is the full text of proposed rule 91-074-3, in ASCII format, in a self-extracting compressed form. Download the file, then after disconnecting, type the file name prefix ("ruleasc") to expand the file.

NAME: rulewp.exe SIZE: 83682 TYPE: binary
BY: woodmgmr ON: Thu Dec 30 10:55:11 EST 1993

DESC: Rule text - WordPerfect format - compressed, self-extracting format

This is the full text of the proposed rule in WordPerfect format, in a self-extracting compressed form. After downloading it, disconnect and type the file name prefix ("rulewp") to expand it.

NAME: pressrel SIZE: 4438 TYPE: text
BY: rkelly ON: Wed Jan 26 11:42:50 EST 1994

DESC: Press Release on Wood Proposal

This is the USDA/APHIS Press Release announcing publication of the proposed rule. It is in ASCII format, and was published 1/25/94.

NAME: econanalysis SIZE: 98200 TYPE: binary
BY: kelly_ ON: Fri Jan 28 10:24:51 EST 1994

DESC: Economic analysis of the proposed rule

This is the preliminary economic analysis APHIS prepared in compliance with Executive Order 12866 and the Regulatory Flexibility Act. IT IS IN WORDPERFECT FORMAT. It is missing two figures (graphs) discussed in its text, to shorten downloading time.

NAME: pubhearing1 SIZE: 15788 TYPE: text
BY: kelly_ ON: Mon Feb 14 11:44:05 EST 1994

DESC: Some comments made at the first public hearing

This file includes comments made at the first public hearing by the Oregon Department of Agriculture, a sawmill industry group, a mycology researcher, and a Chilean wood exporter. Additional comments from the hearing will be posted later by APHIS.

NAME: pubhearing2 SIZE: 24205 TYPE: text
BY: kelly_ ON: Wed Feb 16 18:07:42 EST 1994

DESC: More comments made at the first public hearing

NAME: eis.asc SIZE: 28589 TYPE: text
BY: kelly_ ON: Wed Mar 9 11:41:44 EST 1994

DESC: Intro Section of Draft Environmental Impact Statement

This file contains, in ASCII format, the Summary and Introduction sections of the Draft Environmental Impact Statement (DEIS) prepared for the proposed rule. It also includes the names and addresses of the persons responsible for preparing, distributing, and accepting comments on the DEIS. It's about fourteen pages.

Government Gopher Servers (From UC Irvine/PEG)

1. Call for assistance....
2. POLITICS and GOVERNMENT/
3. Definition of a "United States Government Gopher".
4. Federal Government Information (via Library of Congress)/
5. LEGI-SLATE Gopher Service (via UMN)/
6. AVES: Bird Related Information/
7. Americans Communicating Electronically/
8. Arkansas-Red River Forecast Center (NOAA)/
9. AskERIC - (Educational Resources Information Center)/
10. CYFERNet USDA Children Youth Family Education Research Network/
11. Co-operative Human Linkage Center (CHLC) Gopher/
12. Comprehensive Epidemiological Data Resource (CEDR) Gopher/
13. Defense Technical Information Center Public Gopher/
14. ERIC Clearinghouse for Science, Math, Environmental (OSU)/
15. ERIC Clearinghouse on Assessment and Evaluation/
16. ESnet Information Services Gopher/
17. Electronic Government Information Service/
18. Environment, Safety & Health (USDE) Gopher/
19. Environmental Protection Agency/
20. Environmental Protection Agency/
21. Environmental Protection Agency Great Lakes National Program Offi.../
22. Extension Service, USDA/
23. Federal Communications Commission Gopher/
24. Federal Info Exchange (FEDIX)/25. Federal Register (via Internet.COM)/
26. Federal Register - Sample access/
27. Information Infrastructure Task Force (DoC) Gopher/
28. LANL Advanced Computing Laboratory/
29. LANL Gopher Gateway /
30. LANL Nonlinear Science Information Service/
31. LANL Physics Information Service/
32. LANL T-2 Nuclear Information Service Gopher/
33. LANL Weather Machine/
34. LTERnet (Long-Term Ecological Research Network)/
35. Lawrence Berkeley Laboratory (LBL)/
36. Library of Congress MARVEL Information System/
37. Los Alamos National Laboratory/
38. NASA Ames Research Center K-12 Gopher/
39. NASA Center for Aerospace Information/
40. NASA Goddard Space Flight Center/
41. NASA High Energy Astrophysics Science Archive Research Center/
42. NASA Laboratory for Terrestrial Physics Gopher/
43. NASA Langley Research Center/
44. NASA LeRC Telecommunications and Networking Gopher/
45. NASA Lewis Research Center (LeRC)/
46. NASA Library X at Johnson Space Center/
47. NASA Mid-Continent Technology Transfer Center/
48. NASA Minority University Space Interdisciplinary Network/
49. NASA Network Application and Information Center (NAIC)/
50. NASA Office of Life and Microgravity Sciences and Applications/
51. NASA Scientific and Technical Information/
52. NASA Shuttle Small Payloads Information/
53. NASA Space Medicine and Life Sciences/
54. NASA Telnet Sites/
55. NIST Computer Security/

56. NOAA Environmental Services Gopher/
57. NOAA National Geophysical Data Center (NGDC)/
58. NOAA National Oceanographic Data Center (NODC) Gopher/
59. National Agricultural Library Genome Gopher/
60. National Cancer Institute/
61. National Center for Atmospheric Research (NCAR) Gopher/
62. National Center for Biotechnology Information (NCBI) Gopher/
63. National Center for Education Statistics/
64. National Center for Research on Evaluation, Standards/
65. National Center for Supercomputing Applications/
66. National Coordination Office for High Performance Computing and Co.../
67. National Geophysical Data Center (NOAA)/
68. National Institute of Allergy and Infectious Disease (NIAID)/
69. National Institute of Environmental Health Sciences (NIEHS) Gopher/
70. National Institute of Mental Health (NIMH) Gopher/
71. National Institute of Standards and Technology (NIST)/
72. National Institutes of Health (NIH)/
73. National Library of Medicine /
74. National Library of Medicine TOXNET Gopher/
75. National Oceanographic Data Center (NODC) Gopher/
76. National Science Foundation (STIS)/
77. National Science Foundation Center for Biological Timing/
78. National Science Foundation Metacenter/
79. National Toxicology Program (NTP) NIEHS-NIH/
80. Naval Ocean System Center (NRaD) Gopher/
81. Naval Research Laboratory/
82. Naval Research Laboratory Central Computing Facility/
83. Oak Ridge National Laboratory Center for Computational Sciences/
84. Oak Ridge National Laboratory ESD Gopher/
85. Protein Data Bank - Brookhaven National Lab/
86. STIS (Science and Technology Information System-NSF)/
87. Smithsonian Institution Natural History Gopher/
88. U.S. Bureau of Mines Gopher/
89. U.S. Bureau of the Census Gopher/
90. U.S. Dept Agriculture ARS GRIN National Genetic Resources Program/
91. U.S. Dept Agriculture Children Youth Family Education Research Net.../
92. U.S. Dept Agriculture Economics and Statistics/
93. U.S. Dept Agriculture Extension Service/
94. U.S. Dept Agriculture National Agricultural Library Plant Genome/
95. U.S. Dept Commerce Information Infrastructure Task Force/
96. U.S. Dept Commerce Economic Conversion Information Exchange/
97. U.S. Dept Education/
98. U.S. Dept Energy /
99. U.S. Dept Energy Environment, Safety & Health Gopher/
100. U.S. Dept Energy Office of Nuclear Safety/
101. U.S. Environmental Protection Agency/
102. U.S. Environmental Protection Agency Futures Group/
103. U.S. Environmental Protection Agency Great Lakes National Program .../
104. U.S. Geological Survey (USGS)/
105. U.S. Geological Survey Atlantic Marine Geology/
106. U.S. House of Representatives Gopher/
107. U.S. Military Academy Gopher/
108. U.S. National Information Service for Earthquake Engineering/
109. U.S. Naval Observatory Satellite Information/
110. U.S. Navy Naval Ocean System Center NRaD Gopher/
111. U.S. Senate Gopher/
112. Voice of America (Radio)



THE UNIVERSITY OF NORTH CAROLINA
AT
CHAPEL HILL

Department of Political Science
College of Arts and Sciences
919-962-3041
FAX 919-962-0432

February 15, 1994

The University of North Carolina at Chapel Hill
CB# 3265, Hamilton Hall
Chapel Hill, N.C. 27599-3265

Mr. Jock Gill
The White House
1600 Pennsylvania Avenue, NW
Washington, D.C. 20500

Dear Mr. Gill,

As you know, UNC-CH plays a major role in developing the future of America's information infrastructure. SunSITE represents the premier example, worldwide, of the information revolution and its role in democratic decision-making. For example, just two days ago Apple introduced its newest hardware to the consuming public at a demonstration/news conference in California by linking up onto the Internet and when they did, they came directly to SunSITE and the Clinton White House papers.

Now, SunSITE has begun a new consortium including all of its current partners and a new one, the US National Archives and Records Administration. With NARA's presidential libraries system, we are launching a Presidential Libraries IDEA Network (called *PRESIDENT*) linking together the resources of the 12 presidential libraries into a single network of information, with SunSITE at the hub.

To initiate this network, NARA has invited archivists from each of its libraries and from Washington to convene in Chapel Hill for a conference, March 9-11, 1994. At the conference, we will be teaching archivists about this new information source and working out the development details for the network. We would like to extend an invitation to you to participate in this conference. In particular, we invite you to attend a dinner on the evening of March 9th at which we will welcome the conferees and allow our partners (NARA, Sun, and CISCO) to discuss their role in *PRESIDENT*. We will also present a 15-minute computer generated synopsis of *PRESIDENT*, which we will repeat in April at the White House for President Clinton. I have included a copy of our preliminary schedule for the conference. The cost of the dinner is \$20.00.

With my regards, I am

Sincerely yours,

Terry Sullivan

Director, *PRESIDENT* at SunSITE.UNC.EDU

Faculty advisor to Clinton Papers Project at SunSITE.UNC.EDU

March 8, 1994

MEMORANDUM FOR REGULATORY WORKING GROUP

FROM: JOHN PODESTA
Assistant to the President
and Staff Secretary

KEVIN THURM
Chief of Staff, Department of Health
and Human Services

SUBJECT: ELECTRONIC INFORMATION TECHNOLOGY AND RULEMAKING

The Vice President's Report on Improving Regulatory Systems accompanying the National Performance Review recommends that federal departments and agencies explore the use of information technology in the development and implementation of rules. To that end, the Regulatory Working Group has established a Task Force on the Use of Information Technology to Improve Rulemaking. We have been asked to co-chair this Task Force. We are asking the departments and agencies to consider participating in this effort.

This Task Force is charged with sponsoring and evaluating innovative ways to use technology, including ways to use it to broaden and strengthen participation in rulemaking, and to increase the efficiency of the rulemaking process. The Task Force will examine ongoing projects and promote the initiation of others, and facilitate cross-agency sharing of implementation lessons.

Some of the kinds of innovations we should consider have already been tested in other contexts. For example, the first year of the Clinton Administration has seen the development of communications technology allowing citizens to send electronic mail to the White House, receive electronic copies of documents directly from bulletin boards and through CD-ROMs. Currently accessible documents include the Federal Budget and the National Performance Review monographs.

These initial steps have been well received by the public. However, despite the increasing availability of interactive electronic communications technology, the federal government has yet to take full advantage of this emerging opportunity to renew the connection between American citizens and their government. Our Task Force will seek to bridge that gap for the regulatory process.

Our efforts will encompass a wide range of approaches. These include dissemination of proposed rules through electronic as well as paper copies to facilitate public access. Important regulatory documents, such as the Unified Agenda of Federal Regulations and reports on improving regulatory practices, could also be disseminated electronically, not only to the public but also to the widely dispersed federal employees involved in rulemaking. Potentially of greatest importance, interactive information technology could be used for electronic forums to increase public participation and to expand the dialogue among parties interested in particular rules.

A number of such projects are already under way. For example, the Labor Department's Occupational Safety and Health Administration is sponsoring a negotiated rulemaking that will involve computer messages both in negotiations and for the public. The Commerce Department is putting the radio allocation proceeding on a bulletin board, and the Nuclear Regulatory Commission and the Administrative Conference of the United States are planning "Reg Net," a regulatory conferencing pilot project. We would like to learn of other pilot projects already planned or underway, and stimulate others. The experience gained from a number of these projects should provide a solid basis for evaluation and dissemination of results, and for widespread adoption of effective approaches.

We will hold our first meeting on Monday, March 21, 1994 at 10 am in Room 472 of the Old Executive Office Building. This meeting will give each interested department or agency a chance to participate on the Task Force and to provide information on projects it is planning or conducting. We are particularly interested in representatives who can help develop techniques, identify or sponsor additional pilot projects, and develop the Task Force agenda for further work.

If you could provide us with the names of people to serve on the Task Force, we will get materials to them before the first meeting. Please call Walt Francis at 202/690-8291 with the names, dates of birth, and telephone and facsimile numbers.

THE ELECTRONIC AGENCY AND THE TRADITIONAL PARADIGMS OF ADMINISTRATIVE LAW

Henry H. Perriitt, Jr.*

INTRODUCTION

Electronic information technology will change administrative agency structures and application of traditional administrative law concepts.¹

*Professor of Law, Villanova Law School; Member of the Bar, Virginia, Pennsylvania, District of Columbia, United States Supreme Court; Chair, Section on Law and Computers, Association of American Law Schools; Chair Committee on Regulatory Initiatives and Information Technology, Section on Administrative Law and Regulatory Practice, ABA. This article grew out of a paper prepared while the author was a Fellow at the Center for Business and Government of the Kennedy School of Government at Harvard University during the fall semester, 1990. The author appreciates intellectual assistance from John T. Dunlop, David R. Johnson, Marc Lauritsen, Catherine Lancot, and students in the author's class in Administrative Law at Villanova Law School, fall semester, 1991.

1. The phenomenon is not limited to administrative agencies. See generally James I. Cash & Benn R. Konsynski, *IS Redraws Competitive Boundaries*, 63 HARV. BUS. REV., Mar.-Apr. 1985, at 134 (penetration of information systems into internal business processes); Benn R. Konsynski & F. McFarlan, *Information Partnership: Scale Without Ownership* (HARV. BUS. SCH. CASE N1-191-023) (information technology allows enterprises to cooperate in new ways). Private sector organizations draw their boundaries so as to minimize the transaction costs of production and coordination. Costs of production are minimized by vertical integration when firms can realize Minimum Optimal Scale within the firm. Minimum Optimal Scale (MOS) is the smallest size of a production unit at which all of the economies of scale can be realized. They buy from other firms when their own needs are not sufficient to utilize fully an MOS-size operation for that factor of production. MIT Sloan School Professor Thomas Malone calls transaction costs outside the firm "coordination costs."

Historically, coordination costs were relatively high and remained high as improved technology reduced production costs. This created an incentive to move more and more production activities within the firm; in other words it created incentives for more vertical integration.

Now, technological innovation promises greater rewards with respect to coordination costs than to production costs. Computer and digital communications technologies now make feasible various forms of electronic coordination, particularly electronic contracting and its close cousin Electronic Data Interchange (EDI). As EDI is introduced more widely, the expectation is that economically rational firms will draw in their boundaries, reducing the average size of firms. In other words, more economic activity will occur in the marketplace rather than within vertically integrated firms.

These ideas cannot be applied directly to governmental entities. Governmental entities exist for purposes other than production efficiency. Agency survival and growth is determined by factors other than market share and profit. Accordingly, there is no reason to

Governments are increasing their use of digital electronic information technologies to acquire information from private entities, to process it internally, and to disseminate it to the public.² Interest in electronic forms of public information is growing rapidly, as the SEC, the IRS and the federal tariff agencies begin to require electronic filings; as more government information is available for release to the public in electronic form; and as agency management practices change because of electronic mail and electronic records management.

This article assesses the impact of electronic information technology on three traditional goals of administrative procedure: efficiency, participation, and formality (judicial reviewability). It concludes that adoption of electronic information technology for rulemaking, adjudication, internal management, and delivery of services advances virtually all of the traditional goals of administrative law.

1. Electronic information technology increases efficiency by permitting mechanical functions to be automated.

2. In the long run, adoption of information technology systems designed for flexibility can blur the boundaries between citizen and agency and between agency and court, furthering participation and individual dignity goals.

3. Blurring of these boundaries may necessitate rethinking the definitions of some of the basic events that define the administrative process, public participation and judicial review. Ultimately a balance must be struck between pursuit of participation goals and formality.

4. Electronic information technology can be implemented so as to make administrative procedure inflexible, but inflexibility can be avoided by proper system design.

5. Barriers to wider adoption of information technology result from misapplication of legal concepts and failure to appreciate the adaptability of the technologies to policy decisions about the goals of the administrative process.

In assessing the connection between electronic information technology and administrative law issues generally, it is useful to have a concrete idea of how a government agency might function once it takes full advantage of electronic information technology now available or reasonably expected to be available within five to ten years. Sketching the hypothetical uses of technology not only identifies problems for traditional paradigms of government and of information management, but also shows a mode of

conclude, based on the Williamson and Malone propositions, that digital electronic technologies will cause agency boundaries to contract. Greater use of the technologies can reduce external coordination costs, however, and it is external coordination costs that are involved in assessing efficiency of administrative procedure involving private parties.

2. See generally Administrative Conference Recommendation 88-10, 1 C.F.R. § 305.88-10 (1989) (recommending, among other things, experimentation with electronic rulemaking and adjudication).

governmental functioning that enhances citizen participation in governmental decisionmaking.

The hypotheticals involve four categories of agency decisionmaking: adjudication, rulemaking, management of agency resources, and delivery of services. The use of electronic information technology is somewhat different in each category. Adjudication involves the application of a pre-existing rule to a particular case. Rulemaking involves the formulation of new standards for application in later adjudications as pre-existing rules. There is a loose correspondence between the categories of adjudication and rulemaking in administrative law, and the categories of contract administration and contract formation in contract law. Rulemaking and contract formation define a relationship, establishing standards for the first time. Contract administration, like adjudication, applies the standards to particular conduct.

After the first step of defining the hypothetical applications, the second step is to identify any mismatches between these applications and existing administrative law concepts. Then, third, one can consider what legal paradigms should be modified to permit this kind of operation. The modifications may involve changes in statutory law, or simply changes in the way one thinks about applying existing statutory law. Fourth, one should consider what changes in the paradigms are undesirable for policy reasons. Fifth, one should consider the degree to which the technology can be adapted to the legal paradigms that would remain or would be created for policy reasons. Sixth and finally, one should consider whether what remains of the technology after its adaptation to the policy-based paradigms is worth implementing.

STATE OF THE ART

The four visions of agency technology sketched in this article are not fanciful. Many aspects of the visions have been put in place, and certain policy and legal issues already have gained prominence.

A number of agencies have committed themselves to large-scale electronic filing programs. These programs encourage or require private entities to submit material to the agencies in electronic form. The Securities and Exchange Commission's EDGAR system is a prominent example. EDGAR, by the time it is fully implemented in about 1993, will require all public corporations subject to the federal securities laws to file their quarterly and annual reports and their prospectuses with the SEC in electronic form. The SEC provides two streams of access to the database resulting from the electronic filings, one on an unrestricted basis to the SEC analysts, and the other on a more restricted basis to the public via a number of competing value-added information retailers. The Internal Revenue Service now is processing more than two million individual income tax returns filed electronically by third-party preparers under the IRS's Electronic Filing

Project. The three federal tariff agencies—the Federal Maritime Commission, the Interstate Commerce Commission, and the Department of Transportation—have committed themselves to electronic filing of freight and passenger tariffs. The Energy Regulatory Commission requires that certain applications and evidence be filed electronically.³ The Coal Commission required electronic filing of comments.⁴ While these programs are different from each other in the data structures used, the statutory authority involved, and the implementation schedule, all involve some of the issues addressed in this article.

Perhaps the most interesting model of future relationships is represented by the approach taken by the Department of Transportation to airline tariffs. Under the DOT approach, airlines, which are required to file tariffs with DOT and make them available to the public, can satisfy these requirements by affording to DOT and to the public electronic access to a database in an airline-controlled computer.⁵ This initiative is a clear example of how boundaries between agency and regulator, and agency and public can be blurred by electronic technology.

VISIONS OF THE FUTURE

Electronic Adjudication and Enforcement

In electronic adjudication, hearing and pretrial procedures would all be electronic. Recordkeeping and filing obligations imposed in aid of enforcement⁶ also would be electronic as in EDGAR and the IRS Electronic Filing Project. The rare exception would be a contested matter in which the credibility of witnesses is at issue. Even videotaped depositions could be taken in advance, digitized, and presented to the administrative law judge through hypermedia electronic filing and database techniques.⁷ For ease in discussion, the computer systems for electronic adjudication can be called the Adjudication Management System (AMS). A case would be started by a private party by filing a complaint in electronic form in an electronic mailbox, the number and address of which would be posted in an electronic directory. The initial complaint might be structured according to an EDI-

3. 18 C.F.R. § 154.1-.310 (1991) (FERC filing requirements).

4. See Meeting Notice, 55 Fed. Reg. 33,390 (1990) (submissions to Advisory Commission on United Mine Workers Retiree Health Plans (Coal Commission) required to be on floppy disk unless hardship shown). The author was Vice Chairman of the Coal Commission.

5. 14 C.F.R. §§ 221.251, 389.20 (1991) (rule permitting airlines to file passenger fare tariffs electronically).

6. Recordkeeping and filing (reporting) are grouped with adjudication because all three involve individual compliance with pre-existing rules. Recordkeeping and filing produce raw materials from which adjudicatory enforcement proceedings may spring.

7. These techniques permit information of different kinds, in significantly different formats, to be linked together. Thus, a voice recording, a full-motion video image and a textual discussion could be combined.

like transaction set⁸ so that preliminary processing steps could be taken without human intervention: setting up a docket entry, sending notices to opposing parties, and classifying the type of case involved. If the government commences the proceeding, it would give notice by sending an electronic citation to the published electronic mailbox address of the respondent. Regulatees might be obligated to have electronic mailboxes, much as corporations presently are required by state law to have agents for service of process.

Proof of service of the private complaint or government citation would be automatic when the respondent retrieves it from the respondent's mailbox. Any further pleading stages would occur electronically. As a new fact is asserted, AMS would open a new record in a table of a database devoted to the matter in adjudication. AMS would prompt the respondent for answers to newly asserted facts and would set the value of fields in the appropriate records according to the respondent's position. There is no reason that discrete pleading events need be defined as in the past (complaints, answers, and new matter); facts could be asserted seriatim and answered seriatim within certain time limits. As Harvard Business School Professor Benn Konsynski cautions, the new technology should not be used simply to "speed up the mess."

As pleading proceeds, the AMS would automatically identify facts as to which there is dispute and those that are established by the pleadings. Discovery would proceed as to disputed facts. Each interrogatory would open a new database record, much as a newly pleaded fact opens a new record. Responses to interrogatories would set values of fields in the appropriate records. To the extent that interrogatories are framed in a yes or no or multiple choice format, the answers would be machine-processible. AMS would prepare a pretrial memorandum for the hearing officer automatically, listing the disputed facts. Proffers of evidence would be submitted in a structured form so as to fill fields in records identified with the particular factual issue. If live testimony is taken either before the ALJ or in a deposition, an electronic transcript would be prepared and scanned (necessitating some human intervention) to disaggregate the transcribed testimony of each witness into the factual issues to which it pertains. As multimedia technologies develop further, deposition videotapes could be digitized and placed in the same database in the same fashion.

Tentative legal conclusions could be drawn automatically on some issues by rule-based software that "knows" what facts must be established to establish a valid claim under the applicable statute. Counsel could have notice of impending legal conclusions automatically, much as counsel have notice of proposed Findings of Fact and Conclusions of Law before they become

8. Electronic Data Interchange (EDI) is the practice of exchanging contractual documents in electronic form. An EDI "transaction set" is a data structure or template for an electronic contract form like a purchase order.

final under judicial procedural rules⁹ and practice in most courts. This notice would be given automatically and electronically. All of this could occur wherever counsel and witnesses are located, with no need for counsel, witnesses, and hearing officer to be in the same place at the same time. They would communicate and exchange information via electronic links.

Rulemaking

Automating the rulemaking category of government decisionmaking has even greater potential to change the way in which government operates because rulemaking as a quasi-legislative process is concerned with policy making and is supposed to involve whatever public is concerned with a particular policy. Electronic information technology greatly facilitates timely public involvement and reduces burdens on agencies affording that involvement.

An agency would commence a rulemaking by publishing a notice in an electronic federal register. The electronic federal register would not be set up chronologically like the paper *Federal Register*; it would be a database organized rather like a modern-day regulatory agenda by topic within the jurisdiction of the different agencies. When an agency envisions a change in policy, it would post a notice under the appropriate topic in the electronic *Federal Register*. Agencies would structure their proposals so as to identify discrete issues on which comments are to be received, and the database would be organized accordingly. Interested parties could begin to comment immediately, by sending electronic messages to the database.¹⁰ Their messages would be structured according to an EDI-like transaction set, identifying the particular issue commented on, the author of the comment, and the interest represented. To the extent that issues are framed by the agency in terms that could be answered yes or no or answered by choosing one of several discrete choices, comments could be processed automatically and tallied automatically. Free-form comments also would be accommodated. As comments are received, the agency could post notices responding or raising new questions. The electronic rulemaking would be a kind of running dialogue among an agency and interested parties.

When a decision is made, that decision would appear in the database and the Rulemaking Management System (RMS) would apply electronic delegations of authority to ensure that the purported decisionmaker has the requisite authority. The RMS database would ensure that the decision is automatically communicated¹¹ to the compilers of annotated codes, such as WESTLAW and LEXIS.

Proposals or petitions for rulemaking activity would be submitted elec-

9. See FED. R. CIV. P. 53 (providing for notice of master's proposed findings and conclusions).

10. The electronic interface with the database would be an electronic bulletin board, accessible through dial-up telephone links and modems.

11. The text envisions an object-oriented approach in which the object "final rule" would, when activated, trigger various electronic publication procedures.

tronically and posted in the appropriate database table of the electronic regulatory agenda. Requests for interpretation of regulations similarly would be submitted and posted electronically, with agency responses posted in the same place. Thus, a citizen wishing to find agency rules on a particular subject simply would retrieve the material from the regulatory agenda database by topic and would see not only the text of the regulation, but also pending regulatory action and interpretations of existing regulations.

The electronic record of a particular rulemaking decision would be all of the entries in the appropriate table of the RMS database. The record on petition for judicial review would be a set of electronic pointers to appropriate places in the table.¹² A reviewing court simply would access the appropriate table through the pointers.

Internal Agency Management

Internal agency management can be automated by integrating database and electronic mail technologies, making both easily accessible on desktop computers for all agency personnel. Electronic management¹³ would relax the need for official paper documents to record and communicate instructions and decisions to lower levels in the organization. Rather than signing a new delegation of authority, a memorandum making a change in organization structure, or a directive reallocating enforcement resources, an agency head would post a notice directly from his or her desktop workstation, electronically changing a database record. The state of the organization, of delegations of authority, and of resource allocations would be defined officially by the state of the database.

Delivering Services

The fourth electronic vision is that of electronic delivery of governmental services, such as electronic dissemination of public information, and electronic transfers of money in connection with public welfare and subsidy programs. Electronic food stamps, direct deposit of social security checks, and electronic management of Medicare and Medicaid benefits are all examples. Such electronic information technology applications use well-proven electronic funds transfer techniques, combining them with EDI standards in the case of Medicare reimbursement.

The electronic food stamps program is worth considering in some detail. The Electronic Benefit Transfer (EBT) Alternative Issuance Demonstra-

12. The component of the database associated with a particular rule could be thought of as a record. As one considers adding more and more to the file for a particular rule, however, it may be more appropriate to think of the file for a particular rule as a table containing many records, in which case the regulatory agenda for a particular agency would be a database composed of many tables.

13. One could view management of agency resources as a weak form of rulemaking and adjudication, not involving the same degree of legal formality aimed at ensuring political accountability, but involving the same types of decisionmaking processes.

tion Project was developed by the USDA in July of 1983.¹⁴ The program was developed to test the application of electronic funds transfer technologies to the delivery and control of food stamp benefits. Pilot testing began in October 1984 within a limited area of Reading, Pennsylvania, and presently is continuing on an expanded basis through 1992.

EBT is aimed at eliminating paper food stamps, relying instead on electronic transfer of benefits to recipients and redemption for retailers. Eligible households are issued uniquely identified access devices resembling credit-type cards in lieu of food coupons. At a store the beneficiary pays for eligible food items at the point of sale by electronically transferring program benefits from the participant's food stamp account to the retail grocer's credit. The participant's account is automatically debited by the amount of the purchase made.

Varying means of recipient identification are being considered under proposed systems, all of which use a Personal Identification Number (PIN), which the recipient would enter on a number pad at the point of sale.¹⁵ The recipient must establish that he or she is entitled to the benefits and the retailer will be responsible for denying purchases if this cannot be established.¹⁶

Recipients can obtain their account balances any time of the day by calling a local number and entering their case number and PIN. A synthesized voice then provides the household's account balance in either English or Spanish, depending on the arrangement made with the state agency. In addition, following each purchase, households receive a receipt that documents the purchase amount and the account balance after the purchase. Households receive detailed training on these and other aspects of the new system prior to or at the time of their initial certification. Follow-up training is also available for those having problems with any system feature.¹⁷

USDA demonstration projects continue under varying contractor and federal/state partnerships.¹⁸

Electronic dissemination of public information is another type of government-service delivery worth discussing in some detail because of a relatively mature debate and a number of issues that involve blurring of traditional institutional boundaries.

The increasing availability of government information in electronic form, whether because it is filed that way or because agencies create and maintain it that way, has stimulated interest in releasing that information to the public in electronic form. The electronic filing and dissemination programs described earlier in this article are examples. In addition, some fifty agency

14. General Notice, 48 Fed. Reg. 31,431 (1983).

15. Households select their own PINs to facilitate easy recall. (The PIN may be any combination of four alphanumeric characters.)

16. 48 Fed. Reg. 31,433 (1983).

17. Amended General Notice, 49 Fed. Reg. 33,153 (1984).

18. Meetings Notice, 55 Fed. Reg. 49,661 (1990).

bulletin boards have been established to provide public access to agency information on a dial-up basis.¹⁹ The American Library Association is promoting an initiative for an electronic network to distribute the contents of the *Federal Register* and the Congressional Record to libraries in electronic form.

The Fit Between Technology, Law, and Policy

The different reactions of people who read an earlier version of this article that presented the hypotheticals, or participated in a faculty seminar about it at the Center for Business and Government at the Harvard Kennedy School on November 15, 1990, were interesting. The economists (who dominated the Harvard seminar group) had two main concerns. First, they instinctively doubted the utility of formal procedures and thus liked any move toward greater informality. But they also were skeptical about the capacity of digital electronic technologies to provide the informality. They thought that there would be many cases in which an electronic form for adjudication, or an electronic template for rulemaking, would be unable to accommodate the real positions or arguments of the parties or to match these with considerations the agency ought to take into account.

Some of the lawyers felt it was too cold-blooded and neglected the dignity values associated with due process concepts. The lawyers also thought the earlier version was too cavalier in suggesting that the hallmarks of formal procedure might be changed by changing technologies.

The paper discussed at the Harvard seminar focused exclusively on efficiency and judicial review criteria embedded in the traditional model of administrative law. Lawyer reaction makes it appropriate to consider, in addition to the issues raised in that paper, procedural fairness in terms of dignity values as well as in terms of accuracy and efficiency values; and to probe more deeply the implications of choosing between formal and informal processes. On the one hand, shifting to digital electronic technologies makes administrative processes more formal because it limits the kinds of information that can be expressed and processed. A user cannot send information not accommodated by the electronic format, which may limit free-text expression just as paper forms with blanks and boxes to be checked limit expression. Conversely, shifting to digital electronic technologies may permit procedures to be less formal because it blurs the boundaries of agencies.

The distinction between formal and informal processes is hardly new. Professor Michelman, in his oft cited *Nomos* chapter,²⁰ addressed the distinction. He concluded that formal processes are aimed primarily at permitting post-decisional review by higher authority, while informal proc-

19. The text accompanying note 76 discusses Administrative Conference and ABA policy guidelines for electronic dissemination.

20. Frank I. Michelman, *Formal and Associational Aims in Procedural Due Process*, 18 *NOMOS* 126, 127-29 (J. Roland Pennock & John W. Chapman eds., 1977).

esses are aimed at promoting other values, generally falling into the dignity classification in more recent due process literature. Computer representation of information is generally thought to require greater formality in linguistic expression, but this does not necessarily mean more formality of procedure in the Michelman sense.

The following parts of the article revisit basic legal models of administrative law and consider how the visions of electronic agency methods sketched in the preceding section fit with the legal models.

Models of Administrative Law

Recent scholarship and case law emphasize three major goals for administrative procedure: formality, efficiency, and participation. Formality, aimed at facilitating judicial reviewability, is the major contribution of the New Deal formalist school.²¹ Efficiency is the Supreme Court's major contribution in *Mathews v. Eldridge*.²² Participation has received increased emphasis through broadened standing, increased use and scrutiny of notice and comment rulemaking, and scholarly emphasis on the dignity value in due process.

Formality and judicial reviewability ensure compliance with three subordinate goals, one of which replicates the participation touchstone.²³ First, administrative agencies should act only within authority delegated to them by the legislature.²⁴ Second, the public is entitled to participate.²⁵ Third, administrative agency decisions should be rational.²⁶ The requirement for decision rationality ensures agency faithfulness to relevant statutory norms

21. Judicial reviewability is the major artifact of the delegation doctrine. Delegation of legislative authority is constitutional as long as the Congress gives standards to guide exercise of the delegated authority that can be applied as meaningful constraints by the courts.

22. *Mathews v. Eldridge*, 424 U.S. 319, 347-49 (1976). See also *Nixon v. Administrator of Gen. Servs.*, 433 U.S. 425, 529 n.23 (1977) (Burger, J., dissenting) (the goal of administrative efficiency cited in *Mathews* is not the only consideration); *Dixon v. Love*, 431 U.S. 105, 114 (1977) (administrative efficiency and public interest in safe drivers permit suspending drivers license without prior hearing, citing *Mathews*, 424 U.S. at 347-49); *Wilkerson v. Sullivan*, 904 F.2d 826, 851 (3d Cir. 1990) (citing *Mathews* in support of observation that a certain number of errors must be tolerated in large and complex systems of claims adjudication).

23. *Citizens to Preserve Overton Park v. Volpe*, 401 U.S. 402 (1971), broadly represents the need for judicial review in order to police agency decisionmaking.

24. *A.L.A. Schechter Poultry Corp. v. United States*, 295 U.S. 495 (1935) (finding the National Industrial Recovery Act unconstitutional). See also *Panama Refining Co. v. Ryan*, 293 U.S. 388 (1935) (also finding the National Industry Recovery Act unconstitutional).

25. As noted in the discussion in the text, the goals of formality, efficiency and participation are not entirely independent. Each supports the others to some degree.

26. Professor Jerry L. Mashaw recently restated the dominant administrative law model as serving two major purposes: keeping administrators within their jurisdiction and faithful to the values and purposes expressed in legislation, and protecting, through procedural entitlement, participation in the "micropolitical processes" of administration. (The legislative and electoral processes are "macropolitical.") See Jerry L. Mashaw, *Explaining Administrative Process: Normative, Positive, and Critical Stories of Legal Development*, 6 J.L. ECON. & ORG. 267, 271-72 (1990). Judicial review is the lynchpin of the whole arrangement. *Id.* at 274.

and evidence of record.²⁷ Rationalizing decisions in terms of statutory norms ensures faithfulness to legislative policy. Rationalizing decisions based on evidentiary records ensures meaningful participation. To allow decisions to be based on matters not in the record risks making participation a sham.²⁸ Thus the rationality, delegation and participation principles converge.

Judicial review necessitates a "record" of agency decisionmaking. The boundary between judicial review and original agency decisionmaking is represented by two related rules: administrative remedies must be exhausted²⁹ and courts review only final agency actions.³⁰ The record, exhaustion, and final-agency-action requirements link judicial reviewability with procedural formality.

The efficiency goals largely determine adjudication and rulemaking requirements, although the participation goal also is an important constraint.³¹ Efficiency includes two sub-goals: accuracy in fact-finding,³² and cost-effective resource allocation.³³ The *Mathews v. Eldridge* formula evaluates adjudicatory entitlements by the marginal improvement in fact-finding accuracy resulting from each additional procedural ingredient and weighs this against the cost in agency resources of adding the step, taking into account the magnitude of the individual deprivation resulting from an error in the decisional process. The accuracy criterion is a gloss on the rationality requirement.

27. *Id.* at 274.

28. See *Home Box Office v. FCC*, 567 F.2d 9, 54 (D.C. Cir. 1977) (limiting ex parte contact in rulemaking).

29. *Federal Trade Comm'n v. Standard Oil Co.*, 449 U.S. 232, 243 (1980) (denying judicial review of nonfinal order despite exhaustion of administrative remedies; considering difference).

30. 5 U.S.C. § 704 (1988) (providing for judicial review of final agency action).

31. *Goldberg v. Kelly*, 397 U.S. 254 (1970) (procedures for contesting welfare termination violated procedural due process). Although *Goldberg* involved constitutional due process scrutiny of a welfare rights case, more broadly it stands for the need for certain minimal procedures in adjudication. The detailed adjudication requirements under the Administrative Procedure Act (APA) reflect constitutional due process concepts. Compare Henry J. Friendly, *Some Kind of Hearing*, 123 U. PA. L. REV. 1267 (1975) (constitutional procedural process) with 5 U.S.C. §§ 554-57 (1988) (statutory adjudication procedures). Rulemaking has more flexible procedural requirements. The rationality principle is applied to rulemaking through the arbitrary and capricious standard for judicial review. *Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 844 (1984); *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Ins. Co.*, 463 U.S. 29, 41 (1983). Participation in rulemaking can be ensured in a variety of ways practically aimed at giving the public notice of an intended policy change and an opportunity to comment. *Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council, Inc.*, 435 U.S. 519 (1978) (courts may not impose procedures on agencies beyond those required by Administrative Procedure Act).

32. Accuracy in fact-finding is essentially the same goal as rationality.

33. But see Paul R. Verkuil, *The Emerging Concept of Administrative Procedure*, 78 COLUM. L. REV. 258, 279-87 (1978) (emerging judicial support for a spectrum of procedural alternatives to serve values of fairness, efficiency, and satisfaction). Professor Verkuil's efficiency value considers only deciding cases cheaply and quickly. *Id.* at 280 n.113. His satisfaction value is close to the dignity value considered in the text. *Id.* at 280 n.3. His fairness value apparently takes into account accuracy. But see *id.* at 283 (quoting Frankfurter as endorsing fairness and satisfaction values, "feeling . . . that justice has been done").

The participation goal has emerged as a separate consideration relatively recently. Critics of the formality and efficiency goals urge giving greater emphasis to participation as a goal with greater utility than facilitation of judicial control.³⁴ They suggest reference to political science, which offers a more flexible perspective that acknowledges the role of political deals and unintended consequences.³⁵

A recently developed branch of political theory, based loosely on public choice, argues that administrative law is structured to permit winning political coalitions to enforce the bargains they persuaded legislatures to enact.³⁶ This model emphasizes legislative control more than judicial control.³⁷ The desire for legislative control combines with a desire to minimize transaction costs, to cause legislators to structure programs to empower others (usually the members of the winning political coalition) to monitor and enforce the bargain against the agencies.³⁸ This of course leads back to judicial review, because the courts are the usual instrument of enforcement. Congressional micromanagement of procedure, especially when it is aimed at limiting executive branch control, is evidence in favor of the public choice model.³⁹ Judicial control of course predominates, and to this extent the political science view overlaps the traditional formalist view.⁴⁰ The emergence of negotiated rulemaking as a new pattern of agency decisionmaking reflects the political science view of administrative law,⁴¹ placing participation at the center of rulemaking procedure. The legitimacy of negotiated rulemaking derives from effective participation by affected parties in developing rules.⁴²

Critical legal studies, while suspicious of all models, emphasizes a particular aspect of the participation goal: human dignity.⁴³ Critics urge, rather vaguely, efforts aimed at liberation, enhancing human freedom, and reor-

34. Mashaw, *supra* note 26, at 286; Richard Stewart, *The Reformation of American Administrative Law*, 88 HARV. L. REV. 1667 (1975) (interest representation model). See also Gerald E. Frug, *The Ideology of Bureaucracy in American Law*, 97 HARV. L. REV. 1277, 1297-1355 (1984) (criticizing formalist (delegation), expertise, and judicial review models).

35. Sunstein recharacterizes Mashaw's idealist view as a simple interpretive view, not one aimed at predicting. Cass Sunstein, *Political Economy, Administrative Law: A Comment*, 6 J. L. ECON. & ORG. 299, 303 (1990).

36. Mashaw, *supra* note 26, at 279-81. See generally Cass Sunstein, *Paradoxes of the Regulatory State*, 57 U. CHI. L. REV. 407 (1990) (describing paradoxes; discussion suggests they arise because of unanticipated detriments to regulatory efficiency).

37. Mashaw, *supra* note 26, at 283.

38. Mathew D. McCubbins et al., *Positive and Normative Models of Procedural Rights: An Integrative Approach to Administrative Procedures*, 6 J.L. ECON. & ORG. 307, 313-14 (1990).

39. Mashaw, *supra* note 26, at 289.

40. *Id.* at 292-93.

41. Administrative Conference Recommendation 85-5, 1 C.F.R. § 305.85-5 (1989) (encouraging agencies to use negotiated rulemaking).

42. See Henry H. Perritt, Jr., *Negotiated Rulemaking before Federal Agencies: Evaluation of Recommendations by the Administrative Conference of the United States*, 74 GEO. L.J. 1625 (1987).

43. Critical legal studies attacks all conventional models on the grounds that they are mechanisms for deception. By legitimating bureaucratic control, they frustrate broad reformation of society. Frug, *supra* note 34, at 1379-81. The critics argue that any effort to develop models of administrative law is futile. *Id.* at 1381.

dering American society through forms of organization transparently open to transformation.⁴⁴

While there are dissenters from the view emphasizing the dignitary value,⁴⁵ advancement of dignitary goals is a concern both of political science pluralist models and the critical legal studies movement.⁴⁶

There is wide recognition of a dignity basis for due process, as well as the accuracy basis recognized in *Mathews v. Eldridge*.⁴⁷ One of the most cited formulations of a dignity basis is Mashaw's,⁴⁸ and one of the most quotable is Tribe's:

Among the formal procedural safeguards ordinarily held to be required by due process, perhaps the two most striking—the right to be heard and the right to hear why—are ultimately more understandable as inherent in decent treatment than as optimally designed to minimize mistakes. When God asked Adam if he had eaten of the tree of life, the Midrash explains, the point of the exchange was less to minimize the risk of divine error than to afford Adam a moment to regain his composure.⁴⁹

44. *Id.* at 1295–96.

45. Wesley A. Magat & Christopher H. Schroeder, *Administrative Process Reform in a Discretionary Age: The Role of Social Consequences*, 1984 DUKE L.J. 301, 317–18 nn.64–65 (1984).

46. See Jerry L. Mashaw, *Administrative Due Process: The Search for a Dignitary Theory*, 61 B.U. L. REV. 885 (1981) [hereinafter *Administrative Due Process*] (dignitary approach has merit but should place only modest additional demands on procedures necessary to assure rationality in efficiency context).

47. See *Lister v. Hoover*, 706 F.2d 796, 801 (7th Cir. 1983) (due process did not require written reasons for denial of request for in-state tuition) (Swygert, J., dissenting) (the Constitution recognizes higher values than speed and efficiency, citing Martha I. Morgan, *The Constitutional Right to Know Why*, 17 HARV. C.R.-C.L. L. REV. 297 (1982); Robert S. Summers, *Evaluating and Improving Legal Processes—A Plea for "Process Values"*, 60 CORNELL L. REV. 1 (1974); ROBERT COVER ET AL., PROCEDURE 126–27 (1988) (explaining dignity basis for procedure, but acknowledging that limits of procedural entitlements cannot be defined only in terms of what is satisfactory to claimant)).

48. Jerry L. Mashaw, *The Supreme Court's Due Process Calculus for Administrative Adjudication in Mathews v. Eldridge: Three Factors in Search of a Theory of Value*, 44 U. CHI. L. REV. 28, 50 (1976) [hereinafter *Due Process Calculus*]. Mashaw explains the limits of the utilitarian approach in *Mathews* and explains how consideration of other values, including individual dignity, equality, and tradition, would improve the acceptability of limits on procedural entitlements. He acknowledges that the additional values would not have led to a different outcome in *Mathews* and that techniques for limiting procedural entitlements under the dignity value have been unsatisfactory. *Id.* at 58. See also Stephen LaTour, *Determinants of Participant and Observer Satisfaction with Adversary and Inquisitorial Modes of Adjudication*, 36 J. PERS. & SOC. PSYCH. 153 (1978) (empirically showing that adversarial procedures are favored because they give disputants more "process control"); Richard B. Saphire, *Specifying Due Process Values: Toward a More Responsive Approach to Procedural Protection*, 127 U. PA. L. REV. 111, 117, 163 (1978) (importance of personal and oral participation to serve dignitary value of procedure not given enough weight by utilitarian approach); Robert S. Summers, *Evaluating and Improving Legal Processes—A Plea for "Process Values"*, 60 CORNELL L. REV. 1, 20–21 (1974); Michelman, *supra* note 20, at 127–28 (due process vindicates values of "participation," noting the psychological importance of "the participatory opportunity," regardless of result).

49. LAURENCE TRIBE, *AMERICAN CONSTITUTIONAL LAW* § 10-15 at 744 (2d ed. 1988).

Frank I. Michelman says it this way:

[T]he individual may have various reasons for wanting an opportunity to discuss the decision with the agent. Some pertain to external consequences: the individual might succeed in persuading the agent away from the harmful action. But again a participatory oppor-

The next section of this article considers the impact of shifting to digital electronic technologies on the dignity value.

Despite the criticisms of the traditional formalist model, and its evolution to encompass political participatory and dignitary goals as much as anti-delegation and judicial reviewability mechanisms, it still is the most familiar conceptual framework for thinking about administrative law. The traditional model is the one taught in most law schools. It is the model used by most lawyers to make arguments attacking and defending agency decisions and by most judges to scrutinize agency action and to justify judicial decisions. Accordingly, this article uses the traditional model to assess the attractiveness of electronic methods, while also asking whether electronic methods enhance or diminish participation, the concern of the political scientists, and whether electronic methods worsen or ameliorate the mismatch between legal models and reality, a major concern of critical legal studies adherents. Necessarily simplifying the ongoing effort to identify and to distinguish the values served by administrative law, the article uses formality, efficiency, and participation goals as reasonable proxies for more sophisticated paradigms. The article asks, changing the order of the questions, whether electronic technologies improve efficiency in terms of accuracy of fact-finding and use of agency resources, whether they enhance participation in terms of interest group politics and control and human dignity, and whether they can ensure the formality necessary for effective judicial review.

The next sections argue that the electronic methods used in the ways sketched here advance virtually all of the traditional goals of administrative law, while also lessening the gap between legal models and reality—a major concern of critical legal studies. Special attention is given to the softer⁵⁰ form of the participation goal, the feeling that one needs flesh-and-blood attention to the human dimensions of one's problem. One of the author's colleagues⁵¹ said on reviewing an earlier draft of this article, "This is too cold-blooded for me." The following analysis considers whether an electronic agency is necessarily more cold-blooded than a nonelectronic one.⁵²

ARE TECHNOLOGY AND POLICY-BASED PARADIGMS RECONCILABLE?

Assessing the fit between information technology and the three paradigms of administrative law—formality, efficiency, and participation—

tunity might also be psychologically important to the individual: to have played a part in, to have made one's apt contribution to, decisions which are about oneself may be counted important even if the decision, as it turns out, is the most unfavorable one imaginable and one's efforts have not proved influential.

Michelman, *supra* note 20, at 127-28.

50. See *TRIBE*, *supra* note 49, § 10-13 at 717 (*Mathews'* utilitarian calculus tends to dwarf soft variables, quoting *Due Process Calculus*, *supra* note 48, at 48).

51. Catherine Lancot, Associate Professor of Law, Villanova University School of Law.

52. The question of whether electronic methods make administrative procedure more or less cold-blooded implicates the argument over whether formal procedure serves only accuracy-enhancing goals, or whether it also serves dignitary and participation goals.

benefits from a comparison of two technologies: telephony and digital electronic technologies.

Just because technologies exist does not mean they replace previous methods. The telephone, for example, is more than a century old, but telephonic communication plays only a supporting role in adjudication and rulemaking.⁵³ Telephonic hearings are used occasionally, but the practice is seen as novel and controversial.

Digital electronic technologies already are playing a more central role than telephony. No one seriously would consider permitting, let alone requiring, corporate reports to be made to SEC by telephone; yet EDGAR requires that they be made by digital electronic communication. Digital electronic technologies are becoming common methods of disseminating public information. Voice telephone is used relatively rarely for this purpose.⁵⁴

There are two conceivable reasons for the reluctance to make wider use of telephone technology: the need for a record of the communication, which is not provided by a telephone conversation; and a psychological reluctance to substitute telephone communication for face-to-face contact. The first reason, the need for a better record than is provided by telephone technology, should not be a barrier to acceptance of digital electronic technologies more than telephone technologies. The text accompanying notes 81-83 explains the ways of ensuring an adequate record of digital electronic communications, which, despite limitations and uncertainties, are better means for ensuring a record than telephone contact. Even though telephone conversations can be recorded, organizing the recorded material for later retrieval is insuperably burdensome for large quantities of material.

The second possible reason, psychological or cultural reluctance to substitute any kind of technology for face-to-face contact, is a bigger problem. In most cases, however, the substitution contemplated by the hypotheticals is a substitution of digital electronic technology for paper, not for face-to-face contact.

This part of the article assesses the four basic hypothetical technology uses in terms of their impact on the three goals for administrative law. This part develops the following arguments:

Digital electronic information technologies advance efficiency goals and also can advance participation goals, thus mitigating the tension that most commentators have believed is unavoidable between efficiency and participation goals such as personal dignity.

53. The role of telephonic communication is greater in internal agency management.

54. Hybrid technologies, using digital electronic technologies to organize and permit retrieval of prerecorded voice segments, are employed in some cases for electronic dissemination. A prominent example is the Internal Revenue Service Taxpayer Assistance System. Under this system, a taxpayer desiring brief instructions on how to prepare income tax forms dials a number and then selects particular instructions by entering responses on a touch-tone phone to prerecorded menus.

Electronic information technologies can increase fulfillment of participation goals even more than may be desirable because they reduce the need for intermediaries and reduce the barriers of geographic distance.

At some point, increasing fulfillment of participation goals begins to conflict with fulfillment of the formality (judicial reviewability) goal because the administrative process becomes too informal.

Impact on Efficiency

The Supreme Court, in *Mathews v. Eldridge*, enshrined one purpose of administrative process: promoting accuracy in fact-finding while minimizing the burden on agency resources. This represents an efficiency approach to designing administrative process. All four hypothetical uses of electronic technologies further this goal, although the cost of electronic food stamps may compare unfavorably with conventional techniques. This section reviews the efficiency implications of each of the hypotheticals.

Electronic adjudication would provide a more complete and much more accessible record of adjudications than paper processes. Because of the basic similarity of the adjudication process regardless of agency, formats and software could be standardized, making it easier for adjudication records to be transferred among agencies and the National Archives. Appellate review of agency adjudications would be facilitated by development of judicial capacity to handle the standardized formats.

Two other efficiency-enhancing aspects of electronic adjudication are worth thinking about. First, in order for the processing of litigation information to be automated, it must be more structured and stylized than is the case under current practice. The effect would be rather like filling out a preprinted form rather than writing a free-form complaint and other pleadings and memoranda. The benefit would be to reduce the burden on counsel and decisionmaker of managing mounds of paper and of spending hours to locate particular documents or passages in transcripts. The Administrative Procedure Act (APA) already permits the use of forms.

Second, the need for live proceedings would be diminished but not entirely extinguished. The shift from oral exchanges to electronic exchanges may present some difficulty. The received legal tradition places much weight on live credibility determinations by the fact finder. On the other hand, the preference for live presentation of testimony already has been weakened somewhat with the acceptance of videotape depositions and their use for a wide variety of purposes in lieu of live testimony.⁵⁵ There is no reason that a digitized videotape segment should be less acceptable than an analog videotape, assuming that the potential for tampering with content is reduced.

The concern with electronic signatures on adjudicatory pleadings is a red herring. A variety of techniques for authenticating electronic documents exist that are as good or better than traditional handwritten signatures. The

55. See TAX COURT RULE 81 (providing for videotape depositions).

need to authenticate documents, to detect or prevent forgeries, and to detect or prevent data loss or corruption in the filing process is common both to electronic adjudication and to electronic contracting. The private sector has moved aggressively in recent years to embrace electronic contracting under the umbrella of a set of format standards developed by American National Standards Institute (ANSI) Accredited Standards Committee X12 and loosely called EDI, and conceptually similar standards developed separately for electronic funds transfer. These electronic contracting practices offer potential efficiencies to the governmental procurement process, and the General Services Administration and the Defense Department have committed to use EDI. As this possibility becomes known to government lawyers, they struggle to decide if signature requirement and the requirement for a "writing" under the governmental Statute of Frauds⁵⁶ can be satisfied by electronic messages instead of physical writings. There is growing agreement among lawyers knowledgeable about electronic contracting that authentication and signature concerns can be addressed by existing legal concepts in conjunction with adequate audit and record keeping controls.⁵⁷

Electronic rulemaking has efficiency implications essentially similar to those for the vision of electronic adjudication: a more complete and more easily accessible record, and the likelihood of some degree of format standardization for economic reasons.

Rulemaking notices must be reasonably calculated to inform the general public under the basic concepts enshrined in section 553 of the Administrative Procedure Act.⁵⁸ Practically, posting something on an electronic bulletin board organized by topic may be better notice than publishing something in the *Federal Register* because it is instantaneously accessible by anyone who can communicate with the bulletin board.⁵⁹ Electronic information formats have the potential to permit enhanced public access even as the volume of information grows because of the potential for better indexes that are computer searchable and the possibility of free-text search.

On the other hand, changing the state of a table in a rulemaking database does not necessarily alert all users of the database that there has been a change. Even if it did, alerting everyone in the country to every regulatory or policy change would overwhelm all users of the system. In order to satisfy the requirement for notice, it may be necessary to develop electronic "filters"

56. 31 U.S.C. § 1501 (1988).

57. See MICHAEL BAUM & HENRY H. PERRITT, JR., *ELECTRONIC CONTRACTING, PUBLISHING AND EDI LAW* §§ 6.5-6.32 (1991); Electronic Messaging Services Task Force, *The Commercial Use of Electronic Data Interchange—A Report and Model Trading Partner Agreement*, 45 BUS. LAW. 1645 (1990).

58. 5 U.S.C. § 553 (1988) (providing for notice and comment rulemaking).

59. The rapid spread of desktop computer modems into individual businesses and homes and into public libraries means that almost anyone has the technological means to access electronic bulletin boards.

that citizens can tailor to alert them to changes or potential changes in rules they want to know about.

The concept of "actual notice" would work much better with electronic rulemaking than with conventional technology. The RMS would set a flag⁶⁰ as soon as a particular user reads or otherwise accesses a particular notice.

The formats for public comments can be sufficiently flexible to permit affected citizens to comment as they wish. There is, however, a tension between additional structure, desirable to facilitate machine processing of comments, and flexibility, desirable to allow commenters to say whatever they wish. One attractive possibility, mitigating the tension, is to construct an interactive electronic form. The blanks on the form would correspond to the issues raised by the agency in the electronic notice of rulemaking. An unsophisticated commenter simply would fill out the form on his or her PC.

The advantages of expanding electronic methods for internal agency management are greatly reduced transaction costs for making managerial decisions, advancing the efficiency goal.

Electronic delivery of services offers faster availability of funds and improved ability to audit, also advancing the efficiency goal. EBT improves accountability and security. Cash change for purchases is not necessary. Unused recipient benefits remain stored, awaiting the next purchase.⁶¹

Cost of some early systems are a problem, however. EBT administrative costs were substantially reduced from approximately \$27 per case month to approximately \$9 per case month but stayed about three times higher than the costs of a coupon system.⁶² System improvements were implemented to minimize the chance for recurrence of problems that occurred during early stages of the test.⁶³

Virtually no one questions the efficiency-enhancing value of electronic methods for disseminating certain types of government information.

Impact on Participation and Individual Dignity

All models of administrative procedure accept participation as a goal. Participation serves pluralist political purposes and also advances dignity goals. Administrative procedure is closely modeled on due process requirements, at least those parts of administrative procedure that are adjudicatory. Accordingly, the justifications offered for due process are appropriate justifications for administrative adjudicatory procedure. The Supreme Court, in *Mathews v. Eldridge*,⁶⁴ enshrined one aspect of the efficiency goal

60. "Setting a flag" is a kind of electronic checkmark.

61. 49 Fed. Reg. 33,154 (1984).

62. 55 Fed. Reg. 49,661 (1990).

63. *Id.*

64. 424 U.S. 319 (1976).

in due process: promoting accuracy in fact-finding. But there are other, "softer" goals that frequently escape notice.⁶⁵

Because automation intuitively enhances efficiency more than it enhances participation and human values, it is important to evaluate the impact on dignity of moving to digital electronic technologies. This section considers each of the hypothetical uses of technology in terms of the impact on participation generally and on dignity more specifically.⁶⁶ It starts with electronic rulemaking because there, the potential impact is greatest.

The dignity value should be served better by using electronic technologies for rulemaking, because it would give a wider variety of citizens real access to the rulemaking activity, at least if the percentage of the population with desktop computers continues to increase rapidly, or if appropriate networks are constructed to permit ordinary citizen access to electronic rulemakings through public library desktop computers.

Intuitively, using digital electronic technologies for adjudication seems to reduce the dignity value. In order for the processing of the litigation information to be automated, it must be more structured and stylized than is the case under current practice. Requiring litigants to fill out preprinted forms rather than writing free-form complaints increases formality and reduces flexibility to tailor the procedure to the circumstances of an individual case.⁶⁷ The dignity value could be disserved if the digital electronic technologies increase the proportion of cases in which a decisionmaker says in effect, "I would like to help you but the rules do not permit me to do so." This may be an even more serious blow to legitimacy and the dignity value than reducing face-to-face contact. Automation frequently involves a special kind of codification of rules, a codification that, absent some special precautions, can make the rules very difficult to apply flexibly and difficult to change without a score of programmers and a year and a half. While technology has the capacity to make government more flexible and adaptable, it also may make it less adaptable.⁶⁸ User-friendly electronic forms could reduce the need to access agencies only through counsel, thereby enhancing individual participation and dignity, but system designers must seek to design such forms into the public interfaces of electronic systems. System designers also must emphasize user-friendly computer interfaces.

Objections to electronic adjudication can be anticipated, expressing

65. Professor Frank I. Michelman divides explanatory procedures into formal and nonformal procedures. Michelman, *supra* note 20.

66. See *Administrative Due Process*, *supra* note 46, at 903-04 (exploring relationship between participation and dignity values; noting they are not the same).

67. Sometimes organizations destroy or ignore information nuances in order to facilitate processing. JAMES BENIGER, *THE CONTROL REVOLUTION: TECHNOLOGICAL AND ECONOMIC ORIGINS OF THE INFORMATION SOCIETY* 15 (1986) (commenting on impact of paper forms in bureaucracy; arguing that efforts to retain control through information processing play a central role in social development).

68. See generally SHOSHANA ZUBOFF, *IN THE AGE OF THE SMART MACHINE: THE FUTURE OF WORK AND POWER* (1988) (case studies contrasting automation strategies that enlarge the human role from those that diminish the human role).

antipathy for assembly line or mechanical justice. Agencies using electronic adjudication would be attacked for failing to give case-by-case attention to the facts of a particular case. Individual claimants or respondents would never "get their day in court," critics would say, because they would never be able to tell their stories to a human being. These expressions reflect valid concerns, recognized in the dignity goal of procedure, but an idealized vision of administrative reality. The present day reality is that most administrative adjudication is of the assembly line variety, and almost no individual participants get to tell their stories at leisure. The burden of the case load and the economics of dealing with it already have created assembly line justice. The new technologies simply would cause the assembly line to work better.

The dignity value would be reduced by electronic adjudication for the actual parties only to the extent that under present systems they have face-to-face contact with decisionmakers rather than working entirely through counsel and the use of digital electronic technologies would eliminate this face-to-face contact.

Some automation initiatives have been well received on the dignity dimension. The electronic food stamp evaluation reports indicated that participant groups preferred the EBT system to coupons.⁶⁹ Retailers and banks expressed their pleasure regarding the time and effort saved by not having to process coupons.⁷⁰

Separate from the dignity concern is another participation-linked concern: the question of whether it is an undue burden to impose electronic filing requirements on a broad-based group of regulatees. Closely associated with this question is the nature of the data structures required to be filed and the availability of inexpensive hardware and software to translate information formats likely to be possessed by the filer into the formats required by the agency. These questions essentially are the same ones that have so far blocked most electronic filing with federal courts, except under a few relatively narrow pilot projects. The solution lies in standard procedures and data structures embodied in user-friendly commercial software.

The most profound implications for participation and dignity goals arise from the idea that the rulemaking process might become less discrete and more in the nature of a dialogue.⁷¹ The interactive capability could blur the distinction between incomplete and complete rulemaking decisions. The technology permits a dialogue between regulator and regulatee, reducing the need for communications between the two to occur by means of formal written documents in the form of petitions, comments, and final rules. The electronic dialogue approach to regulation and policymaking strongly resembles the relational contract view of contract formation and modification in the private sector; the relationship between the parties evolves

69. 55 Fed. Reg. 49,661 (1990).

70. *Id.*

71. The author thanks David R. Johnson of Wilmer, Cutler & Pickering for first suggesting the implications of this possibility.

WINTER 1992

over time rather than arising from discrete decisions and documents.⁷²

Electronic agency management also would tend to increase fulfillment of dignity goals for agency personnel, by making it easier for any agency employee to communicate with higher authority.⁷³

Dissemination of government information inherently relates to dignity and participation goals. Participation is more effective when the participant is well informed, so electronic delivery of services in the form of information services promotes participation goals. The possibility of access to electronic information raises a number of questions under the Freedom of Information Act (FOIA), including whether information in electronic form is an "agency record," whether the FOIA access requirement covers software as well as raw data, and whether it obligates agencies to release information in the formats requested or only in the formats chosen by the agency.⁷⁴

Two of the sharpest controversies to date with respect to agency use of electronic information technologies have involved a blurring of the boundary between public and private sector action in disseminating information and a blurring of the boundary between access and dissemination.⁷⁵ In 1986, the Federal Maritime Commission (FMC) began to modernize ocean shipping tariffs by converting to an electronic database format. As a part of this conversion, the FMC intended to provide direct public access through dial-up telephone lines to the new tariff database. The electronic information industry objected strenuously, led by vendors of private ocean shipping tariff databases. In the end, a compromise was reached, which limited public dial-up access to the Federal Maritime Commission database.⁷⁶

The blurring of the distinction between access and dissemination collapses an important legal distinction made between creating a record and providing access to existing records. Only the latter is required under the FOIA. Dissemination with paper technologies involves the agency in affirmatively preparing material for publication and then arranging for printing and distribution, activities involving much greater commitment of agency resources than simply providing access on request. When electronic tech-

72. See BAUM & PERRITT, *supra* note 57, at § 6.4 (explaining relational contract theory).

73. Dignity of agency personnel is not a traditional concern of administrative law, but Frug's assessment of dignity includes large organization employee perspectives. Frug, *supra* note 34.

74. See Henry H. Perritt, Jr., *Federal Electronic Information Policy*, 63 TEMPLE L. REV. 201 (1990) (analyzing application of FOIA to electronic formats).

75. The literature distinguishes access, disclosure, and discrimination in terms of how much initiative the government takes to propagate the electronic information. Access is the most passive role for the government, involving release of information only on request. Dissemination is the most active role for the government, involving affirmative steps to publish information. Disclosure is an intermediate level of government activity, involving the placement of the information in a place and in a form that makes it easy for interested persons to retrieve it. See generally *id.* at 203 n.9.

76. See 55 Fed. Reg. 42,416 (1990) (extending comment period on advance notice of proposed rulemaking); *id.* at 31,199 (soliciting public comment on proposed Automated Tariff Filing and Information System).

nologies are used, the distinction between access and dissemination is blurred. Making a database available for dial-up access gets it in the hands of an outside party just like dissemination does; yet the initiative for obtaining a copy of the material is with the private citizen rather than the agency.

The problem with the indistinct lines between electronic access and publishing is that an apparently sensible step to provide electronic access may put the agency in competition with private sector publishers. This was the source of controversy with the FMC system. Whether the government should engage in electronic publishing of its information raises a number of policy questions that are less narrowly focused than the electronic FOIA question. The electronic publishing questions mainly involve the questions of competition between public and private sectors and the degree to which the government should rely on the private sector to distribute public information electronically. The questions involve a conflict between participation and efficiency goals. Relying on the private sector may be more efficient, but may reduce participation because government information may cost more.

The debate over the government's role in electronic dissemination focuses on disseminating or releasing at lower levels of added value to electronic information. At one extreme, the government could withhold everything except raw data in electronic form, leaving to the private sector the tasks of adding value in the form of retrieval software, sophisticated data structures and formats, and indexes. At the other extreme, the government could make its entire information systems available online through sophisticated telecommunication systems. Obviously, permitting private citizens simply to plug into the internal agency information system represents a dramatic erosion of the boundary between agency and public.

Both electronic access and electronic dissemination are the subjects of policy guidelines from the American Bar Association.⁷⁷ The electronic access guidelines urge agencies, and the Congress if necessary, to recognize electronic formats as covered by the Freedom of Information Act, and to allow FOIA requesters to specify whether they want paper or electronic formats when an agency has both. The dissemination guidelines recognize that it is appropriate for agencies to act affirmatively in certain cases to disseminate information electronically, and recognize the need for certain value-added features to be part of any government electronic dissemination program, including appropriate electronic indexes, templates, and search tools. The guidelines articulate a presumption that electronic information developed with public money to serve internal agency needs, including value-added retrieval features, should be made available to the public. Affirmative

77. Electronic FOIA guidelines were adopted by the ABA Board of Governors in its winter 1990 meeting. The author of this article drafted electronic dissemination guidelines for the ABA Section on Administrative Law and Regulatory Practice, approved by the Section's Council at its mid-winter 1991 meeting and adopted by the House of Delegates of the ABA in August 1991.

programs of electronic dissemination can save agencies and requesters the costs of making and responding to ad-hoc requests under the Freedom of Information Act, and further the policies of that act by anticipating likely requests. The guidelines recognize the importance of diversity in electronic information sources and advocate that agencies encourage multiple sources of public information and experimentation with different information features. This means respecting the need for private sector incentives, while avoiding government created or supported monopoly. The guidelines recognize the important role that depository libraries and other public and private libraries should play in assuring a diversity of electronic information products and distribution channels. They discourage tying up public information, and associated retrieval features, with intellectual property rights.

Impact on Formality

The possibility of regulation or policymaking occurring through dialogue, using the mechanism of electronic rulemaking, raises some profound legal and institutional issues, among other things, because it would blur the concept of a "record" of a particular proceeding and would erode the final decision concept. Existing administrative law paradigms require discrete events, primarily "final decisions" by administrative agencies, to permit the judicial scrutiny that is the mainstay of political accountability in administrative law.

The problem for law is to decide how to ensure accountability in the electronic dialogue approach to policymaking. This is not a problem, of course, as long as both parties to the dialogue agree with each other. Law rarely is difficult when there is harmony, but governmental decisionmaking presupposes instances in which citizens must comply with decisions with which they do not agree. In a democratic society, this necessitates some mechanism for challenging the decision and obtaining review of it by higher political authority. If the challenger cannot identify the particular decision he seeks to have reviewed, accountability is diminished. The final decision requirement serves two purposes. It reduces party, agency and judicial resources required for multiple appeals of agency decisions; and it minimizes intrusion of the judicial branch of government into an agency's domain by permitting an agency to moot an otherwise objectionable preliminary decision.

Whether the final decision requirement should be diluted in electronic rulemaking should depend on the degree to which the efficiencies available from electronic rulemaking overcome the costs to efficiency and comity resulting from its relaxation or dilution.

Formality in decisionmaking and in presenting positions intended to influence decisionmaking has advantages. For one thing, it ensures that the decisions and positions are institutional ones rather than personal ones. It

may be, of course, that emerging technologies for "groupware"⁷⁸ may permit internal clearances to be obtained automatically as a prerequisite for a decision or a position being filed. Even if such techniques are developed and accepted, however, the result would be somewhat more formality and less of a dialogue than has been suggested for the Rulemaking Management System.

The opportunities and problems associated with an electronic dialogue as the predominant rulemaking process are essentially the same as those associated with negotiated rulemaking.⁷⁹ The decisionmaking agency has better awareness of party needs, problems and interests because of more informal communications. The informal communication is feasible because the time lags associated with each communication event are much smaller. To some extent, the electronic rulemaking approaches are easier to square with traditional administrative procedure concepts because it is not as hard to reconstruct the record of an electronic rulemaking as it is to reconstruct the record of a negotiated rulemaking. On the other hand, exchanging electronic messages is certainly not the same thing as face-to-face group discussion in terms of nuances of oral expression and body language.

The electronic agency management hypothetical presents some risks, primarily by undermining formality. There might be a greater likelihood of premature or whimsical decisions without adequate consultation,⁸⁰ and the possibility that changes in instructions to lower levels of the organization would go unnoticed. Both of these disadvantages could be mitigated by the same approaches used to ensure adequate consultation in electronic rulemaking and to ensure that interested persons are alerted to changes that affect them.

The formality-related problems to be solved for electronic delivery of services are those of electronic contracting and electronic funds transfer generally: potentially increased risk of forgery.⁸¹

EBT creates a complete audit trail and facilitates reconciliation and reporting capabilities. EBT eliminates or significantly reduces many of the opportunities for fraud existent in the paper system. Only those members of households to which the benefit card and PIN are issued may use the benefit device. Food stamp coupons contain no household identifying information to permit enforcement of this use limitation.

The solutions to the risk of forgery problems are the same ones being developed for authenticating electronic messages used in electronic

78. Groupware is a kind of software for electronic mail and word processing that permits many people to participate electronically in drafting, editing and commenting on a single document. See generally MICHAEL SCHRAGE, *SHARED MINDS: THE NEW TECHNOLOGIES OF COLLABORATION* (1990).

79. See *supra* notes 41-42.

80. This is the same difficulty with personal as opposed to institutional decisions noted in the discussion of electronic rulemaking.

81. Forgery, broadly conceived, involves misrepresenting the author of a message and also involves unauthorized alteration in the contents of a message.

contracting and electronic funds transfer in the private sector. There is no reason to believe that these problems are particularly difficult to solve with appropriate understanding of legal concepts and auditing techniques.

ADAPTING THE TECHNOLOGY

Two policy-based paradigms associated with the formality goal seem to require particular efforts to maintain in an electronic environment. The first is the need for a certain degree of formality in agency, and possibly party and agency statements. The second is preservation of a record of what statements were made. It is not difficult to adapt a technology to the first of these. The same human and organizational procedures that prevent submitting official statements on paper without appropriate authorization can prevent unauthorized electronic submissions. These traditional techniques depend on human compliance with rules. They can be supplemented in an electronic environment by technical means. For example, it would be relatively easy to design the rulemaking or adjudication systems so they accept only those submissions accompanied by a password-like token that can come only from the person with authority to approve the submission. In networked computer systems, the approval token could be generated automatically when the authorized person reads the proposed submission and signifies approval by checking a box or making a menu selection on his or her screen. There is a trade-off between complex authentication procedures built into an electronic system and system cost and performance. It always is important not to overdesign security systems out of proportion to the risks involved.⁸² The problem, of course, is deciding how much formality is desirable. There is a tension between the dignity value and most types of formality.⁸³

Preserving Formality

Pervading all four visions are two threats to short-term and long-term public access to the record of agency decisionmaking. The first threat is technological obsolescence, the possibility that by the time someone wants to read the electronic file, computer hardware and software capable of reading the information in the file will not be available. This problem can be solved, under recommendations developed for the Administrative Conference of the United States by the author of this article,⁸⁴ by developing appropriate standards for information exchange, so that information

82. OFFICE OF MANAGEMENT AND BUDGET, A FIVE-YEAR PLAN FOR MEETING THE AUTOMATIC DATA PROCESSING AND TELECOMMUNICATIONS NEEDS OF THE FEDERAL GOVERNMENT II-40 (Nov. 1990).

83. See Frug, *supra* note 34, at 1276.

84. Recommendation 90-5, 55 Fed. Reg. 53,269 (1991) (to be codified at 1 C.F.R. part 305); HENRY H. PERRITT, JR., REPORT AND RECOMMENDATIONS ON FEDERAL AGENCY ELECTRONIC RECORDS MANAGEMENT AND ARCHIVES TO THE ADMINISTRATIVE CONFERENCE OF THE UNITED STATES (Aug. 1990).

in today's formats can be converted to tomorrow's formats.

The second threat is the possibility that specific messages representing preliminary decisions, notices, party positions, applications for benefits or evidence may be integrated into databases as a proceeding goes forward, losing their discrete character. This problem also exists in electronic contracting, and the same methods for preserving an audit trail for individual messages in electronic contracting are appropriate to preserve an electronic record of agency decisionmaking.

Good electronic record systems design ensures that archives and records retention needs are designed into the system. While such design features may be difficult to incorporate in PC-based systems, the communications link for the adjudication and rulemaking systems is an obvious and fail-safe point of capture for maintaining a comprehensive record of adjudication and rulemaking electronic submissions. Technical means could ensure that nothing gets into the system without being entered in a docket and having an archival copy made. The integrity would be greater than that achievable with human- and paper-based systems.

Preserving the Dignity Value

The discussion of the impact of electronic methods on the dignity value noted that the risk is that codifying procedural rules in computer programs can make the rules for citizen/agency interaction more rigid and difficult to change. Electronic methods of adjudication, rulemaking, agency management, and delivery of services should provide appropriate rule-modifiability by ensuring that electronic systems are accessible and user friendly. An electronic form or template should always permit inclusion of information that does not fit predefined categories or fields and should permit use of the electronic channels for a free-form dialogue with a real person, if only for assistance in filling out electronic forms. Failure to offer such channels might be a basis for invalidating decisions reached through the electronic systems.

CONCLUSION

Adoption of information technology in connection with rulemaking, adjudication, internal management, and service-delivery advances traditional goals of administrative procedure in both the short and long run. Efficiency is advanced, participation increased, and necessary formality can be assured in properly designed systems.

Barriers to wider adoption of information technology result from misapplication of legal concepts and the absence of widely acceptable format standards for value-added information. There is no reason that existing concepts for signatures and document authentication cannot be adapted easily to electronic formats. The necessary analytical work is well underway in support of electronic contracting in the private sector. As this article suggests, no

changes in the Administrative Procedure Act or its underlying concepts should be necessary to permit electronic adjudication, electronic rulemaking, electronic agency management, or electronic dissemination of information.

In the long run, adoption of information technology will blur the boundaries between citizen and agency and between agency and court. Blurring of these boundaries may necessitate rethinking the definitions of some of the basic events that define the administrative process, public participation and judicial review. Blurring boundaries between agency and court through relaxation of the final decision rule can be handled by comparing costs and benefits of interlocutory electronic review versus maintaining a defined point at which an agency decision is subject to review. Blurring of the boundary between citizen and agency does raise somewhat more difficult questions relating to institutional versus personal expression and accountability.

**ELECTRONIC INFORMATION TECHNOLOGY AND RULEMAKING
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