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# **Policy and Management Issues Associated with E-Rulemaking**

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# The Rise (and Decline?) of Rulemaking

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“The procedure of administrative rulemaking is in my opinion one of the greatest inventions of modern government.”

Kenneth Culp Davis (1970)

“The past decade’s case study literature on the performance of America’s administrative agencies details an agency-by-agency retreat from rulemaking.”

Jerry Mashaw (1997)

# Does E-Rulemaking Hold the Answer?

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“The most powerful technological vehicle for disseminating government information and increasing public participation in government decisionmaking that is available today is the Internet.” .... “The Internet changes everything...”

Stephen M. Johnson (1998)

# Overview

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- Why rulemaking is a candidate for the use of information technology
- Some possible uses of information technology in the rulemaking process
- Policy and management considerations for making e-rulemaking work

# Why Information Technology Might Help

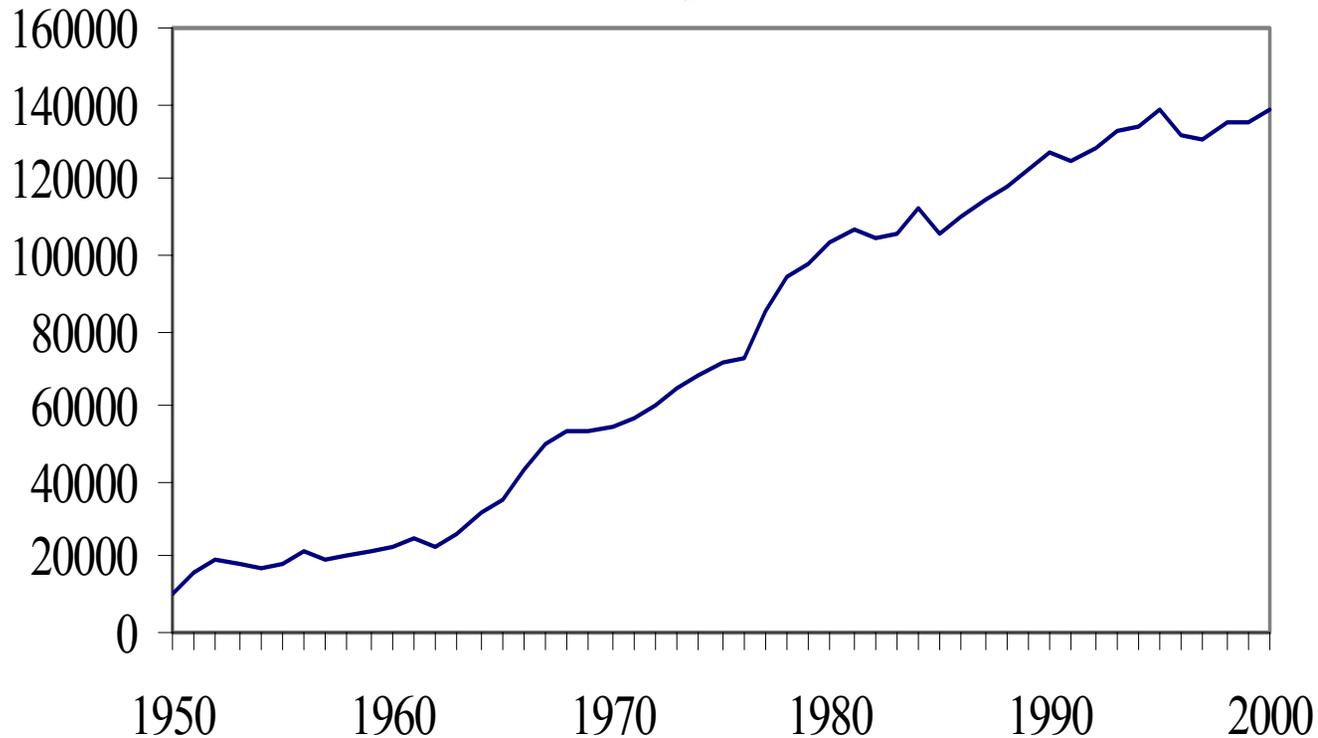
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1. Rulemaking remains a frequent and important function of the federal government, so productivity gains associated with IT could yield significant gains for government agencies and the public.
2. Rulemaking is intricately networked.
3. Rulemaking is information intensive, both in terms of data and text.

# Rulemaking Remains Frequent

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Cumulative Pages in the  
Code of Federal Regulations, 1950-2000



# Rulemaking is Important

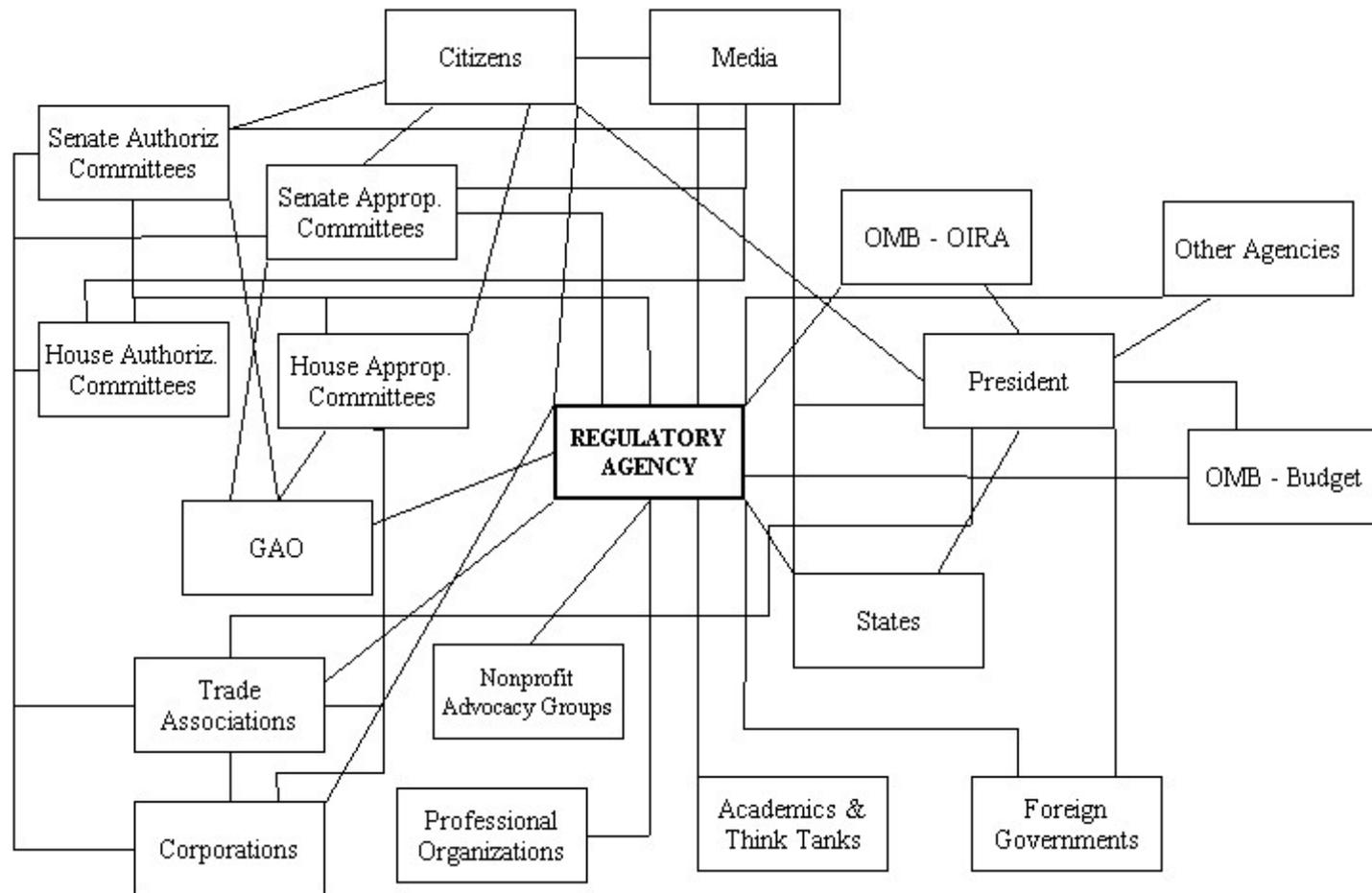
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- Federal health, safety, and environmental regulations yield up to \$250 billion to \$1 trillion in benefits to society each year.
- These same regulations also impose costs of up to \$150 billion to \$230 billion each year.
- Other federal regulations, such as in the areas of transportation, energy, telecommunications, and international trade, impose an additional estimated cost of \$230 billion per year.

(Source: OMB, 2001)

# Rulemaking is a Network

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# Rulemaking is Information Intensive

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Policy analysis demands information about:

- Regulatory problems and their causes
- Potential solutions
- Consequences

In addition, regulators need information about:

- Legal issues
- Political acceptability
- Administrative capacities
- Interaction with other policies

**Rulemaking is really all about gathering, processing, analyzing, and communicating *information*.**

# Potential Uses for Information Technology

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- Data mining
- Integrating rules with other laws
- Conflict identification tools
- Plain language tools
- Customizable, automatic alerts
- Processing and analyzing public comments
- Digital public hearings
- Sharing data and models online
- “Turbo Tax<sup>®</sup>” rules
- ....and many more ideas (see [www.e-rulemaking.org](http://www.e-rulemaking.org))

# Making E-Rulemaking Work

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1. Approach e-rulemaking as one possible solution, among alternative solutions, to specified rulemaking problems
2. Develop functional or management models of rulemaking, rather than rely on legal process models
3. Take institutional factors into account
4. Ensure systematic evaluation of results

# E-Rulemaking in a Problem-Solving Mode

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Define the problem as precisely as possible

Inefficiency? Ineffectiveness? Delays?  
Insufficient public awareness or input?

Articulate potential solutions

- Different IT solutions
- Other solutions, such as process changes
- The status quo

Identify criteria (goals and constraints)

Select clear metrics relating to problems (goals)  
Develop metrics for constraints (e.g., costs, legality)

Analyze alternative solutions using criteria

# Functional Approach to Rulemaking

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The typical portrayal of the rulemaking process follows the steps of the APA:

Notice → Comment → Final Rule

But information technology applies to *functions* within regulatory management, such as:

- Gathering or sharing information
- Analyzing public input
- Drafting documents

# Take Institutional Factors into Account

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“The effects of the Internet on government will be ... profoundly influenced by organizational, political, and institutional logics.”

Jane Fountain (2001)

“Systems that agencies cannot afford, or that do not fit well the needs or practices of agency officials, will likely prove to be ineffective, no matter how technologically innovative they may be. Successful e-rulemaking efforts will therefore need to integrate both technological and institutional analysis, taking organizational needs and constraints into account in designing information systems.”

Draft Report on E-Rulemaking  
to National Science Foundation (2003)

# Systematic Evaluation of E-Rulemaking

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- Need clear metrics for evaluation
- Need appropriate comparisons
- Experiments and pilot projects should be well-designed and draw upon academic researchers for evaluation, when possible
- Evaluation is vital both for institutional decision making as well as technological design

# Conclusion

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“Not only may digital technologies offer better ways for agencies to complete existing tasks, but they also may lead to a significant redefinition of the existing tasks and processes of rulemaking .... The effective use of information technology promises to advance important goals....but sustained cooperation between regulatory agencies and the research community will be essential to take e-rulemaking into its next generation.”

Draft Report on E-Rulemaking  
to National Science Foundation (2003)

# References and Further Information

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**For further information, visit [www.e-rulemaking.org](http://www.e-rulemaking.org)**