

## Public Engagement in Agency Rulemaking

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## Reasons for Public Engagement

1. Involving Absent Stakeholders
2. Improved Regulations
3. Democratic Accountability and Legitimacy
4. Public Acceptance of Regulation

## IAP2 Levels of Public Engagement

1. Inform – to educate the public
2. **Consult** – to obtain feedback from the public
3. **Involve** – to work directly with the public throughout the process to ensure that their concerns and aspirations are understood and considered
4. **Collaborate** – to partner with the public in each aspect of the decision
5. Empower – to place final decision making in the hands of the public

## Stages of Rulemaking

1. Agenda Setting
2. Early Rule Development
3. Advanced Rule Development
4. Notice-and-Comment Process
5. Retrospective Review

Levels of engagement + Stages of RM =

- (1) **Why** does agency want to engage with the public?
- (2) **Who** is the agency trying to reach?
- (3) **What** type of information is the agency seeking?
- (4) **How** is this information most likely to be obtained?
- (5) **When** should these efforts occur?
- (6) **What** will the agency do with this information?

## Agenda Setting

### *Modes of Public Engagement*

1. Rulemaking Petitions
2. Advisory Committees
3. Focus Groups
4. Requests for Information
5. Public Hearings/Listening Sessions
6. Hotlines or Suggestion Boxes
7. Public Complaints
8. Notice & Comment Related to Agenda
9. Enhanced Deliberative Exercises

## Agenda Setting

- Under what circumstances is public engagement with agenda setting most/least useful?
- What are the most/least effective means of engaging the public in agenda setting?
- What are the limitations or challenges of public engagement in agenda setting?

## Rule Development

### *Modes of Public Engagement*

1. Advisory Committees
2. Focus Groups
3. Requests for Information (early)
4. Public Hearings/Listening Sessions
5. Internet and Web-Based Outreach
6. Status updates & Impact Reports
7. Advance NPRMs (advanced)
8. Negotiated Rulemaking (advanced)
9. Development of Plain Language NPRMs (advanced)
10. Enhanced deliberative exercises

## Rule Development

- When is public engagement with rule development most/least useful?
- What are the most/least effective means of engaging the public in rule development?
- What are the limitations or challenges of public engagement in rule development?

## Notice & Comment Rulemaking

### *Current Status and Challenges*

- Formally most open part of rulemaking to the public
  - Anyone may comment
  - Agency must respond to salient comments
- Frequently dominated by sophisticated stakeholders
- Difficult for unsophisticated stakeholders to effectively comment on long, complex, and detailed proposals
- Perception that agency has already made up its mind
- Legal constraints on dialogic communications

## Notice & Comment Rulemaking

### *Enhancing Public Engagement*

1. Plain-language NPRMs
2. Effective Commenting Tutorials
3. User-friendly, dynamic e-rulemaking dockets
4. Status Reports and Notifications
5. Reply Comment Periods
6. Public Hearings
7. Supplemental Deliberative Exercises

## Notice & Comment Rulemaking

- When are supplemental efforts to engage the public in notice & comment rulemaking most/least useful?
- What are the most effective strategies for facilitating engagement with rulemaking by absent or unsophisticated stakeholders?
- What are the limitations or challenges of supplemental efforts to engage the public with notice & comment rulemaking?

## Retrospective Review

### *Modes of Public Engagement*

1. Rulemaking Petitions
2. Advisory Committees
3. Focus Groups
4. Requests for Information
5. Public Hearings/Listening Sessions
6. Hotlines or Suggestion Boxes
7. "Living" Rulemaking Dockets
8. Public Notice and Comment

## Retrospective Review

- When is public engagement with retrospective review most/least useful?
- What are the most/least effective means of engaging the public in retrospective review?
- What are the limitations or challenges of public engagement in retrospective review?

## Incentives and Regulatory Culture

There are *many, many* examples of agencies engaging in meaningful public engagement in rulemaking –

- How do we establish incentives to improve on existing practices and institutionalize best practices in this area, particularly when flexibility is needed and uniform legal requirements may be undesirable?
- What are the challenges or obstacles to enhancing public engagement?

## The Importance of Planning

- How should agencies plan for public engagement?
- Should agencies develop specific plans for each rulemaking initiative that an agency undertakes or seriously considers? What should they include?
- What are the challenges to planning for public engagement in rulemaking?

## Outreach and Communication

- How can agencies reach targeted stakeholders, persuade them to participate, and provide them with tools to do so effectively?
- What are the challenges or obstacles to reaching and incentivizing participation by the public in agency rulemaking?

## Toward Deliberative Democracy

### *Enhanced Public Deliberation in Rulemaking*

1. Regulation Room
2. Citizen Juries
3. Citizen Advisory Committees
4. Citizen Assemblies
5. Deliberative Polls
6. 21<sup>st</sup> Century Town Meetings
7. Participatory Budgeting

## Public Deliberation in Rulemaking

- When would deliberative exercises like Regulation Room be most useful and worth the effort?
- What are the limitations or challenges of undertaking highly deliberative exercises?