

## PUBLIC COMMENTS MAKE A DIFFERENCE

Public participation matters. Democratic, legal, and management principles justify why public comments make a difference in regulatory policy. Public participation is an essential function of good governance. Participation enhances the quality of law and its realization through regulations (e.g. rules).

### Democratic Principles

- **Legitimacy.** Participation in rulemaking lends democratic legitimacy to regulatory decisions.
- **Responsiveness.** Government officials can respond to people's needs, grievances, or preferences. Comments can also clarify the legislative intent of Congress.
- **Acceptance.** Public comments assist the ability of agencies to determine the level of acceptance or resistance in affected communities to a rule under development.
- **Public Interest.** Public comments shape how the public interest will be served by the rule.

### Legal Principles

- **Requirement.** By law, Federal agencies must consult the public in rulemaking. Based in section 553 of the Administrative Procedure Act, the law states "the agency shall give interested persons an opportunity to participate in the rule making through submission of written data, views, or arguments with or without opportunity for oral presentation. After consideration of the relevant matter presented, the agency shall incorporate in the rules."
- **Reduce Conflict.** By having many different comments, rule writers can weigh competing interests carefully and craft consensus around acceptable alternatives.
- **Reduce Litigation.** Comments help agencies check the likelihood of a lawsuit that might challenge a rule before its completion.
- **Public Priorities.** Comments help agencies determine which public priorities can be implemented under the congressional or statutory authority of the rule.

### Management Principles

- **Impacts Policy.** Agencies genuinely value public participation because it impacts the outcomes of regulatory policy. The Federal Register confirms that comments are carefully recorded and examined. Agencies respond to comments by categories in the preambles of final rules.
- **Distributed expertise.** No agency has perfect knowledge. Some of the information needed to conduct risk assessments for health and safety, for example, comes from those regulated. This information can alert agencies to unforeseen options or consequences of proposed rules. Also, the more comments, the greater likelihood of collecting the most accurate, useful, and current information for the development of rules [regulations].



- **Learning.** Agencies can better assess how much those regulated will need to learn and the level of training involved for government officials in charge of oversight.
- **Reduces cost.** Comments give rule writers a chance to actively listen to a wide-range of concerns, values, and preferences. They strive to understand the data presented, why people raise specific questions, and how to logically support a decision with all the necessary and relevant evidence. To reduce costs associated with delays or litigation, agencies strive to carefully consider the merits of many comments in order to recommend reasonable action.
- **Respect and Reliance.** Agencies respect the views and questions of others without biased judgment or unfair criticism. Also, they rely on the public for much of the information they request to develop rules.