Benefits of robust public consultation
a U.S. private sector perspective

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GE’s regulatory approach
Core regulatory principles

How do you develop the best regulations?

Good regulation

• Begins with a clear problem statement
• Developed by experts
• Achieves the most beneficial outcome and the lowest possible costs
• Simple, prospective, and non-duplicative

Good regulatory process

• Open
• Shaped by diverse input
• Transparent
• Coordinated
• Subject to review
• Subject to challenge
Globally recognized principles

Organizations & goals

Organizations

- OECD
- APEC
- World Bank / IMF
- World Economic Forum
- Global Trade and Investment Agreements

Goals

- Create sound policies and regulations that promote private sector development
- Maximize benefits to society
Benefits of good regulatory process

Public consultation is key

**Good for government**

- Poorly designed regulations are **costly** for governments
- Whole-of-government **efficiency** and **coordination**
- Smart design, openness, and transparency lead to **increased trust** in government

**Good for society**

- Better regulation supports quality of life, social cohesion, and the rule of law, through **enhanced transparency** and **public participation**
- Increased **citizen protections** coupled with **economic growth**

**Good for business**

- A good regulatory environment improves business competitiveness and trust in government.
- Good regulation reduces costs and barriers that impede business start-ups, development, economy, and growth – increases certainty and predictability
Benefits of good regulatory process (cont.)

Public consultation is key

Good for the economy

- Improves market mechanisms, innovation, and entrepreneurship
- Improves investors’ confidence, including foreign investors, through increased clarity and transparency
- Improves domestic and global competitiveness
- Don’t forget permitting, fees, and enforcement

World Economic Forum: “if implemented correctly, sound regulation can strengthen countries’ growth capacity, while protecting citizens and improving their long-term living standards.”
Role of the private sector
Value of private sector input

Unmask the unknown-unknowns

Gather good ideas

• Do you have the best available data? Science? Policy ideas?
• Agencies gather critical input from the regulated community AND civil society

Spot unintended consequences

• Do you know how many parties you’re affecting? Will your regulation solve one problem, but cause others?

Avoid duplication

• Regulated parties see all of the agencies that regulate them – and they know if your rule will conflict with rules from those other agencies
Develop trust-based relationships

Regulation works better with mutual understanding

Solve problems early

• Is “command-and-control” regulation necessary at all (is there a market failure)? What problem is the agency trying to solve?

• Does industry understand the agency’s goals, or do they feel like the agency exists to make their life more difficult? Can the problem be solved informally?

Demonstrate responsibility

• By participating in the regulatory process and asking regulators to make smarter rules, regulated parties demonstrate good faith.

• Regulated parties must help agencies understand their concerns, and participating in the regulatory process is key to achieving that understanding.

• If you have a problem, will your regulator trust you to fix it?
RIA and the review process
Make good choices

Develop a menu of options, and stress-test it

Regulatory impact analysis (RIA)

• Thoughtful RIAs provoke discussion – are there alternatives that achieve the regulatory goal? Has the agency picked right balance of burden and benefit?

• RIAs are a means to an end. They provide crucial info to public participants who can then submit more meaningful and targeted comments on how to improve the rule.

Review process

• Central review requires a careful balance of transparency: open enough to encourage participation, but protected enough that participants provide honest feedback.

• The reviewing agency should be empowered to change proposed rules to keep consistency among agencies and with official policy
What’s next?
Regulations need to be accessible

Can you easily figure out the rules that apply to you?

Rules should be easy to find

• Easy online access is critical to compliance.

• Trust that most parties will act in good faith, and that they would rather comply with the rules than break the law.

Invest in online infrastructure

• Critical for international companies

• Can a business executive in the U.S., India, or Argentina understand how to do business in Zambia? Could a lawyer from one of those countries figure it out?
Public participation should be easy

Develop tools to engage the private sector – from big business to individual contributors

Tools matter

• U.S. Federal agencies do a very good job of publicizing their activities. If an agency is making a new rule, generally it will be easy to find the proposal and comment on it.

• In contrast, state agencies usually do a worse job of including the public in rulemaking. As a result, their rules are less vetted and are often lower quality.

Is anybody listening?

• What can Zambian agencies do to demonstrate that they are listening to public concerns? Does private sector participation change the shape of agency rules?

• Are Zambian agencies clearly communicating their enforcement priorities?

• If the private sector believes participation is futile, the entire exercise will be futile.
Public participation should be transparent

Transparency among all parties is critical to trust

Oversight depends on open dockets

• Non-government parties should be able to challenge the outcome of rules if they are illegal, unfair, or poorly made.

• Open comment dockets allow anybody to see if a party or industry wields too much influence, to challenge incorrect statements, and to develop a record for judicial review.

• Open dockets are also vital to spotting agency capture.

Key questions

• Do Zambian agencies occasionally rely on *ex parte* communications to justify their actions?

• Can the public easily read comments submitted by foreign governments and parties?
Online tools are critical

What will regulators do next?

How do you read proposed rules and comment?
Online tools are critical (cont.)

What rules are under central review?

How do you keep up with what government is doing?
Appendix
Congress passes law authorizing/requiring rulemaking

Agency drafts and clears internally a proposed rule; works w/ WH offices

If “significant,” OMB reviews and clears draft proposed rule

Agency publishes notice of proposed rulemaking (NPRM)

Public reviews NPRM and submits comments to agency

Agency reviews public comments and develops/clears draft final rule; WH policy offices provide input

If “significant,” OMB reviews and clears draft final rule

Agency publishes final rule

Rule takes effect

If challenged in court:

Court “vacates” all or part of rule

Litigation to order agency to engage in rulemaking (e.g. Mass. v. EPA), or prevent agency from acting

Congress exercises oversight of rulemaking process; exerts influence via letters, hearings, and appropriations riders

Congress reviews final rule under Congressional Review Act

Disapproval resolution passed; rule is voided

Appropriations riders may affect implementation/enforcement

Legislative Branch

Executive Branch

Judicial Branch
Office of Information and Regulatory Affairs

**OMB**
- Managed by a small group of political appointees; most staff (400+) are highly skilled career professionals.
- President’s chief tool to manage Executive Branch

**OIRA**
- Coordinates regulation in the Executive Branch
- Manages interagency review to prevent multiple agencies from overlapping (or creating conflicting rules)
- Ensures high-quality analysis in the rulemaking process
- Only reviews the most important rules, many agency rules are low-cost and non-controversial
- Process and people remain essentially unchanged throughout Administrations
OIRA in-depth

Timeframe

Review can take up to 90 days (avg. ~50 days); option to extend

Meetings

Open-door policy during review – OIRA accepts any meeting requested. OIRA always invites the agency writing the rule, and often invites other White House offices or key agencies

Transparency

OIRA docket all meetings online, including written materials provided, with participants identified. Oral communications are docketed but not transcribed. After review, the public can see before-and-after versions of the rule

Outcome

OIRA can accept the rule as written, or it may ask the agency to make changes. OIRA may also delay the issuance of the rule, or ask the agency to withdraw the rule entirely and not issue it