

Negotiated Rulemaking Act

- UNITED STATES CODE
 - TITLE 5 - GOVERNMENT ORGANIZATION AND EMPLOYEES
 - PART I - THE AGENCIES GENERALLY
 - CHAPTER 5 - ADMINISTRATIVE PROCEDURE
 - SUBCHAPTER III - NEGOTIATED RULEMAKING PROCEDURE
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§ 561. Purpose

The purpose of this subchapter is to establish a framework for the conduct of negotiated rulemaking, consistent with section [553](#) of this title, to encourage agencies to use the process when it enhances the informal rulemaking process. Nothing in this subchapter should be construed as an attempt to limit innovation and experimentation with the negotiated rulemaking process or with other innovative rulemaking procedures otherwise authorized by law.

§ 562. Definitions

For the purposes of this subchapter, the term -

- (1) "agency" has the same meaning as in section [551\(1\)](#) of this title;
- (2) "consensus" means unanimous concurrence among the interests represented on a negotiated rulemaking committee established under this subchapter, unless such committee -
 - (A) agrees to define such term to mean a general but not unanimous concurrence; or
 - (B) agrees upon another specified definition;
- (3) "convener" means a person who impartially assists an agency in determining whether establishment of a negotiated rulemaking committee is feasible and appropriate in a particular rulemaking;
- (4) "facilitator" means a person who impartially aids in the discussions and negotiations among the members of a negotiated rulemaking committee to develop a proposed rule;
- (5) "interest" means, with respect to an issue or matter, multiple parties which have a similar point of view or which are likely to be affected in a similar manner;

(6) "negotiated rulemaking" means rulemaking through the use of a negotiated rulemaking committee;

(7) "negotiated rulemaking committee" or "committee" means an advisory committee established by an agency in accordance with this subchapter and the Federal Advisory Committee Act to consider and discuss issues for the purpose of reaching a consensus in the development of a proposed rule;

(8) "party" has the same meaning as in section [551\(3\)](#) of this title;

(9) "person" has the same meaning as in section [551\(2\)](#) of this title;

(10) "rule" has the same meaning as in section [551\(4\)](#) of this title; and

(11) "rulemaking" means "rule making" as that term is defined in section [551\(5\)](#) of this title.

§ 563. Determination of need for negotiated rulemaking committee

(a) Determination of Need by the Agency. - An agency may establish a negotiated rulemaking committee to negotiate and develop a proposed rule, if the head of the agency determines that the use of the negotiated rulemaking procedure is in the public interest. In making such a determination, the head of the agency shall consider whether -

(1) there is a need for a rule;

(2) there are a limited number of identifiable interests that will be significantly affected by the rule;

(3) there is a reasonable likelihood that a committee can be convened with a balanced representation of persons who -

(A) can adequately represent the interests identified under paragraph (2); and

(B) are willing to negotiate in good faith to reach a consensus on the proposed rule;

(4) there is a reasonable likelihood that a committee will reach a consensus on the proposed rule within a fixed period of time;

(5) the negotiated rulemaking procedure will not unreasonably delay the notice of proposed rulemaking and the issuance of the final rule;

(6) the agency has adequate resources and is willing to commit such resources, including technical assistance, to the committee; and

(7) the agency, to the maximum extent possible consistent with the legal obligations of the agency, will use the consensus of the committee with respect to the proposed rule as the basis for the rule proposed by the agency for notice and comment.

(b) Use of Conveners -

(1) Purposes of conveners. - An agency may use the services of a convener to assist the agency in -

(A) identifying persons who will be significantly affected by a proposed rule, including residents of rural areas; and

(B) conducting discussions with such persons to identify the issues of concern to such persons, and to ascertain whether the establishment of a negotiated rulemaking committee is feasible and appropriate in the particular rulemaking.

(2) Duties of conveners. - The convener shall report findings and may make recommendations to the agency. Upon request of the agency, the convener shall ascertain the names of persons who are willing and qualified to represent interests that will be significantly affected by the proposed rule, including residents of rural areas. The report and any recommendations of the convener shall be made available to the public upon request.

§ 564. Publication of notice; applications for membership on committees

(a) Publication of Notice. - If, after considering the report of a convener or conducting its own assessment, an agency decides to establish a negotiated rulemaking committee, the agency shall publish in the Federal Register and, as appropriate, in trade or other specialized publications, a notice which shall include -

(1) an announcement that the agency intends to establish a negotiated rulemaking committee to negotiate and develop a proposed rule;

(2) a description of the subject and scope of the rule to be developed, and the issues to be considered;

(3) a list of the interests which are likely to be significantly affected by the rule;

(4) a list of the persons proposed to represent such interests and the person or persons proposed to represent the agency;

(5) a proposed agenda and schedule for completing the work of the committee, including a target date for publication by the agency of a proposed rule for notice and comment;

(6) a description of administrative support for the committee to be provided by the agency, including technical assistance;

(7) a solicitation for comments on the proposal to establish the committee, and the proposed membership of the negotiated rulemaking committee; and

(8) an explanation of how a person may apply or nominate another person for membership on the committee, as provided under subsection (b).

(b) Applications for Membership or (FOOTNOTE 1) Committee. - Persons who will be significantly affected by a proposed rule and who believe that their interests will not be adequately represented by any person specified in a notice under subsection (a)(4) may apply for, or nominate another person for, membership on the negotiated rulemaking committee to represent such interests with respect to the proposed rule. Each application or nomination shall include -

(FOOTNOTE 1) So in original. Probably should be "on".

(1) the name of the applicant or nominee and a description of the interests such person shall represent;

(2) evidence that the applicant or nominee is authorized to represent parties related to the interests the person proposes to represent

(3) a written commitment that the applicant or nominee shall actively participate in good faith in the development of the rule under consideration; and

(4) the reasons that the persons specified in the notice under subsection (a)(4) do not adequately represent the interests of the person submitting the application or nomination.

(c) Period for Submission of Comments and Applications. - The agency shall provide for a period of at least 30 calendar days for the submission of comments and applications under this section.

§ 565. Establishment of committee

(a) Establishment. -

(1) Determination to establish committee. - If after considering comments and applications submitted under section [564](#), the agency determines that a negotiated rulemaking committee can adequately represent the interests that will be significantly affected by a proposed rule and that it is feasible and appropriate in the particular rulemaking, the agency may establish a negotiated rulemaking committee. In establishing and administering such a committee, the agency shall comply with the Federal Advisory Committee Act with respect to such committee, except as otherwise provided in this subchapter.

(2) Determination not to establish committee. - If after considering such comments and applications, the agency decides not to establish a negotiated rulemaking committee, the agency shall promptly publish notice of such decision and the reasons therefore in the Federal Register and, as appropriate, in trade or other specialized publications, a copy of which shall be sent to any person who applied for, or nominated another person for membership on the negotiating (FOOTNOTE 1) rulemaking committee to represent such interests with respect to the proposed rule.

(b) Membership. - The agency shall limit membership on a negotiated rulemaking committee to 25 members, unless the agency head determines that a greater number of members is necessary for the functioning of the committee or to achieve balanced membership. Each committee shall include at least one person representing the agency.

(c) Administrative Support. - The agency shall provide appropriate administrative support to the negotiated rulemaking committee, including technical assistance.

§ 566. Conduct of committee activity

(a) Duties of Committee. - Each negotiated rulemaking committee established under this subchapter shall consider the matter proposed by the agency for consideration and shall attempt to reach a consensus concerning a proposed rule with respect to such matter and any other matter the committee determines is relevant to the proposed rule.

(b) Representatives of Agency on Committee. - The person or persons representing the agency on a negotiated rulemaking committee shall participate in the deliberations and activities of the committee with the same rights and responsibilities as other members of the

committee, and shall be authorized to fully represent the agency in the discussions and negotiations of the committee.

(c) Selecting Facilitator. - Notwithstanding section [10\(e\)](#) of the Federal Advisory Committee Act, an agency may nominate either a person from the Federal Government or a person from outside the Federal Government to serve as a facilitator for the negotiations of the committee, subject to the approval of the committee by consensus. If the committee does not approve the nominee of the agency for facilitator, the agency shall submit a substitute nomination. If a committee does not approve any nominee of the agency for facilitator, the committee shall select by consensus a person to serve as facilitator. A person designated to represent the agency in substantive issues may not serve as facilitator or otherwise chair the committee.

(d) Duties of Facilitator. - A facilitator approved or selected by a negotiated rulemaking committee shall -

(1) chair the meetings of the committee in an impartial manner;

(2) impartially assist the members of the committee in conducting discussions and negotiations; and

(3) manage the keeping of minutes and records as required under section [10\(b\)](#) and [\(c\)](#) of the Federal Advisory Committee Act, except that any personal notes and materials of the facilitator or of the members of a committee shall not be subject to section [552](#) of this title.

(e) Committee Procedures. - A negotiated rulemaking committee established under this subchapter may adopt procedures for the operation of the committee. No provision of section [553](#) of this title shall apply to the procedures of a negotiated rulemaking committee.

(f) Report of Committee. - If a committee reaches a consensus on a proposed rule, at the conclusion of negotiations the committee shall transmit to the agency that established the committee a report containing the proposed rule. If the committee does not reach a consensus on a proposed rule, the committee may transmit to the agency a report specifying any areas in which the committee reached a consensus. The committee may include in a report any other information, recommendations, or materials that the committee considers appropriate. Any committee member may include as an addendum to the report additional information, recommendations, or materials.

(g) Records of Committee. - In addition to the report required by subsection (f), a committee shall submit to the agency the records required under section [10\(b\)](#) and [\(c\)](#) of the Federal Advisory Committee Act.

§ 567. Termination of committee

A negotiated rulemaking committee shall terminate upon promulgation of the final rule under consideration, unless the committee's charter contains an earlier termination date or the agency, after consulting the committee, or the committee itself specifies an earlier termination date.

¹ So in original. Probably should be “negotiated”.

Source:

<http://www.archives.gov/federal-register/laws/negotiated-rulemaking/567.html>