

(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.

(Added Pub. L. 101-648, §3(a), Nov. 29, 1990, 104 Stat. 4970, §582; renumbered §562, Pub. L. 102-354, §3(a)(2), Aug. 26, 1992, 106 Stat. 944.)

REFERENCES IN TEXT

The Federal Advisory Committee Act, referred to in par. (7), is Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 770, as amended, which is set out in the Appendix to this title.

AMENDMENTS

1992—Pub. L. 102-354 renumbered section 582 of this title as this section.

§ 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.

(Added Pub. L. 101-648, §3(a), Nov. 29, 1990, 104 Stat. 4970, §583; renumbered §563, Pub. L. 102-354, §3(a)(2), Aug. 26, 1992, 106 Stat. 944.)

AMENDMENTS

1992—Pub. L. 102-354 renumbered section 583 of this title as this section.

NEGOTIATED RULEMAKING COMMITTEES

Pub. L. 104-320, §11(e), Oct. 19, 1996, 110 Stat. 3874, provided that: “The Director of the Office of Management and Budget shall—

“(1) within 180 days of the date of the enactment of this Act [Oct. 19, 1996], take appropriate action to expedite the establishment of negotiated rulemaking committees and committees established to resolve disputes under the Administrative Dispute Resolution Act [Pub. L. 101-552, see Short Title note set out under section 571 of this title], including, with respect to negotiated rulemaking committees, eliminating any redundant administrative requirements related to filing a committee charter under section 9 of the Federal Advisory Committee Act (5 U.S.C. App.) and providing public notice of such committee under section 564 of title 5, United States Code; and

“(2) within one year of the date of the enactment of this Act, submit recommendations to Congress for any necessary legislative changes.”

§ 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;