Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

#### AMENDMENTS

1978—Pub. L. 95–454 substituted ''5372'' for ''5362'' wherever appearing.

Pub. L. 95–251 substituted ''administrative law judges'' for ''hearing examiners'' wherever appearing.

1968—Pub. L. 90–623 inserted ''of this title'' after ''7521'' wherever appearing.

#### EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–454 effective on first day of first applicable pay period beginning on or after the 90th day after Oct. 13, 1978, see section 801(a)(4) of Pub. L. 95–454, set out as an Effective Date note under section 5361 of this title.

#### EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–623 intended to restate without substantive change the law in effect on Oct. 22, 1968, see section 6 of Pub. L. 90–623, set out as a note under section 5334 of this title.

## SUBCHAPTER III—NEGOTIATED RULEMAKING PROCEDURE

#### PRIOR PROVISIONS

A prior subchapter III (§ 571 et seq.) was redesignated subchapter V (§ 591 et seq.) of this chapter.

#### AMENDMENTS

1992—Pub. L. 102–354, § 3(a)(1), Aug. 26, 1992, 106 Stat. 944, redesignated subchapter IV of this chapter relating to negotiated rulemaking procedure as this subchapter.

### § 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.

(Added Pub. L. 101–648, § 3(a), Nov. 29, 1990, 104 Stat. 4970, § 581; renumbered § 561, Pub. L. 102–354, § 3(a)(2), Aug. 26, 1992, 106 Stat. 944.)

#### AMENDMENTS

1992—Pub. L. 102–354 renumbered section 581 of this title as this section.

#### EFFECTIVE DATE OF REPEAL; SAVINGS PROVISION

Section 5 of Pub. L. 101–648, as amended by Pub. L. 102–354, § 5(a)(2), Aug. 26, 1992, 106 Stat. 945, which provided that subchapter III of chapter 5 of title 5 and the table of sections corresponding to such subchapter, were repealed, effective 6 years after Nov. 29, 1990, except for then pending proceedings, was repealed by Pub. L. 104–320, § 11(a), Oct. 19, 1996, 110 Stat. 3873.

#### SHORT TITLE OF 1992 AMENDMENT

Section 1 of Pub. L. 102–354 provided that: ''This Act [amending sections 565, 568, 569, 571, 577, 580, 581, and 593 of this title, section 10 of Title 9, Arbitration, and section 173 of Title 29, Labor, renumbering sections 571 to 576, 581 to 590, and 581 to 593 as 591 to 596, 561 to 570, and 571 to 583, respectively, of this title, and amending provisions set out as notes under this section and section 571 of this title] may be cited as the 'Administrative Procedure Technical Amendments Act of 1991'.''

#### SHORT TITLE OF 1990 AMENDMENT

Section 1 of Pub. L. 101–648 provided that: ''This Act [enacting this subchapter] may be cited as the 'Negotiated Rulemaking Act of 1990'.''

#### CONGRESSIONAL FINDINGS

Section 2 of Pub. L. 101–648 provided that: ''The Congress makes the following findings:

''(1) Government regulation has increased substantially since the enactment of the Administrative Procedure Act [see Short Title note set out preceding section 551 of this title].

''(2) Agencies currently use rulemaking procedures that may discourage the affected parties from meeting and communicating with each other, and may cause parties with different interests to assume conflicting and antagonistic positions and to engage in expensive and time-consuming litigation over agency rules.

''(3) Adversarial rulemaking deprives the affected parties and the public of the benefits of face-to-face negotiations and cooperation in developing and reaching agreement on a rule. It also deprives them of the benefits of shared information, knowledge, expertise, and technical abilities possessed by the affected parties.

''(4) Negotiated rulemaking, in which the parties who will be significantly affected by a rule participate in the development of the rule, can provide significant advantages over adversarial rulemaking.

''(5) Negotiated rulemaking can increase the acceptability and improve the substance of rules, making it less likely that the affected parties will resist enforcement or challenge such rules in court. It may also shorten the amount of time needed to issue final rules.

''(6) Agencies have the authority to establish negotiated rulemaking committees under the laws establishing such agencies and their activities and under the Federal Advisory Committee Act (5 U.S.C. App.). Several agencies have successfully used negotiated rulemaking. The process has not been widely used by other agencies, however, in part because such agencies are unfamiliar with the process or uncertain as to the authority for such rulemaking.''

#### AUTHORIZATION OF APPROPRIATIONS

Section 4 of Pub. L. 101–648, as amended by Pub. L. 102–354, § 5(a)(1), Aug. 26, 1992, 106 Stat. 945, authorized additional appropriations to Administrative Conference of the United States to carry out Pub. L. 101–648 in fiscal years 1991, 1992, and 1993.

### § 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;