

Pub. L. 102-354, §3(a)(2), (4), Aug. 26, 1992, 106 Stat. 944.)

#### REFERENCES IN TEXT

Section 7(d) of the Federal Advisory Committee Act, referred to in subsec. (c), is section 7(d) of Pub. L. 92-463, which is set out in the Appendix to this title.

#### AMENDMENTS

1992—Pub. L. 102-354, §3(a)(2), renumbered section 588 of this title as this section.

Subsec. (d). Pub. L. 102-354, §3(a)(4), substituted “section 569” for “section 589”.

### § 569. Encouraging negotiated rulemaking

(a) The President shall designate an agency or designate or establish an interagency committee to facilitate and encourage agency use of negotiated rulemaking. An agency that is considering, planning, or conducting a negotiated rulemaking may consult with such agency or committee for information and assistance.

(b) To carry out the purposes of this subchapter, an agency planning or conducting a negotiated rulemaking may accept, hold, administer, and utilize gifts, devises, and bequests of property, both real and personal if that agency's acceptance and use of such gifts, devises, or bequests do not create a conflict of interest. Gifts and bequests of money and proceeds from sales of other property received as gifts, devises, or bequests shall be deposited in the Treasury and shall be disbursed upon the order of the head of such agency. Property accepted pursuant to this section, and the proceeds thereof, shall be used as nearly as possible in accordance with the terms of the gifts, devises, or bequests.

(Added Pub. L. 101-648, §3(a), Nov. 29, 1990, 104 Stat. 4975, §589; renumbered §569 and amended Pub. L. 102-354, §3(a)(2), (5), Aug. 26, 1992, 106 Stat. 944; Pub. L. 104-320, §11(b)(1), Oct. 19, 1996, 110 Stat. 3873.)

#### AMENDMENTS

1996—Pub. L. 104-320 in section catchline substituted “Encouraging negotiated rulemaking” for “Role of the Administrative Conference of the United States and other entities”, and in text added subsecs. (a) and (b) and struck out former subsecs. (a) to (g) which related to: in subsec. (a), consultation by agencies; in subsec. (b), roster of potential conveners and facilitators; in subsec. (c), procedures to obtain conveners and facilitators; in subsec. (d), compilation of data on negotiated rulemaking and report to Congress; in subsec. (e), training in negotiated rulemaking; in subsec. (f), payment of expenses of agencies; and in subsec. (g), use of funds of the conference.

1992—Pub. L. 102-354, §3(a)(2), renumbered section 589 of this title as this section.

Subsec. (d)(2). Pub. L. 102-354, §3(a)(5)(A), substituted “section 566” for “section 586”.

Subsec. (f)(2). Pub. L. 102-354, §3(a)(5)(B), substituted “section 568(c)” for “section 588(c)”.

Subsec. (g). Pub. L. 102-354, §3(a)(5)(C), substituted “section 595(c)(12)” for “section 575(c)(12)”.

### § 570. Judicial review

Any agency action relating to establishing, assisting, or terminating a negotiated rulemaking committee under this subchapter shall not be subject to judicial review. Nothing in this section shall bar judicial review of a rule if such judicial review is otherwise provided by law. A

rule which is the product of negotiated rulemaking and is subject to judicial review shall not be accorded any greater deference by a court than a rule which is the product of other rulemaking procedures.

(Added Pub. L. 101-648, §3(a), Nov. 29, 1990, 104 Stat. 4976, §590; renumbered §570, Pub. L. 102-354, §3(a)(2), Aug. 26, 1992, 106 Stat. 944.)

#### AMENDMENTS

1992—Pub. L. 102-354 renumbered section 590 of this title as this section.

### § 570a. Authorization of appropriations

There are authorized to be appropriated such sums as may be necessary to carry out the purposes of this subchapter.

(Added Pub. L. 104-320, §11(d)(1), Oct. 19, 1996, 110 Stat. 3873.)

## SUBCHAPTER IV—ALTERNATIVE MEANS OF DISPUTE RESOLUTION IN THE ADMINISTRATIVE PROCESS

#### CODIFICATION

Another subchapter IV (§581 et seq.) relating to negotiated rulemaking procedure was redesignated subchapter III (§561 et seq.) of this chapter.

#### AMENDMENTS

1992—Pub. L. 102-354, §3(b)(1), Aug. 26, 1992, 106 Stat. 944, transferred this subchapter so as to appear immediately after subchapter III of this chapter.

### § 571. Definitions

For the purposes of this subchapter, the term—

(1) “agency” has the same meaning as in section 551(1) of this title;

(2) “administrative program” includes a Federal function which involves protection of the public interest and the determination of rights, privileges, and obligations of private persons through rule making, adjudication, licensing, or investigation, as those terms are used in subchapter II of this chapter;

(3) “alternative means of dispute resolution” means any procedure that is used to resolve issues in controversy, including, but not limited to, conciliation, facilitation, mediation, fact-finding, minitrials, arbitration, and use of ombuds, or any combination thereof;

(4) “award” means any decision by an arbitrator resolving the issues in controversy;

(5) “dispute resolution communication” means any oral or written communication prepared for the purposes of a dispute resolution proceeding, including any memoranda, notes or work product of the neutral, parties or non-party participant; except that a written agreement to enter into a dispute resolution proceeding, or final written agreement or arbitral award reached as a result of a dispute resolution proceeding, is not a dispute resolution communication;

(6) “dispute resolution proceeding” means any process in which an alternative means of dispute resolution is used to resolve an issue in controversy in which a neutral is appointed and specified parties participate;

(7) “in confidence” means, with respect to information, that the information is provided—

(A) with the expressed intent of the source that it not be disclosed; or

(B) under circumstances that would create the reasonable expectation on behalf of the source that the information will not be disclosed;

(8) “issue in controversy” means an issue which is material to a decision concerning an administrative program of an agency, and with which there is disagreement—

(A) between an agency and persons who would be substantially affected by the decision; or

(B) between persons who would be substantially affected by the decision;

(9) “neutral” means an individual who, with respect to an issue in controversy, functions specifically to aid the parties in resolving the controversy;

(10) “party” means—

(A) for a proceeding with named parties, the same as in section 551(3) of this title; and

(B) for a proceeding without named parties, a person who will be significantly affected by the decision in the proceeding and who participates in the proceeding;

(11) “person” has the same meaning as in section 551(2) of this title; and

(12) “roster” means a list of persons qualified to provide services as neutrals.

(Added Pub. L. 101-552, §4(b), Nov. 15, 1990, 104 Stat. 2738, §581; renumbered §571 and amended Pub. L. 102-354, §§3(b)(2), 5(b)(1), (2), Aug. 26, 1992, 106 Stat. 944, 946; Pub. L. 104-320, §2, Oct. 19, 1996, 110 Stat. 3870.)

#### CODIFICATION

Section 571 of former Title 5, Executive Departments and Government Officers and Employees, was transferred to section 2256 of Title 7, Agriculture.

#### PRIOR PROVISIONS

A prior section 571 was renumbered section 591 of this title.

#### AMENDMENTS

1996—Par. (3). Pub. L. 104-320, §2(1), struck out “, in lieu of an adjudication as defined in section 551(7) of this title,” after “any procedure that is used”, struck out “settlement negotiations,” after “but not limited to,” and substituted “arbitration, and use of ombuds” for “and arbitration”.

Par. (8). Pub. L. 104-320, §2(2), substituted “decision;” for “decision,” at end of subpar. (B), and struck out closing provisions which read as follows: “except that such term shall not include any matter specified under section 2302 or 7121(c) of this title;”.

1992—Pub. L. 102-354, §3(b)(2), renumbered section 581 of this title as this section.

Par. (3). Pub. L. 102-354, §5(b)(1), inserted comma after “including”.

Par. (8). Pub. L. 102-354, §5(b)(2), amended par. (8) generally. Prior to amendment, par. (8) read as follows: “‘issue in controversy’ means an issue which is material to a decision concerning an administrative program of an agency, and with which there is disagreement between the agency and persons who would be substantially affected by the decision but shall not extend to matters specified under the provisions of sections 2302 and 7121(c) of title 5;”.

#### TERMINATION DATE; SAVINGS PROVISION

Section 11 of Pub. L. 101-552, as amended by Pub. L. 104-106, div. D, title XLIII, §4321(i)(5), Feb. 10, 1996, 110

Stat. 676, which provided that the authority of agencies to use dispute resolution proceedings under this Act [see Short Title note below] was to terminate on Oct. 1, 1995, except with respect to pending proceedings, was repealed by Pub. L. 104-320, §9, Oct. 19, 1996, 110 Stat. 3872.

#### SHORT TITLE OF 1996 AMENDMENT

Section 1 of Pub. L. 104-320 provided that: “This Act [enacting sections 570a and 584 of this title, amending this section, sections 569, 573 to 575, 580, 581, and 583 of this title, section 2304 of Title 10, Armed Forces, section 1491 of Title 28, Crimes and Criminal Procedure, section 173 of Title 29, Labor, section 3556 of Title 31, Money and Finance, and sections 253 and 605 of Title 41, Public Contracts, repealing section 582 of this title, enacting provisions set out as notes under section 563 of this title, section 1491 of Title 28, and section 3556 of Title 31, amending provisions set out as notes under this section, and repealing provisions set out as notes under this section and section 561 of this title] may be cited as the ‘Administrative Dispute Resolution Act of 1996.’”

#### SHORT TITLE

Section 1 of Pub. L. 101-552 provided that: “This Act [enacting this subchapter, amending section 556 of this title, section 10 of Title 9, Arbitration, section 2672 of Title 28, Judiciary and Judicial Procedure, section 173 of Title 29, Labor, section 3711 of Title 31, Money and Finance, and sections 605 and 607 of Title 41, Public Contracts, and enacting provisions set out as notes under this section] may be cited as the ‘Administrative Dispute Resolution Act.’”

#### CONGRESSIONAL FINDINGS

Section 2 of Pub. L. 101-552 provided that: “The Congress finds that—

“(1) administrative procedure, as embodied in chapter 5 of title 5, United States Code, and other statutes, is intended to offer a prompt, expert, and inexpensive means of resolving disputes as an alternative to litigation in the Federal courts;

“(2) administrative proceedings have become increasingly formal, costly, and lengthy resulting in unnecessary expenditures of time and in a decreased likelihood of achieving consensual resolution of disputes;

“(3) alternative means of dispute resolution have been used in the private sector for many years and, in appropriate circumstances, have yielded decisions that are faster, less expensive, and less contentious;

“(4) such alternative means can lead to more creative, efficient, and sensible outcomes;

“(5) such alternative means may be used advantageously in a wide variety of administrative programs;

“(6) explicit authorization of the use of well-tested dispute resolution techniques will eliminate ambiguity of agency authority under existing law;

“(7) Federal agencies may not only receive the benefit of techniques that were developed in the private sector, but may also take the lead in the further development and refinement of such techniques; and

“(8) the availability of a wide range of dispute resolution procedures, and an increased understanding of the most effective use of such procedures, will enhance the operation of the Government and better serve the public.”

#### PROMOTION OF ALTERNATIVE MEANS OF DISPUTE RESOLUTION

Section 3 of Pub. L. 101-552, as amended by Pub. L. 104-320, §4(a), Oct. 19, 1996, 110 Stat. 3871, provided that:

“(a) PROMULGATION OF AGENCY POLICY.—Each agency shall adopt a policy that addresses the use of alternative means of dispute resolution and case management. In developing such a policy, each agency shall—

“(1) consult with the agency designated by, or the interagency committee designated or established by,

the President under section 573 of title 5, United States Code, to facilitate and encourage agency use of alternative dispute resolution under subchapter IV of chapter 5 of such title; and

“(2) examine alternative means of resolving disputes in connection with—

- “(A) formal and informal adjudications;
  - “(B) rulemakings;
  - “(C) enforcement actions;
  - “(D) issuing and revoking licenses or permits;
  - “(E) contract administration;
  - “(F) litigation brought by or against the agency;
- and

“(G) other agency actions.

“(b) DISPUTE RESOLUTION SPECIALISTS.—The head of each agency shall designate a senior official to be the dispute resolution specialist of the agency. Such official shall be responsible for the implementation of—

“(1) the provisions of this Act [see Short Title note above] and the amendments made by this Act; and

“(2) the agency policy developed under subsection (a).

“(c) TRAINING.—Each agency shall provide for training on a regular basis for the dispute resolution specialist of the agency and other employees involved in implementing the policy of the agency developed under subsection (a). Such training should encompass the theory and practice of negotiation, mediation, arbitration, or related techniques. The dispute resolution specialist shall periodically recommend to the agency head agency employees who would benefit from similar training.

“(d) PROCEDURES FOR GRANTS AND CONTRACTS.—

“(1) Each agency shall review each of its standard agreements for contracts, grants, and other assistance and shall determine whether to amend any such standard agreements to authorize and encourage the use of alternative means of dispute resolution.

“(2)(A) Within 1 year after the date of the enactment of this Act [Nov. 15, 1990], the Federal Acquisition Regulation shall be amended, as necessary, to carry out this Act [see Short Title note above] and the amendments made by this Act.

“(B) For purposes of this section, the term ‘Federal Acquisition Regulation’ means the single system of Government-wide procurement regulation referred to in section 6(a) of the Office of Federal Procurement Policy Act ([former] 41 U.S.C. 405(a)) [now 41 U.S.C. 1121(a) to (c)(1)].”

#### USE OF NONATTORNEYS

Section 9 of Pub. L. 101-552 provided that:

“(a) REPRESENTATION OF PARTIES.—Each agency, in developing a policy on the use of alternative means of dispute resolution under this Act [see Short Title note above], shall develop a policy with regard to the representation by persons other than attorneys of parties in alternative dispute resolution proceedings and shall identify any of its administrative programs with numerous claims or disputes before the agency and determine—

“(1) the extent to which individuals are represented or assisted by attorneys or by persons who are not attorneys; and

“(2) whether the subject areas of the applicable proceedings or the procedures are so complex or specialized that only attorneys may adequately provide such representation or assistance.

“(b) REPRESENTATION AND ASSISTANCE BY NON-ATTORNEYS.—A person who is not an attorney may provide representation or assistance to any individual in a claim or dispute with an agency, if—

“(1) such claim or dispute concerns an administrative program identified under subsection (a);

“(2) such agency determines that the proceeding or procedure does not necessitate representation or assistance by an attorney under subsection (a)(2); and

“(3) such person meets any requirement of the agency to provide representation or assistance in such a claim or dispute.

“(c) DISQUALIFICATION OF REPRESENTATION OR ASSISTANCE.—Any agency that adopts regulations under sub-

chapter IV of chapter 5 of title 5, United States Code, to permit representation or assistance by persons who are not attorneys shall review the rules of practice before such agency to—

“(1) ensure that any rules pertaining to disqualification of attorneys from practicing before the agency shall also apply, as appropriate, to other persons who provide representation or assistance; and

“(2) establish effective agency procedures for enforcing such rules of practice and for receiving complaints from affected persons.”

#### DEFINITIONS

Section 10 of Pub. L. 101-552, as amended by Pub. L. 102-354, §5(b)(6), Aug. 26, 1992, 106 Stat. 946, provided that: “As used in this Act [see Short Title note above], the terms ‘agency’, ‘administrative program’, and ‘alternative means of dispute resolution’ have the meanings given such terms in section 571 of title 5, United States Code (enacted as section 581 of title 5, United States Code, by section 4(b) of this Act, and redesignated as section 571 of such title by section 3(b) of the Administrative Procedure Technical Amendments Act of 1991 [Pub. L. 102-354]).”

#### § 572. General authority

(a) An agency may use a dispute resolution proceeding for the resolution of an issue in controversy that relates to an administrative program, if the parties agree to such proceeding.

(b) An agency shall consider not using a dispute resolution proceeding if—

(1) a definitive or authoritative resolution of the matter is required for precedential value, and such a proceeding is not likely to be accepted generally as an authoritative precedent;

(2) the matter involves or may bear upon significant questions of Government policy that require additional procedures before a final resolution may be made, and such a proceeding would not likely serve to develop a recommended policy for the agency;

(3) maintaining established policies is of special importance, so that variations among individual decisions are not increased and such a proceeding would not likely reach consistent results among individual decisions;

(4) the matter significantly affects persons or organizations who are not parties to the proceeding;

(5) a full public record of the proceeding is important, and a dispute resolution proceeding cannot provide such a record; and

(6) the agency must maintain continuing jurisdiction over the matter with authority to alter the disposition of the matter in the light of changed circumstances, and a dispute resolution proceeding would interfere with the agency’s fulfilling that requirement.

(c) Alternative means of dispute resolution authorized under this subchapter are voluntary procedures which supplement rather than limit other available agency dispute resolution techniques.

(Added Pub. L. 101-552, §4(b), Nov. 15, 1990, 104 Stat. 2739, §582; renumbered §572, Pub. L. 102-354, §3(b)(2), Aug. 26, 1992, 106 Stat. 944.)

#### CODIFICATION

Section 572 of former Title 5, Executive Departments and Government Officers and Employees, was transferred to section 2257 of Title 7, Agriculture.