

(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<sup>1</sup> 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—

(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.

(Added Pub. L. 101-648, §3(a), Nov. 29, 1990, 104 Stat. 4971, §584; renumbered §564, Pub. L. 102-354, §3(a)(2), Aug. 26, 1992, 106 Stat. 944.)

#### AMENDMENTS

1992—Pub. L. 102-354 renumbered section 584 of this title as 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 agen-

cy 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 therefor 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<sup>1</sup> 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.

(Added Pub. L. 101-648, §3(a), Nov. 29, 1990, 104 Stat. 4972, §585; renumbered §565 and amended Pub. L. 102-354, §3(a)(2), (3), Aug. 26, 1992, 106 Stat. 944.)

#### REFERENCES IN TEXT

The Federal Advisory Committee Act, referred to in subsec. (a)(1), 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, §3(a)(2), renumbered section 585 of this title as this section.

Subsec. (a)(1). Pub. L. 102-354, §3(a)(3), substituted “section 564” for “section 584”.

### § 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

<sup>1</sup> So in original. Probably should be “on”.

<sup>1</sup> So in original. Probably should be “negotiated”.