

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.

(Added Pub. L. 101-648, §3(a), Nov. 29, 1990, 104 Stat. 4973, §586; renumbered §566, Pub. L. 102-354, §3(a)(2), Aug. 26, 1992, 106 Stat. 944.)

#### REFERENCES IN TEXT

Section 10 of the Federal Advisory Committee Act, referred to in subsecs. (c), (d)(3), and (g), is section 10 of Pub. L. 92-463, which is set out in the Appendix to this title.

#### AMENDMENTS

1992—Pub. L. 102-354 renumbered section 586 of this title as this section.

### § 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.

(Added Pub. L. 101-648, §3(a), Nov. 29, 1990, 104 Stat. 4974, §587; renumbered §567, Pub. L. 102-354, §3(a)(2), Aug. 26, 1992, 106 Stat. 944.)

#### AMENDMENTS

1992—Pub. L. 102-354 renumbered section 587 of this title as this section.

### § 568. Services, facilities, and payment of committee member expenses

(a) **SERVICES OF CONVENERS AND FACILITATORS.**—

(1) **IN GENERAL.**—An agency may employ or enter into contracts for the services of an individual or organization to serve as a convener or facilitator for a negotiated rulemaking committee under this subchapter, or may use the services of a Government employee to act as a convener or a facilitator for such a committee.

(2) **DETERMINATION OF CONFLICTING INTERESTS.**—An agency shall determine whether a person under consideration to serve as convener or facilitator of a committee under paragraph (1) has any financial or other interest that would preclude such person from serving in an impartial and independent manner.

(b) **SERVICES AND FACILITIES OF OTHER ENTITIES.**—For purposes of this subchapter, an agency may use the services and facilities of other Federal agencies and public and private agencies and instrumentalities with the consent of such agencies and instrumentalities, and with or without reimbursement to such agencies and instrumentalities, and may accept voluntary and uncompensated services without regard to the provisions of section 1342 of title 31. The Federal Mediation and Conciliation Service may provide services and facilities, with or without reimbursement, to assist agencies under this subchapter, including furnishing conveners, facilitators, and training in negotiated rulemaking.

(c) **EXPENSES OF COMMITTEE MEMBERS.**—Members of a negotiated rulemaking committee shall be responsible for their own expenses of participation in such committee, except that an agency may, in accordance with section 7(d) of the Federal Advisory Committee Act, pay for a member's reasonable travel and per diem expenses, expenses to obtain technical assistance, and a reasonable rate of compensation, if—

(1) such member certifies a lack of adequate financial resources to participate in the committee; and

(2) the agency determines that such member's participation in the committee is necessary to assure an adequate representation of the member's interest.

(d) **STATUS OF MEMBER AS FEDERAL EMPLOYEE.**—A member's receipt of funds under this section or section 569 shall not conclusively determine for purposes of sections 202 through 209 of title 18 whether that member is an employee of the United States Government.

(Added Pub. L. 101-648, §3(a), Nov. 29, 1990, 104 Stat. 4974, §588; renumbered §568 and amended

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—