

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.)

#### Editorial Notes

##### 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 agency 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.)

#### Editorial Notes

##### 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 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.

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

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.)

#### Editorial Notes

##### 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.)

#### Editorial Notes

##### 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.)

#### Editorial Notes

##### 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