



Negotiated Rulemaking and Other Options for Public Engagement

Committee on Rulemaking
FACT SHEET

SUMMARY

At its June 2017 Plenary Session, the ACUS Assembly formally adopted Recommendation 2017-2, Negotiated Rulemaking and Other Options for Public Engagement.

The recommendation was based on a research report prepared by ACUS Attorney Advisor Cheryl Blake and Research Chief Reeve Bull. (Negotiated Rulemaking (June 12, 2017))

This recommendation aims to help agencies decide when to use negotiated rulemaking or other methods of public engagement, depending on the circumstances of a particular policymaking effort. It also suggests how agencies can streamline the negotiated rulemaking process itself.

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OVERVIEW

The recommendation gives agencies guidance on when to use negotiated rulemaking (or alternative public engagement methods) to most effectively engage with the public in policymaking.

Negotiated rulemaking is designed to improve the quality of regulations and lower the risk of litigation by enabling balanced committees of agency staff and stakeholders to seek agreement on many or all parts of proposed rules before the formal public comment process begins.

The recommendation also offers best practices for how agencies should conduct negotiated rulemaking.

Specific suggestions include that agencies:

- use Negotiated Rulemaking Act procedures to convene and facilitate discussion among balanced committees of the interests affected by the proposed rule;
- use negotiated rulemaking to support the development of regulatory analyses, and offer to brief the agency's desk officers at the Office of Information & Regulatory Affairs (OIRA); and
- use standing federal advisory committees and subcommittees to expedite the negotiated rulemaking process while observing all applicable requirements of the Federal Advisory Committee Act (FACA).

IMPACT

Negotiated rulemaking can help agencies save time and reduce litigation, especially when the subject is technical or complex. Under other circumstances, alternative public engagement methods allow agencies to make most efficient use of their resources. Ultimately, meaningful engagement with the public helps improve the quality of regulations and promotes better understanding of what agencies do.

Recommendation 2017-2 helps agencies choose whether to use negotiated rulemaking or other options for public engagement, depending on the agency's goals and the public interest. It also gives guidance on how to streamline the negotiated rulemaking process.