



Negotiated Rulemaking Fact Sheet

What is a rule?

A rule or regulation is a legally enforceable requirement issued by an executive agency. Congress often defers to agencies to draw from agency expertise and provide more detailed instructions or prohibitions than Congress provides in the statute that authorizes the regulation. The EPA writes rules that fulfill its statutory mandates and further its mission to protect human health and the environment.

How are rules usually written?

Generally, a federal agency's staff drafts the text of a proposed rule, based on its analysis of scientific, economic, and other data. After circulation and comment within the agency and among other federal agencies, the proposed rule is published in the *Federal Register*. The public is then invited to comment on the rule. After reading and analyzing the public's comment, the agency may revise the rule to incorporate suggestions or eliminate problems identified as a result of the analysis. The rule is then published in final form in the *Federal Register* and becomes effective on the date listed in the notice. It is then incorporated in the government's Code of Federal Regulations, which lists all regulations.

What is negotiated rulemaking?

Negotiated rulemaking is a process which brings together representatives of stakeholder groups that may be affected by the rule and a federal agency to negotiate the provisions of a proposed rule. The goal of a negotiated rulemaking proceeding is for the committee to reach consensus on the text or a detailed outline of a proposed rule, requiring fewer changes as the final rule is promulgated, and allowing faster implementation.

How is negotiated rulemaking different?

In a negotiated rulemaking proceeding, a well-balanced group representing the regulated public, community and public interest groups, and state and local governments, joins with a representative of the federal agency in a federally chartered [advisory committee](#). The committee negotiates the text, outline, or concept of the rule before it is published in the *Federal Register*. If the committee reaches consensus, the federal agency can use this consensus as the basis of the proposed rule. It is still subject to public comment. If consensus is not reached, then the agency proceeds with its normal rulemaking procedures, informed by, but not necessarily committed to the information exchanged during the negotiated rulemaking process.

What are the advantages of negotiated rulemaking?

Negotiated rulemaking allows a balanced representation of stakeholders to have direct input into the drafting of the regulation. This provides the responsible agency with a more balanced view of the needs and limitations of the affected parties. Studies have found rules drafted by negotiation to be more practical and more easily implemented at an earlier date, to receive a smaller number of public comments is reduced, and to receive public comments that are more constructive. Fewer substantive changes from the proposed approach are required before the rule is made final, and fewer legal challenges to the final rule are expected from stakeholders. Often, a negotiated rulemaking committee, working together, is able to address issues faced by parties in creative ways that no one member could have thought of or believed would work.

How does the negotiated rulemaking process work?

The federal agency establishes a formal advisory committee under the Federal Advisory Committee Act. A balanced mix of stakeholders is invited by the agency to participate and represent an identified interest or set of interests. Committees are usually composed of between 12 and 25 members representing both the public and private sectors. A neutral facilitator or mediator is used to convene the committee and to manage its meetings.

Meetings are announced in the *Federal Register* (and sometimes in local or trade press) and are open to members of the public. The number of meetings held depends on how complicated the rule is to draft, how much controversy there is among the committee members, and what the deadline is for the rule to be published and implemented.

Generally, only the committee members speak during the meetings, although provisions are made for input by members of the public. Caucuses (small breakout meetings) can be called by committee members to speak with their constituency or with other members of the committee; caucuses may or may not be open to the public observers.

Decisions are made by consensus, not by majority vote. The committee discusses and decides upon their own definition of consensus prior to the start of its deliberations. Often the consensus is generally defined as an agreement by all parties, that they can each live with the provisions of the rule when taken as a whole package.

If consensus is reached, the agency will use it as a basis for their proposed rule. Committee members agree not to file adverse comments on the proposed rule or challenge the final rule in court if no substantive changes are made to the consensus agreement.

Where can I find additional information on negotiated rulemaking?

[Negotiated Rulemaking Sourcebook](#), 1995, Administrative Conference of the U.S.; David Pritzker and Deborah S. Dalton, eds. Available at EPA from the EPA Conflict Prevention and Resolution Center by request to adr@epa.gov or 202-564-2922. Also available for purchase from the Superintendent of Documents, Government Printing Office, ISBN-13 978-0160482229.