



FMCS

FEDERAL MEDIATION & CONCILIATION SERVICE

Negotiated Rulemaking

Regulating with Greater Stakeholder Engagement

Could a neutral third party help your agency facilitate and overcome potential barriers to multi-party regulatory negotiations?

What Is Negotiated Rulemaking?

Negotiated rulemaking, sometimes known as regulatory negotiations or “reg neg,” is a process in which a governmental agency invites representatives of stakeholders impacted by a rule to participate in its drafting. The interested parties and the agency form a committee and, with the assistance of a neutral third-party facilitator, work toward reaching a consensus on the content of the rule. If the parties reach consensus and make a recommendation, the final rule, when issued, is much more likely to be implemented more quickly without costly challenges and delays.

Key Advantages of Negotiated Rulemaking

- Dialogue and discussion during the drafting of a rule give parties the chance to interact with each other and present their views, needs and concerns directly to the regulatory agency. Issues are raised upfront while the rule is being drafted, rather than during a post-issuance notice and comment period.
- The free and open exchange of ideas encouraged by an effective “reg neg” process allows for the proactive consideration of issues that may not otherwise have come to light.
- Interested parties, particularly those who might otherwise oppose or challenge the rule, are given the chance to participate in its formulation, and are therefore less likely to challenge its implementation.
- The public has increased confidence in the regulation because of the transparency, engagement, and inclusiveness of the process; the result is a rule that is more balanced and acceptable to the regulated parties.

FMCS and Regulatory Negotiation

The Administrative Dispute Resolution Act of 1990 and the Negotiated Rulemaking Act of 1990 authorized FMCS to use its dispute resolution expertise to bring together regulators and those impacted by their regulations in a collaborative process prior to the issuance of a new rule. Experienced FMCS mediators use their professional skills and expertise as neutrals to convene and facilitate complex, multi-party rulemakings and to help parties produce consensus rules.

FMCS-assisted negotiated rulemakings have produced many successful results. In 2023, following the U.S. Supreme Court striking down Student Loan Debt Relief under the HEROES Act, FMCS successfully helped facilitate the Department of Education Negotiated Rulemaking on Student Loan Debt Relief under the Higher Education Act. These virtual facilitated meetings were held on a FMCS-licensed meeting platform for 16+ negotiators including the Department of Education’s Chief Negotiator plus attendance of 1000+ viewers on a livestream feed.



Also, in 2023, FMCS successfully provided facilitation assistance to the Department of Energy in helping conclude its regulatory negotiations over commercial HVAC standards. In 2024, a second FMCS Facilitation Team facilitated the Program Integrity & Institutional Quality Negotiated Rulemaking for the Department of Education. A Department of Education official who was part of the process later shared overwhelmingly positive feedback with the FMCS Facilitation Team.

FMCS successfully facilitated the very first negotiated rulemaking for the Federal Aviation Administration in 1982, and subsequently facilitated negotiated rulemaking with the U.S. Departments of Housing and Urban Development, Transportation, Health and Human Services, Labor, Agriculture, and Education as well as the Centers for Medicare and Medicaid Services, the FAA, EPA, OSHA, the States of Iowa, Tennessee, and New York, and other federal and state agencies. Over the years, in total, FMCS has facilitated at least 47 public policy negotiations as a part of its extensive negotiated rulemaking experience.

FMCS Role in Negotiated Rulemaking

FMCS assistance covers all aspects of the regulatory negotiation process, from initial planning to facilitating the drafting of final text. It can be especially helpful with:

- Making decisions about the composition of the committee in the process of convening to ensure that all appropriate and interested parties are given an opportunity to participate in the "reg neg."
- Creating smaller working groups on specific topics.
- Providing negotiation and joint problem-solving training for committee members and coordinating the processing of issues, such as dates, locations and ground rules for conducting meetings.
- Keeping the negotiated rulemaking process on track and on schedule.
- Mediating conflicting views and working out resolutions to the disputes that invariably arise in the course of a "reg neg."
- Dealing with the media, if requested, and otherwise serving as the committee's neutral spokesperson.
- Managing the final approval process for the committee's consensus recommendation to the relevant agency.

FMCS Technology-Assisted Collaboration Tools

FMCS negotiated rulemaking support can be delivered with a variety of technology tools, allowing for both face-to-face and virtual collaboration. Our video conferencing platforms provide agencies with a wide variety of facilitation delivery options to meet the challenges of geographically dispersed participants and limited budgets.

For More Information

For additional information regarding negotiated rulemaking, please contact the FMCS Office of National Projects at 216-217-7384

"I wanted to take a few minutes to thank you all immensely for the help and support that you have provided us over the course of the last few months related to our negotiated rulemaking. We know that days can be long and that those little behind the scenes details that you all assist us with are not something to be taken for granted. It is a great honor and pleasure to work alongside of you. Thank you again for your help and support. We are truly grateful!"

- U.S. Department of Education Official