



Federal Mediation & Conciliation Service

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Multi-Stakeholder Processes

FMCS makes important contributions to the successful use of regulatory negotiations and public policy dialogues

The Negotiated Rulemaking Act of 1990 authorizes FMCS to use its mediation and facilitation services to improve government operations. As a neutral third-party, FMCS convenes and facilitates a wide range of complex, multi-party processes, including public policy dialogues and regulatory negotiations, helping all parties to improve their communication and relationships and reach consensus on the issues.

Convening and Facilitation of multi-stakeholder processes

In the early 1980s, FMCS facilitated the first regulatory negotiations held by the Federal Aviation Administration. FMCS' involvement in regulatory negotiations, as both a convener and facilitator, increased throughout the 1980s, with the agency facilitating negotiations involving the Departments of Transportation, Agriculture, Labor, and other federal agencies, and was further. After the passage of the Negotiated Rulemaking Act of 1990, FMCS's involvement in multi-party negotiations continued to grow. The results have been very positive. By formulating rules and policies in a public negotiating process, potential or actual antagonists become partners in helping the agency solve a regulatory problem. Thus, the likelihood of subsequent challenges to a new regulation is greatly reduced.

FMCS has convened and facilitated dozens of regulatory negotiations and other multi-stakeholder processes. Examples include:

Department of Transportation -- disability access to airplanes (1988)
 Department of Agriculture -- Varroa mites (1988)
 Department of Education -- vocational education (1990)
 Killington-Pico ski resorts/Appalachian trail mergers (1990-91)
 Farm Credit Administration -- developing formula for member contributions (1992)
 New York State -- usage of pesticides (1993)
 State of Tennessee -- use of waterways (1993)
 Department of Housing and Urban Development -- vacancy rates for subsidized housing (1995)
 Federal Energy Regulatory Commission -- development of water resources in the Bay area of San Francisco (1995)
 Railway Safety Administration (DOT) -- rail repair safety procedures (1995)
 Department of Interior/Health and Human Services -- Indian Self Determination Act, the largest Reg-Neg ever attempted (1995)
 Equal Employment Opportunity Commission (1995/96)
 Architectural and Barriers Compliance Board -- disability access to play areas (1996)
 Department of Interior -- Indian Reservation Roads (2000 -2002) -- roads on reservations
 Department of Labor -- ERISA Standards (1998-1999) -- pension benefits
 US Access Board -- Outdoor Accessibility Standards (1996 -1999) -- disability access to parks
 National Indian Gaming Commission -- Tribal Gaming and Environmental, Public Health and Safety Issues (1999-2001) -- health and safety in casinos
 National Institute of Standards and Technology - Department of

Commerce - (2002)- Scope of the investigation of the World Trade Center collapse

How Negotiated Rulemaking Works

Authorized by the Administrative Dispute Resolution Act of 1996, FMCS offers government regulatory and enforcement agencies a better way to formulate new rules and regulations. In the traditional rulemaking process, agency personnel draft a new regulation with little or no outside input, publish the draft regulation in the Federal Register for the required public comment period, and then wait for the inevitable criticism, and even legal challenges, from those affected by the new regulation.

In contrast, FMCS convenes and facilitates Regulatory Negotiations, a process in which those who will be affected by a regulation sit down with the government agency to write a proposed rule or regulation by consensus. Experience has shown that by bringing potential or even actual antagonists into participation in a public process, they become invested in helping the agency solve its problem. The result is usually better regulation and because those who will be regulated have taken part in the process, the likelihood of subsequent challenges are greatly reduced.

The Service assists federal and some state agencies by convening and facilitating/mediating regulatory negotiations as well as less formal, public policy dialogues under the authority of the 1996 Administrative Dispute Resolution Act. FMCS completed five major multi-party negotiations during FY 2000 and is currently engaged in three new multi-party negotiations thus far in FY 2001. It is certain that the use of negotiated rulemaking and other highly interactive negotiating models will be the choice of agencies as a constructive way to diminish litigation and enhance relationships with their constituencies. A program of note, designed under HUD's Hope VI project, involves a whole community revitalization effort, consulting with residents in issues of design, safety, qualifications of returning residents, job training and education. FMCS provided skills building training in the areas of communication, mediation, problem-solving and meeting planning. Also, the Service provided extensive problem-solving workshops at three sites under this program.

Negotiated Rulemaking in Action

Health and Human Services, Indian Health Services Negotiated Rulemaking Public Law 106-260, the Tribal Self-Governance Amendments of 2000, was signed into law on August 18, 2000. This legislation adds additional titles to the Indian Self-Determination and Education Assistance Act of 1975. It requires the Secretary of Health and Human Services to use a negotiated rulemaking process to negotiate and promulgate regulations to carry out the provisions of the law. FMCS provided facilitation for this expedited process in five cities around the U.S. This multi-party negotiated rulemaking process led to the successful settlement of these issues.

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