

# **DRAFT NEGOTIATED RULEMAKING COMMITTEE GROUND RULES**

This Negotiated Rulemaking is intended to facilitate discussion and agreement on a proposed rule.

Participants should enter these negotiations with an open mind hopeful of reaching a speedy and amicable resolution of the negotiations. All members agree to make a good faith effort to reach agreement in all aspects of these negotiations.

## **PARTICIPATION**

A. The Negotiating Committee: The Committee shall be comprised of one representative from each organization that is a party to the negotiation. Each organization may designate a Committee Member and an alternate.

B. Attendance at Meetings: Each Committee Member agrees to make a good faith effort to attend every meeting. Only the Committee Member shall have the privilege of sitting at the table and participating in the consensus process. Comments by non committee members may be arranged through the Facilitator/Mediator at the request of the Committee Member.

C. Constituents Interests: Committee Members are expected to represent the concerns and interests of their constituents.

## **DECISION MAKING**

A. Decision by Consensus: The Negotiating Committee (hereafter the “Committee”) will make decisions by consensus. Consensus is defined as a decision which all Committee Members or designated alternates present at the meeting can agree upon. The decision may not be everyone’s first choice, but they have heard it and everyone can live with it.

B. Subgroups may be formed to address specific issues, and to make recommendations to the Committee.

C. Schedule of Meetings: Meetings will be scheduled by consensus or by direction of the Facilitator/Mediators.

## **AGREEMENT**

A. The goal of the Committee is to prepare a draft Notice of Proposed Rule Making (NPRM). If consensus is not reached on some of the issues presented in the negotiated rulemaking, the Committee shall identify the areas of agreement and disagreement and explanations for any disagreement. Upon conclusion of the negotiated rule process, the members reserve the right to comment adversely on those areas of disagreement in which no consensus has been reached.

B. The Department will issue the consensus of the Committee as a Notice of Proposed Rule Making unless it is inconsistent with statutory authority of the agency or for other legal reasons.

C. If consensus is reached, the members of the Committee will support the consensus when published in a Notice of Proposed Rulemaking.

## **PROCEDURES**

A. Minutes: Summary minutes will be prepared, certified and distributed under the supervision of the Facilitator/Mediators.

B. Meetings: All meetings shall be open to the public. Meetings shall be scheduled consistent with the schedules of the participants and allow appropriate time to study and confer on proposals. To expedite the process, the Facilitator/Mediators may meet with members separately or via telephone, mail, electronically or arrange subgroup meetings as may be appropriate.

C. Caucuses: Any member may request a caucus at any time. The Committee Members and the Facilitator/Mediators shall endeavor to keep the length of the caucus reasonable.

## **PUBLIC RECORD**

Information and data provided to the Committee will be a matter of public record.

## **FACILITATOR/MEDIATORS**

The Federal Mediation and Conciliation Service will serve as the neutral Facilitator/Mediator to assist the Committee in reaching agreement. (See Appendix A, Facilitator/Mediator and Recorder Ground Rules). The role of the Facilitator/Mediator may include developing draft agendas, chairing Committee and subgroup discussions as appropriate, and working to resolve any impasses that may arise. They will also supervise preparation of meeting summaries, assist in the location and circulation of either background or other materials the Committee develops. The Facilitator/Mediators will perform other functions as appropriate.

## **GROUND RULE AMENDMENTS**

The members may amend these ground rules, by consensus, at any time.

We the undersigned agree to participate fully in the negotiation process, on behalf of ourselves and the organizations we represent, and to be bound by the terms of these Committee ground rules.

Date:

1. \_\_\_\_\_  
**Mark Babitz**
2. \_\_\_\_\_  
**Andrea Brassard**
3. \_\_\_\_\_  
**Roy C. Brooks**
4. \_\_\_\_\_  
**Jose Camacho**
5. \_\_\_\_\_  
**Kathleen A. Clanon**
6. \_\_\_\_\_  
**Beth Giesting**
7. \_\_\_\_\_  
**David Goodman**
9. \_\_\_\_\_  
**Daniel Hawkins**
10. \_\_\_\_\_  
**Sherry Hirota**
11. \_\_\_\_\_  
**Steve Holloway**
12. \_\_\_\_\_  
**Barbara Kornblau**
13. \_\_\_\_\_  
**Tess Kuenning**
14. \_\_\_\_\_  
**Nicole Lamoureux**

15. \_\_\_\_\_  
**Alice Larson**
16. \_\_\_\_\_  
**Tim McBride**
17. \_\_\_\_\_  
**Lolita McDavid**
18. \_\_\_\_\_  
**Alan Morgan**
19. \_\_\_\_\_  
**Ronald Nelson**
20. \_\_\_\_\_  
**Charles Owens**
21. \_\_\_\_\_  
**Robert Phillips**
22. \_\_\_\_\_  
**Alice Rarig**
23. \_\_\_\_\_  
**Patrick Rock**
24. \_\_\_\_\_  
**Edward Salsberg**
25. \_\_\_\_\_  
**William J. Scanlon**
26. \_\_\_\_\_  
**Sally H. Smith**
27. \_\_\_\_\_  
**John Supplitt**
28. \_\_\_\_\_  
**Donald Taylor**
29. \_\_\_\_\_  
**Elizabeth Wilson**



## APPENDIX A

### NEGOTIATED RULEMAKING FACILITATOR/MEDIATOR AND RECORDER GROUND RULES

The Facilitator/Mediator or Recorder is not the agent of any party to the negotiation. The Facilitator /Mediator is a neutral third party whose responsibility is to facilitate consensus and resolution of the issues identified and agreed upon by the parties to the negotiations. The Recorder prepares and distributes minutes of the negotiations at the direction of and under the supervision of the Facilitator/Mediator.

1. The Facilitator/Mediator has no enforcement authority.
2. The Facilitator/Mediator will make every attempt to keep the parties focused on the agreed issues and objectives.
3. The Facilitator/Mediator is responsible for ensuring the parties adhere to the agreed process and ground rules.
4. Facilitator/Mediator and Recorder Confidentiality: Anything said to the Facilitator/Mediator in private conversation or shared in private caucuses remains confidential, unless otherwise authorized by the parties. The Facilitator/Mediator or the Recorder cannot and will not be called to testify, give deposition, or participate in any legal proceeding regarding their role or any information obtained by the Facilitator/Mediator or the Recorder in the course of performing their responsibilities as a neutral, nor will any party or their representatives request the Facilitator/Mediator or Recorder notes or written working papers.
5. The Facilitator/Mediator may utilize a variety of techniques to assist the parties in resolution of identified issues including but not limited to private caucus, side bars, brainstorming, consensus decision making, "supposals" or suggestions.
6. Facilitator/Mediator "supposals" or suggestions: In the event the Facilitator/Mediator utilizes these techniques, the parties should not confuse this with the Facilitator/Mediator taking a substantive position on issues. Rather, such techniques shall be used with the sole intent of facilitating the proceedings.