

Feasibility of a Negotiated Rulemaking Process to Develop the All Appropriate Inquiry Standard Required Under the Small Business Liability Relief and Brownfields Revitalization Act. A copy of this final report is included in the regulatory docket for today's notice.

D. Agency Commitment

In initiating this regulatory negotiation process, EPA is making a commitment to provide adequate resources to ensure timely and successful completion of the process. This commitment includes making the process a priority activity for all representatives, components, officials, and personnel of the Agency who need to be involved in the rulemaking, from the time of initiation until such time as a final rule is issued or the process is expressly terminated. EPA will provide administrative support for the process and will take steps to ensure that the negotiated rulemaking committee has the dedicated resources it requires to complete its work in a timely fashion. These include the provision or procurement of such support services as: Properly equipped space adequate for public meetings and caucuses; logistical support; word processing and distribution of background information; the service of a facilitator; and such additional research and other technical assistance as may be necessary.

To the maximum extent possible consistent with the legal obligations of the Agency, EPA will use the consensus of the regulatory negotiation committee as the basis for the rule proposed by the Agency for public notice and comment. The Agency is committed to publishing a consensus proposal that is consistent with the legal mandate of the Brownfields Law.

E. Negotiating Consensus

As discussed above, the negotiated rulemaking process is fundamentally different from the usual development process for developing a proposed rule. Negotiation allows interested and affected parties to discuss possible approaches to various issues rather than only asking them to respond to details on an Agency proposal. The negotiation process involves a mutual education of the parties by each other on the practical concerns about the impact of such approaches. Each committee member participates in resolving the interests and concerns of other members, rather than leaving it up to EPA to bridge different points of view.

A key principle of negotiated rulemaking is that agreement is by consensus of all the interests. Thus, no one interest or group of interests is able

to control the process. The Negotiated Rulemaking Act defines consensus as the unanimous concurrence among interests represented on a negotiated rulemaking committee, unless the committee itself unanimously agrees to use a different definition. In addition, experience has demonstrated that using a trained mediator to facilitate this process will assist all potential parties, including EPA, to identify their interests in the rule and so to be able to reevaluate previously stated positions on issues involved in this rulemaking effort.

III. Proposed Negotiating Procedures

A. Key Issues for Negotiation

We anticipate the issues to be addressed by the Negotiated Rulemaking Committee on All Appropriate Inquiry may include:

- Balancing the goals and priorities of state regulatory programs, privately-developed consensus standards, and the Congressional mandate for a federal standard for conducting all appropriate inquiry.
- Developing clear and concise standards that address each of the statutory criteria (Section 101(35)(B)(iii) of CERCLA).
- Balancing the need to put abandoned properties back into productive reuse with concerns for public health and environmental protection.
- Balancing a need for clear and comprehensive standards that will ensure a high level of certainty in identifying potential environmental concerns without imposing time consuming and unnecessarily expensive regulatory requirements.
- Defining the shelf life of an assessment and the extent to which an assessment, or the results of all appropriate inquiry, may be transferred to subsequent property owners.
- Minimizing disruptions to the current real estate market due to the development of a federal standard that is different from current industry protocols while ensuring that the federal standard is protective and in compliance with statutory criteria.
- Identifying the extent to which sampling and analysis of potentially contaminated property may be required to document the presence, or the lack of, environmental contamination.
- Identifying what information is necessary on the potential contamination of adjacent and adjoining properties, as well as underlying groundwater resources.
- Establishing a list of contaminants to include in the investigation when conducting all appropriate inquiry.

B. Committee Formation

The negotiated rulemaking Committee will be formed and operated in full compliance with the requirements of the Federal Advisory Committee (FACA) in a manner consistent with the requirements of the Negotiated Rulemaking Act.

C. Interests Involved/Committee Membership

The Agency intends to conduct the negotiated rulemaking proceedings with particular attention to ensuring full and adequate representation of those interests that may be significantly affected by the proposed rule setting standards for conducting all appropriate inquiry. Section 562 of the NRA defines the term "interest" as "with respect to an issue or matter multiple parties which have a similar point of view or which are likely to be affected in a similar manner." Listed below are parties which the Agency has identified tentatively as being "significantly affected" by the matters that may be included in the proposed rule.

EPA anticipates that the negotiating committee will be composed of approximately 25 members representing parties of interest to the rulemaking. EPA will monitor membership carefully to ensure that there is a balanced representation from affected and interested stakeholder groups. EPA anticipates that the committee will contain the following types of representatives:

- Environmental Interest Groups
- Environment Justice Community
- Federal Government
- Tribal Government
- State Government
- Local Government
- Real Estate Developers
- Bankers and Lenders
- Environmental Professionals

We point out that one purpose of this notice is to determine whether federal standards for conducting all appropriate inquiry will significantly affect interests that are not listed above, as well as whether the list provided below identifies accurately and comprehensively a group of stakeholders representing the interests listed above. We invite comment and suggestions on the list of "significantly affected" interests, as well as the list of suggested stakeholders, or committee members.

EPA recognizes that the regulatory actions we take under this program may at times affect various segments of society in different ways, and that this may in some cases produce unique "interests" in a proposed rule based on