

parties, identify the information and data necessary to resolve the issues, and develop a rule that is acceptable to the respective interests, all within the contours of the substantive statute.

ACUS adopted this recommendation in "Procedures for Negotiating Proposed Regulations," 47 FR 30708. The thrust of the recommendation is that representatives of all interests should be assembled to discuss the issue and all potential solutions, reach consensus, and prepare a proposed rule for consideration by the agency. After public comment on any proposal issued by the agency, the group would reconvene to review the comments and make recommendations for a final rule. This inclusive process is intended to make the rule more acceptable to all affected interests and prevent the need for petitions for reconsideration (and litigation) that often follow issuance of a final rule.

The movement toward negotiated rulemaking gained impetus with enactment of the Negotiated Rulemaking Act of 1990 (RegNeg), 5 U.S.C. Sec. 561 *et seq.* In 1993, Executive Order 12866 (58 FR 51735) added to this impetus:

In particular, before issuing a notice of proposed rulemaking, each agency should, where appropriate, seek the involvement of those who are intended to benefit from and those expected to be burdened by any regulation * * * Each agency is also directed to explore and, where appropriate, use consensual mechanisms for developing regulations, including negotiated rulemaking. (Sec. 6(a), p. 51740)

Although relatively new, negotiated rulemakings have been used successfully by agencies within DOT: the Federal Aviation Administration, Federal Highway Administration, Federal Railroad Administration, and the United States Coast Guard. NHTSA now intends to begin this process in a formal manner for the first time in promulgating a Federal motor vehicle safety standard. It welcomes the opportunity to work with those who will be affected directly by such a rule, and is confident that the agency, industry, and the public will benefit with the creation of an effective and reasonable regulation.

Pursuant to section 563(a) of RegNeg, an agency considering rulemaking by negotiation should consider whether:

- (1) There is need for the rule;
- (2) There is a limited number of identifiable interests;
- (3) These interests can be adequately represented by persons willing to negotiate in good faith to reach a consensus;
- (4) There is a reasonable likelihood that the committee will reach consensus within a fixed period of time;

(5) The negotiated rulemaking procedure will not unreasonably delay the notice of proposed rulemaking;

(6) The agency has adequate resources and is willing to commit such resources to the process; and

(7) The agency is committed to use the result of the negotiation in formulating a proposed rule if at all possible.

For the reasons stated in this Notice, NHTSA believes that these criteria have been met with regard to headlamp aimability and beam pattern issues.

The regulatory negotiation NHTSA proposes would be carried out by an advisory committee (Committee) created under the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C. App., and in a manner that reflects appropriate rulemaking directives, including pertinent executive Orders. NHTSA will be represented on the Committee and will take an active part in the negotiations as a Committee member. However, pursuant to section 566(c) of RegNeg, those representing NHTSA would not facilitate or otherwise chair the proceedings.

III. Procedures and Guidelines

The following proposed procedures and guidelines would apply to NHTSA's negotiated rulemaking process, subject to appropriate changes made as a result of comments received on this Notice or as are determined to be necessary during the negotiating process.

(A) *Facilitator*: The Facilitator will not be involved with substantive development of this regulation. This individual will chair the negotiations, may offer alternative suggestions toward the desired consensus, and will determine the feasibility of negotiating particular issues. The Facilitator may ask members to submit additional information or to reconsider their position. NHTSA has contracted with the Federal Mediation and Conciliation Service for a Facilitator.

(B) *Feasibility*: NHTSA has examined the issues and interests involved and has made a preliminary inquiry among representatives of those interests to determine whether it is possible to reach agreement on: (a) individuals to represent those interests; (b) the preliminary scope of the issues to be addressed; and (c) a schedule for developing a notice of proposed rulemaking. The results are sufficiently encouraging to believe that a workable proposal could be developed, and that there are potential participants who could adequately represent the affected interests.

(C) *Participants and Interests*: The number of Committee participants generally should not exceed 25.

However, it is not necessary that each individual or organization affected by a final rule have its own representative on the Committee. Rather, each interest must be adequately represented, and the Committee should be fairly balanced. However, individuals who are not part of the Committee may attend sessions and confer with or provide their views to Committee members.

The following interests have been tentatively identified as those that are likely to be significantly affected by the rule:

- (1) Motor vehicle manufacturers
- (2) Motor vehicle headlamp manufacturers
- (3) Manufacturers of headlamp aiming devices
- (4) International standards organizations
- (5) State and Federal governments
- (6) General public

NHTSA proposes that persons selected by the various interests be named to the Committee. In addition to NHTSA, the following interests have been tentatively identified as those that would supply Committee members:

- (1) American Automobile Manufacturers Association (AAMA)
- (2) Association of International Automobile Manufacturers, Inc. (AIAM)
- (3) Society of Automotive Engineers, Road Illumination Devices Subcommittee
- (4) Hopkins Manufacturing Corporation
- (5) Groupe de Travail Brussels
- (6) Liaison Committee for the Manufacturers of Automobile Equipment and Spare Parts
- (7) Japanese Automobile Standards Internationalization Center
- (8) American Association of Motor Vehicle Administrators (AAMVA)
- (9) National Automobile Dealers Association
- (10) Automotive Service Association
- (11) Advocates for Highway and Auto Safety
- (12) Federal Highway Administration

As indicated previously in this Notice, NHTSA invites applications for representation from any interests that will be affected by a final rule on the subject but are not named in this list or who may not be represented or be able to be represented by the interests on the list. Such applications must be filed within thirty days from the date of publication of this Notice, and must meet the requirements set forth herein. Also, such interests should provide the name(s) of the individual(s) they propose to represent their interest. As noted, the Committee should not exceed 25 members.

(D) *Good Faith*: Participants must be committed to negotiate in good faith. It