

committee, observing all applicable requirements prescribed by FACA.

Deciding When To Use Negotiated Rulemaking

2. An agency should consider using negotiated rulemaking when it determines that the procedure is in the public interest, will advance the agency's statutory objectives, and is consistent with the factors outlined in the Negotiated Rulemaking Act. Specifically, such factors include whether:

- "there are a limited number of identifiable interests that will be significantly affected by the rule;"¹⁸
- "there is a reasonable likelihood that a committee can be convened with a balanced representation of persons who (a) can adequately represent the [identifiable and significantly affected] interests and (b) are willing to negotiate in good faith to reach a consensus on the proposed rule;"¹⁹
- there is adequate time to complete negotiated rulemaking and the agency possesses the necessary resources to support the process;²⁰ and
- "the agency, to the maximum extent possible consistent with the legal obligations of the agency, will use the consensus of the committee with respect to the proposed rule as the basis for the rule proposed by the agency for notice and comment."²¹

3. In light of the broad range of highly specific factors that need to be considered when determining whether to use negotiated rulemaking, the choice should generally reside within the agency's discretion.

Structuring a Negotiated Rulemaking Committee To Maximize the Probability of Success

4. As a general matter, agency officials should clearly define the charge of the negotiated rulemaking committee at the outset. This involves explicitly managing expectations and stating any constraints on the universe of options the committee is authorized to consider, including any legal prohibitions or non-negotiable policy positions of the agency. Agency officials should inform the committee members of the use to which the information they provide will be put and should notify them that negotiated rulemaking committee meetings will be made open to the public and documents submitted in connection therewith generally will be made available to the public.

5. Agencies should appoint an official with sufficient authority to speak on behalf of the agency to attend all negotiated rulemaking committee meetings and to participate in them to the extent the agency deems suitable.

6. Agencies should work with convenors or facilitators to define clearly the roles they

should play in negotiated rulemakings.²² Generally, agencies should draw upon the convenor's expertise in selecting committee members, defining the issues the committee will address, and setting the goals for the committee's work. Similarly, agencies should use a facilitator to assist the negotiation impartially and to make that impartiality clear to the members of the committee.

7. Agencies should keep in mind the role of the Office of Information and Regulatory Affairs (OIRA) in the rulemaking process when conducting negotiated rulemaking and inform committee members of that role. An agency should notify its OIRA desk officer of the opportunity to observe the committee meetings and, upon request, provide him or her with briefings on the meetings. An agency should also discuss whether or how the committee process might be used to support the development of the elements needed to comply with relevant analytical requirements, including the rule's regulatory impact analysis.

Considerations Associated With FACA

8. Congress should exempt negotiated rulemaking committees from FACA's chartering and reporting requirements.²³ If Congress exempts negotiated rulemaking committees from FACA entirely, it should amend the Negotiated Rulemaking Act to require comparable transparency, such as by requiring that negotiated rulemaking committee meetings be noticed in advance and open to the public.

9. For greater flexibility within the framework of FACA, agencies should consider maintaining standing committees from which a negotiated rulemaking subcommittee or working group can be formed on an as-needed basis to obviate the need to charter a new committee each time the agency undertakes a negotiated rulemaking.²⁴ Regardless of whether Congress exempts negotiated rulemaking from certain FACA requirements, agencies

²²Notably, while such neutrals may be hired by an agency, they support the overall process impartially (rather than on behalf of, or in favor of, the agency). For more details on the roles of convenors and facilitators, see Recommendation 85-5, *supra* note 1, at recommendations 5-8 and the discussion in note 4, *supra*. The roles may be filled by the same person or by two different individuals, who may be agency employees or external professionals.

²³Administrative Conference of the United States, Recommendation 2011-7, *The Federal Advisory Committee Act—Issues and Proposed Reforms*, 77 FR 2257 (Jan. 17, 2012).

²⁴Both the Department of Energy and Department of Transportation (Federal Aviation Administration and Federal Railroad Administration) have standing committees that at times have been used to support negotiated rulemaking or other rulemaking activities. When seeking to negotiate a proposed rule, these agencies will form subcommittees or working groups (sometimes wholly comprising standing committee members, while other times comprising both standing committee and new members). For more details on the structure of these arrangements and their potential benefits, see Blake & Bull, *supra* note 14, at 29-30. Note, however, that some components in the Department of Transportation do prepare FACA charters for each new negotiated rulemaking committee, rather than using the standing committee/subcommittee model just described.

should strive to minimize unnecessary procedural burdens associated with the advisory committee process.

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DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

June 29, 2017.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104-13. Comments are requested regarding (1) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by August 4, 2017 will be considered. Written comments should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, 725 17th Street NW., Washington, DC 20502. Commenters are encouraged to submit their comments to OMB via email to: OIRA_Submission@OMB.EOP.GOV or fax (202) 395-5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250-7602. Copies of the submission(s) may be obtained by calling (202) 720-8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

¹⁸ 5 U.S.C. 563(a)(2).

¹⁹ *Id.* § 563(a)(3).

²⁰ *See id.* §§ 563(a)(4)-(6) (providing that "there is a reasonable likelihood that the committee will reach consensus on the proposed rule within a fixed period of time"; "the negotiated rulemaking procedure will not unreasonably delay the notice of proposed rulemaking and the issuance of the final rule"; and "the agency has adequate resources and is willing to commit such resources, including technical assistance, to the committee").

²¹ *Id.* § 563(a)(7).

Office of Procurement and Property Management

Title: Voluntary Labeling Program for Biobased Products.

OMB Control Number: 0503–0020.

Summary of Collection: Section 9002(h) of the Farm Security and Rural Investment Act (FSRIA) of 2002, as amended by the Food, Conservation, and Energy Act (FCEA) of 2008 and the Agricultural Act of 2014, requires the Secretary of Agriculture to implement a voluntary labeling program that would enable qualifying biobased products to be certified with a “USDA Certified Biobased Product” label. The voluntary labeling program is required to be consistent, where possible, with the guidelines implementing the preferred procurement of biobased products by Federal agencies (referred to hereafter as the preferred procurement program), which is also authorized under section 9002 of FSRIA. Under the preferred procurement program, Federal agencies are required to purchase with certain exceptions, biobased products that are identified, by rulemaking, for preferred procurement. The BioPreferred Program is implemented by USDA’s Office of Procurement and Property Management (OPPM).

Need and Use of the Information: Under the voluntary labeling program, manufacturers and vendors must complete an application for each stand-alone biobased product or biobased product family for which they wish to use the label. The application process is electronic and is accessible through the voluntary labeling program Web site. In addition manufacturers and vendors whose applications have been conditionally approved must provide to OPPM certain information for posting by OPPM on the voluntary labeling program Web site. For each product approved by the Agency for use of the label, the manufacturer or vendor must keep that information for each certified product up-to-date. The information requested for inclusion in the application are: (1) Contact information (of the manufacturer or vendor and preparer of application) and (2) product identification information, including brand name(s), the applicable designated item category or categories or equivalent, and the biobased content of the product.

Description of Respondents: Business or other for-profit.

Number of Respondents: 150.

Frequency of Responses: Recordkeeping; Reporting: Other (once).

Total Burden Hours: 1,350.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2017–14031 Filed 7–3–17; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Notice of Request for Revision of Currently Approved Information Collections

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Foreign Agricultural Service’s (FAS) intention to request a revision for currently approved information collections in support of the foreign donation of agricultural commodities under the section 416(b) program, the Food for Progress Program, and the McGovern-Dole International Food for Education and Child Nutrition Program.

DATES: Comments on this notice must be received by September 5, 2017.

ADDRESSES: We invite you to submit comments as requested in this document. In your comment, include the volume, date, and page number of this issue of the **Federal Register**. You may submit comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.

- *Mail, hand delivery, or courier:* Benjamin Muskovitz, Director, Food Assistance Division, Foreign Agricultural Service, U.S. Department of Agriculture, Stop 1034, Washington, DC 20250–1034;

- *Email:* Benjamin.Muskovitz@fas.usda.gov; or

- *Telephone:* (202) 720–0886.

Comments will be available for inspection online at <http://www.regulations.gov> and at the mail address listed above between 8:00 a.m. and 4:30 p.m., Monday through Friday, except holidays.

Persons with disabilities who require an alternative means for communication of information (e.g., Braille, large print, audiotape, etc.) should contact USDA’s Target Center at (202) 720–2600 (voice and TDD).

FOR FURTHER INFORMATION CONTACT: Benjamin Muskovitz, Director, Food

Assistance Division, Foreign Agricultural Service, U.S. Department of Agriculture, Stop 1034, Washington, DC 20250–1034; or by email at Benjamin.Muskovitz@fas.usda.gov; or by telephone at (202) 720–0886.

SUPPLEMENTARY INFORMATION:

Title: Foreign Donation of Agricultural Commodities (section 416(b) and Food for Progress programs) and McGovern-Dole International Food for Education and Child Nutrition Program.

OMB Number: 0551–0035.

Expiration Date of Approval: November 30, 2017.

Type of Request: Revision of currently approved information collections.

Abstract: Under the section 416(b) and Food for Progress programs (the “Foreign Donation Programs”) and the McGovern-Dole International Food for Education and Child Nutrition (“McGovern-Dole”) Program, information will be gathered from applicants desiring to receive federal awards under the programs to determine the viability of requests for resources to implement activities in foreign countries. Recipients of awards under the programs must submit compliance reports until activities carried out with donated commodities or funds, or local currencies generated from the sale of donated commodities, are completed. Recipients that use the services of freight forwarders must submit certifications from the freight forwarders regarding their activities and affiliations. Documents are used to develop effective grant and cooperative agreements for awards under the programs and assure that statutory requirements and objectives are met.

Estimate of Burden: The public reporting burden for each respondent resulting from information collections under the Foreign Donation Programs or the McGovern-Dole Program varies in direct relation to the number and type of agreements entered into by such respondent. The estimated average reporting burden for the Foreign Donation Programs is 45.24 hours per response and for the McGovern-Dole Program is 45.24 hours per response.

Respondents: Private voluntary organizations, cooperatives, foreign governments, intergovernmental organizations, freight forwarders, ship owners and brokers, and survey companies.

Estimated Number of Respondents: 61 per annum.

Estimated Number of Responses per Respondent: 32 per annum.

Estimated Total Annual Burden of Respondents: 88,308.5 hours.