

## DEPARTMENT OF THE INTERIOR

## Office of Surface Mining Reclamation and Enforcement

## 30 CFR Part VII

## Establishment of an Advisory Committee to Negotiate Regulations

**AGENCY:** Office of Surface Mining Reclamation and Enforcement, Interior.

**ACTION:** Proposed rule.

**SUMMARY:** Notice is hereby given that the Secretary of the Interior is administratively establishing an advisory committee to be known as the Office of Surface Mining Reclamation and Enforcement Negotiated Rulemaking Committee on Coal Refuse Disposal. This notice is published in accordance with the Federal Advisory Committee Act (FACA), and the Negotiated Rulemaking Act of 1990. The notice is attached as an appendix.

The Office of Surface Mining Reclamation and Enforcement (OSM) seeks comments on the establishment of the advisory committee chartered to negotiate a rule on Coal Refuse Disposal, and nominations for its membership. Issues to be considered by the advisory committee include general permits, baseline hydrologic studies and hydrologic requirements at refuse sites, the application of valid existing rights to coal refuse sites, the collection of Abandoned Mine Land fees from companies processing coal refuse for reuse, and other environmental protection standards. OSM anticipates that the negotiation process will help resolve at least some of these outstanding issues.

**DATES:** Interested parties may file comments and/or nominations for Committee Membership on or before April 13, 1995.

**ADDRESSES:** *Written Comments:* Hand-deliver to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, room 660, 800 North Capitol Street, Washington, DC; or mail to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, room 660 NC, 1951 Constitution Avenue NW., Washington, DC 20240. Comments may also be sent electronically through the Internet to: OSMRULES@OSMRE.GOV.

**FOR FURTHER INFORMATION CONTACT:** Melanie Wilson, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue NW., room 52, Washington, DC 20240, (202) 208-4609. For the hearing impaired, contact TTD (202) 208-2737.

## SUPPLEMENTARY INFORMATION:

- I. Negotiated Rulemaking
- II. Subject and Scope of Rule for Negotiated Rulemaking
- III. How Does Negotiated Rulemaking Work?
- IV. What is the Purpose of the Committee?
- V. How are Committee Members Selected?
- VI. Who Has Been Contacted to Participate in this Process?
- VII. Will All of These Groups Participate in the Regulatory Negotiation Process?
- VIII. How Can You Participate in the Process?

## I. Negotiated Rulemaking

The purpose of a negotiated rulemaking committee (or "reg neg" as it is frequently called) is to develop a consensus on a proposed rule. Before establishing such a committee, § 583(a) of the Negotiated Rulemaking Act directs the head of an agency to consider whether—

- There is a need for the rule
- There are a limited number of identifiable interests that will be affected by the rule
- There is a reasonable likelihood that a committee can be convened with a balanced representation of persons who can adequately represent those interests and are willing to negotiate in good faith to reach a consensus on a proposed rule
- There is a reasonable likelihood that a committee will reach consensus on the proposed rule within a fixed period of time
- The negotiated rulemaking will not unreasonably delay the notice of proposed rulemaking and the issuance of the final rule
- The agency has adequate resources and is willing to commit such resources, including technical assistance, to the committee, and
- The agency, to the maximum extent possible consistent with the legal obligations, 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.

"Consensus" in term means the unanimous concurrence among the interests represented on the negotiated rulemaking committee unless the committee explicitly adopts some other definition. Thus, under the Negotiated Rulemaking Act, each interest on the committee has a veto: nothing can be adopted by the committee over the dissent of an interest. That has served to provide important protection for the parties and to help the parties focus on developing an entire regulation. This definition also means that the agency itself participates in the negotiations in a manner similar to that of any other party.

Negotiated rulemaking has been used quite successfully to address highly controversial subjects in a practical manner. For that reason, OSM thought it would be an appropriate process to use for the coal refuse rule.

## II. Subject and Scope of Rule for Negotiated Rulemaking

Numerous coal refuse piles exist throughout the coal fields in the eastern United States. These piles are a major source of aesthetic and environmental degradation. A significant number of these piles, however, still contain large, potentially marketable quantities of coal. Modern technology enables the recovery of the coal in these piles, and in some cases the direct utilization of the material, for example in refuse burning power plants, electric power generation and co-generation facilities.

Under current law and policies, permitting and performance standards are the same for refuse pile operations as for any other mining operations. Section 2503 of the Energy Policy Act of 1992 requires the publication of new regulations on permitting and performance standards that distinguish between (1) operations that reprocess abandoned coal refuse on-site and (2) those that completely remove abandoned coal refuse from a site for the direct use of such coal refuse or for the reprocessing of such coal refuse at another location. These standards must recognize the distinct differences between these operations and other surface coal mining operations.

The committee will try to reach consensus on the major issues that could not be resolved in the draft rulemaking, specifically:

- Environmental protection standards
- Permits
- The application of valid existing rights to coal refuse sites
- Abandoned mine land fees

If the committee is able to reach consensus on these issues, the committee will propose a rule on coal refuse.

In addition, the committee may also address other appropriate remaining issues that may arise from the discussion of coal refuse.

## III. How Does Negotiated Rulemaking Work?

Negotiated Rulemaking typically occurs in two stages:

1. *The Convening Stage.* During this stage, an outside neutral party assists the agency in selecting participants to ensure balanced representation and helps the agency identify which specific issues should be negotiated. He or she educates the participants about the

negotiation process and attempts to get the parties to commit to the product that will be produced. Convening typically takes one or two months.

2. *The Negotiation Stage.* This stage typically takes six to eight months. Again, a neutral outside party is often used to facilitate group meetings, which are generally held once a month. The goal of this stage is to produce regulatory language and, if possible, preamble text.

#### IV. What is the Purpose of the Committee?

The purpose of the Committee is to provide a forum to discuss the regulatory and reclamation issues of concern to the public, primacy States which regulate surface coal mining, environmental groups, coal mine region residents, industry, the Congress, and other State and Federal agencies.

#### V. How Are Committee Members Selected?

The Secretary of the Interior will appoint 20–25 members to the Committee to represent a cross-section of those who are interested in and directly affected by this proposed rulemaking. OSM has sought the advice of an outside neutral professional convener in an effort to carefully monitor membership to ensure that there is a balance among those interests affected by the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*). Members will represent the following segments of the population in appropriate mix and balance for the task at hand.

##### Categories of Members

- Environmental groups
- Representatives from the coal refuse removal and reprocessing industry
- Primary states with responsibility for regulating surface coal mining operations
  - General coal mining industry
  - Citizens/residents of areas with significant deposits of coal refuse

#### VI. Who Has Been Contacted to Participate in this Process?

The following parties were identified as potentially affected interests and were contacted during the convening stage of the process.

##### Environmental Groups

Citizen's Coal Council  
 Kentucky Resources Council, Inc.  
 National Wildlife Federation  
 Western Pennsylvania Land Conservancy  
 West Virginia Highlands Conservancy  
 Armstrong Conservation District

##### Industry

Inter-Power/AHIcon Partners  
 Western Kentucky Coal Association  
 Kentucky Coal Association  
 Pennsylvania Coal Association  
 WV Mining & Reclamation Assoc.  
 Gilberton Power Company  
 Inter-Power Development Corporation  
 National Coal Association  
 American Mining Congress  
 Consol, Inc.

##### States

Interstate Mining Compact Commission  
 West Virginia Department of Environmental Protection  
 Pennsylvania Department of Reclamation  
 Illinois Division of Land Reclamation  
 Abandoned Mine Lands Reclamation Council  
 Kentucky Department for Surface Mining

##### Federal

Office of Surface Mining  
 Environmental Protection Agency

#### VII. Will All of These Groups Participate in the Regulatory Negotiation Process?

No. First, the Secretary of the Interior will select committee members based on whether the entity will be substantially affected by this rule. Second, some of the groups, for various reasons, may decide not to participate in this specific regulatory negotiation.

#### VIII. How Can You Participate in the Process?

If you believe that your interests may not have been adequately represented by any of the parties listed above you may apply for, or nominate another entity for membership on the committee to represent your interests. Each application for nomination must include:

1. The name of the applicant or nominee and a description of the interests the entity will represent.
2. Evidence that the applicant or nominee is authorized to represent parties related to the interests the entity proposes to represent.
3. A written commitment that the applicant or nominee shall actively participate in good faith in the development of the rule under consideration.
4. The reasons that the entities specified above do not adequately represent the interests of the entity submitting the application or nomination.

The OSM will advise the Secretary whether that entity should be added to the group. The decision will be based on

whether the entity would be substantially affected by the rule and whether that entity is already adequately represented in the negotiating group.

#### IX. What Happens After the Committee Members are Selected?

Once membership in the Committee has been selected, an organizational meeting will be held to develop the specific issues and groundrules for how the negotiation will be conducted. The location and dates of future meetings will be published in the **Federal Register**. Meetings will be open to the public unless specifically noted as being closed in the **Federal Register**, as authorized by FACA.

#### X. Conclusion

OSM requests public comment on whether: (1) It should establish a Federal Advisory Commission, (2) it has properly identified the interests that are significantly affected by the key issues listed above, (3) the suggested committee membership reflects a balanced representation of these interests, and (4) regulatory negotiation is appropriate for this rulemaking.

Dated: March 2, 1995.

##### Bob Armstrong,

*Assistant Secretary, Land and Minerals Management.*

#### Appendix

This notice is published in accordance with Section 9(a) (2) of the Federal Advisory Committee Act (FACA), 5 U.S.C. App. (1988). Following consultation with the General Services Administration and the Office of the Management and Budget, notice is hereby given that the Secretary of the Interior is administratively establishing an advisory committee to be known as the Office of Surface Mining Reclamation and Enforcement Negotiated Rulemaking Committee on Coal Refuse Disposal.

The purpose of the Committee is to provide a forum to discuss a variety of regulatory and reclamation issues of concern to the public, primacy States which regulate surface coal mining, environmental groups, coal mine region residents, industry, the Congress, and other State and Federal agencies.

The Secretary of the Interior will appoint 20–25 members to the Committee to represent a cross-section of those who are interested in and directly affected by regulatory and reclamation activities. OSM has sought the advice of an outside neutral professional convener in an effort to carefully monitor membership to ensure that there is a balance among those interests affected by the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*). Members will represent the following segments of the population in appropriate mix and balance for the task at hand.

Categories of Members:

- \* Environmental groups;

- \* Representatives from the coal refuse removal and reprocessing industry;
- \* Primacy States with responsibility for regulating surface coal mining operations;
- \* General coal mining industry; and
- \* Citizens/residents of areas with significant deposits of coal refuse.

**Certification**

I hereby certify that the administrative establishment of the Office of Surface Mining Reclamation and Enforcement Negotiated Rulemaking Committee on Coal Refuse Disposal is necessary and in the public interest in connection with the performance of duties imposed on the Department of the Interior by the Surface Mining Control and

Reclamation Act of 1977 (30 U.S.C. 1201 et. seq.).

Dated: August 18, 1994.

**Bruce Babbitt,**

*Secretary of the Interior.*

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