Exhibit No. 2
Date 3-16-05
Bill No. HB 304

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[FR Doc. 05-3451 Filed 2-22-05; 8:45 am]

BILLING CODE 6560-50-U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL-7875-6]

Mississippi: Final Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Mississippi has applied to EPA for Final authorization of the changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA proposes to grant final authorization to Mississippi for RCRA Clusters IV through X. In the "Rules and Regulations" section of this **Federal Register**, EPA is authorizing the changes by an immediate final rule. EPA did not make a proposal prior to the immediate final rule because we believe this action is not controversial and do not expect comments that oppose it. We have explained the reasons for this authorization in the preamble to the immediate final rule. Unless we get written comments which oppose this authorization during the comment period, the immediate final rule will become effective on the date it establishes, and we will not take further action on this proposal. If we get comments that oppose this action, we will withdraw the immediate final rule and it will not take effect. We will then respond to public comments in a later final rule based on this proposal. You may not have another opportunity for comment. If you want to comment on this action, you must do so at this time.

DATES: Send your written comments by March 25, 2005.

ADDRESSES: Submit your comments by one of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- E-mail: *middlebrooks.gail@epa.gov.*
- Fax: (404) 562-8439 (prior to faxing, please notify the EPA contact listed below).
- Mail: Send written comments to Gail Middlebrooks at the address listed below.

Instructions: Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov,* or e-mail. The Federal *regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comments. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit.

You can view and copy Mississippi's applications from 8 a.m. to 4:30 p.m. at the following addresses: Mississippi Department of Environmental Quality, Hazardous Waste Division, 101 W. Capital, Suite 100, Jackson, Mississippi 39201; and EPA, Region 4, Library, 9th Floor, The Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303-3104; (404) 562-8190.

FOR FURTHER INFORMATION CONTACT: Gail Middlebrooks, RCRA Services Section, RCRA Programs Branch, Waste Management Division, U.S. Environmental Protection Agency, Region 4, The Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303-3104; (404) 562-8494.

SUPPLEMENTARY INFORMATION: For additional information, please see the immediate final rule published in the "Rules and Regulations" section of this **Federal Register**.

Dated: February 2, 2005.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 05-3364 Filed 2-22-05; 8:45 am]

BILLING CODE 6560-50-P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Subtitle A

[Docket No. OST-2005-20434]

Driver's Licenses and Personal Identification Cards

AGENCY: Office of the Secretary (OST), DOT.

ACTION: Notice of intent to form a negotiated rulemaking advisory committee.

SUMMARY: Pursuant to the portion of the Intelligence Reform and Terrorism Prevention Act of 2004 known as the 9/11 Commission Implementation Act of 2004, the Office of the Secretary, DOT, is establishing a committee to develop, through negotiated rulemaking procedures, recommendations for minimum standards to tighten the security for driver's licenses and personal identification cards issued by States, in order for these documents to qualify for use by Federal agencies for identification purposes. The committee will consist of persons who represent the interests affected by the proposed rule, *i.e.*, State offices that issue driver's licenses or personal identification cards, elected State officials, the Departments of Transportation and Homeland Security, and other interested parties. The purpose of this document is to invite interested parties to submit comments on the issues to be discussed and the interests and organizations to be considered for representation on the committee.

DATES: You should submit your comments or applications for membership or nominations for membership on the negotiated rulemaking committee early enough to ensure that the Department's Docket Management System (DMS) receives them not later than March 25, 2005. Late-filed comments will be considered to the extent practicable.

ADDRESSES: You should mention the docket number of this document in your comments or application/nomination for membership and submit them in writing to: Docket Management System (DMS), Room PL-401, 400 Seventh Street, SW., Washington, DC 20590. Commenters may also submit their comments electronically. Instructions for electronic submission may be found at the following Web address: *http://dms.dot.gov/submit/.*

You may call the Docket at 202-366-9324, and visit it from 10 a.m. to 5 p.m., Monday through Friday. Interested persons may view docketed materials on the Internet at any time. Instructions for doing so are found at the end of this notice.

You may read the comments received by DMS at the address given above under **ADDRESSES.** The hours of the Docket are indicated above in the same location.

You may also review all documents in the docket via the internet. To read docket materials on the internet, take the following steps:

1. Go to the DMS Web page of the Department of Transportation (*http://dms.dot.gov/*).
2. On that page, click on "search."
3. On the next page (*http://dms.dot.gov/search/*), type in the four-digit docket number shown at the beginning of this document. Example: If the docket number were OST-2005-1234," you would type "1234." After typing the docket number, click on "search."
4. On the next page, which contains docket summary information for the

docket you selected, click on the desired comments. You may download the comments. The comments are word searchable.

Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically check the Docket for new material.

FOR FURTHER INFORMATION CONTACT: Robert C. Ashby, Deputy Assistant General Counsel for Regulation and Enforcement, Office of the General Counsel, at 202-366-9310 (*bob.ashby@dot.gov*), or Steve Wood, Assistant Chief Counsel for Vehicle Safety Standards and Harmonization, Office of the Chief Counsel, National Highway Traffic Safety Administration, 202-366-2992 (*steve.wood@nhtsa.dot.gov*) Their mailing addresses are at the Department of Transportation, 400 7th Street, SW., Washington, DC 20590, at rooms 10424 and 5219, respectively.

SUPPLEMENTARY INFORMATION:

I. Background

On December 17, 2004, the President signed into law the Intelligence Reform and Terrorism Prevention Act of 2004. (Public Law No. 108-458). Title VII of that Act is known as the 9/11 Commission Implementation Act of 2004 (the 9/11 Act). Subtitle B of the 9/11 Act addresses terrorist travel and effective screening. Among other things, subtitle B mandates the issuance of minimum standards for Federal acceptance of birth certificates (section 7211), and driver's licenses and personal identification cards (section 7212). It also establishes requirements for enhancing the security of social security cards (section 7213). This notice concerns section 7212.

A bill currently under consideration in Congress (H.R. 418), if enacted and signed into law as passed by the House, would terminate the Department's negotiated rulemaking. The Administration has endorsed this bill, which would repeal section 7212 which is the basis for the Department's rulemaking. Until and unless such legislation is enacted, however, the Department is taking the steps necessary to meet the existing statutory deadline. This notice describes the procedure that we propose to use in implementing section 7212, as long as it remains in effect.

II. Statutory Mandate for Minimum Standards on Driver's Licenses and Personal Identification Cards

Section 7212 of the 9/11 Act requires the Secretary of Transportation, in consultation with the Secretary of Homeland Security, to establish, by regulation, minimum standards for driver's licenses or personal identification cards issued by a State in order to qualify for use by Federal agencies for identification purposes.

This provision was enacted in response to the following recommendation in the 9/11 Commission report:

> Recommendation: Secure identification should begin in the United States. The Federal government should set standards for the issuance of birth certificates and sources of identification, such as drivers licenses. Fraud in identification documents is no longer just a problem of theft. At many entry points to vulnerable facilities, including gates for boarding aircraft, sources of identification are the last opportunity to ensure that people are who they say they are and to check whether they are terrorists.[1]

In making that recommendation, the Commission noted:

> All but one of the 9/11 hijackers acquired some form of U.S. identification document, some by fraud. Acquisition of these forms of identification would have assisted them in boarding commercial flights, renting cars, and other necessary activities.[2]

A. Substance of the Standards

Section 7212(b)(2) of the 9/11 Act requires that the standards to be established by the Secretary of Transportation include—

(A) standards for documentation required as proof of identity of an applicant for a driver's license or personal identification card;

(B) standards for the verifiability of documents used to obtain a driver's license or personal identification card;

(C) standards for the processing of applications for driver's licenses and personal identification cards to prevent fraud;

(D) standards for information to be included on each driver's license or personal identification card, including—

(i) the person's full legal name;

(ii) the person's date of birth;

(iii) the person's gender;

(iv) the person's driver's license or personal identification card number;

(v) a digital photograph of the person;

(vi) the person's address of principal residence; and

(vii) the person's signature;[3]

(E) standards for common machine-readable identity information to be included on each driver's license or personal identification card, including defined minimum data elements;

(F) security standards to ensure that driver's licenses and personal identification cards are—

(i) resistant to tampering, alteration, or counterfeiting; and

(ii) capable of accommodating and ensuring the security of a digital photograph or other unique identifier; and

(G) a requirement that a State confiscate a driver's license or personal identification card if any component or security feature of the license or identification card is compromised.

Section 7212(b)(3) requires further that the standards—

(A) shall facilitate communication between the chief driver licensing official of a State, an appropriate official of a Federal agency and other relevant officials, to verify the authenticity of documents, as appropriate, issued by such Federal agency or entity and presented to prove the identity of an individual;

(B) may not infringe on a State's power to set criteria concerning what categories of individuals are eligible to obtain a driver's license or personal identification card from that State;

(C) may not require a State to comply with any such regulation that conflicts with or otherwise interferes with the full enforcement of State criteria concerning the categories of individuals that are eligible to obtain a driver's license or personal identification card from that State;

(D) may not require a single design to which driver's licenses or personal identification cards issued by all States must conform; and

(E) shall include procedures and requirements to protect the privacy rights of individuals who apply for and hold driver's licenses and personal identification cards.

B. Process for Developing Recommendations for Proposed Standards

The 9/11 Act requires that before publishing proposed minimum

[1] 9/11 Commission Report, page 390.

[2] Ibid.

[3] Section 7214 of the Act provides that no State or subdivision thereof may "display a social security account number issued by the Commissioner of Social Security (or any derivative of such number) on any driver's license, motor vehicle registration, or personal identification card (as defined in section 7212(a)(2) of the 9/11 Commission Implementation Act of 2004), or include, on any such license, registration, or personal identification card, a magnetic strip, bar code, or other means of communication which conveys such number (or derivative thereof)."

standards, the Secretary of Transportation must establish a negotiated rulemaking process pursuant to 5 U.S.C. 561 *et seq.*,[4] and receive such recommendations regarding a proposed as the regulatory negotiation committee may adopt. The committee must include representatives from—

(i) among State offices that issue driver's licenses or personal identification cards;

(ii) among State elected officials;

(iii) the Department of Homeland Security; and

(iv) among interested parties.[5]

C. Schedule for Submitting Recommendations and Establishing the Standards

The recommendations of the negotiated rulemaking committee must be submitted to the Secretary of Transportation not later than 9 months after the date of enactment, *i.e.*, by September 17, 2005.[6] The Secretary must issue a final rule establishing the standards not later than 18 months after the date of enactment, *i.e.*, by June 17, 2006.[7]

D. Implementation of the Standards

Section 7212(b)(1)(C) provides that each State must certify to the Secretary of Transportation that the State is in compliance with the requirements of this section. The certifications are to be made at such intervals and in such a manner as the Secretary of Transportation may prescribe by regulation.

Further, Section 7212(b)(1)(A) bars all Federal agencies from accepting, for any official purpose, a driver's license or personal identification card that is newly issued by a State more than 2 years after the issuance of the minimum standards (*i.e.*, by June 17, 2008) unless the driver's license or personal identification card conforms to those standards.[8] As to all driver's licenses and personal identification cards, regardless of when they were issued, the Secretary of Transportation, in consultation with the Secretary of Homeland Security, is required by Section 7212(b)(1)(B) to set a date after which all Federal agencies are barred from accepting any driver's license or personal identification card for any official purpose unless such driver's license or personal identification card conforms to the minimum standards.

III. Negotiated Rulemaking

As required by Section 7212 (b)(4)(C), the Office of the Secretary will conduct the mandated negotiated rulemaking in accordance with the Negotiated Rulemaking Act of 1990, Public Law 101–648 (NRA) (5 U.S.C. 561, *et seq.*). The NRA establishes a framework for the conduct of a negotiated rulemaking and encourages agencies to use negotiated rulemaking to enhance the informal rulemaking process. Pursuant to Section 7212 and the NRA, OST will form an advisory committee consisting of representatives of the affected interests for the purpose of reaching consensus, if possible, on the proposed rule.

A. The Concept of Negotiated Rulemaking

Usually, DOT develops a rulemaking proposal using its own staff and consultant resources. The concerns of affected parties are made known through means such as various informal contacts and advance notices of proposed rulemaking published in the **Federal Register**. After the notice of proposed rulemaking is published for comment, affected parties may submit arguments and data defining and supporting their positions with regard to the issues raised in the proposed rule. All comments from affected parties are directed to the Department's docket for the rulemaking. In general, there is limited communication among parties representing different interests. Many times, effective regulations have resulted from such a process.

However, as Congress noted in the NRA, such regulatory development procedures may "discourage the affected parties from meeting and communicating with each other, and may cause parties with different interests to assume conflicting and antagonistic positions * * *" (Sec. 2(2) of Pub. L. No. 101–648). Congress also stated "adversarial rulemaking deprives the affected parties and the public of the benefits of face-to-face negotiations and cooperation in developing and reaching agreement on a rule. It also deprives them of the benefits of shared information, knowledge, expertise, and technical abilities possessed by the affected parties." (Sec. 2(3) of Pub. L. No. 101–648).

Using negotiated rulemaking to develop the proposed rule is fundamentally different. Negotiated rulemaking is a process in which a proposed rule is developed by a committee composed of representatives of all those interests that will be significantly affected by the rule. Decisions are made by some form of consensus, which generally requires a measure of concurrence among the interests represented.[9] An agency desiring to initiate the process does so by carefully identifying all interests potentially affected by the rulemaking under consideration. To help in this identification process, the agency publishes a notice, such as this one, which identifies a preliminary list of interests and requests public comment on that list. Following receipt of the comments, the agency establishes an advisory committee representing these various interests to negotiate a consensus on the terms of a proposed rule. The committee is chartered under the Federal Advisory Committee Act (FACA; 5 U.S.C. App. 2). Representation on the committee may be direct, that is, each member represents a specific interest, or may be indirect, through coalitions of parties formed for this purpose. The establishing agency has a member of the committee representing the Federal government's own set of interests.[10] A facilitator or mediator can assist the negotiated rulemaking advisory committee by facilitating the negotiation process. The role of this mediator, or facilitator, is to apply proven consensus building techniques to the advisory committee setting.

Once a regulatory negotiation advisory committee reaches consensus on the provisions of a proposed rule, the agency, consistent with its legal obligations, uses this consensus as the basis of its proposed rule and publishes it in the **Federal Register**. This provides the required public notice under the Administrative Procedure Act (APA; 5 U.S.C. 551 *et seq.*) and allows for a public comment period. Under the APA, the public retains the right to comment. The Department anticipates, however, that the pre-proposal consensus agreed upon by this committee will effectively address virtually all major issues prior to publication of a proposed rulemaking.

[4] Section 7212(b)(4)(A).

[5] Section 7212(b)(4)(B).

[6] Section 7212(b)(4)(C)(i).

[7] Section 7212(b)(2). See also Section 7212(b)(4)(C)(ii).

[8] Section 7212(d) provides that the Secretary may extend this date "for up to 2 years for driver's licenses issued by a State if the Secretary determines that the State made reasonable efforts to comply with the date under * * * [section 7212(b)] * * * but was unable to do so."

[9] The Negotiated Rulemaking Act defines "consensus" as "unanimous concurrence among the interests represented on a negotiated rulemaking committee * * * unless such committee (A) agrees to define such term to mean a general but not unanimous concurrence; or (B) agrees upon another specified definition." 5 U.S.C. 562(2).

[10] In this regulatory negotiation, both the Departments of Transportation and Homeland Security are required by statute to represent the Federal government's interests.

B. The Department of Transportation's Commitment

In initiating this regulatory negotiation process, the Department plans to provide adequate resources to ensure timely and successful completion of the process. This includes making the process a priority activity for all representatives, components, officials, and personnel of the Department 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. The Department will provide administrative support for the process and will take steps to ensure that the negotiated rulemaking committee has the appropriate 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 services of a convenor/facilitator; and such additional research and other technical assistance as may be necessary.

To the extent possible, consistent with its legal obligations, the Department currently plans to use any consensus arising from the regulatory negotiation committee as the basis for the proposed minimum standards to be published for public notice and comment.[11]

C. 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 simply being asked in a regular notice and comment rulemaking proceeding to respond to details on a proposal developed and issued by an agency. The negotiation process involves a mutual education of the parties by each other on the practical concerns about the impact of various approaches. Each committee member participates in resolving the interests and concerns of other members, rather than leaving it up to the agency to bridge different points of view.

A key principle of negotiated rulemaking is that agreement is by consensus. Thus, no one interest or group of interests is able to control the process. Under the NRA as noted above, "consensus" usually means the unanimous concurrence among interests represented on a negotiated rulemaking committee, though a different definition may be employed in some cases. In addition, experience has demonstrated that using a professional mediator to facilitate this process will assist all potential parties, including helping to identify their interests in the rule and enabling them to reevaluate previously stated positions on issues involved in the rulemaking effort.

D. Key Issues for Negotiation; Invitation to Comment on Issues To Be Addressed

As noted above, Section 7212 sets forth considerable detail regarding the issues to be addressed in developing and promulgating the mandated minimum standards. The Department invites comment on the issues regarding the particular aspects of the standards that the negotiating committee should address in developing its recommendations or report.

The Department is aware of the considerable work that has been and is being done at Federal and State levels and in the private sector to improve various types of identification documents, including driver's licenses. We invite comment on which of these past and ongoing efforts are most relevant to this rulemaking, and on what implications those efforts have for the recommendations and choices to be made in this rulemaking.

IV. Procedures and Guidelines for This Regulatory Negotiation

The following proposed procedures and guidelines will apply to the regulatory negotiation process, subject to appropriate changes made as a result of comments on this Notice or as determined to be necessary during the negotiating process.

A. Notice of Intent To Establish Advisory Committee and Request for Comment

In accordance with the requirements of FACA, an agency of the Federal government cannot establish or utilize a group of people in the interest of obtaining consensus advice or recommendations unless that group is chartered as a Federal advisory committee. It is the purpose of this Notice to indicate the Department's intent to create a Federal advisory committee, to identify the issues involved in the rulemaking, to identify the interests affected by the rulemaking, to identify potential participants who will adequately represent those interests, and to ask for comment on the identification of the issues, interests, procedures, and participants.

B. Facilitator

Pursuant to the NRA (5 U.S.C. 566), a facilitator will be selected to serve as an impartial chair of the meetings; assist committee members to conduct discussions and negotiations; and manage the keeping of minutes and records as required by FACA. The facilitator will chair the negotiations, may offer alternative suggestions to committee members to help achieve the desired consensus, will help participants define and reach consensus, and will determine the feasibility of negotiating particular issues. The Department has selected Ms. Susan Podziba, an experienced mediator, as its convenor/facilitator for this regulatory negotiation.

C. Membership

The NRA provides that the agency establishing the regulatory negotiation advisory committee "shall limit membership to 25 members, unless the agency head determines that a greater number of members is necessary for the functioning of the committee or to achieve balanced membership." The purpose of the limit on membership is to promote committee efficiency in deliberating and reaching decisions on recommendations. The Department of Transportation's current inclination is to observe that limit. However, the Department notes that its experience with regulatory negotiations indicates that limiting membership to fewer than 25 members is often desirable.

D. Interests Likely To Be Affected; Representation of Those Interests

The committee will include a representative from the Department of Transportation and from the interests and organizations listed below. Each representative may also name an alternate, who will be encouraged to attend all committee meetings and will serve in place of the representative if necessary. The DOT representative is the Designated Federal Official (DFO and will participate in the deliberations and activities of the committee with the same rights and responsibilities as other committee members. The DFO will be authorized to fully represent the Department in the discussions and negotiations of the committee.

[11] The Department of Transportation is obligated under Section 7212 to propose and adopt minimum standards regardless of whether the committee to be established pursuant to Section 7212 is able to achieve consensus on all required elements of those standards. Thus, if the committee were unable to reach consensus on any of the elements, the Department of Transportation would, in consultation with the Department of Homeland Security, independently develop proposals regarding those elements.

The Department has tentatively identified the following organizations or interests to participate in the negotiated rulemaking. The convenor will contact these and other organizations to determine their interests and willingness to serve on the committee.

(1) Department of Transportation.

(2) Department of Homeland Security.

(3) State offices that issue driver's licenses or personal identification cards; American Association of Motor Vehicle Administrators.

(4) Representatives of elected State officials; National Governors Association; National Conference of State Legislatures; National Association of Attorneys General.

(5) Other interested parties.

(a) Groups or organizations presenting the interests of applicants for and holders of driver's licenses and personal identification cards.

(i) Consumer organization.

(ii) Organization representing non-citizens/immigrants.

(b) Organizations with technological and operational expertise in document security.

(c) Privacy and civil liberties groups.

(d) Law enforcement officials.

The first four interests identified above are required by the statute to participate in the negotiated rulemaking.[12] The "other interests" mentioned are those that appear to the Department to have potentially important roles in helping achieve consensus on recommendations on the issues involved. The Department seeks comment on whether there are additional interests that should be represented on the committee. The Department also seeks comments on particular organizations and individuals who would appropriately represent interests on the committee. Please identify such organizations and interests if they exist and explain why they should have separate representation on the committee.

The list of potential parties specifically named above is not presented as a complete or exclusive list from which committee members will be selected, nor does inclusion on the list of potential parties mean that a party on the list has agreed to participate as a member of the committee or as a member of a coalition, or will necessarily be invited to serve on the committee. The list merely indicates parties that DOT has tentatively identified as representing significantly affected interests in the outcome of the proposed rule. This document gives notice of this process to other potential participants and affords them the opportunity to request representation in the negotiations. The procedure for requesting such representation is set out below. In addition, comments and suggestions on this tentative list are invited.

The Department is aware that there are many more potential participants, whether they are listed here or not, than there are membership slots on the committee. We do not believe, nor does the NRA contemplate, that each potentially affected group must participate directly in the negotiations. What is important is that each affected interest be adequately represented. To have a successful negotiation, it is important for interested parties to identify and form coalitions that adequately represent significantly affected interests. These coalitions, to provide adequate representation, must agree to support, both financially and technically, a member to the committee whom they will choose to represent their "interest." Those selected, it should be noted, represent one or more interests, not just themselves or their organizations.

It is very important to recognize that interested parties who are not selected to membership on the committee can make valuable contributions to this negotiated rulemaking effort in any of several ways:

- The person or organization could request to be placed on the committee mailing list, submitting written comments, as appropriate;
- Any member of the public could attend the committee meetings, caucus with his or her interest's member on the committee, and, as provided in FACA, speak to the committee. Time will be set aside during each meeting for this purpose, consistent with the committee's need for sufficient time to complete its deliberations; or
- The person or organization could assist in the work of a workgroup that might be established by the committee.

Informal workgroups are usually established by an advisory committee to assist the committee in "staffing" various technical matters (*e.g.*, researching or preparing summaries of the technical literature or comments on particular matters such as economic issues) before the committee so as to facilitate committee deliberations. They also might assist in estimating costs and drafting regulatory text on issues associated with the analysis of the costs and benefits addressed, and formulating drafts of the various provisions and their justification previously developed by the committee. Given their staffing function, workgroups usually consist of participants who have expertise or particular interest in the technical matter(s) being studied.

E. Applications for Membership

Each application for membership or nomination to the committee should include:

(i) the name of the applicant or nominee and the interest(s) such person would represent;

(ii) evidence that the applicant or nominee is authorized to represent parties related to the interest(s) the person proposes to represent; and

(iii) a written commitment that the applicant or nominee would participate in good faith.

Please be aware that each individual or organization affected by a final rule need not have its own representative on the committee. Rather, each interest must be adequately represented, and the committee should be fairly balanced.

F. Good Faith Negotiation

Committee members should be willing to negotiate in good faith and have the authority from his or her constituency to do so. The first step is to ensure that each member has good communications with his or her constituencies. An intra-interest network of communication should be established to bring information from the support organization to the member at the table, and to take information from the table back to the support organization. Second, each organization or coalition should, therefore, designate as its representative an official with credibility and authority to insure that needed information is provided and decisions are made in a timely fashion. Negotiated rulemaking efforts can require a very significant contribution of time by the appointed members for the duration of the negotiation process. Other qualities that are very helpful are negotiating experience and skills, and sufficient technical knowledge to participate in substantive negotiations.

Certain concepts are central to negotiating in good faith. One is the willingness to bring all issues to the bargaining table in an attempt to reach a consensus, instead of keeping key issues in reserve. The second is a willingness to promote and protect the ability of the committee to conduct its negotiations. Finally, good faith includes a willingness to move away from the type of positions usually taken in a more traditional rulemaking process, and instead explore openly with other parties all ideas that may emerge from the discussions of the committee.

[12] Section 7212(b)(4)(B).

G. Notice of Establishment

After evaluating comments received as a result of this Notice, the Department will issue a notice announcing the establishment and composition of the committee. After the committee is chartered, the negotiations will begin.

H. Administrative Support and Meetings

Staff support will be provided by the Department. Meetings are currently expected to take place in Washington, DC.

I. Notice of Proposed Rulemaking

The committee's objective will be to prepare a report, consisting of its consensus recommendations for the regulatory text of a draft notice of proposed rulemaking. This report may also include suggestions for the NPRM preamble, regulatory evaluation, or other supplemental documents. If the committee cannot achieve consensus on some aspects of the proposed regulatory text, it will, pursuant to the "ground rules" the committee has established, identify in its report those areas of disagreement, and provide explanations for any disagreement. The Department will use the information and recommendations from the committee report to draft a notice of proposed rulemaking and, as appropriate, supporting documents. Committee recommendations and other documents produced by the committee will be placed in the rulemaking docket.

In the event that the Department's NPRM differs from the committee's consensus recommendations, the preamble to an NPRM addressing the issues that were the subject of the negotiations will explain the reasons for the decision to depart from the committee's recommendations.

Following the issuance of NPRM and comment period, the Department will prepare and provide to the committee a comment summary. The committee will then be asked to determine whether the committee should reconvene to discuss changes to the NPRM based on the comments.

J. Committee Procedures

Under the general guidance of the facilitator, and subject to legal requirements, the committee will establish detailed procedures for the meetings. The meetings of the committee will be open to the public. Any person attending the committee meetings may address the committee if time permits or file statements with the committee.

K. Record of Meetings

In accordance with FACA requirements, the facilitator will prepare summaries of all committee meetings. These summaries will be placed in the public docket for this rulemaking.

L. Tentative Schedule

The Department is seeking to convene the first of the committee's meetings by the last week of March 2005. The date and exact location of that meeting will be announced in the agency's notice of establishment of the advisory committee. Meetings are expected to last approximately three and a half days each. The negotiation process will proceed according to a schedule of specific dates for subsequent meetings that the committee devises at its first meeting. We will publish a single notice of the schedule of all future meetings in the **Federal Register**, but will amend the notice through subsequent **Federal Register** notices if it becomes necessary to do so. The interval between meetings will be approximately two weeks.

The first meeting will commence with an overview of the regulatory negotiation process conducted by the facilitator.

Issued this 17th day of February, 2005, in Washington, DC.

Jeffrey A. Rosen,

General Counsel.

[FR Doc. 05–3458 Filed 2–17–05; 4:26 pm]

BILLING CODE 4910–62–P