**2020 NATIONAL MINING ASSOCIATION PLAN: COAL**

[2020 COAL POLICY PLAN 2](#_Toc31961296)

[OPPOSING ADDITIONAL AND UNNECESSARY FISCAL BURDENS 2](#_Toc31961297)

[Black Lung Excise Tax (BLET) 2](#_Toc31961298)

[Abandoned Mine Land (AML) Fees 2](#_Toc31961299)

[Federal Coal Royalty Valuation Rule 2](#_Toc31961300)

[Rightsizing Office of Surface Management and Enforcement (OSM) 2](#_Toc31961301)

[PREVENTING PREMATURE PLANT CLOSURES 3](#_Toc31961302)

[Affordable Clean Energy (ACE) Rule 3](#_Toc31961303)

[New Source Review (NSR) Reforms to Accompany ACE Rule 3](#_Toc31961304)

[Federal Energy Regulatory Commission (FERC) Actions to Value Reliability 3](#_Toc31961305)

[Coal Combustion Residuals (CCR) 4](#_Toc31961306)

[Powerplant Effluent Limitation Guidelines (ELGs) 4](#_Toc31961307)

[SECURING FUTURE COAL USE 4](#_Toc31961308)

[Coal Exports 4](#_Toc31961309)

[Promoting Technological Solutions 5](#_Toc31961310)

[New Source Performance Standards (NSPS) 5](#_Toc31961311)

[Mercury Air Toxics Standards (MATS) 5](#_Toc31961312)

[Coal Leasing Moratorium 6](#_Toc31961313)

[RATIONAL PERMITTING REQUIREMENTS 6](#_Toc31961314)

[Surface Mining Control and Reclamation Act (SMCRA) Biological Opinion 6](#_Toc31961315)

[OSM Oversight of State SMCRA Regulators 7](#_Toc31961316)

2020 COAL POLICY PLAN

OPPOSING ADDITIONAL AND UNNECESSARY FISCAL BURDENS

Black Lung Excise Tax (BLET)

While NMA successfully secured a 55 percent BLET reduction at the end of 2018, the threat of unfavorable action continued throughout 2019 and, in the final weeks of 2019, a one-year increase in the tax made it into the fiscal year 2020 government spending bill. For 2020 we will oppose attempts to increase the fee as compounding the stress on the coal sector and unnecessary since previous revenues were sufficient to cover benefits and no recipients of benefits from the trust fund are at risk of losing their benefits.

STRATEGY:

Legislative: Oppose legislative efforts to maintain the higher tax rate.

Congressional Oversight: Coordinate with Congress to perform oversight of inefficiencies in administering the Black Lung Disability Trust Fund and the impact of higher taxes on the coal industry, while advocating for comprehensive reforms to the program.

Abandoned Mine Land (AML) Fees

Despite the collection of more than $11 billion in industry tax dollars plus interest for AML cleanups, only one of every three dollars has reached the priority coal projects they were intended to remediate. Efforts to restore the intended purpose of the program have been unavailing and, as a result, NMA’s efforts in 2020 will focus on opposing extension of the fee, which is scheduled to expire in 2021.

STRATEGY:

Legislative: Support reduction in the AML fee, underscore need to direct funds toward high priority projects, and garner support for fee reduction and program reforms from industry allies.

Federal Coal Royalty Valuation Rule

In 2019, a federal court reinstituted the unworkable and onerous Obama 2016 coal valuation rulemaking. In response, NMA filed a legal challenge and successfully obtained a preliminary injunction preventing implementation of the rule until the court has an opportunity to make a decision on the merits. In 2020, the focus will be on leveraging the injunction victory and overturning the 2016 rule.

STRATEGY:

Litigation: Commence briefing on the merits of the rule and provide tangible industry data demonstrating the unworkability of the rule.

Legislative: Support the longstanding valuation rules in oversight and legislative hearings.

Rightsizing Office of Surface Management and Enforcement (OSM)

OSM’s budget fails to reflect two fundamental shifts that have occurred since the 1977 enactment of the Surface Mining Control and Reclamation Act (SMCRA): (1) the number of operating coal mines has declined by 80 percent and (2) states have assumed exclusive jurisdiction to regulate 97 percent of all coal mines. Despite these shifts, OSM’s budget and resources are well above current and foreseeable needs and as a result in 2020, focus will be on building upon NMA’s past successes (reduction of 56 full-time equivalent positions since 2011) in using the budget process to advocate for right-sizing OSM in light of the agency’s reduced workload.

STRATEGY:

Legislative: Advocate for additional targeted reductions for agency-wide OSM staff, field offices, and over-funded programs.

PREVENTING PREMATURE PLANT CLOSURES

Affordable Clean Energy (ACE) Rule

The finalization of the ACE rule was critical to ensuring standards for existing coal plants are reasonable and achievable at the source. Focus in 2020 will be on defending the ACE rule in the courts and encouraging states to become early adopters of the rule.

STRATEGY:

Litigation: Position NMA as coal industry voice in legal challenges to defend the rule. Revive prior state-industry coordinating committee of parties to present a focused and effective defense of the ACE repeal and replacement rules.

Legislative: Mobilize opposition to any legislative initiatives that would bar EPA from implementing the ACE rule.

State: Work with state regulators, governors and attorneys general to encourage states to develop state implementation plans that protect the existing fleet of coal-fired electricity generation and to do so well in advance of the 2020 implementation deadline.

New Source Review (NSR) Reforms to Accompany ACE Rule

The ACE rule was intended to be accompanied with NSR reforms to remove barriers to efficiency improvements at coal plants. Focus in 2020 will be on finalization of the modified NSR threshold test using hourly emission rate changes.

STRATEGY:

Regulatory: Encourage expedited issuance of final rule that would allow power plants to avoid the expensive and lengthy NSR program if the efficiency upgrades would lower hourly emissions, but still result in greater annual emissions simply due to the increased dispatch of the power plant.

Litigation: Intervene in defense of the final rule.

Legislative: Support legislative initiatives to codify the final rule’s approach.

Federal Energy Regulatory Commission (FERC) Actions to Value Reliability

FERC took initial steps at the end of 2019 to restore fairness to the marketplace and address the loss of the nation’s baseload generating capacity. Focus in 2020 will be on expanding that effort to find additional opportunities to quarantine the market-manipulating effects of growing state subsidies.

STRATEGY:

Regulatory: Support implementation of FERC’s order for PJM to expand its MOPR. Comment on any proposed rules that could impact the coal industry. Encourage FERC to initiate a rulemaking on its grid resilience docket.

Litigation: Engage in any rehearing filings or legal challenges to FERC’s order directing PJM to expand its MOPR.

Legislative: Support congressional efforts to restore competition to the electric power market, modernize related legislation, or support existing baseload generation.

Coal Combustion Residuals (CCR)

The prior administration’s 2015 rule on the disposal of coal combustion residuals (CCR) threatened the economic viability of coal-fired power plants. Efforts to reform the 2015 rule have been complicated and delayed by adverse court decisions. Focus in 2020 will be on finalization of a series of new rules that provide coal plants additional necessary flexibility.

STRATEGY:

Regulatory: Coordinate with utility allies on issues related to compliance flexibility and federal permitting issues and engage in the agency’s reconsideration rulemaking process as warranted.

Powerplant Effluent Limitation Guidelines (ELGs)

The overly stringent 2015 standards for powerplant effluent discharges threatened to cause premature coal plant closures. EPA took initial steps in 2019 to revise standards and in 2020, the focus will be on the finalization of the proposed revisions necessary to provide more flexible standards and compliance timeframes.

STRATEGY:

Regulatory: Advocate for expedited finalization of rule containing key revisions to the limitations, pretreatment standards and compliance timeframes for flue gas desulfurization wastewater and bottom ash transport water.

SECURING FUTURE COAL USE

Coal Exports

Both thermal and metallurgical coal exports have become an increasingly important market sector for U.S. coal producers. While a 2019 executive order addressed a significant hurdle to exports—state misuse of the CWA section 401 certification process to block export projects—additional favorable governmental policies are necessary to ensure the long-term viability of the United States as a major coal exporter. Focus in 2020 will be finalization of an EPA rule to prevent abuse of the CWA 401 process, and engagement with various federal departments and agencies to resolve specific barriers to expansion of U.S. coal exports.

STRATEGY:

Regulatory: Urge expedited issuance of final EPA rule to reform the 401 process and limit the scope of review; push for release of the coal export study called for in E.O. 13868.

Litigation: Engage in amicus efforts in cases where permits for infrastructure (including port projects) are denied on unlawful grounds.

Legislative: Support legislative efforts to reform the 401 process and seek oversight opportunities to showcase examples of state misuse.

State: Deploy state leaders to highlight the economic harm done by obstructionist tactics.

International: Find opportunities in trade agreements and maximize networks to reduce international barriers.

Promoting Technological Solutions

The 2015 rule that required carbon capture and storage (CCS) for new or modified coal plants posed as a major technological hurdle for new plants or upgrades to existing plants and jeopardized the ability to build new plants. Focus in 2020 will be on finalization of the rule eliminating the mandatory CCS requirement for new power plants and promoting support and funding for advanced technologies.

STRATEGY:

Regulatory: Push for finalization of rule for new power plants; engage with the Department of Energy’s *Coal First* program to advance new coal generation technologies; advocate for finalization of Internal Revenue Service guidance on carbon capture tax credit.

Legislation: Support legislation, funding opportunities and tax provisions that incentivize the use of advanced coal technologies such as high efficiency, low emission plants, and carbon capture and storage.

International: Close coordination and membership with relevant and influential groups including the World Coal Association and Coal International Advisory Board to the International Energy Agency.

New Source Performance Standards (NSPS)

The 2015 rule that required carbon capture and storage (CCS) for new or modified coal plants posed as a major technological hurdle for new plants or upgrades to existing plants and jeopardized the ability to build new plants. Focus in 2020 will be on finalization of the rule that eliminates the CCS requirement.

STRATEGY:

Regulatory: Promote expedited issuance of final rule to provide a path forward for commercially viable, advanced coal technology.

Litigation: Intervene in defense of final rule.

Mercury Air Toxics Standards (MATS)

While it is too late to undo the damage and coal plant closures inflicted by the 2012 MATS rule, 2019 brought action to prevent similar future misuse of co-benefits alone to justify regulations. 2020 focus will center on finalization of EPA’s rule that will conclude that the implementation costs of MATS far outweigh the monetized benefits and specifically repudiate the previous administration’s reliance on the co-benefits of air pollutants that are not the target of a rule to justify new rulemakings.

STRATEGY

Regulatory: Urge expedited issuance of final rule that provides EPA’s reassessment of the cost-benefit aspect of the rule to improve regulation moving forward and correct the dangerous precedent set in 2012. The final rule will also memorialize the agency’s Residual Risk and Technology Review conclusion specifying that there is no residual risk and public health is protected with an ample margin of safety and therefore no additional control is necessary.

Legislative: Oppose efforts to overturn the final rule.

Coal Leasing Moratorium

In a sharp departure from legal precedent on types of agency actions subject to the National Environmental Policy Act (NEPA), a 2019 federal district court decision held that the Department of the Interior’s (DOI) lifting of the Obama-era coal leasing moratorium was unlawful for failure to conduct a NEPA analysis prior to resumption of leasing. NMA was an intervenor in the litigation to support government’s position. 2020 focus will be on finalization of DOI’s draft environmental assessment (EA) prepared in response to the court decision.

STRATEGY:

Regulatory: Advocate for expedited issuance of the final EA designed to resolve the court’s NEPA ruling.

Litigation: Continue intervention in the litigation if the court decides the EA is insufficient and does not resolve the litigation. If the EA is deemed sufficient, evaluate litigation participation if nongovernmental organizations decide to challenge the validity of the EA.

Legislative: Support the existing program in oversight and legislative hearings on fair market value issues, lease by application process and need for a programmatic EIS surrounding federal coal leasing program.

RATIONAL PERMITTING REQUIREMENTS

Surface Mining Control and Reclamation Act (SMCRA) Biological Opinion

The passage of the 2017 NMA-backed Congressional Review Act voiding the Stream Protection Rule (SPR) and its accompanying 2016 biological opinion (2016 BiOp) triggered new OSM and FWS consultation under the Endangered Species Act (ESA) section 7 to develop a new BiOp for the SMCRA program. FWS) Building on engagement with OSM, FWS, and the Secretary of the Interior over the past few years, the focus in 2020 is to secure a new BiOp that returns to the framework used in the 1996 BiOp and does not give FWS a veto power over state issued SMCRA permits.

STRATEGY:

Regulatory: Push for expedited release of new BiOp that respects state primacy under SMCRA and leverages new regulatory ESA reforms.

Litigation: Intervene in Center for Biological Diversity lawsuit filed against DOI for ongoing reliance on the 1996 BiOp.

Legislative: Defend the new BiOp from legislative efforts to block it.

OSM Oversight of State SMCRA Regulators

Under the Obama administration, OSM issued a number of policy documents that significantly increased issuance of ten-day notices, while impairing state primacy and the ability of operators to secure and rely on state issued permits. In 2020, the focus will be: to build upon the successes of 2019, when NMA secured the rescission and replacement of two onerous directives (INE-35 and REG-8) with new policies to remove OSM from state permitting decisions, eliminate duplication of efforts with state regulators, and stop independent unannounced inspections.

STRATEGY:

Regulatory: Engage with OSM to secure further clarification, through policy or formal rulemaking, that citizen complaints cannot be used to collaterally attack state permitting decisions.