

NATIONAL MINING ASSOCIATION
ANTITRUST COMPLIANCE POLICY & MEETING GUIDELINES

The National Mining Association (NMA) requires its members and staff to conduct all activities in strict compliance with federal and state antitrust laws. These laws prohibit competitors from engaging in actions that could result in an unreasonable restraint of trade. Although most of NMA's activities do not have antitrust implications, NMA meetings do bring competitors together and antitrust sensitivities are raised whenever this occurs since it provides an opportunity for perceived impropriety even under the most benign circumstances.

The following is an antitrust checklist for use in the conduct of NMA-sponsored meetings. This checklist is not exhaustive. Participants in NMA-sponsored meetings should also refer to NMA's "Guide To Antitrust Compliance" for further guidance.¹ If you are uncertain as to whether an antitrust problem might exist, or do not know what course of action to follow, consult with the NMA Legal and Regulatory Affairs Department.

ANTITRUST "DO'S AND DON'TS"

"Do's": Do ensure strict compliance in the following areas:

- ✓ **Oversight/Supervision** – An NMA staff representative should be present at every NMA-sponsored meeting.
- ✓ **Recordkeeping** – Meeting discussions should always be governed by an agenda prepared in advance, and accurately memorialized by minutes.
- ✓ **Compliance** – An NMA staff representative or member present who becomes concerned about a discussion's antitrust implications should terminate that discussion immediately. Should that antitrust-sensitive discussion continue, the NMA staff representative must intervene and adjourn the meeting until counsel can be consulted. If necessary, those concerned with the nature of such discussions may wish to leave the room, after requesting that the minutes reflect both their disagreement with the discussion and their decision to leave.

"Don'ts": Do not, in fact or appearance, enter into any agreement,* discuss or exchange information on:

- ✓ **Prices** – Including individual company prices, costs, price or cost related terms, or forecasts of prices or costs. Prices include not only sales prices, but also purchase prices, discounts, warranties, credit terms, allowances, and other standard contract terms that affect price. Agreements on timing or the announcement of price changes are also prohibited.
- ✓ **Future production or future/pending bids** – Including submitting bids in which one party knowingly submits a bid that is high or otherwise unacceptable so as to steer the award to another bidder.
- ✓ **Market division** – Divisions of markets can occur whenever competitors allocate business, customers or product or geographic markets, or even by erecting entry barriers to potential competitors.
- ✓ **Establishing or participating in standard-setting or certification programs that fix, manipulate, stabilize prices or otherwise restrict competition** – The widest group of potentially affected parties should always be afforded the opportunity to participate in the standard-setting process.

* *In all of these areas*, it is important to remember the ease in which a *prohibited* "agreement" may be inferred, particularly from contact with competitors. A formal agreement is not necessary. *The prohibition includes "gentleman's agreements," tacit understandings, and so-called "off the record" conversations. Splinter or rump sessions are therefore not sanctioned by NMA.*

¹ A copy of the "Guide to Antitrust Compliance," as adopted by the Board of Directors, and updated as necessary, is available on the NMA "Members Only" section of the Association's website.