[FR Doc. 03–5203 Filed 3–5–03; 8:45 am]
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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Chapter I

[FRN–7459–7]

Notice of Intent To Negotiate Proposed Rule on All Appropriate Inquiry

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Intent to Establish FACA Committee and Negotiate a Proposed Rule.

SUMMARY: The Environmental Protection Agency (EPA) is giving notice that it intends to establish a Negotiated Rulemaking Committee under the Federal Advisory Committee Act (FACA) and the Negotiated Rulemaking Act (NRA) to negotiate proposed federal standards for conducting all appropriate inquiry. The purpose of the Committee will be to conduct discussions and reach consensus, if possible, on proposed regulatory language setting standards and practices for conducting all appropriate inquiry, as required by the Small Business Liability Relief and Brownfields Revitalization Act (the Brownfields Law). The Committee will consist of representatives of parties with a definable stake in the outcome of the proposed standards. EPA also is announcing the date of an open public meeting to discuss the use of the negotiated rulemaking process to develop a proposed rule. During the public meeting, EPA officials will discuss the Agency's plans for the establishment of a FACA committee to negotiate the proposed standards for all appropriate inquiry.

DATES: EPA must receive comments on this notice by April 7, 2003. Comments received after this date may not be considered. The public meeting will be held on April 15, 2003. The meeting is scheduled for 1 p.m. to 3 p.m.

ADDRESSES: The public meeting will be held in Learning Forum Rooms A and B of the Marriott Learning Complex in the Ronald Reagan Building and International Trade Center at 1300 Pennsylvania Avenue NW., Washington, DC 20004. The Marriott Learning Center Complex is on the concourse level of the Ronald Reagan Building just inside the building entrance from the Federal Triangle Metro station.

Comments on today's notice may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions for submitting public comments provided in paragraph B of the **SUPPLEMENTARY INFORMATION** section below. Please reference Docket number SFUND–2003–0006 when submitting your comments.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA/CERCLA Call Center at 800–424–9346 or TDD 800–553–7672 (hearing impaired). In the Washington, DC metropolitan area, call 703–412–9810 or TDD 703–412–3323. For more detailed information on specific aspects of today's notice, contact Patricia Overmeyer, Office of Brownfields Clean up and Redevelopment (5105T), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460–0002, 202–566–2774. *overmeyer.patricia@epa.gov.*

SUPPLEMENTARY INFORMATION:

General Information

A. How Can I Get Copies of the Background Materials Supporting Today's Notice or Other Related Information?

1. EPA has established an official public docket for this notice under Docket ID No. SFUND–2003–0006. The official public docket consists of the documents specifically referenced in this rule and other information related to this notice. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the EPA Docket Center located at 1301 Constitution Ave. NW., Washington, DC 20004. This Docket Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding federal holidays. To review docket materials, it is recommended that the public make an appointment by calling (202) 566–0276. The public may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies cost $0.15/page.

2. *Electronic Access.* You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/.*

You may use EPA Dockets at *http://www.epa.gov/edocket/* to access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket identification number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI, and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified above.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff. For additional information about EPA's electronic public docket visit EPA Dockets online or see 67 FR 38102, May 31, 2002.

B. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your comment. Please ensure that your

comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA will not consider late comments in formulating a final decision.

1. *Electronically.* If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the party submitting the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket,* and follow the online instructions for submitting comments. To access EPA's electronic public docket from the EPA Internet Home Page, select ''Information Sources,'' ''Dockets,'' and ''EPA Dockets.'' Once in the system, select ''search,'' and then key in Docket ID No. SFUND–2003–0006. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

2. *E-mail.* Comments may be sent by electronic mail (e-mail) to *Superfund.Docket@epamail.epa.gov.* Make sure this electronic copy is in an ASCII format that does not use special characters or encryption. Cite the docket Number SFUND–2003–0006 in your electronic file. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the Docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

3. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified above. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

4. *By Mail.* Send two (2) copies of your comments to: EPA Docket Center, U.S. Environmental Protection Agency Headquarters, Mail Code 5305T, 1200 Pennsylvania Ave., NW., Washington, DC, 20460, Attention Docket ID No. SFUND–2003–0006.

5. *By Hand Delivery or Courier.* Deliver your comments to: EPA Docket Center, EPA West Building, Room B–102, 1301 Constitution Ave., NW., Washington, DC 20007. Attention Docket ID No. SFUND–2003–0006. Such deliveries are only accepted during the Docket's normal hours of operation as identified above.

Preamble

I. Statutory Authority

This notice announcing EPA's intent to negotiate a proposed regulation setting federal standards for the conduct of all appropriate inquiry was developed under the authority of sections 563 and 564 of the Negotiated Rulemaking Act of 1996 (5 U.S.C. 561, Public Law 104–320). The proposed regulation setting standards for the conduct of all appropriate inquiry that EPA is proposing to develop under a negotiated rulemaking process will be developed under the authority of section 101(35)(B) of CERCLA (42 U.S.C. 9601(35)(B)(ii)).

II. Background

As required by the Federal Advisory Committee Act (5 U.S.C. App. 2. section 9(a)(2)), and the Negotiated Rulemaking Act of 1996 (5 U.S.C. 561, Pub. L. 104–320), we are giving notice that the Environmental Protection Agency is establishing a Negotiated Rulemaking Committee to develop proposed standards and practices for conducting all appropriate inquiry.

On January 11, 2002, President Bush signed the Small Business Liability Relief and Brownfields Revitalization Act (''the Brownfields Law''). In general, the Brownfields Law amends CERCLA and provides funds to assess and clean up brownfields sites, clarifies CERCLA liability provisions for certain landowners, and provides funding to enhance State and Tribal clean up programs. Subtitle B of Title II of the Brownfields Law revises some of the provisions of CERCLA Section 101(35) clarifying the requirements necessary to establish the innocent landowner defense under CERCLA in addition to providing Superfund liability limitations for bona fide prospective purchasers and contiguous property owners. Among the requirements added to CERCLA is the requirement that such parties undertake ''all appropriate inquiry'' into prior ownership and use of a property at the time at which a party acquires the property.

The Brownfields Law requires EPA to develop regulations establishing standards and practices for how to conduct all appropriate inquiry and promulgate the standards within two years of its enactment. Congress included in the Brownfields Law a list of criteria that the Agency must address in the regulations establishing standards and practices for conducting all appropriate inquiry (section 101(35)(2)(B)(ii)). The Brownfields Law also requires that parties receiving funding under the federal brownfields program to conduct site assessments must conduct the site assessment in accordance with the standards and practices for all appropriate inquiry established under the same provision of the Brownfields Law.

A. Negotiated Rulemaking

EPA has decided to use the negotiated rulemaking process to develop proposed federal standards for conducting all appropriate inquiry. In the Brownfields Law, Congress mandated that EPA develop regulations establishing standards and practices for conducting all appropriate inquiry and set forth a series of criteria for the Agency to follow in developing the federal regulations. The most important reason for using the regulatory negotiation process for developing a proposed federal standard is that all stakeholders strongly support a consensual rulemaking effort. EPA believes a regulatory negotiation process will be less adversarial than the regulatory rulemaking process and that a regulatory negotiation will result in a proposed rule that will effectively reflect Congressional intent.

A regulatory negotiation process will allow EPA to solicit direct input from informed, interested, and affected parities when drafting the regulation, rather than delay public input until the public comment period provided after

publishing a proposed rule; therefore, ensuring that the rule is more sensitive to the needs and limitations of both the parties and the Agency. A rule drafted by negotiation with informed and affected parties is expected to be more pragmatic and more easily implemented, therefore providing the public with the benefits of the rule while minimizing the negative impact of a regulation conceived or drafted without the input of outside knowledgeable parties. Since a negotiating committee includes representatives from the major stakeholder groups affected by or interested in the rule, the number of public comments on the proposed rule may be reduced and those comments that are received may be more moderate. EPA anticipates that there will be a need for few substantive changes to a proposed rule developed under a regulatory negotiation process prior to the publication of a final regulation.

B. The Concept of Negotiated Rulemaking

Usually, EPA develops a proposed rulemaking using Agency staff and consultant resources. The concerns of affected parties are made known through various informal contacts, the circulation of a draft proposal to known affected parties for their informal comment, through advance notices of proposed rulemaking published in the **Federal Register**, or formal consultation with an advisory committee. 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 communications from affected parties are directed to the Agency. In general, there is not much communication among parties representing different interests. Many times, effective regulations have resulted from such a process. However, as Congress noted in the Negotiated Rulemaking Act, 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)). Congress also stated that ''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)).

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 consensus, which generally require concurrence among the interests represented. The process is started by the Agency's careful identification of all interests potentially affected by the rulemaking under consideration. To help in this identification process, the Agency publishes a notice in the **Federal Register**, 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. 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 Agency is a member of the committee representing the Federal government's own set of interests. The negotiated rulemaking advisory committee is facilitated by a trained mediator, who facilitates 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 such consensus as the basis of its proposed rule, to be published in the **Federal Register**. This provides the required public notice and allows for a public comment period. Other participants and other interested parties retain their rights to comment, participate in an informal hearing (if requested) and judicial review. EPA anticipates, however, that the pre-proposal consensus agreed upon by this Committee will effectively address all major issues prior to publication of a proposed rulemaking.

C. Proposed Rule Setting Standards for All Appropriate Inquiry

The negotiated Rulemaking Act allows EPA to establish a negotiated rulemaking committee if it is determined that the use of the negotiated rulemaking procedure is in the public interest. We understand that voluntary standards developed by standards developing organizations, such as the ASTM 1527–2000 standard, are available and are currently being used to conduct all appropriate inquiry in conjunction with private real estate property transactions. In addition, site assessment protocols have been established under the federal Superfund program and Resource Conservation and Recovery Act (RCRA) corrective action programs. Similarly, many State response programs include site assessment requirements. We intend to develop federal regulations that build upon the depth of experience accrued in both the public and private sectors in implementing these standards and programs. We believe that building upon currently available private sector standards for undertaking all appropriate inquiry as well as building on the experience of state and federal government site assessment programs is the most efficient and economical way to develop federal regulatory standards that will both meet the criteria set in the Brownfields Law and ensure minimal disruption to the private market and state and federal site assessment programs.

EPA has determined that the regulatory negotiation process will ensure that we obtain a diverse array of input from both private sector stakeholders and state program officials who are familiar with and experienced in implementing processes to conduct all appropriate inquiry. During the fall of 2002, we initiated the convening stage of the negotiated rulemaking process to identify appropriate stakeholder groups and solicit advice and input from experienced public and private sector users of similar standards. We retained an expert facilitator to contact parties potentially affected by the all appropriate inquiry rule to determine whether or not stakeholders are interested in participating in a negotiated rulemaking process and determine the potential for stakeholder issues to be successfully addressed through a regulatory negotiation. Following an evaluation of stakeholder interest and input during the convening process, our facilitator determined that there is sufficient enthusiasm among stakeholders for a negotiated rulemaking process and almost all stakeholders that we identified and interviewed expressed a belief that potential issues and differences between interested parties could be successfully addressed and negotiated through the regulatory negotiation process. A description of the issues raised by identified stakeholders and a list of interested stakeholders, as well as the findings of our facilitator are contained in the final report entitled *Convening Assessment Report on the*

Feasibility of a Negotiated Rulemaking Process to Develop the All Appropriate Inquiry Standard Required Under the Small Business Liability Relief and Brownfields Revitalization Act. A copy of this final report is included in the regulatory docket for today's notice.

D. Agency Commitment

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

To the maximum extent possible consistent with the legal obligations of the Agency, EPA will use the consensus of the regulatory negotiation committee as the basis for the rule proposed by the Agency for public notice and comment. The Agency is committed to publishing a consensus proposal that is consistent with the legal mandate of the Brownfields Law.

E. 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 only asking them to respond to details on an Agency proposal. The negotiation process involves a mutual education of the parties by each other on the practical concerns about the impact of such approaches. Each committee member participates in resolving the interests and concerns of other members, rather than leaving it up to EPA to bridge different points of view.

A key principle of negotiated rulemaking is that agreement is by consensus of all the interests. Thus, no one interest or group of interests is able to control the process. The Negotiated Rulemaking Act defines consensus as the unanimous concurrence among interests represented on a negotiated rulemaking committee, unless the committee itself unanimously agrees to use a different definition. In addition, experience has demonstrated that using a trained mediator to facilitate this process will assist all potential parties, including EPA, to identify their interests in the rule and so to be able to reevaluate previously stated positions on issues involved in this rulemaking effort.

III. Proposed Negotiating Procedures

A. Key Issues for Negotiation

We anticipate the issues to be addressed by the Negotiated Rulemaking Committee on All Appropriate Inquiry may include:

- Balancing the goals and priorities of state regulatory programs, privately-developed consensus standards, and the Congressional mandate for a federal standard for conducting all appropriate inquiry.
- Developing clear and concise standards that address each of the statutory criteria (Section 101(35)(B)(iii) of CERCLA).
- Balancing the need to put abandoned properties back into productive reuse with concerns for public health and environmental protection.
- Balancing a need for clear and comprehensive standards that will ensure a high level of certainty in identifying potential environmental concerns without imposing time consuming and unnecessarily expensive regulatory requirements.
- Defining the shelf life of an assessment and the extent to which an assessment, or the results of all appropriate inquiry, may be transferred to subsequent property owners.
- Minimizing disruptions to the current real estate market due to the development of a federal standard that is different from current industry protocols while ensuring that the federal standard is protective and in compliance with statutory criteria.
- Identifying the extent to which sampling and analysis of potentially contaminated property may be required to document the presence, or the lack of, environmental contamination.
- Identifying what information is necessary on the potential contamination of adjacent and adjoining properties, as well as underlying groundwater resources.
- Establishing a list of contaminants to include in the investigation when conducting all appropriate inquiry.

B. Committee Formation

The negotiated rulemaking Committee will be formed and operated in full compliance with the requirements of the Federal Advisory Committee (FACA) in a manner consistent with the requirements of the Negotiated Rulemaking Act.

C. Interests Involved/Committee Membership

The Agency intends to conduct the negotiated rulemaking proceedings with particular attention to ensuring full and adequate representation of those interests that may be significantly affected by the proposed rule setting standards for conducting all appropriate inquiry. Section 562 of the NRA defines the term ''interest'' as ''with respect to an issue or matter multiple parties which have a similar point of view or which are likely to be affected in a similar manner.'' Listed below are parties which the Agency has identified tentatively as being ''significantly affected'' by the matters that may be included in the proposed rule.

EPA anticipates that the negotiating committee will be composed of approximately 25 members representing parties of interest to the rulemaking. EPA will monitor membership carefully to ensure that there is a balanced representation from affected and interested stakeholder groups. EPA anticipates that the committee will contain the following types of representatives:

- Environmental Interest Groups
- Environment Justice Community
- Federal Government
- Tribal Government
- State Government
- Local Government
- Real Estate Developers
- Bankers and Lenders
- Environmental Professionals

We point out that one purpose of this notice is to determine whether federal standards for conducting all appropriate inquiry will significantly affect interests that are not listed above, as well as whether the list provided below identifies accurately and comprehensively a group of stakeholders representing the interests listed above. We invite comment and suggestions on the list of ''significantly affected'' interests, as well as the list of suggested stakeholders, or committee members.

EPA recognizes that the regulatory actions we take under this program may at times affect various segments of society in different ways, and that this may in some cases produce unique ''interests'' in a proposed rule based on

income, gender, or other factors. Particular attention will be given by the Agency to ensure that any unique interests that have been identified in this regard, and that may be significantly affected by the proposed rule, are fully represented.

EPA tentatively identified the following list of possible interests and parties as representing the above list of interested stakeholder groups. The following list includes those organizations tentatively identified by EPA as being either a potential member of the Committee, or a potential member of a coalition that would in turn nominate a candidate to represent one of the significantly affected interests listed above:

- U.S. Environmental Protection Agency
- Sierra Club
- Environmental Defense
- Center for Public Environmental Oversight
- Partnership for Sustainable Brownfields Redevelopment
- Association of State and Territorial Solid Waste Management Officials
- National Association of Attorneys General
- Gila Tribe, Department of Environmental Quality
- U.S. Conference of Mayors
- National Association of Local Government Environmental Professionals
- National Association of Home Builders
- The Real Estate Roundtable
- National Association of Industrial and Office Parks
- Trust for Public Land
- National Brownfields Association
- Bank of America
- Freddie Mac
- Mortgage Bankers Association
- Wasatch Environmental
- National Groundwater Association
- Associated Soil and Foundation Engineers

The list of potential parties shown 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. The list merely indicates parties that EPA has tentatively identified as representing significantly affected interests in the outcome of the proposed rule establishing federal standards for the conduct of all appropriate inquiry. 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 under Section I ''General Information'' part of this document. In addition, comments and suggestions on this tentative list are invited.

The negotiating group should not exceed 25 members. The Agency believes that more than 25 members would make it difficult to conduct effective negotiations. EPA is aware that there are many more potential participants, whether they are listed here or not, than there are membership slots on the Committee. The Agency does not believe, nor does the NRA contemplate, that each potentially affected group must participate directly in the negotiations; nevertheless, each affected interest can 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.''

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 could request to be placed on the Committee mailing list, submitting written comments, as appropriate;
- The person could attend the Committee meetings, which are open to the public, caucus with his or her interest's member on the Committee, or even address the Committee (usually allowed at the end of an issue's discussion or the end of the session, as time permits); or
- The person 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 affordability 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.

Because it recognizes the importance of this staffing work for the Committee, EPA will provide appropriate technical expertise for such workgroups. EPA requests comment regarding particular appointments to membership on the regulatory negotiation committee. Members can be individuals or organizations. If the effort is to be fruitful, participants should be able to fully and adequately represent the viewpoints of their respective interests. Those who wish to be appointed as members of the committee should submit a request to EPA, in accordance with the public participation procedures outlined in Section I ''General Information'' of this notice.

The list of potential committee members provided above includes those who have been tentatively identified by EPA as being either a potential member of the Committee, or a potential member of a coalition that would in turn nominate a candidate to represent one of the significantly affected interests, also listed above.

D. 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 that must be sustained for up to a year. Other qualities that can be 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 keep the issues at the table and not take them to other forums. 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.

E. Facilitator

The facilitator will not be involved with the substantive development of the standard. Rather, the facilitator's role generally includes:

- Facilitating the meetings of the committee in an impartial manner; and
- Impartially assisting the members of the Committee in conducting discussions and negotiations;

F. EPA Representative

The EPA representative will be a full and active participant in the consensus building negotiations. The Agency's representative will meet regularly with various senior Agency officials, briefing them on the negotiations and receiving their suggestions and advice, to effectively represent the Agency's views regarding the issues before the Committee. EPA's representative also will ensure that the entire spectrum of federal governmental interests affected by the all appropriate inquiry rulemaking, including the Office of Management and Budget, the Department of Justice, and other Departments and agencies, are kept informed of the negotiations and encouraged to make their concerns known in a timely fashion.

G. Committee Notice and Schedule

EPA will have an open public meeting of all parties to discuss the possibility of using negotiated rulemaking on April 15, 2003. The Public Meeting will be held in Learning Forum Rooms A and B of the Marriott Learning Complex in the Ronald Reagan Building at 1300 Pennsylvania Avenue NW., Washington, DC 20004. The meeting is scheduled for 1 p.m. to 3 p.m. If EPA proceeds with a negotiated rulemaking committee on all appropriate inquiry, EPA plans for the Committee to begin deliberations in May, 2003 and conclude negotiations in December, 2003.

After evaluating the comments on this announcement and the requests for representation, EPA will issue a notice that will announce the establishment of the committee and its membership, unless after reviewing the comments, it is determined that such an action is inappropriate. The negotiation process will begin once the committee membership roster is published in the **Federal Register**.

IV. Comments Requested

EPA requests comments on whether it should use negotiated rulemaking to develop draft language for this rule and the extent to which the issues, parties and procedures described above are adequate and appropriate.

Dated: February 27, 2003.

Thomas P. Dunne,

Associate Assistant Administrator, EPA Office of Solid Waste and Emergency Response.

[FR Doc. 03–5324 Filed 3–5–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[NH–055b; FRL–7458–4]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants: New Hampshire; Negative Declaration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the sections 111(d) negative declaration submitted by the New Hampshire Department of Environmental Services (DES) on July 22, 1998. This negative declaration adequately certifies that there are no existing municipal solid waste (MSW) landfills located in the state of New Hampshire that have accepted waste since November 8, 1987 and that must install collection and control systems according to EPA's emissions guidelines for existing MSW landfills.

DATES: EPA must receive comments in writing by April 7, 2003.

ADDRESSES: You should address your written comments to: Mr. Steven Rapp, Chief, Air Permits, Toxics & Indoor Programs Unit, Office of Ecosystem Protection, U.S. EPA, One Congress Street, Suite 1100 (CAP), Boston, Massachusetts 02114–2023.

Copies of documents relating to this proposed rule are available for public inspection during normal business hours at the following location: Environmental Protection Agency, Air Permits, Toxics & Indoor Program Unit, Office of Ecosystem Protection, One Congress Street, Suite 1100, Boston, Massachusetts 02114–2023. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the day of the visit.

FOR FURTHER INFORMATION CONTACT: John Courcier, Office of Ecosystem Protection (CAP), EPA-New England, Region 1, Boston, Massachusetts 02203, (617) 918–1659, or by e-mail at *courcier.john@epa.gov.* While the public may forward questions to EPA via e-mail, it must submit comments on this proposed rule according to the procedures outlined above.

SUPPLEMENTARY INFORMATION: Under section 111(d) of the Clean Air Act, EPA published regulations at 40 CFR part 60, subpart B which require states to submit control plans to control emissions of designated pollutants from designated facilities. In the event that a state does not have a particular designated facility located within its boundaries, EPA requires that a state submit a negative declaration in lieu of a control plan.

The New Hampshire DES submitted the negative declaration to satisfy the requirements of 40 CFR part 60, subpart B. In the Final Rules section of this **Federal Register**, EPA is approving the New Hampshire negative declaration as a direct final rule without a prior proposal. EPA is doing this because the Agency views this action as a noncontroversial submittal and anticipates that it will not receive any significant, material, and adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If EPA does not receive any significant, material, and adverse comments to this action, then the approval will become final without further proceedings. If EPA receives adverse comments, we will withdraw the direct final rule and EPA will address all public comments received in a subsequent final rule based on this proposed rule. EPA will not begin a second comment period.

Dated: February 20, 2003.

Robert W. Varney,

Regional Administrator, EPA New England.

[FR Doc. 03–5305 Filed 3–5–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[Region 2 Docket No. NJ57–251b; FRL–7459–5]

Approval and Promulgation of Plans for Designated Facilities; New Jersey; Delegation of Authority

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing approval of the New Jersey Department of Environmental Protection's request