

# **NEMA GUIDELINES FOR CONDUCTING NEMA MEETINGS**

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## **Contents:**

- Notice & agenda
- Discussion topics
- Standards
- Statistics
- Minutes
- Presence of NEMA staff member
- Rump sessions
- Role of Counsel
- Conclusion

When properly conducted, trade association meetings play a valuable role in promoting competition and consumer welfare. Trade associations must be acutely sensitive to antitrust issues, however, because their meetings also may provide opportunities to reach unlawful agreements.

The criminal penalties for violating the antitrust laws are severe: corporations and other organizations may be fined up to \$100,000,000 per offense, and individuals face fines of up to \$1,000,000 and/or up to ten years in jail. In addition, private parties injured by antitrust violations may sue for treble damages. The costs of defending an antitrust suit are usually very high. In light of these harsh penalties and costs, NEMA takes a conservative approach to antitrust issues. Its meetings must be conducted to avoid even the appearance that members are taking common action that might unreasonably restrict competition.

## **Notice & Agenda**

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Each NEMA meeting must be preceded by a notice mailed to the members. A copy of the meeting agenda should also be sent. This will alert the members to the business to be considered, enabling them to prepare for a productive meeting. The agenda can also alert members and staff to matters which may raise legal questions for which the advice of counsel may be sought prior to the meeting.

## Discussion Topics

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It is not possible to provide a comprehensive list of antitrust rules that would cover every situation that might be encountered at a NEMA meeting. Nevertheless, a prudent general rule, which is to be followed at all NEMA meetings, is that no commercial topics should be acted upon or even considered. To avoid the most sensitive areas, there should never be a discussion of the following at NEMA meetings:

- current or future prices or components thereof, including discounts, rebates, and credit terms;
- price lists or procedures for coordinating price changes;
- licensing of patent technology or the construction or validity of patents;
- sales or production quotas;
- allocation or division of territories or customers along manufacturers, distributors, or retailers;
- boycotting any party or denying any party access to markets, products, product inputs, or information;
- identified individual company statistics, market shares, inventories or merchandising methods;
- commercial practices of particular competitors or customers;
- commercial liabilities, warranties, guarantees, or the particular terms and conditions of sales, including credit, shipping and transportation arrangements, or
- anything dealing with "arm-twisting," trade abuses, or excluding or controlling competition.

## Standards

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When standardization activities are under consideration at a meeting, NEMA policy requires that the discussion be confined to technical, engineering and safety factors. Commercial considerations (warranties, guarantees, etc.) are not proper factors to be considered. Also, since NEMA standards are voluntary, there must be no agreement to adhere to them or any discussions as to when members will begin to offer products conforming to the standards. Members involved in NEMA's standardization activities should read the [Standardization Policies and Procedures](#) manual.

**Bring Essential Patent Claims to the attention of NEMA early in the standards development process.** NEMA and ANSI policies provide that standards may embrace "essential patent claims" if technical reasons justify that approach. A patent claim contained in a patent or published patent application is "essential" if its use is necessary to create a compliant implementation of the mandatory portions of the normative clauses of the NEMA Standard or proposed NEMA Standard when there is no commercially and technically feasible non-infringing alternative. Participants in the NEMA standards development process are required to disclose known essential patent claims and are encouraged to bring essential patent claims to NEMA's attention early and at any time during the course of the standards development process. Participants will be asked to certify at the time of ballot whether or not they are aware of any essential patent claims. Companies that hold essential patent claims are required to make a licensing commitment as spelled out in Section 3.9 of NEMA's [Standardization Policies and Procedures](#) manual or applicable ANSI policy. Commercial discussions relating to licensing and legal discussions of patent construction and validity should not take place at standards development meetings.

## **Statistics**

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Statistical programs are among the most valuable services NEMA can offer its membership. They are lawful so long as they are not part of a prohibited scheme to fix prices, allocate production or otherwise unreasonably restrain trade. At meetings at which statistical programs are being formulated or evaluated, members should refrain from disclosing or discussing individual company statistics. Nor should discussions in this area lead to statements about an individual company's plans for sales or production. NEMA statistical programs are voluntary; no member may be coerced into participation.

## **Minutes**

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The legal importance of minutes of NEMA meetings must not be underestimated. They are the official record of the association and represent the only contemporaneous evidence of what transpired at the meeting. They are one of the first types of documents that litigants and investigators request. The secretary is responsible to see that the minutes are clear, complete and accurate with regard to the actions which were taken and the justification for those actions.

For the benefit of members, it should be noted that there is no such thing as a conversation "off the record" at the NEMA meeting. If you feel that your comments would be inappropriate for recording, they probably are not proper for a NEMA meeting and should not be made.

## **Presence of NEMA Staff Member**

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NEMA policy requires the full-time attendance of a member of the NEMA staff at every meeting where NEMA business is conducted. What constitutes "NEMA business" should be broadly interpreted. For example, members should not meet to discuss proposals for submission at a future NEMA meeting without a NEMA staff member present. If a member of the NEMA staff cannot attend the meeting, postpone the meeting. NEMA staff have been instructed in the conduct of meetings and are familiar with NEMA policy and procedure. They can alert the members to situations that pose antitrust pitfalls, some of which may be innocently and unintentionally approached by the members. The presence of a NEMA staff member is a safeguard the members must not forego.

## **Rump Sessions**

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When a NEMA meeting is adjourned, it should be over in all respects and not simply in name. Informal "rump" sessions present too great a temptation for "confidential" of prohibited subjects. If anticompetitive industry practices follow such meetings, the results could be disastrous for the member, the member's company and NEMA. Memoranda of these supposedly "secret" meetings often figure prominently in prosecutions for price fixing.

## **Role of Counsel**

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According to the Article VII, Section 9, Subsection C of the NEMA By-Laws:

All actions by Subdivisions or Committees thereof are subject to review by Counsel for the Association, and no action shall be taken if disapproved by such Counsel.

Counsel discharges this responsibility by reviewing the minutes of each meeting and, where necessary, providing comments. While counsel does not review the agenda for each

meeting, review its available in situations in which problems are anticipated. The NEMA staff member should contact counsel in such cases.

Obviously, counsel cannot attend all meetings. However, in those few instances where the secretary or a member believes potentially sensitive matters may arise requiring the attendance of counsel, such presence will be provided. This should be arranged as far in advance as possible to enable counsel to prepare adequately for the meeting.