DEPARTMENT OF ENERGY

10 CFR Part 431


Appliance Standards and Rulemaking Federal Advisory Committee: Notice of Intent To Establish the Commercial Package Air Conditioners and Heat Pumps and Commercial Warm Air Furnaces Working Group To Negotiate Potential Energy Conservation Standards


ACTION: Notice of intent and announcement of a public meeting.

SUMMARY: The U.S. Department of Energy (DOE or the Department) is giving notice that it intends to establish a negotiated rulemaking working group under the Appliance Standards and Rulemaking Federal Advisory Committee (ASRAC) in accordance with the Federal Advisory Committee Act (FACA) and the Negotiated Rulemaking Act (NRA) to negotiate regarding energy conservation standards for small, large, and very large, air-cooled commercial package air conditioners and heat pumps as well as commercial warm air furnaces. The purpose of the working group will be to discuss and, if possible, reach consensus regarding the development of energy conservation standards for small, large, and very large, air-cooled commercial package air conditioners and heat pumps as well as commercial warm air furnaces, as authorized by the Energy Policy and Conservation Act (EPCA) of 1975, as amended. The working group will consist of representatives of parties having a defined stake in the outcome of the energy conservation standards, and will consult as appropriate with a range of experts on technical issues.

The working group is expected to negotiate a final term sheet regarding energy conservation standards for the aforementioned equipment by Monday, June 15, 2015. The final term sheet will be presented to ASRAC at an open meeting for their deliberation and decision on whether to pass it on as a formal recommendation to DOE.

DATES: Written comments and request to be appointed as members of the CUAC and CWAF Working Group, including an application package, are welcome and should be submitted by April 15, 2015. DOE will hold the first meeting for the CUAC and CWAF Working Group on Tuesday, April 28, 2015, from 9 a.m. to 5 p.m., in Washington, DC. The meeting will also be broadcast as a webinar. See section V Public Participation for webinar registration information, participant instructions, and information about the capabilities available to webinar participants.

ADDRESSES: The first CUAC and CWAF Working Group meeting, which is also open to the public, will be held at the U.S. Department of Energy, Forrestal Building, Room 8E–089, 1000 Independence Avenue SW., Washington, DC 20585. To attend, please notify asrac@ee.doe.gov. Please note that foreign nationals participating in the public meeting are subject to advance security screening procedures which require advance notice prior to attendance at the public meeting. If a foreign national wishes to participate in the public meeting, please inform DOE as soon as possible by contacting regina.washington@ee.doe.gov so that the necessary procedures can be completed. Please also note that those wishing to bring laptops into the Forrestal Building will be required to obtain a property pass. Visitors should avoid bringing laptops, or allow an extra 45 minutes. Persons can attend the public meeting via webinar. For more information, refer to section V of this document (Public Participation).

Interested person may submit comments, identified by docket number EERE–2013–BT–STD–0007; EERE–2013–BT–STD–0021 by any of the following methods:


No telefacsimilies (faxes) will be accepted.

Docket: The docket is available for review at www.regulations.gov, including Federal Register notices, public meeting attendee lists and transcripts, comments, and other supporting documents/materials. All documents in the docket are listed in the www.regulations.gov index. However, not all documents listed in the index may be publicly available, such as information that is exempt from public disclosure.


SUPPLEMENTARY INFORMATION:

Preamble

I. Authority
II. Background
III. Proposed Negotiating Procedures
IV. Comments Requested
V. Public Participation
I. Authority

This notice of intent, announcing DOE’s intent to negotiate regarding energy conservation standards for small (greater than or equal to 65,000 Btu/h and under 135,000 Btu/h cooling capacity), large (greater than or equal to 135,000 Btu/h and under 240,000 Btu/h cooling capacity) and very large (greater than or equal to 240,000 Btu/h and under 760,000 Btu/h cooling capacity), air-cooled commercial package air conditioners and heat pumps (CUACs) as well as commercial warm air furnaces (CWAFs), was developed under the authority of sections 563 and 564 of the NRA (5 U.S.C. 561–570, Pub. L. 104–320). The establishment of energy conservation standards for CUACs and CWAFs by DOE is pursuant to authority in EPCA, as amended, directs DOE to adopt energy conservation standards CUACs and CWAFs for which standards would be technologically feasible and economically justified. 42 U.S.C. 6295(o)(2)(A). The primary reason for using the negotiated rulemaking process will effectively reflect facts and issues right and will result in a consensual rulemaking effort. DOE amended energy conservation standards for CUACs and CWAFs. EPCA, as amended, directs DOE to adopt energy conservation standards for CUACs and CWAFs for which standards would be technologically feasible and economically justified, and would result in significant energy savings. The current Federal for CUACs are found in 10 CFR part 431.97(b).

A. Negotiated Rulemaking

DOE has determined that the use of the negotiated rulemaking process is in the public interest. DOE intends to develop Federal regulations that build on the depth of expertise accrued in both the public and private sectors in implementing standards and programs. DOE has determined that the regulatory negotiation process will provide for obtaining a diverse array of in-depth input, as well as an opportunity for increased collaborative discussion from both private-sector stakeholders and government officials who are familiar with energy use and efficiency of CUACs and CWAFs.

B. Rulemaking for CUAC and CWAF Energy Conservation Standards

The NRA enables DOE to establish an advisory committee or working group if it is determined that the use of the negotiated rulemaking process is in the public interest. DOE intends to develop Federal regulations that build on the depth of expertise accrued in both the public and private sectors in implementing standards and programs. DOE has determined that the regulatory negotiation process will provide for obtaining a diverse array of in-depth input, as well as an opportunity for increased collaborative discussion from both private-sector stakeholders and government officials who are familiar with energy use and efficiency of CUACs and CWAFs.

C. Department Commitment

In initiating this regulatory negotiation process regarding energy conservation standards for CUACs and CWAFs, DOE is making a commitment to provide adequate resources to facilitate 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 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. DOE will provide administrative support for the process and will take steps to ensure that the advisory committee or working group has the dedicated resources it requires to complete its work in a timely fashion. Specifically, DOE will make available the following support services: 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 Department, DOE will consider the consensus of the advisory committee or working group as the basis for the rulemaking moving forward.

E. Negotiating Consensus

As discussed above, the negotiated rulemaking process differs fundamentally from the usual process for developing and revising a typical rulemaking. Negotiation enables interested and affected parties to discuss various approaches to issues rather than asking them only to respond to a proposal developed by the Department. The negotiation process involves a mutual education of the various parties on the practical concerns about the impact of standards. Each advisory committee or working group member participates in resolving the interests and concerns of other members, rather than leaving it up to DOE to evaluate and incorporate 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 NRA defines consensus as the unanimous concurrence among interests represented on a negotiated rulemaking committee or working group, unless the committee or working group itself unanimously agrees to use a different definition. 5 U.S.C. 562. In addition, experience has demonstrated that using a trained mediator to facilitate this process will assist all parties, including DOE, in identifying their real interests in the rule, and thus will enable parties to focus on and resolve the important issues.

III. Proposed Negotiating Procedures

A. Key Issues for Negotiation

The following issues and concerns will underlie the work of the Negotiated Rulemaking Committee on CUAC and CWAF Energy Conservation Standards:
- Additional data that could be considered by the Working Group in potentially revising the analytical tools that DOE used for the proposed rules;
- Additional methodology assumptions that could be considered by the Working Group in potentially revising the analytical tools that DOE used for the proposed rules;
- Synergies gained by combining the rulemaking and potential compliance dates for two covered products; and
- Consideration of energy conservation standards.

To examine the underlying issues outlined above, and others not yet
articulated, all parties in the negotiation will need DOE to provide data and an analytic framework complete and accurate enough to support their deliberations. DOE’s analyses must be adequate to inform a prospective negotiation—for example, the notice of proposed rulemakings for CUACs and CWAFs or equivalent must be available and timely.

B. Formation of Working Group

A working group will be formed and operated in full compliance with the requirements of FACA and in a manner consistent with the requirements of the NRA. DOE has determined that the working group shall not exceed 25 members. The Department believes that more than 25 members would make it difficult to conduct effective negotiations. DOE is aware that there are many more potential participants than there are membership slots on the working group. The Department does not believe, nor does the NRA contemplate, that the 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. To provide adequate representation, those coalitions must agree to support, both financially and technically, a member of the working group whom they choose to represent.

DOE recognizes that when it establishes energy conservation standards for consumer products and commercial equipment, various segments of society may be affected in different ways, in some cases producing unique “interests” in a rulemaking based on income, gender, or other factors. The Department will pay attention to providing that any unique interests that have been identified, and that may be significantly affected by the rulemaking, are represented.

FACA also requires that members of the public have the opportunity to attend meetings of the full committee and speak or otherwise address the committee during the public comment period. In addition, any member of the public is permitted to file a written statement with the advisory committee. DOE plans to follow these same procedures in conducting meetings of the working group.

C. Interests Involved/Working Group Membership

DOE anticipates that the working group will comprise no more than 25 members who represent affected and interested stakeholder groups, at least one of whom must be a member of the ASRAC. As required by FACA, the Department will conduct the negotiated rulemaking with particular attention to ensuring full and balanced representation of those interests that may be significantly affected by the rulemaking for energy conservation standards regarding CUACs and CWAFs. 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 the Department to date has identified as being “significantly affected” by a rulemaking regarding the energy conservation standards regarding CUACs and CWAFs.

- The U.S. Department of Energy
- Trade Associations representing manufacturers of CUACs and CWAF;
- Utilities
- Energy Efficiency/Environmental Advocacy Groups
- Consumers

One purpose of this notice of intent is to determine whether Federal regulations regarding CUACs and CWAFs energy conservation standards will significantly affect interests that are not listed above. DOE invites comment and suggestions on its initial list of significantly affected interests.

Members may be individuals or organizations. If the effort is to be fruitful, participants on the working group should be able to fully and adequately represent the viewpoints of their respective interests. This document gives notice of DOE’s process to other potential participants and affords them the opportunity to request representation in the negotiations. Those who wish to be appointed as members of the CUACs and CWAF Working Group, should submit a request to DOE, in accordance with the public participation procedures outlined in the DATES and ADDRESSES sections of this notice of intent. Membership of the working group is likely to involve:

- Attendance at approximately six, one (1) to two (2) day meetings;
- Travel costs to those meetings; and
- Preparation time for those meetings.

Members serving on the working group will not receive compensation for their services. Interested parties who are not selected for membership on the working group may make valuable contributions to this negotiated rulemaking effort in any of the following ways:

- The person may request to be placed on the working group mailing list and submit written comments as appropriate.
- The person may attend working group meetings, which are open to the public; caucus with his or her interest’s member on the working group; or even address the working group during the public comment portion of the working group meeting.
- The person could assist the efforts of a workgroup that the working group might establish.

A working group may establish informal workgroups, which usually are asked to facilitate committee deliberations by assisting with various technical matters (e.g., researching or preparing summaries of the technical literature or comments on specific matters such as economic issues). Workgroups also might assist in estimating costs or drafting regulatory text on issues associated with the analysis of the costs and benefits addressed, or formulating drafts of the various provisions and their justifications as previously developed by the working group. Given their support 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 support work for the working group, DOE will provide appropriate technical expertise for such workgroups.

D. Good Faith Negotiation

Every working group member must be willing to negotiate in good faith and have the authority, granted by 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 designate as its representative a person having the credibility and authority to ensure that needed information is provided and decisions are made in a timely fashion. Negotiated rulemaking can require the appointed members to give a significant sustained time commitment for as long as the duration of the negotiated rulemaking. Other qualities of members that can be 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, as opposed to 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 some of the positions often taken in a more traditional rulemaking process, and instead explore openly with other parties all ideas that may emerge from the working group’s discussions.

E. Facilitator

The facilitator will act as a neutral in the substantive development of the proposed standard. Rather, the facilitator’s role generally includes:

- Impartially assisting the members of the working group in conducting discussions and negotiations; and
- Impartially assisting in performing the duties of the Designated Federal Official under FACA.

F. Department Representative

The DOE representative will be a full and active participant in the consensus building negotiations. The Department’s representative will meet regularly with senior Department officials, briefing them on the negotiations and receiving their suggestions and advice so that he or she can effectively represent the Department’s views regarding the issues before the working group. DOE’s representative also will ensure that the entire spectrum of governmental interests affected by the standards rulemaking, including the Office of Management and Budget, the Attorney General, and other Departmental offices, are kept informed of the negotiations and encouraged to make their concerns known in a timely fashion.

G. Working Group and Schedule

After evaluating the comments submitted in response to this notice of intent and the requests for nominations, DOE will either inform the members of the working group that they have been selected or determine that conducting a negotiated rulemaking is inappropriate.

The working group is expected to negotiate a final term sheet by Monday, June 15, 2015. The final term sheet will be presented to ASRAC at an open meeting for their deliberation and decision on whether or not to pass it on for DOE's approval. DOE will allow, as time permits, other participants to comment briefly on any general statements.

VI. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this notice of intent.

Issued in Washington, DC, on March 24, 2015.

Kathleen B. Hogan,
Deputy Assistant Secretary for Energy Efficiency and Renewable Energy.

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