

This document, concerning Notice of Intent to Form the Commercial HVAC, WH, and Refrigeration Certification Working Group and Solicit Nominations to Negotiate Commercial Certification Requirements for Commercial HVAC, WH, and Refrigeration Equipment, is a rulemaking action issued by the Department of Energy. Though it is not intended or expected, should any discrepancy occur between the document posted here and the document published in the *Federal Register*, the *Federal Register* publication controls. This document is being made available through the Internet solely as a means to facilitate the public's access to this document.

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DEPARTMENT OF ENERGY

10 CFR Part 429

Notice of Intent to Form the Commercial HVAC, WH, and Refrigeration Certification Working Group and Solicit Nominations to Negotiate Commercial Certification Requirements for Commercial HVAC, WH, and Refrigeration Equipment.

AGENCY: Office of Energy Efficiency and Renewable Energy, U.S. Department of Energy.

ACTION: Notice of intent.

SUMMARY: The U.S. Department of Energy (DOE or the Department) is giving notice that the Appliance Standards and Rulemaking Federal Advisory Committee (ASRAC) intends to establish a working group in accordance with the Federal Advisory Committee Act (FACA) and the Negotiated Rulemaking Act (NRA) to negotiate certification requirements of commercial heating, ventilation, and air-conditioning (HVAC), water heating (WH), and refrigeration equipment. The purpose of the working group will be to discuss and, if possible, reach consensus on proposed certification requirements for commercial HVAC, WH, and refrigeration equipment, as authorized by the Energy Policy and Conservation Act of 1975, as amended. The working group members will be representatives of parties having a defined stake in the outcome of the proposed certification requirements, and will consult with a range of experts on technical issues.

DATES: Nominations of membership must be received on or before **[INSERT DATE 14 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. DOE will not consider any nominations received via mail or after midnight on **[INSERT DATE 14 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]** to be valid.

ADDRESSES: The nominee’s name, resume, biography, and any letters of support must be submitted in electronic format via email to asrac@ee.doe.gov. Any requests for further information should also be sent via email to asrac@ee.doe.gov.

FOR FURTHER INFORMATION CONTACT: John Cymbalsky, ASRAC Designated Federal Officer, U.S. Department of Energy (DOE), Office of Energy Efficiency and Renewable Energy, 950 L’Enfant Plaza, S.W., Washington, DC 20024. Email: asrac@ee.doe.gov.

SUPPLEMENTARY INFORMATION:

- I. Authority
- II. Background
- III. Proposed Negotiating Procedures
- IV. Nominations Requested
- V. Approval of the Office of the Secretary

I. Authority

Title III of the Energy Policy and Conservation Act of 1975, as amended (“EPCA” or “the Act”) sets forth a variety of provisions designed to improve energy efficiency. Part A of Title III

(42 U.S.C. 6291–6309) provides for the Energy Conservation Program for Consumer Products Other Than Automobiles. The National Energy Conservation Policy Act (NECPA), Public Law 95–619, amended EPCA to add Part A–1 of Title III, which established an energy conservation program for certain industrial equipment. (42 U.S.C. 6311–6317) Sections 6299–6305, and 6316 of EPCA authorize DOE to enforce compliance with the energy and water conservation standards (all non-product specific references herein referring to energy use and consumption include water use and consumption; all references to energy efficiency include water efficiency) established for certain consumer products and commercial equipment. (42 U.S.C. 6299–6305 (consumer products), 6316 (commercial equipment)) DOE has promulgated enforcement regulations that include specific certification and compliance requirements. See 10 CFR part 429; 10 CFR part 431, subparts B, U, and V.

This notice announces DOE’s and the ASRAC’s intent to negotiate certification requirements of commercial heating, ventilation, and air-conditioning (HVAC), water heating (WH), and refrigeration equipment under the authority of sections 563 and 564 of the NRA (5 U.S.C. 561–570, Pub. L. 104–320).

II. Background

On March 7, 2011, DOE published a final rule in the Federal Register that, among other things, modified the requirements regarding manufacturer submission of compliance statements and certification reports to DOE (March 2011 Final Rule). 76 FR 12421. This rule, among other things, imposed new or revised reporting requirements for some types of covered products and equipment, including a requirement that manufacturers submit annual reports to the Department

certifying compliance of their basic models with applicable standards. In issuing the rule, the Department emphasized that manufacturers could use their discretion in grouping individual models as a “basic model” such that the certified rating for the basic model matched the represented rating for all included models. See 76 FR 12428-12429 for more information.

In response to the initial deadline for certifying compliance imposed on commercial HVAC, WH, and refrigeration equipment manufacturers by the March 2011 Final Rule, certain manufacturers of particular types of commercial and industrial equipment stated that, for a variety of reasons, they would be unable to meet that deadline. DOE initially extended the deadline for certifications for commercial HVAC, WH, and refrigeration equipment in a final rule published June 30, 2011 (June 30 Final Rule). 76 FR 38287 (June 30, 2011). DOE subsequently extended the compliance date for certification an additional 12 months to December 31, 2013, for these types of equipment (December 2012 final rule) to allow, among other things, the Department to explore the negotiated rulemaking process for this equipment. 77 FR 72763.

In the summer of 2012, DOE had an independent convenor evaluate the likelihood of success, analyzing the feasibility of developing certification requirements for commercial HVAC, WH, and refrigeration equipment (not including walk-in coolers and freezers) through consensus-based negotiations among affected parties. October 2012, the convenor issued his report based on a confidential interview process involving forty (40) parties. from a wide range of commercial HVAC, WH, and CRE interests. Ultimately, the convenor recommended that with the proper scope of issues on the table surrounding commercial HVAC, WH, and CRE certification, a

negotiated rulemaking appears to have a good likelihood of achieving consensus based on the factors set forth in the Negotiated Rulemaking Act because the interviewed parties believe the negotiated rulemaking is superior to notice and comment rulemaking for the certification-related issues. Additional details of the report can be found at https://www1.eere.energy.gov/buildings/appliance_standards/pdfs/convening_report_hvac_cre_1.pdf.

III. Proposed Negotiating Procedures

A. Key Issues for Negotiation

DOE has identified the following substantive issues that will underlie the work of the Commercial HVAC, WH, and Refrigeration Certification Working Group:

- Strategies for grouping models for purposes of certification;
- Identification of non-efficiency attributes, which do not impact the measured consumption of the equipment as tested by DOE's test procedure;
- The information that is certified to the Department;
- The timing of when the certification should be made relative to distribution in commerce;
- and
- Alterations to a basic model that would impact the certification.

The formed working group will examine the underlying issues outlined above, and possibly others not yet articulated as determined through the negotiated rulemaking process. As voted on by ASRAC, the working group will be required to provide a progress report to ASRAC on its efforts by Wednesday, June 26, 2013, and report back to the Committee with final

recommendations by Friday, August 30, 2013.

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. In accordance with NRA, DOE has determined that the working group not exceed 25 members. 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 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 their interests.

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, two of whom will be members of ASRAC – John Mandyck and Kent Peterson. Additionally, in accordance with NRA, one seat on the working

group will be reserved for a DOE representative to represent the views of the Department. 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 certification requirements of commercial HVAC, WH, and refrigeration equipment.

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 working group, including those that have been tentatively identified by DOE in this notice of intent, 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 of multiple, 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 several 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 task force that the working group might establish.

A working group may establish informal task forces, 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). Task forces 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, task forces 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 task forces.

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 therefore 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 amount of time, which must be sustained 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. 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 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 inform the members of the working group that they have been selected. DOE and ASRAC plan for the working group to have its first meeting in April 2013 and have determined a need for an update from the working group on negotiation efforts by Wednesday, June 26, 2013, and final recommendations to ASRAC by Friday, August 30, 2013.

At the initial working group meeting, DOE and ASRAC representatives on the working group will advise working group members of administrative matters related to the functions of the working group, lay out the working group's scope, and confirm deadlines. Given the outlined scope and established deadlines, the working group will develop a work plan to accomplish the proposed objectives. While the negotiated rulemaking process is underway, DOE is committed to performing much of the same analysis as it would during a normal process and

to providing information and technical support to the working group.

IV. Nominations Requested

DOE requests nominations of which parties should be included in a negotiation efforts of certification requirements of commercial HVAC, WH, and refrigeration equipment and suggestions of additional interests and/ or stakeholders that should be represented on the working group. Please include the nominee's name, contact information, resume, biography, and any letters of support. Nominations must be submitted in electronic format via email to asrac@ee.doe.gov.

V. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of today's notice of proposed rulemaking. Issued in Washington, DC, on March 5, 2013.



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