Proposed Rules

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF ENERGY

10 CFR Part 431

Appliance Standards and Rulemaking Federal Advisory Committee: Notification of Intent To Establish a Working Group for Variable Refrigerant Flow Multi-Split Air Conditioners and Heat Pumps To Negotiate a Notice of Proposed Rulemaking for Test Procedures and Energy Conservation Standards


ACTION: Notification of intent and solicitation of nominations for membership.

SUMMARY: The U.S. Department of Energy (DOE or the Department) is giving notice that DOE 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 proposed test procedures and amended energy conservation standards for variable refrigerant flow multi-split air conditioners and heat pumps (VRF multi-split systems). The purpose of the working group will be to discuss and, if possible, reach consensus on a proposed rule regarding test procedures and energy conservation standards for VRF multi-split systems, 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 proposed standards and/or test procedure, and will consult as appropriate with a range of experts on technical issues. DOE is hereby soliciting nominations for members of the VRF multi-split systems working group. Application packages should be submitted to DOE by April 26, 2018.

DATES: Nominations of membership must be received on or before April 26, 2018. DOE will not consider any nominations received via mail or after midnight on April 26, 2018.

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.


SUPPLEMENTARY INFORMATION:

Preamble

I. Authority

DOE is announcing its intent to negotiate proposed test procedures and amended energy conservation standards for VRF multi-split systems under the authority of sections 563 and 564 of the NRA (5 U.S.C. 561–570, Pub. L. 104–320). The regulation of VRF multi-split systems standards that DOE is proposing to develop under a negotiated rulemaking will be developed under the authority of EPCA, as amended, 42 U.S.C. 6311(1) and 42 U.S.C. 6291 et seq.

II. Background

On January 10, 2018, the ASRAC met and made a recommendation to form a VRF multi-split systems subcommittee to meet, discuss, and, if possible, reach consensus on a proposed rule for the test procedures and energy efficiency standards for VRFs. For purposes of this document, the ASRAC subcommittee at issue will be referred to as the “working group.” As required by the NRA, DOE is giving notice that it is establishing a working group under ASRAC to discuss proposed amended test procedures and energy efficiency requirements for VRF multi-split systems. The working group will be established and function as a subcommittee of ASRAC in accordance with the provisions of the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C., App. 2.

A. Negotiated Rulemaking

DOE is supporting the use of the negotiated rulemaking process to discuss and develop proposed test procedures and amended energy conservation standards for VRF multi-split systems. The primary reason for using the negotiated rulemaking process for this equipment is that stakeholders strongly support a consensual rulemaking effort. DOE believes such a regulatory negotiation process will be less adversarial and better suited to resolving complex technical issues. An important virtue of negotiated rulemaking is that it allows expert dialog that is much better than traditional techniques at getting the facts and issues right and will result in a proposed rule that will effectively reflect Congressional intent.

A regulatory negotiation will enable DOE to engage in direct and sustained dialog with informed, interested, and affected parties when drafting the regulation, rather than obtaining input during a public comment period after developing and publishing a proposed rule. A rule drafted by negotiation with informed and affected parties is expected to be potentially more pragmatic and more easily implemented than a rule arising from the traditional process. Such rulemaking improvement is likely to provide the public with the full benefits of the rule while minimizing the potential negative impact of a proposed regulation conceived or drafted without the full prior input of outside knowledgeable parties. Because a negotiating working group includes representatives from the major stakeholder groups, including consumers, affected by or interested in the rule, the number of public comments on the proposed rule may be decreased. DOE anticipates that there will be a need for fewer substantive changes to a proposed rule developed under a regulatory negotiation process prior to the publication of a final rule.

B. The Concept of Negotiated Rulemaking

Usually, DOE develops a proposed rulemaking using Department staff and consultant resources. Congress noted in the NRA, however, that regulatory development 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.” (5 U.S.C. 561(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.” (5 U.S.C. 561(2)(3))

Using negotiated rulemaking to develop a proposed rule differs fundamentally from the Department centered process. In negotiated rulemaking, a proposed rule is developed by an advisory committee or a working group established by the advisory committee, composed of members chosen to represent the various interests that will be significantly affected by the rule. The goal of the advisory committee or its working group is to reach consensus on the treatment of the major issues involved with the rule. The process starts with the Department’s careful identification of all interests potentially affected by the rulemaking under consideration. To help with this identification, the Department publishes a notification of intent such as this one in the Federal Register, identifying a preliminary list of interested parties and requesting public comment on that list. Following receipt of comments, the Department establishes an advisory committee or advisory committee working group representing the full range of stakeholders to negotiate a consensus on the terms of a proposed rule. Representation on the advisory committee or its working group may be direct; that is, each member may represent a specific interest, or may be indirect, such as through trade associations and/or similarly-situated parties with common interests. The Department especially seeks membership from consumers or consumer groups that will be impacted by any potential energy conservation standard. The Department is a member of the advisory committee or working group and represents the Federal government’s interests. The advisory committee or working group chair is assisted by a neutral mediator who facilitates the negotiation process. The role of the mediator, also called a facilitator, is to apply proven consensus-building techniques to the advisory committee or working group process.

E. Negotiating Consensus

As discussed, the negotiated rulemaking process differs fundamentally from the usual process for developing a proposed rule. 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 advisory committee or its working group itself unanimously agrees to use a different definition. 5 U.S.C. 562.
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 Variable Refrigerant Flow Multi-Split Systems Energy Conservation Standards:

- Test procedures for VRF multi-split systems; and
- Energy Conservation Standards for VRF multi-split systems.

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. Prior to the commencement of the working group, DOE expects to publish a notice of data availability (NODA) which discusses the results of DOE’s analysis of the energy savings potential of amended energy conservation standards for VRF multi-split systems. DOE also expects to publish a technical support document and analytical tools along with the NODA. Working Group members should review the associated materials before each meeting.

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 may be 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. DOE is especially interested in representation by consumers of VRF multi-split systems since any potential energy conservation standard may impact this stakeholder group. Consumers of VRFs may include, but are not limited to, commercial building owners, commercial heating, ventilation, and air-conditioning architects, or commercial building tenants that pay utility bills. DOE recognizes that when it establishes energy efficiency standards and test procedures for residential products and commercial equipment, various segments of society may be affected in different ways, in some cases producing unique “interests” in a proposed rule 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 proposed rule, are represented. Per the ASRAC charter, the Assistant Secretary for Energy Efficiency and Renewable Energy or his designee, in consultation with the ASRAC Chair, appoints ASRAC subcommittee (working group) chairs.

One purpose of this notification of intent is to determine whether Federal regulations for VRF multi-split systems will significantly affect interests that are not listed above. DOE invites comment and suggestions on its initial list of significantly affected interests and encourages all interested parties and stakeholders to apply for the working group. 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 nominate members to the working group, should submit an application package to DOE in accordance with the public participation procedures outlined in the DATES and ADDRESSES sections of this notification of intent. Qualified individuals can self-nominate or be nominated by any individual or organization. Nominators shall submit an application package which includes:

- The nominee’s current resume or curriculum vitae and contact information, including mailing address, email address, and telephone number;
- A letter of interest, which includes:
  - A summary of how the nominee’s experience and expertise would support the working group’s objectives;
  - The interest the nominee would represent in the working group; and
  - A description of other assets (such as data or modeling tools) the nominee could provide to support the working group’s objectives.

Membership of the working group is likely to include:

- Attendance (in person preferable) at approximately ten (10), one (1)– to two (2)–day meetings (with the potential for two (2) additional one (1)– or two (2)–
- day meetings);
or coalition therefore should designate an individual to be a member of the
working group. DOE will provide appropriate technical expertise for these
workgroups. Workgroups might assist in preparing summaries of the technical
work product and/or recommendations 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
discussed, 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. Such workgroups will provide their work product and/or recommendations
only to the working group.

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
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, familiarity with using VRF multi-split systems as a
consumer, and/or sufficient technical knowledge to participate in substantive
negotiations.