

PART 418—RECALLS

Sec.

418.1 [Reserved]

418.2 Notification.

418.3 Preparation and maintenance of current, written recall procedures.

418.4 Records.

Authority: 7 U.S.C. 450; 21 U.S.C. 451–470, 601–695; 7 CFR 2.18, 2.53.

§ 418.1 [Reserved]**§ 418.2 Notification.**

Each official establishment shall promptly notify the local FSIS District Office (*see* 9 CFR 300.3(c)) within 48 hours of learning or determining that an adulterated or misbranded meat, meat food, poultry, or poultry product received by or originating from the official establishment has entered commerce, if the official establishment believes or has reason to believe that this has happened. The official establishment shall inform the District Office of the type, amount, origin, and destination of the adulterated or misbranded product.

§ 418.3 Preparation and maintenance of current, written recall procedures.

Each official establishment shall prepare and maintain written procedures for the recall of any meat, meat food, poultry, and poultry product produced and shipped by the official establishment for use should it become necessary for the official establishment to remove product from commerce. These written procedures shall specify how the official establishment will decide whether to conduct a product recall, and how the establishment will effect the recall, should it decide that one is necessary.

§ 418.4 Records.

All records, including records documenting procedures required by this part, shall be available for official review and copying.

Done in Washington, DC, on March 19, 2010.

Alfred V. Almanza,
Administrator.

[FR Doc. 2010–6629 Filed 3–24–10; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF ENERGY**10 CFR Part 431****[Docket No. EERE–2008–BT–STD–0006]****RIN 1904–AB47****Energy Conservation Standards for Residential Central Air Conditioners and Heat Pumps: Public Meeting and Availability of the Preliminary Technical Support Document**

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

ACTION: Notice of public meeting and availability of preliminary technical support document.

SUMMARY: The U.S. Department of Energy (DOE) will hold a public meeting to discuss and receive comments on the product classes that DOE plans to analyze for purposes of establishing energy conservation standards for residential central air conditioners and heat pumps; the analytical framework, models, and tools that DOE is using to evaluate amended standards for these products; the results of preliminary analyses performed by DOE for these products; and potential energy conservation standard levels derived from these analyses that DOE could consider for these products. DOE also encourages written comments on these subjects. DOE has prepared a preliminary technical support document (TSD), which is available at:

http://www1.eere.energy.gov/buildings/appliance_standards/residential/central_ac_hp.html.

DATES: DOE will hold a public meeting on Wednesday, May 5, 2010, from 9 a.m. to 5 p.m. in Washington, DC. Any person requesting to speak at the public meeting should submit such request, along with an electronic copy of the statement to be given at the public meeting, before 4 p.m., Wednesday, April 21, 2010. Written comments are welcome, especially following the public meeting, and should be submitted by May 10, 2010.

ADDRESSES: The public meeting held at the U.S. Department of Energy, Forrestal Building, Room GE–086, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Please note that foreign nationals participating in the public meeting are subject to advance security screening procedures. If a foreign national wishes to participate in the public meeting, please inform DOE of this fact as soon as possible by contacting Ms. Brenda Edwards at (202) 586–2945 so that the necessary procedures can be completed.

Interested persons may submit comments, identified by docket number EERE–2008–BT–STD–0006, by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov> Follow the instructions for submitting comments.

- *E-mail:*

Brenda.Edwards@ee.doe.gov Include EERE–2008–BT–STD–0006 in the subject line of the message.

- *Postal Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, Public Meeting for Residential Central Air Conditioners and Heat Pumps, EERE–2008–BT–STD–0006, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Telephone (202) 586–2945. Please submit one signed paper original.

- *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Sixth Floor, 950 L'Enfant Plaza, SW., Washington, DC 20024. Telephone (202) 586–2945. Please submit one signed paper original.

Instructions: All submissions must include the agency name and docket number.

Docket: For access to the docket to read background documents or a copy of the transcript of the public meeting or comments received, go to the U.S. Department of Energy, Sixth Floor, 950 L'Enfant Plaza, SW., Washington, DC 20024, (202) 586–2945, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Please call Ms. Brenda Edwards at (202) 586–2945 for additional information regarding visiting the Resource Room.

FOR FURTHER INFORMATION CONTACT:

Direct requests for additional information to Mr. Wes Anderson, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies, EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121, (202) 586–7335. E-mail:

Wes.Anderson@ee.doe.gov. In the Office of General Counsel, contact Ms. Elizabeth Kohl, U.S. Department of Energy, Office of General Counsel, GC–71, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–7796. E-mail: *Elizabeth.Kohl@hq.doe.gov*.

SUPPLEMENTARY INFORMATION:**A. Statutory Authority**

Part A of Title III of the Energy Policy and Conservation Act (42 U.S.C. 6291 *et seq.*) (EPCA) established the Energy Conservation Program for Consumer Products Other than Automobiles. Amendments expanded Title III of

EPCA to include certain commercial and industrial equipment, including residential central air conditioners and heat pumps. (42 U.S.C. 6292(3)) In particular, the Energy Policy Act of 1992, Pub. L. 102–486 amended EPCA to direct DOE to prescribe energy conservation standards for those residential central air conditioners and heat pumps for which the Secretary determines that standards “would be technologically feasible and economically justified, and would result in significant energy savings.” (42 U.S.C. 6295(o)(2)(A), (o)(3))

DOE must design each standard for these products to: (1) Achieve the maximum improvement in energy efficiency that is technologically feasible and economically justified, and (2) result in significant conservation of energy. (42 U.S.C. 6295(o)(2)(A)) To determine whether a proposed standard is economically justified, DOE must, after receiving comments on the proposed standard, determine whether the benefits of the standard exceed its burdens to the greatest extent practicable, considering the following seven factors:

1. The economic impact of the standard on manufacturers and consumers of products subject to the standard;
2. The savings in operating costs throughout the estimated average life of the covered products in the type (or class) compared to any increase in the price, initial charges, or maintenance expenses for the covered products which are likely to result from the imposition of the standard;
3. The total projected amount of energy savings likely to result directly from the imposition of the standard;
4. Any lessening of the utility or the performance of the covered products likely to result from the imposition of the standard;
5. The impact of any lessening of competition, as determined in writing by the Attorney General, that is likely to result from the imposition of the standard;
6. The need for national energy conservation; and
7. Other factors the Secretary [of Energy] considers relevant.

(42 U.S.C. 6295(o)(2)(B)(i))

Prior to proposing a standard, DOE typically seeks public input on the analytical framework, models, and tools that will be used to evaluate standards; the results of preliminary analyses; and potential energy conservation standard levels derived from these analyses. DOE is publishing this document to announce the availability of the

preliminary TSD, which details the preliminary analyses, discusses the comments on the framework document, and summarizes the preliminary results. In addition, DOE is announcing a public meeting to solicit feedback from interested parties on its analytical framework, models, and preliminary results.

B. History of Standards Rulemaking for Residential Central Air Conditioners and Heat Pumps

1. Background

Part A of Title III of the Energy Policy and Conservation Act of 1975 (EPCA), Pub. L. 94163, as amended, created the “Energy Conservation Program for Consumer Products Other Than Automobiles.” (42 U.S.C. 6291–6309) This program includes residential central air conditioners and central air-conditioning heat pumps (hereafter referred to as central air conditioners and heat pumps). (42 U.S.C. 6292(3))

The National Appliance Energy Conservation Act of 1987 (NAECA), Pub. L. 100–12, established energy conservation standards for central air conditioners and heat pumps as well as requirements for determining whether these standards should be amended. Specifically, NAECA established energy conservation standards for central air conditioners and heat pumps in the form of minimum limits on the seasonal energy efficiency ratio (SEER) for air conditioners and for heat pumps operating in the cooling mode, and on the heating seasonal performance factor (HSPF) for heat pumps operating in the heating mode. (42 U.S.C. 6291(22)(C), 6295(d)) NAECA established the following standards for central air conditioners and heat pumps: 10.0 SEER/6.8 HSPF for split systems, and 9.7 SEER/6.6 HSPF for single-package systems. “Split systems” consist of outdoor and indoor units which are “split” from each other and connected via refrigerant tubing. The outdoor unit resides outdoors and consists of a compressor, heat exchanger coil, fan, and fan motor. The indoor unit, consisting of a heat exchanger coil, resides either within a furnace or blower-coil unit, and conditioned air is conveyed to the home via ducts. In “single-package systems,” all the components that comprise a split system, including the air circulation products, are placed in a single cabinet. The single-package system resides outdoors, and conditioned air is conveyed to the home via ducts. These standards became effective January 1, 1992 for split systems; standards for single-package systems came into effect

one year later. (42 U.S.C. 6295(d)(1), (d)(2)). NAECA also required that DOE conduct two cycles of rulemakings to determine if more stringent standards are economically justified and technologically feasible. (42 U.S.C. 6295(d)(3))

Pursuant to 42 U.S.C. 6295(d)(3)(A), DOE published a final rule in the **Federal Register** on January 22, 2001 (2001 final rule), amending the energy conservation standards for central air conditioners and heat pumps. 66 FR 7170. The amended standards would have increased the minimum SEER to 13 for all central air conditioners and heat pumps, with a corresponding HSPF of 7.7. *Id.*

Shortly after the publication of the 2001 final rule, DOE postponed the effective date of the rule to reconsider the amended standards for central air conditioners and heat pumps. DOE then promulgated a 12 SEER and 7.4 HSPF standard in a final rule published May 23, 2002, 67 FR 36368. The U.S. Court of Appeals for the Second Circuit, however, ruled that DOE had promulgated the 2002 final rule improperly. *Natural Resources Defense Council v. Abraham*, 355 F.3d 179 (2d Cir. 2004). As a result, DOE published a final rule on August 17, 2004, which established a 13 SEER standard for all central air conditioners and heat pumps, excluding through-the-wall and space-constrained systems. 69 FR 50997. This final rule constituted the first cycle of revised standards for central air conditioners and heat pumps.

In separate court proceedings (*New York versus Bodman*, No. 05 Civ. 7807 (S.D.N.Y. filed Sept. 7, 2005) and *Natural Resources Defense Council versus Bodman*, No. 05 Civ. 7808 (S.D.N.Y. filed Sept. 7, 2005) the resulting consent decree (filed November 6, 2006) adopted the schedule for central air conditioners and heat pumps that DOE published in its January 2006 report to Congress, requiring DOE to publish a final rule by June 30, 2011, with a compliance date of June 30, 2016. This final rule would constitute the second cycle of revised standards for central air conditioners and heat pumps.

More recently, EPCA was amended by the Energy Independence and Security Act of 2007 (EISA 2007), Pub. L. 110140. In Section 306 of EISA 2007, Congress directed DOE to: (1) Amend test procedures for all covered products (including central air conditioners and heat pumps) to include standby-mode and off-mode energy consumption unless current test procedures already fully account for an incorporate standby mode and off mode energy consumption

or an integrated test procedure is technically infeasible, in which case DOE must prescribe a separate standby mode and off mode energy use test procedure, if technically feasible (42 U.S.C. 6295(gg)(2); and (2) incorporate standby mode and off mode energy use into any new or amended standard published after July 1, 2010. (42 U.S.C. 6295(gg)(3)) Because this energy conservation standards rulemaking for central air conditioners and heat pumps will be completed in 2011, the requirement to incorporate standby-mode and off-mode energy use into the energy conservation standards analysis applies.

2. Current Rulemaking Process

DOE prepared and published a notice announcing the availability of the framework document, "Energy Conservation Standards Rulemaking Framework Document for Residential Central Air Conditioners and Heat Pumps," and a public meeting to discuss the proposed analytical framework for the rulemaking. 73 FR 32243 (June 6, 2008). DOE also posted the framework document on its Web site describing the procedural and analytical approaches DOE anticipated using to evaluate the establishment of energy conservation standards for central air conditioners and heat pumps. This document is available at: http://www1.eere.energy.gov/buildings/appliance_standards/residential/pdfs/cac_framework.pdf. DOE held a public meeting on June 12, 2008, to describe the various rulemaking analyses DOE would conduct, such as the engineering analysis, the life-cycle cost (LCC) and payback period (PBP) analyses, and the national impact analysis (NIA); the methods for conducting them; and the relationship among the various analyses. Manufacturers, trade associations, and environmental advocates attended the meeting. The participants discussed nine major issues: the scope of covered product classes, definitions, test procedures, DOE's engineering analysis, life-cycle costs, efficiency levels, regional standards, efficiency metrics, and energy savings.

DOE developed two spreadsheets for analyzing the economic impacts of standard levels—one that calculates LCC and PBP, and one that calculates national impacts.¹ DOE prepared an LCC and PBP spreadsheet that

calculates results for each of the representative units analyzed.

This spreadsheet includes product efficiency data that allows users to determine LCC savings and PBPs based on average values, and can also be combined with Crystal Ball (a commercially available software program) to generate a Monte Carlo simulation, incorporating uncertainty and variability considerations. The second economic spreadsheet calculates the impacts of candidate standard levels on shipments and the national energy savings (NES) and net present value (NPV) at various standard levels. There is one national impact analysis spreadsheet for all central air conditioners and heat pumps. DOE has posted both economic spreadsheets on its Web site for review and comment by interested parties.

Comments received since publication of the framework document have helped DOE identify and resolve issues involved in the preliminary analyses. Chapter 2 of the preliminary TSD, available at the Web link provided in the **SUMMARY** section of this notice, summarizes and addresses the comments received in response to the framework document.

C. Specific Issues for Which DOE Is Seeking Comment

DOE is specifically presenting two issues regarding the energy conservation standards rulemaking for residential central air conditioners and heat pumps in today's notice. There are additional issues presented throughout the preliminary TSD for which DOE is also seeking comment. DOE presents the analysis methodologies throughout the preliminary TSD and summarizes the issues for which DOE seeks comment at the end of the executive summary of the preliminary TSD.

1. Consensus Agreement

On January 26, 2010, the Air-Conditioning, Heating and Refrigeration Institute (AHRI), American Council for an Energy Efficient Economy (ACEEE), Alliance to Save Energy (ASE), Appliance Standards Awareness Project (ASAP), Natural Resources Defense Council (NRDC), and Northeast Energy Efficiency Partnerships (NEEP) submitted a joint comment (hereafter referred to as Joint Comment 5) to DOE recommending minimum energy conservation standards for residential central air conditioners, heat pumps, and furnaces. (AHRI, ACEEE, ASE, ASAP, NRDC, and NEEP, Joint Comment 5, No. #47 at pp. 1–33) The Joint Comment 5 stated the original consensus agreement was completed on

October 13, 2009 and had 15 signatories, including AHRI, ACEEE, ASE, NRDC, ASAP, NEEP, Northwest Power and Conservation Council (NPCC), California Energy Commission (CEC), Bard Manufacturing Company Inc., Carrier Residential and Light Commercial Systems, Goodman Global Inc., Lennox Residential, Mitsubishi Electric & Electronics USA, National Comfort Products, and Trane Residential.

The Joint Comment 5 recommends standards that divide the nation into three regions for residential central air conditioners and two regions for residential furnaces based on the population-weighted number of heating degree days (HDD) of each State. States with 5000 HDD or more are considered as part of the northern region, while States with less than 5000 HDD are considered part of the southern region. For residential central air conditioners, the Joint Comment 5 establishes a third region—the "southwest" region—which is comprised of California, Arizona, New Mexico, and Nevada. For furnaces, the southwest region States are included in the southern region. The compliance date specified in the agreement is May 1, 2013 for non-weatherized furnaces and January 1, 2015 for weatherized furnaces.

In addition to the preliminary TSD, DOE is making available on its Web site the Joint comment 5, which can be found: http://www1.eere.energy.gov/buildings/appliance_standards/residential/furnaces_boilers.html.

DOE specifically invites comment from interested parties on the Joint Comment 5. In particular, DOE is interested in comments relating to the proposed SEER, HSPF, and EER requirements, the proposed regional divisions, and the proposed compliance dates for residential central air conditioners and heat pumps.

2. Combined Rulemaking Approach

DOE is currently conducting or planning separate standards rulemakings for three interrelated products: (1) Central air conditioners and heat pumps; (2) gas furnaces; and (3) furnace fans. These rulemakings are subject to the following deadlines: (1) June 30, 2011 for residential central air conditioners and heat pumps, required by consent decree; (2) May 1, 2011 for furnaces, required as a condition of the remand of a November 2007 final rule amending the minimum energy conservation standards for gas furnaces; and (3) January 1, 2013 for furnace fans, required by amendments to EPCA in EISA 2007. (42 U.S.C. 6295(f)(4)(D))

¹ For the notice of proposed rulemaking, DOE will also develop an economic spreadsheet that will evaluate the financial impacts on central air conditioners and heat pump manufacturers that may result from a standard level.

Rather than analyze each set of products separately, DOE is considering combining the analyses to examine how the interaction between the three products impacts the cost to consumers and the energy savings resulting from potential amended standards. If DOE conducts such an analysis and the results indicate that a combined approach yields additional savings beyond what can be achieved by considering each product separately, DOE may decide to pursue a combined standards rulemaking that addresses all three products, or two of the three products (*i.e.*, central air conditioners and heat pumps and furnaces), simultaneously. If such a combined rulemaking is pursued, DOE would be required to publish the combined final rule by May 1, 2011 in order to comply with the conditions of the remand agreement for residential furnaces. DOE is seeking comment from interested parties relating to a combined rulemaking regarding energy conservation standards for residential central air conditioners and heat pumps, residential furnaces, and furnace fans.

D. Summary of the Analyses Performed by DOE

For central air conditioners and heat pumps currently under consideration, DOE conducted in-depth technical analyses in the following areas: (1) Engineering, (2) energy-use characterization, (3) markups to determine product price, (4) life-cycle cost and payback period, and (5) national impacts. These analyses resulted in a preliminary TSD that presents the methodology and results of each of these analyses. The preliminary TSD is available at the Web address given in the **SUMMARY** section of this notice. The analyses are described in more detail below.

DOE also conducted several other analyses that either support the five major analyses or are preliminary analyses that will be expanded in the notice of proposed rulemaking (NOPR).² These analyses include the market and technology assessment, the screening analysis, which contributes to the engineering analysis, and the shipments analysis, which contributes to the NIA. In addition to these analyses, DOE has begun some preliminary work on the

manufacturer impact analysis and identified the methods to be used for the LCC subgroup analysis, the environmental assessment, the employment analysis, the regulatory impact analysis, and the utility impact analysis. DOE will expand on these analyses in the NOPR.

Engineering Analysis

The engineering analysis establishes the relationship between the manufacturer selling price and efficiency of a product DOE is evaluating for energy conservation standards. This relationship serves as the basis for cost-benefit calculations for individual consumers, manufacturers, and the nation. The engineering analysis identifies a representative baseline product, which is the starting point for analyzing technologies that provide energy efficiency improvements. Baseline product refers to a model or models having features and technologies typically found in the minimum efficiency products currently offered for sale. The baseline model in each product class represents the characteristics of certain central air conditioners and heat pumps. After identifying the baseline models, DOE estimated manufacturer selling prices by using a consistent methodology and pricing scheme including material and labor costs, and manufacturer's markups. In this way, DOE developed "manufacturer selling prices" for the baseline and more efficient motor designs. Later, in its Markups to Determine Installed Price analysis, DOE converts these manufacturer selling prices into installed prices. In the preliminary TSD, section 2.4 of chapter 2 and chapter 5 each provide detail on the engineering analysis and the derivation of the manufacturer selling prices.

Markups To Determine Installed Price

DOE derives the installed prices for products based on manufacturer markups, retailer markups, distributor markups, contractor markups, builder markups, and sales taxes. In deriving these markups, DOE has determined the distribution channels for product sales, the markup associated with each party in the distribution channels, and the existence and magnitude of differences between markups for baseline products (baseline markups) and for more-efficient products (incremental markups). DOE calculates both overall baseline and overall incremental markups based on the product markups at each step in the distribution channel. The overall incremental markup relates the change in the manufacturer sales

price of higher efficiency models (the incremental cost increase) to the change in the retailer or distributor sales price. In the preliminary TSD, section 2.5 of chapter 2 and chapter 6 each provide detail on the estimation of markups.

Energy Use Characterization

The energy use characterization provides estimates of annual energy consumption for central air conditioners and heat pumps, which DOE uses in the LCC and PBP analyses and the NIA. DOE developed energy consumption estimates for all of the product classes analyzed in the engineering analysis, as the basis for its energy use estimates. In the preliminary TSD, section 2.6 of chapter 2 and chapter 7 each provide detail on the energy use characterization.

Life-Cycle Cost and Payback Period Analyses

The LCC and PBP analyses determine the economic impact of potential standards on individual consumers. The LCC is the total consumer expense for a product over the life of the product. The LCC analysis compares the LCCs of products designed to meet possible energy conservation standards with the LCCs of the products likely to be installed in the absence of standards. DOE determines LCCs by considering (1) total installed cost to the purchaser (which consists of manufacturer selling price, sales taxes, distribution chain markups, and installation cost); (2) the operating expenses of the products (energy use and maintenance); (3) product lifetime; and (4) a discount rate that reflects the real consumer cost of capital and puts the LCC in present-value terms. The PBP represents the number of years needed to recover the increase in purchase price (including installation cost) of more efficient products through savings in the operating cost of the product. It is the change in total installed cost due to increased efficiency divided by the change in annual operating cost from increased efficiency. In the preliminary TSD, section 2.7 of chapter 2 and chapter 8 each provide detail on the LCC and PBP analyses.

National Impact Analysis

The NIA estimates the NES and the NPV of total consumer costs and savings expected to result from new standards at specific efficiency levels (referred to as candidate standard levels). DOE calculated NES and NPV for each level for each candidate standard for central air conditioners and heat pumps as the difference between a base-case forecast (without new standards) and the

²For past rulemakings under EPCA section 325, DOE was required to issue an advanced notice of proposed rulemaking (ANOPR) following publication of the framework document. EISA 2007 eliminated this requirement. Given EISA 2007's revisions to EPCA, DOE is now using an alternative process to provide the same information and ability for public comment as the ANOPR, but without publication of analyses in the **Federal Register**.

standards case forecast (with standards). DOE determined national annual energy consumption by multiplying the number of units in use (by vintage) by the average unit energy consumption (also by vintage). Cumulative energy savings are the sum of the annual NES determined over a specified time period. The national NPV is the sum over time of the discounted net savings each year, which consists of the difference between total operating cost savings and increases in total installed costs. Critical inputs to this analysis include shipments projections, retirement rates (based on estimated product lifetimes), and estimates of changes in shipments and retirement rates in response to changes in product costs due to standards. In the preliminary TSD, section 2.8 of chapter 2 and chapter 10 each provide detail on the NIA.

DOE consulted with interested parties as part of its process for conducting all of the analyses and invites further input from the public on these topics. The preliminary analytical results are subject to revision following review and input from the public. A complete and revised TSD will be made available upon issuance of a NOPR. The final rule will contain the final analysis results and be accompanied by a final rule TSD.

DOE encourages those who wish to participate in the public meeting to obtain the preliminary TSD from DOE's Web site and to be prepared to discuss its contents. A copy of the preliminary TSD is available at the Web address given in the **SUMMARY** section of this notice. However, public meeting participants need not limit their comments to the topics identified in the preliminary TSD. DOE is also interested in receiving views concerning other relevant issues that participants believe would affect energy conservation standards for these products or that DOE should address in the NOPR.

Furthermore, DOE welcomes all interested parties, regardless of whether they participate in the public meeting, to submit in writing by May 10, 2010, comments and information on matters addressed in the preliminary TSD and on other matters relevant to consideration of standards for central air conditioners and heat pumps.

The public meeting will be conducted in an informal, conference style. A court reporter will be present to record the minutes of the meeting. There shall be no discussion of proprietary information, costs or prices, market shares, or other commercial matters regulated by United States antitrust laws.

After the public meeting and the expiration of the period for submitting

written statements, DOE will consider all comments and additional information that is obtained from interested parties or through further analyses, and it will prepare a NOPR. The NOPR will include proposed energy conservation standards for the products covered by the rulemaking, and members of the public will be given an opportunity to submit written and oral comments on the proposed standards.

Issued in Washington, DC, on February 22, 2010.

Cathy Zoi,

Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 2010-6595 Filed 3-24-10; 8:45 am]

BILLING CODE 6450-01-P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Parts 701, 723 and 742

RIN 3133-AD68

Fixed Assets, Member Business Loans, and Regulatory Flexibility Program

AGENCY: National Credit Union Administration (NCUA).

ACTION: Proposed rule with request for comments.

SUMMARY: NCUA proposes to revise certain provisions of its Regulatory Flexibility Program (RegFlex) to enhance safety and soundness for credit unions. Those provisions pertain to fixed assets, member business loans (MBL), stress testing of investments, and discretionary control of investments. Some of these revisions will require conforming amendments to NCUA's fixed assets and MBL rules.

DATES: Comments must be received on or before May 24, 2010.

ADDRESSES: You may submit comments by any of the following methods (*Please send comments by one method only*):

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *NCUA Web Site:* http://www.ncua.gov/RegulationsOpinionsLaws/proposed_regs/proposed_regs.html. Follow the instructions for submitting comments.

- *E-mail:* Address to regcomments@ncua.gov. Include "[Your name] Comments on Proposed Rule 742, Regulatory Flexibility Program" in the e-mail subject line.

- *Fax:* (703) 518-6319. Use the subject line described above for e-mail.

- *Mail:* Address to Mary Rupp, Secretary of the Board, National Credit

Union Administration, 1775 Duke Street, Alexandria, Virginia 22314-3428.

- *Hand Delivery/Courier:* Same as mail address.

Public Inspection: All public comments are available on the agency's website at <http://www.ncua.gov/RegulationsOpinionsLaws/comments> as submitted, except as may not be possible for technical reasons. Public comments will not be edited to remove any identifying or contact information. Paper copies of comments may be inspected in NCUA's law library at 1775 Duke Street, Alexandria, Virginia 22314, by appointment weekdays between 9 a.m. and 3 p.m. To make an appointment, call (703) 518-6546 or send an e-mail to OGCMail@ncua.gov.

FOR FURTHER INFORMATION CONTACT: Frank Kressman, Staff Attorney, Office of General Counsel, at the above address or telephone (703) 518-6540.

SUPPLEMENTARY INFORMATION:

A. Background—Regulatory Flexibility Program

The RegFlex Program exempts from certain regulatory restrictions and grants additional powers to those federal credit unions (FCUs) that have demonstrated sustained superior performance as measured by CAMEL ratings and net worth classifications. 12 CFR 742.1. An FCU may qualify for RegFlex treatment automatically or by application to the appropriate regional director. 12 CFR 742.2. Specifically, an FCU automatically qualifies when it has received a composite CAMEL rating of "1" or "2" for the two preceding examinations and has maintained a net worth classification of "well capitalized" under Part 702 of NCUA's rules for six consecutive preceding quarters or, if subject to a risk-based net worth (RBNW) requirement under Part 702, has remained "well capitalized" for six consecutive preceding quarters after applying the applicable RBNW requirement. An FCU that does not automatically qualify may apply for a RegFlex designation with the appropriate regional director. 12 CFR 742.2(a) and (b). An FCU's RegFlex authority can be lost or revoked. 12 CFR 742.3.

The NCUA Board established RegFlex in 2002. 66 FR 58656 (November 23, 2001). Since then, NCUA has amended RegFlex a number of times to increase available relief for FCUs from a variety of regulatory restrictions or lessen the criteria required for obtaining RegFlex status. 71 FR 4039 (January 25, 2006); 72 FR 30247 (May 31, 2007); 74 FR 13083 (March 26, 2009).