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**DEPARTMENT OF ENERGY**

**Office of Energy Efficiency and Renewable Energy**

**10 CFR Parts 429 and 430**

**[Docket No. EERE-2011-BT-CE-0077]**

**RIN: 1904- AC68**

**Energy Conservation Program: Enforcement of Regional Standards for Central Air Conditioners**

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

**ACTION:** Final rule.

**SUMMARY:** On November 19, 2015, the U.S. Department of Energy (DOE) issued a notice of proposed rulemaking (NOPR) to adopt requirements related to the enforcement of regional standards for central air conditioners, as authorized by the Energy Policy and Conservation Act (EPCA) of 1975. That proposed rulemaking serves as the basis for this final rule.

**DATES:** The effective date of this rule is **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].**

**ADDRESSES:** The docket, which includes Federal Register notices, public meeting attendee lists and transcripts, comments, and other supporting documents/materials, is available for review at regulations.gov. All documents in the docket are listed in the regulations.gov index.

However, some documents listed in the index, such as those containing information that is exempt from public disclosure, may not be publicly available.

The docket web page can be found at:

<https://www.regulations.gov/#!docketDetail;D=EERE-2011-BT-CE-0077>. This web page will contain a link to this final rule on the regulations.gov site. The regulations.gov web page will contain simple instructions on how to access all documents, including public comments, in the docket.

For further information on how to review the docket, contact Ms. Brenda Edwards at (202) 586-2945 or by email: [Brenda.Edwards@ee.doe.gov](mailto:Brenda.Edwards@ee.doe.gov).

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## **I. Authority and Background**

### A. Authority

Title III of the Energy Policy and Conservation Act of 1975, as amended (“EPCA” or, in context, “the Act”) sets forth a variety of provisions designed to improve energy efficiency.<sup>1</sup> Part A of Title III<sup>2</sup> (42 U.S.C. 6291–6309) establishes the “Energy Conservation Program for Consumer Products Other Than Automobiles.” These consumer products include central air conditioners, which are the subject of this rule.

Under EPCA, this program consists essentially of four parts: (1) testing; (2) labeling; (3) Federal energy conservation standards; and (4) certification and enforcement procedures.

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<sup>1</sup> All references to EPCA in this document refer to the statute as amended through the Energy Efficiency Improvement Act of 2015, Pub. L. 114-11 (Apr. 30, 2015).

<sup>2</sup> For editorial reasons, Part B was redesignated as Part A upon incorporation into the U.S. Code (42 U.S.C. 6291–6309, as codified).

The Federal Trade Commission (FTC) is primarily responsible for labeling consumer products, and DOE implements the remainder of the program.

Pursuant to EPCA, any new or amended energy conservation standards for covered consumer products must be designed to achieve the maximum improvement in energy efficiency that are technologically feasible and economically justified. (42 U.S.C. 6295(o)(2)(A)) Furthermore, the new or amended standard must result in significant conservation of energy. (42 U.S.C. 6295(o)(3)(B)) The Energy Independence and Security Act of 2007 (EISA 2007) amended EPCA to require that DOE consider regional standards for certain products if the regional standards can save significantly more energy than a national standard and are economically justified. (42 U.S.C. 6295(o)(6)(A)) Under EPCA, DOE is authorized to establish up to two additional regional standards for central air conditioners and heat pumps. (42 U.S.C. 6295(o)(6)(B)(ii)) DOE was required to initiate an enforcement rulemaking after DOE issued a final rule that establishes a regional standard (42 U.S.C. 6295(o)(6)(G)(ii)(I)) and issue a final rule. (42 U.S.C. 6295(o)(6)(G)(ii)(III))

## B. Background

On June 27, 2011, DOE promulgated a Direct Final Rule (June 2011 DFR) that, among other things, established regional standards for central air conditioners. 76 FR 37408. Under the June 2011 DFR, after January 1, 2015, split-system central air conditioners in the Southeast<sup>3</sup> and Southwest<sup>4</sup> must have a Seasonal Energy Efficiency Ratio (SEER) not less than 14. 76 FR at 37547. In addition, the DFR stated that in the Southwest, split-systems

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<sup>3</sup> The southeast region includes states with a hot-humid climate. These states are Alabama, Arkansas, Delaware, Florida, Georgia, Hawaii, Kentucky, Louisiana, Maryland, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, and Virginia, and in the District of Columbia. 76 FR at 37547.

<sup>4</sup> The southwest region includes states with a hot-dry climate. These states are Arizona, California, Nevada, and New Mexico. 76 FR at 37547.

with rated cooling capacities less than 45,000 Btu/h must have an Energy Efficiency Ratio (EER) not less than 12.2, split-systems with rated cooling capacities equal to or greater than 45,000 Btu/h must have an EER not less than 11.7, and single-package systems must not have an EER less than 11.0. Id. DOE subsequently published a notice of effective date and compliance date for the June 2011 DFR on October 31, 2011, setting a standards compliance date for central air conditioners and heat pumps of January 1, 2015. 76 FR 67037.

As required by EPCA, DOE initiated an enforcement rulemaking by publishing a notice of data availability (NODA) in the Federal Register that proposed three approaches to enforcing regional standards for central air conditioners. 76 FR 76328 (December 7, 2011). DOE received numerous comments expressing a wide range of views in response to this NODA. Consequently, on June 13, 2014, DOE published a notice of intent to form a working group to negotiate regulations for the enforcement of regional standards for central air conditioners and requested nominations from parties interested in serving as members of the Working Group. 79 FR 33870. On July 16, 2014, the Department published a notice of membership announcing the eighteen nominations that were selected to serve as members of the Working Group, in addition to two members from Appliance Standards and Rulemaking Federal Advisory Committee (ASRAC), and one DOE representative. 79 FR 41456. The members of the Working Group were selected by ASRAC to ensure a broad and balanced array of stakeholder interests and expertise, and included efficiency advocates, utility representatives, and manufacturers, contractors, and distributors of central air conditioners. Id.

Between August 13, 2014, and October 24, 2014, the Working Group held fourteen public meetings in Washington, DC, primarily at the DOE headquarters.<sup>5</sup> Thirty-seven interested parties, including members of the Working Group, attended the various meetings. For more details see the Working Group meeting transcripts.<sup>6</sup>

The Working Group submitted a final report to ASRAC on October 24, 2014, summarizing the group's recommendations for DOE's rule for enforcement of regional standards for central air conditioners. Working Group Recommendations, No. 70.<sup>7</sup> The recommendations included a statement that the nongovernmental participants conditionally approved the recommendations contingent upon the issuance of final guidance (see No. 89 and No. 90 for the draft versions) consistent with the understanding of the Working Group as set forth in these recommendations. Working Group Recommendations, No. 70 at 37. ASRAC subsequently voted to approve these recommendations on December 1, 2014. (ASRAC Meeting Transcript, No. 73 at pp. 42–43).

DOE presented the Working Group's recommendations in separate rulemakings. DOE proposed regulatory changes related to unit selection and testing requirements in a supplemental notice of proposed rulemaking for CAC test procedures (November 2015 CAC

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<sup>5</sup> The Working Group met on August 13, 2014; August 14, 2014; August 26, 2014; August 27, 2014; August 28, 2014; September 3, 2014; September 4, 2014; September 24, 2014; September 25, 2014; October 1, 2014; October 2, 2014; October 15, 2014; October 16, 2014; and October 24, 2014. Due to space conflicts at DOE, the August 27th meeting took place at ACEEE's office in Washington, DC.

<sup>6</sup> Docket Folder, Energy Conservation Program: Enforcement of Regional Standards for Residential Furnaces and Central Air Conditioners and Heat Pumps, <http://www.regulations.gov/#!docketDetail;D=EERE-2011-BT-CE-0077>.

<sup>7</sup> A notation in this form provides a reference for information that is in the docket for this rulemaking (Docket No. EERE-2011-BT-CE-0077), which is maintained at [www.regulations.gov](http://www.regulations.gov). This notation indicates that the statement preceding the reference is from document number 70 in the docket.

TP SNOPR) on November 9, 2015 and finalized them on June 8, 2016 (June 2016 CAC TP final rule. 80 FR 69277, 81 FR 36992. DOE presented the Working Group's recommendations for enforcement of regional standards for central air conditioners in a NOPR published on November 19, 2015 (November 2015 NOPR). 80 FR 72373. DOE is now finalizing them in today's final rule.

**II. Discussion**

As previously stated, DOE proposed the Working Group's recommendations for enforcement of regional standards for central air conditioners in the November 2015 NOPR. See 80 FR 72373. In response to the November 2015 NOPR, DOE received comments from 11 interested parties including manufacturers, trade associations, advocacy groups, and a utility association. Interested parties provided comments on a range of issues, including those DOE identified in the November 2015 NOPR, as well as issues related to the enforcement procedure changes. The issues on which DOE received comments, as well as DOE's responses to those comments and the resulting changes to the enforcement proposals presented in the November 2015 NOPR, are discussed in the subsequent sections.<sup>8</sup>

**Table II.1 Stakeholders that submitted comments on the NOPR**

<b>Name</b>	<b>Acronym</b>	<b>Organization Type</b>
Advanced Distributor Products, LLC	ADP	Manufacturer
Air-Conditioning, Heating and Refrigeration Institute	AHRI	Trade Association
California Investor Owned Utilities	CA IOUs	Utility Association
Carrier Corporation	Carrier	Manufacturer
Earthjustice	Earthjustice	Energy Efficiency Advocacy Group

<sup>8</sup> A full set of comments can be found at <http://www.regulations.gov/#!docketDetail;D=EERE-2011-BT-CE-0077>.



Heating, Air-conditioning, and Refrigeration Distributors International	HARDI	Trade Association
Ingersoll Rand Residential Solutions	Ingersoll Rand	Manufacturer
Lennox International, Inc.	Lennox	Manufacturer
Natural Resources Defense Council	NRDC	Energy Efficiency Advocacy Group
Appliance Standards Awareness Project	ASAP	Energy Efficiency Advocacy Group
Rheem Manufacturing Company	Rheem	Manufacturer

A.General Comments

DOE received several general comments in response to the November 2015 NOPR. NRDC, Earthjustice, and ASAP support the proposal for enforcement of regional standards for central air conditioners. (NRDC, Earthjustice, and ASAP, No. 96 at p. 1) Ingersoll Rand commented that they support AHRI’s comments. (Ingersoll Rand, No. No. 100 at p. 2)

In addition, DOE received some comments pertaining to the effective dates, enforcement policies, and other aspects of the proposed rule. Rheem commented that the updates to §430.32 that are shown beginning on the NOPR page 72389 clarify the effective dates to 1) include the agreements on the sell through period; and 2) the off-mode power requirements for which there is currently no finalized test procedure. 80 FR 72373, 72389 (Nov. 19, 2015). Rheem suggested that the Federal Register should include a complete, accurate, and transparent account of the effective dates and enforcement policies associated with each for both current and historical references. (Rheem, No. 98 at p. 1)

In response, DOE clarifies that the updates to §430.32 that were proposed in the NOPR did not change the effective compliance and installation dates for the regional

standard. DOE proposed to remove the former energy conservation standards that were surpassed by the current standard levels, and DOE added language related to the Working Group's recommendation that units rated below the regional standard by the OEM cannot be installed in such region. 80 FR 72373, 72389 (Nov. 19, 2015). DOE published a notice of effective date and compliance date for the June 2011 DFR on October 31, 2011, which detailed the compliance dates for central air conditioners and heat pumps standards. 76 FR 67037. As Rheem indicated, DOE issued enforcement guidance stating that DOE will not seek civil penalties for violations of the regional standards applicable to central air conditioners that occur prior to July 1, 2016, provided that the violations are related to the distribution in commerce of units manufactured prior to January 1, 2015.<sup>9</sup> This enforcement guidance does not amend the compliance dates of the for central air conditioners and heat pumps standards, but rather is an exercise of DOE's discretion by providing a sell through period for central air conditioners impacted by regional standards.

In regard to the off-mode power consumption standards, Carrier commented that, while it has no issue with the specific level of watt consumption requirements, it has issues with the retroactive implementation date of January 1, 2015. Carrier cited the DOE Enforcement Policy Statement of July 8, 2014, which stated "...until 180 days following publication of final rule establishing a test method..."<sup>10</sup> Based on this enforcement policy, Carrier believed DOE should modify the compliance date in the CFR to at least 180 days

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<sup>9</sup> Enforcement Policy Statement: Regional Standards Sell-Through. The full enforcement policy can be found at: <http://www.energy.gov/gc/downloads/enforcement-policy-regional-standards-sell-through>

<sup>10</sup> Enforcement Policy Statement: Off Mode Standards for Central Air Conditioners and Central Air Conditioning Heat Pumps. The full enforcement policy can be found at: <http://www.energy.gov/gc/downloads/enforcement-policy-statement-mode-standards-cachp>.

following the publishing of the final test procedure, and requested that DOE consider a 360 day implementation to allow for testing of highest sales volume tested combination. (Carrier, No. 97 at pp. 5–6)

In response to Carrier and Rheem’s comments regarding off-mode power consumption, DOE established the effective date and compliance date for the June 2011 DFR in a separate rule published on October 31, 2011. 76 FR 67037. As Carrier stated, DOE’s enforcement policy statement for off mode standards for central air conditioners and heat pumps is currently applicable to off-mode standards for central air conditioners and heat pumps, and will be until the dates mentioned in the policy statement.<sup>11</sup> Specifically, DOE finalized test procedures for off-mode standards in a final rule published on June 8, 2016. 81 FR 36992. In accordance with the enforcement policy statement, DOE will not assert civil penalty authority for violation of the off mode standard specified at 10 CFR 430.32(c)(6) until December 5, 2016, which is 180 days after the publication of the final rule. This enforcement policy does not change the legal requirements or the compliance date. Therefore, manufacturers will be required to comply with the July 8, 2016 for off-mode testing.

HARDI requested in its comments that DOE effectively communicate all aspects of this standard and its subsequent enforcement to state governments, as some states may enact policies that preempt federal policy. (HARDI, No. 94 at p. 2) As recommended by the Working Group, DOE is promoting public awareness of the regional standards and regional enforcement policy by establishing a website, hosting a public meeting, and publishing

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<sup>11</sup> Id.

informative literature on its website. DOE's webpage for regional standards can be found at <http://www.energy.gov/gc/regional-standards-enforcement>. This webpage includes a brochure for installers and purchasers of central air conditioners. DOE has also been answering questions from state and local governments regarding both the regional standards and DOE's enforcement policy and will continue to do so.

### B. Clarifications to Regional Standards

As previously mentioned, DOE adopted regional standards for central air conditioners in its June 2011 DFR. That rule established regional standards for split-system central air conditioners and single-package central air conditioners. 10 CFR 430.32(c).

A split-system central air conditioner is a kind of air conditioner that has one or more of its major assemblies separated from the others. Typically, the air conditioner has a condensing unit ("outdoor unit") that is separate from the evaporator coil and/or blower ("indoor unit"). Accordingly, a split-system condensing unit is often sold separately from the indoor unit and may be matched with several different models of indoor units and/or blowers. For this reason, a condensing unit could achieve a 14 SEER or above if it is paired with certain indoor units and/or blowers and could perform below 14 SEER when paired with other indoor units and/or blowers. 80 FR 72373 (November 19, 2015).

During their meetings, the Working Group suggested the regional standards required clarification because a particular condensing unit may have a range of efficiency ratings when paired with various indoor evaporator coils and/or blowers. The Working Group provided the

following four recommendations to clarify the regional standards: 1) the least efficient rated combination for a specified model of condensing unit must be 14 SEER for models installed in the Southeast and Southwest regions; 2) the least efficient rated combination for a specified model of condensing unit must meet the minimum EER for models installed in the Southwest region; 3) any condensing unit model that has a certified combination that is below the regional standard(s) cannot be installed in that region; and 4) a condensing unit model certified below a regional standard by the original equipment manufacturer cannot be installed in a region subject to a regional standard(s) even with an independent coil manufacturer's indoor coil or air handler combination that may have a certified rating meeting the applicable regional standard(s). Working Group Recommendations, No. 70 at 4. In the November 2015 NOPR, DOE proposed to adopt these recommendations and requested comment on these recommendations. 80 FR 72373, 72375 (November 19, 2015).

Interested parties submitted comments on the proposed clarification to the regional standards. In their comments, ADP and Lennox supported the clarifications discussed in the NOPR. Further, ADP and Lennox recommended these clarifications be used to provide consistent language in the central air conditioner test procedure rulemaking that are based on basic models. (ADP, No. 93 at p. 1; Lennox, No. 95 at p. 2) Rheem also agreed with the four clarifications to the regional standards discussed in the November 2015 NOPR. In its comments, Rheem stated it could also support the new alternative proposed by DOE concerning combinations permitted to be certified, if the alternative would not impose additional testing costs and burdens. (Rheem, No. 98 at p. 2) CA IOUs supported DOE's conclusion that split-system condensing units should be rated with their lowest performing evaporator combination. (CA IOUs, No. 99 at p. 2)

Alternatively, Carrier and AHRI commented that the approach proposed in the November 2015 NOPR was preferable to the approach proposed in the CAC test procedure SNOPR. Carrier and AHRI explained that the SNOPR approach would mean that an ICM (independent coil manufacturer) could have a CAC basic model meeting the Southeast or Southwest Regional Standard even when the outdoor unit manufacturer certified the condensing unit paired with the ICMs indoor unit below 14 SEER. (Carrier, No. 97 at p. 2; AHRI, No. 101 at p.3)

DOE's proposal in the CAC test procedure SNOPR was to make clear that it is not permissible for an outdoor unit that is certified as meeting a regional standard (i.e., the OUM (outdoor unit manufacturer) does not make any representation below the regional standard for that outdoor unit) to be certified in a combination that does not meet the regional standard. That includes both certifications by an OUM and an ICM. DOE has finalized that approach in the CAC test procedure final rule.<sup>12</sup>

Nonetheless, DOE understands AHRI and Carrier to be concerned that, if an ICM certifies a combination in violation of the regulations, there is no separate prohibition against installing that combination. DOE had proposed in the November 2015 NOPR to include the following language at 10 CFR 430.32(c)(3)-(4): "An outdoor unit model certified below 14 SEER by the outdoor unit manufacturer cannot be installed in this region even with an independent coil manufacturer's indoor unit that may have a certified rating at or above 14

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<sup>12</sup> See the Section III.A.4 of the CAC test procedure final rule at 81 FR 36992 (June 8, 2016).

SEER.” For consistency between its CAC TP and regional standards, DOE clarified in the June 2016 CAC TP final rule at 10 CFR 429.16(a)(3)(A) specific limitations for tested combinations subject to regional standards (“a basic model may only be certified as compliant with a regional standard if all individual combinations within that basic model meet the regional standard for which it is certified. . . [and] an ICM cannot certify a basic model containing a representative value that is more efficient than any combination certified by an OUM containing the same outdoor unit”). In this final rule, DOE is adopting complementary language at 10 CFR 430.32(c)(3)-(4): “[a]ny outdoor unit model that has a certified combination with a rating below 14 SEER cannot be installed in these States.” DOE intends this modified language to prevent any model that is rated below the Southeast or Southwest Regional Standard by the OUM from being installed in those regions. Further, this language maintains the Working Group’s clarification that an outdoor unit certified below a regional standard by the original equipment manufacturer cannot be installed in a region subject to a regional standard(s) even with an independent coil manufacturer’s indoor coil.

### C.Private Labelers

As discussed in the November 2015 NOPR, DOE received questions about the applicability of the regional standards to private labelers, which was an entity not addressed by the Working Group. In response, DOE noted that, although private labelers are liable for distribution in commerce of noncompliant products generally, DOE does not require private labelers to submit certification reports unless the private labeler is also the importer. DOE suggested that it may not be necessary for exactly the same requirements to apply to private labelers. Consequently, DOE requested comment on whether these proposed requirements

should be the same for manufacturers and private labelers or whether different requirements should apply. 80 FR 72373.

Commenters generally agreed that the proposed requirements should apply to private labelers in the same way that the requirements apply to manufacturers. Lennox strongly recommended that DOE apply the same enforcement requirements for manufacturers to private labelers of products covered under this rule. (Lennox, No. 95 at p. 2) NRDC, Earthjustice, and ASAP also supported the Department's proposal to treat private labelers the same as manufacturers. (NRDC, Earthjustice, and ASAP, No. 96 at p. 1) Carrier and AHRI commented that if private labelers are importers, then the private labelers should be subject to the same requirements as manufacturers, consistent with DOE's determination elsewhere in the November 2015 NOPR. Carrier and AHRI further stated that, even if private labelers are not importers and the product does not bear the brand, trademark, or other marking of the manufacturer of the product, then the private labeler should still be treated as a manufacturer. (Carrier, No. 97 at p. 4; AHRI, No. 101 at p. 3)

Accordingly, DOE adopts the same requirements for private labelers and manufacturers in today's final rule as a result of comments received.

#### D. Definitions

EPCA prohibits manufacturers from selling to "distributors, contractors, or dealers that routinely violate the regional standards." (42 U.S.C. § 6302(a)(6)) In the November 2015 NOPR, DOE proposed definitions for "contractor," "dealer," and "installation of a central air conditioner." Under the November 2015 SNOPR, a "contractor" is a person (other than the



manufacturer or distributor) who sells to and/or installs for an end user a central air conditioner subject to regional standards. A “dealer” is a type of contractor, generally with a relationship with one or more specific manufacturers. “Installation of a central air conditioner” means the connection of the refrigerant lines and/or electrical systems to make the central air conditioner operational. 80 FR 72373 (November 19, 2015).

Commenters agreed with the proposed definitions. (ADP, No. 93 at p. 1; Rheem, No. 98 at p. 2; Carrier, No. 97 at p. 3; Lennox, No. 95 at p. 2) Accordingly, DOE adopts the November 2015 NOPR proposed definitions for contractor, dealer, and installation of a central air conditioner in today’s final rule.

#### E.Public Awareness

In the November 2015 NOPR, DOE reiterated the Working Group’s recommendations related to public awareness. 80 FR 72373,72376–77 (Nov. 19, 2015). DOE did not receive any comments specific to the Working Groups recommendations on public awareness.

Per the Working Group’s recommendation, DOE established a webpage with information on regional standards for CACs that could be referenced by manufacturers, distributors, contractors, and other interested parties. This webpage can be found at <http://www.energy.gov/gc/regional-standards-enforcement>. DOE posted on its regional standards webpage a printable trifold to provide information to consumers and contractors and to answer common questions. All information sources include information, including email links, on how to report suspected violations of the CAC regional standards. DOE encourages

manufacturers to provide the information to its distributors, distributors to provide the information to contractors, and contractors to provide this information to purchasers.

The Working Group also recommended that DOE conduct a public presentation (accessible via internet as well as in-person) on regional standards for CACs and the enforcement of such standards in order to educate stakeholders and the public on these regulations. DOE will announce the details for an educational presentation about regional standards soon. (DOE expects that the presentation will be in July 2016.) After the presentation, DOE will post the slides from the presentation to the docket for this rulemaking and on the regional standards webpage.

Finally, the Working Group recommended that CAC manufacturers provide training about regional standards to distributors and contractors/dealers. Distributors and contractors also agreed to conduct their own training on regional standards. The Working Group did not establish specific guidelines for the training. DOE does not have information about whether or to what extent the manufacturers, distributors and contractors have conducted/participated in such training. However, DOE encourages all CAC manufacturers to provide training to their distributors and contractors/dealers as part of their commitment to the Working Group.

#### F.Reporting

The Working Group discussed methods for facilitating the reporting of suspected regional standards violations and recommended that the Department provide multiple pathways for the public to report such information, such as accepting complaints regarding CAC regional standards from an email address and call-in number. The Working Group

emphasized the importance that a complainant receive confidential treatment to the maximum extent authorized by law. DOE did not receive any comments specific to the Working Groups recommendations on reporting of suspected regional standards violations.

As discussed in the November 2015 NOPR, the Department accepts reports of suspected violations of the regional central air conditioner standards that are received via email at EnergyEfficiencyEnforcement@hq.doe.gov or phone at 202-287-6997. 80 FR 72373, 72377 (Nov. 19, 2015). DOE remains committed to investigating all credible complaints.

#### G.Proactive Investigation

In addition to responding to reports of noncompliance with the regional standards, the Working Group recommended that the Department consider conducting proactive investigations. Specifically, the Working Group recommended that, if funding is available, DOE consider conducting a survey of homes in any region of the United States to determine if a central air conditioner not in compliance with the regional standards has been installed. DOE, as a member of the Working Group, agreed to consider proactive investigations if funding for such investigations is available, but has not yet conducted such a survey. DOE did not receive any comments specific to the Working Group recommendations on proactive investigations.

#### H.Records Retention and Requests

In the November 2015 NOPR, DOE proposed to adopt the Working Group's recommended records retention requirements for contractors and dealers, distributors, and manufacturers and private labelers with two modifications. Due to the delay in issuing the

NOPR, DOE proposed that distributors be required to retain records beginning July 1, 2016, instead of November 30, 2015. Additionally, DOE proposed to replace the term “indoor coils or air handlers” with the term “indoor unit” in order to harmonize with the CAC TP supplemental notice of proposed rulemaking (SNOPR). See 80 FR 69278 at 69284. The records retention scheme was proposed as follows:

Beginning 30 days after the issuance of a final rule, a manufacturer must retain:

- For split-system central air conditioner condensing units: the model number, serial number, date of manufacture, date of sale, and party to whom the unit was sold (including person’s name, full address, and phone number);
- For split-system central air conditioner indoor units (not including uncased coils sold as replacement parts): the model number, date of manufacture, date of sale, and party to whom the unit was sold (including person’s name, full address, and phone number); and
- For single-package central air conditioners: the model number, serial number, date of manufacture, date of sale, and party to whom the unit was sold (including person’s name, full address, and phone number).

Beginning July 1, 2016,<sup>13</sup> a distributor must retain:

- For split-system central air conditioner condensing units: the manufacturer, model number, serial number, date the unit was purchased from the manufacturer, party from whom the unit was purchased (including person’s name, full address, and

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<sup>13</sup> The Working Group originally recommended that distributors retain records beginning on November 30, 2015.

phone number), date unit was sold to a dealer or contractor, party to whom the unit was sold (including person's name, full address, and phone number), and, if delivered to the purchaser, the delivery address; and

- For single-package central air conditioners: the manufacturer, model number, serial number, date the unit was purchased from the manufacturer, party from whom the unit was purchased (including person's name, full address, and phone number), date unit was sold to dealer or contractor, party to whom the unit was sold (including person's name, full address, and phone number), and, if delivered to the purchaser, the delivery address.

For all installations in the Southeast and Southwest, beginning 30 days after issuance of a final rule in this rulemaking, contractors must retain:

- For split-system central air conditioner condensing units: the manufacturer name, model number, serial number, location of installation (including street address, city, state, and zip code), date of installation, and party from whom the unit was purchased (including person's name, full address, and phone number);
- For split-system central air conditioner indoor units (not including uncased coils sold as replacement parts): the manufacturer name, model number, location of installation (including street address, city, state, and zip code), date of installation, and party from whom the unit was purchased (including person's name, full address, and phone number); and
- For single-package central air conditioners: the manufacturer name, model number, serial number, location of installation (including street address, city, state, and zip

code), date of installation, and party from whom the unit was purchased (including person's name, full address, and phone number).

The Working Group recommended that contractors retain records for 48 months after the date of installation, distributors retain records for 54 months after the date of sale, and manufacturers retain records for 60 months after the date of sale. The Working Group explicitly noted that retaining records allows each entity to archive records as long as the entity does not delete or dispose of the records. The Working Group also clarified that the records retention requirements neither mandate that contractors, distributors, or manufacturers create new forms for the purpose of tracking central air conditioners nor require records to be electronic. DOE proposed in the November 2015 NOPR to adopt these record retention period requirements. See 2013-BT-NOC-0005, No. 30 at 17-18, 80 FR 72373, 72377-78 (Nov. 19, 2015).

Interested parties generally supported the proposed records retention requirements. (ADP, No. 93 at p. 2; CA IOUs, No. 99 at p. 3; Carrier, No. 97 at p. 3; Lennox, No. 95 at p. 2; Rheem, No. 98 at p. 2) HARDI specifically supported DOE's proposal to require record keeping for distributors to take effect on July 1, 2016. (HARDI, No. 94 at p. 1) AHRI noted that DOE's proposed regulatory text for record retention requirements would need to be aligned with the revised date for distributors proposed by DOE (July 1, 2016), instead of the date of November 30, 2015. (AHRI, No. 101 at p. 6)

Some commenters noted that the proposed requirements impose additional costs on contractors, dealers, distributors, manufacturers, and private labelers. Carrier noted there

would be a cost associated with record retrieval but stated it supported the proposed requirements. (Carrier, No. 97 at p. 3) Although HARDI commented that the cost to alter inventory accounting systems and modify processes for the recordkeeping requirements is significant, it also noted that it was part Working Group and voted in support of these requirements. (HARDI, No. 94 at p. 1) In response, DOE understands that there is an additional cost. However, as HARDI commented, DOE notes that the Working Group was fully aware of the additional cost when it voted to support these provisions and the Working Group attempted to minimize the cost to the greatest extent possible.

Some commenters disagreed with DOE's proposed use of the term "indoor unit" with respect to the record retention requirements for split-system air conditioners. Because DOE proposed a definition for "indoor unit" that does not include casing or expansion device, AHRI expressed concern that the uncased coil would no longer be within the scope of regulation. At the same time, AHRI supported the current status of service coils as "not rated" and would like DOE to make it clear that they will not be rated in the future. To aid DOE in addressing this problem, AHRI recommended definitions for the terms uncased coil, cased coil, service coil, air handler, blower coil, coil-only, and indoor unit.<sup>14</sup> (AHRI, No. 101 at pp. 2-3)

ADP and Lennox commented that DOE needed a clear definition of "uncased coils sold as replacement parts" that are not required to be recorded versus uncased coils sold as a part of a new CAC installation that are required to be recorded. (ADP, No. 93 at p. 2; Lennox, No. 95 at p. 2) Rheem also mentioned that that comments it submitted in response to the test

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<sup>14</sup> A full description of the definitions proposed by AHRI can be found in AHRI's comment at <http://www.regulations.gov/#!docketDetail;D=EERE-2011-BT-CE-0077>.

procedure SNOPR requested that DOE ensure that “service coils” are not a covered product and that consistent terminologies are used to describe air handlers, blower coils, coil-only and indoor units.

DOE appreciates the suggested definitions and clarifications suggested by AHRI, Lennox, ADP, and Rheem. To address these comments and the comments received in response to the CAC TP SNOPR, DOE adopted definitions of the terms blower coil indoor unit, blower coil system, cased coil, coil-only indoor unit, coil-only system, indoor unit, service coil, and uncased coil. For more details on these definitions see the CAC test procedure final rule at 81 FR 36992 (June 8, 2016). In addition, as requested by Rheem, ADP, and Lennox, DOE is not requiring manufacturers, distributors, or installers to retain records for service coils.

Therefore, in today’s final rule, DOE adopts the record retention requirements recommended by the Working Group with the two modifications proposed in the November 2015 NOPR. 80 FR 72373, 72377–78 (Nov. 19 2015).

In the November 2015 NOPR, DOE defined a threshold for records requests and proposed a timeframe for responding to such requests. Specifically, DOE proposed that DOE must have reasonable belief that a violation has occurred to request records specific to an on-going investigation of a violation of central air conditioner regional standards. Upon request, the manufacturer, private labeler, distributor, dealer, or contractor must provide to DOE the relevant records within 30 calendar days of the request. DOE may grant additional time for records production at its discretion. 80 FR 72373, 72378 (November 19, 2015).



DOE requested comments from interested parties on the proposed threshold for a records request and proposed a timeframe for responding to such requests in its November 2015 NOPR. Commenters generally agreed with the proposed threshold and timeframe. (ADP, No. 92 at p. 2; Rheem, No. 98 at p. 2; Lennox, No. 95 at p. 3) Some commenters agreed with the proposed threshold and timeframe but emphasized the need for discretion to grant additional time for production of records. Carrier agreed with the threshold for records request and the proposed 30-day timeframe, as long as DOE uses discretion to grant additional time for production of records as long as the entity is making a good-faith effort. (Carrier, No. 93 at p. 3) HARDI stated that it believes the 30-day threshold is sufficient, but expressed the view that DOE should allow for extra time upon request, as many small entities have little or no experience in complying with such a request. (HARDI, No. 94 at p. 2)

To address Carrier's and HARDI's concerns, DOE reiterates that it may grant additional time for production of records as long as the affected entity makes a good faith effort to respond to the records request. As explained in the November 2015 NOPR, to receive this extra time, the entity, after working to gather the records within the 30 days, must provide DOE all the records gathered and a written explanation for the need for additional time including the requested date for completing the records request. 80 FR at 72377. DOE also notes that both Carrier and HARDI were part of the negotiated rulemaking and agreed to these terms as part of the Working Group.

In today's final rule, DOE adopts the proposed threshold for records requests and the timeline to respond to such requests.

## I. Violations and Routine Violations

In the November 2015 NOPR, DOE proposed to adopt the Working Group's recommendations on regional standards violations for distributors, contractors or dealers in order to clarify the prohibition on manufacturers knowingly selling to such entities that are routine violators. (42 U.S.C. 6302(a)(6), 10 CFR 430.102(a)(10))

For a distributor, the Working Group agreed that it would be a violation to knowingly sell a product to a contractor or dealer with knowledge that the entity will sell and/or install the product in violation of any regional standard applicable to the product. Additionally, it would be a violation for a distributor to knowingly sell a product to a contractor or dealer with knowledge that the entity routinely violates any regional standard applicable to the product. For contractors, the Working Group agreed it would be a violation to knowingly sell to and/or install for an end user a central air conditioner subject to regional standards with knowledge that such product would be installed in violation of any regional standard applicable to the product. 80 FR 72373 (November 19, 2015).

To further clarify what constituted an installation of a central air conditioner in violation of an applicable regional standard, the Working Group agreed that:

- 1) A person cannot install a complete central air conditioner system—meaning the condensing unit and evaporator coil and/or blower—unless it has been certified as a complete system that meets the applicable standard. A previously discontinued combination may be installed as long as the combination was

previously validly certified to the Department as compliant with the applicable regional standard and the combination was not discontinued because it was found to be noncompliant with the applicable standard(s);

- 2) A person cannot install a replacement condensing unit unless it is certified as part of a combination that meets the applicable standard; and
- 3) A person cannot install a condensing unit that has a certified combination with a rating that is less than the applicable regional standard.

Interested parties submitted comments on the proposed violations for distributors, contractors, and dealers. Commenters generally agreed with the proposed violations. (ADP, No. 93 at p. 2; CA IOUs, No. 99 at p. 2; Lennox, No. 95 at p. 3; Rheem, No. 98 at p. 3) Therefore, DOE adopts these violations in today's final rule.

Carrier agreed with the proposed violations, but requested that DOE further elaborate on the term "manufacturer" as it pertains to violations to include clarification that some manufacturers may also act as distributors, but are still subject to the fines of a prohibited act as a manufacturer. (Carrier, No. 97 at p. 4)

DOE agrees with Carrier's clarification that manufacturer-owned distributors are considered manufacturers. Because EPCA defines the term "distributor" as a person, *other than* a manufacturer or retailer, to whom a consumer product is delivered or sold for purposes of distribution in commerce, then a company that both manufactures and distributes is considered a manufacturer. 42 U.S.C. 6291(14). Therefore, manufacturer-owned distributors cannot be found to be routine violators as adopted in this rule, but are instead prohibited from

knowingly selling a product to a distributor, contractor, or dealer with knowledge that the entity routinely violates any regional standard applicable to the product. (42 U.S.C. 6302, 10 CFR 429.102(a)(10))

To determine if a violation occurred, the Department explained it will conduct an investigation into the alleged misconduct. In a typical investigation, DOE may discuss the installation in question with the end user or the homeowner and other relevant parties, including the alleged violator. DOE may also request records from the dealer, contractor, distributor, and/or manufacturer if the Department has reasonable belief a violation occurred.

The Working Group recommended and DOE proposed in the November 2015 NOPR that if no violation is found, the Department should issue a case closed letter to the party being investigated. The Working Group also recommended that, if DOE finds that a contractor or dealer completed a noncompliant installation in one residence or an equivalent setting (e.g., one store), but the violator remediated that violation by installing a compliant unit before DOE concluded its investigation, then DOE should issue a case closed letter to the party being investigated, as long as that person has no history of prior violations. The purpose of this practice would be to incentivize parties who, on one occasion, mistakenly install one noncompliant unit to replace the product and thereby not suffer any public stigma. However, if the noncompliant installation is not remediated and a violation is found, DOE should issue a public “Notice of Violation.” The party found to be in violation can remediate the single violation and it will not count towards the finding of “routine violator” unless the party is found, in the course of a subsequent investigation, to have committed another violation. For

more on remediation of a single violation, see section II.J. See 80 FR 72373, 72378 (Nov. 19, 2015).

In determining whether a party “routinely violates” a regional standard, the Working Group recommended that DOE consider the following factors:

- Number of violations (in both current and past investigations);
- Length of time over which the violations were committed;
- Ratio of compliant to noncompliant installations or sales;
- Percentage of employees committing violations;
- Evidence of effort or intent to commit violations;
- Evidence of training or education provided on regional standards; and
- Subsequent remedial actions.

The Working Group also agreed that DOE should consider whether the routine violation was limited to a specific contractor or distribution location. DOE would rely on the same factors considered in determining whether a routine violation occurred.

Interested parties submitted comments supporting the factors DOE proposed to consider to determine if a violation is routine. (ADP, No. 93 at p. 2; Rheem, No. 98 at p. 3; Carrier, No. 97 at p. 4; Lennox, No. 95 at p. 3) Accordingly, DOE is adopting these factors as part of its provisions for identifying routine violations.

In the November 2015 NOPR, DOE proposed adopting the Working Group’s recommendation that DOE issue a “Notice of Finding of Routine Violator” if the Department determines that a violator routinely violated a regional standard. This notice would identify the party found to be a routine violator and explain the scope of the violation. Additionally, if DOE, in its discretion, finds that the routine violation was limited to a specific location, DOE may in the Notice of Finding of Routine Violation state that the prohibition on manufacturer sales is limited to a particular contractor or distribution location. This notice would be both posted to the Department's enforcement web site<sup>15</sup> and would be emailed to those signed up for email updates.<sup>16</sup> See 80 FR 72373, 72378 (Nov. 19, 2015).

DOE also proposed that if DOE makes a finding of routine violation, the violator has the right to file an administrative appeal of the finding. Any appeal of a Notice of Finding of Routine Violation would be required to be filed within 30 days of the issuance of the notice. The appeal would be reviewed by DOE's Office of Hearings and Appeals. The appeal must present information rebutting the finding of routine violation. The appeal will be decided within 45 days of filing of the appeal. The violator may file a Notice of Intent to Appeal with the DOE Office of Hearings and Appeals. If this notice of intent is filed within three business days of the Notice of Finding of Routine Violation, then manufacturers may continue to sell products to the routine violator during the pendency of the appeal. See section II.J for more details on sales during the pendency of an appeal. See 80 FR 72373, 72378 (Nov. 19, 2015).

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<sup>15</sup> DOE's enforcement web site is: <http://energy.gov/gc/enforcement>.

<sup>16</sup> Sign up for updates at <https://public.govdelivery.com/accounts/USEERE/subscriber/new> and select “Regional Enforcement Standards” under “Appliance and Equipment Standards.”

In response, the CA IOUs commented that DOE should be aware of the potential for units to cross region borders illegally, as once a condenser unit is shipped to a given region, there would be potential for it to cross region borders. The CA IOUs stated that the ability to label the distributor as a “routine violator” would help this problem. Further, the CA IOUs supported publically disciplining distributors who sell non-compliant units by labeling such distributors as “routine violators.” (CA IOUs, No. 99 at p. 2)

DOE received no other comments related to its proposed regulatory framework for violations and routing violations. Therefore, in today’s notice DOE adopts its proposals related to issuing a Notice of Violation or Notice of Finding of Routine Violations. Further, DOE adopts its proposal to allow findings of routine violation to be appealed. The CA IOUs recommendation goes beyond the scope of DOE’s proposal and is not addressed in this rulemaking.

## J.Remediation

DOE proposed in its November 2015 NOPR a concept for remediation that would apply to any party found to be in violation of the regional standards. The Department explained that any violator may remediate by replacing the noncompliant unit at cost to the violator; the end user could not be charged for any costs of remediation. The violator would be required to provide to DOE the serial number of any outdoor unit and/or indoor unit installed not in compliance with the applicable regional standard and the serial number(s) of the replacement unit(s) to be checked by the Department against warranty and other replacement claims. If the remediation is approved by the Department, then DOE would issue a Notice of

Remediation and the violation would not count toward a finding of “routine violator.” 80 FR 72373, 72379 (Nov. 19, 2015).

Commenters agreed with the proposed concept for remediation. (ADP, No. 93 at p. 2; Carrier, No. 97 at p. 5; HARDI, No. 94 at p. 2; Lennox, No. 95 at p. 3; Rheem, No. 98 at p. 3). Accordingly, DOE adopts the proposed concept for remediation in today’s final rule.

#### K. Manufacturer Liability

In accordance with the Department’s regulations on prohibited acts, manufacturers may be fined for “knowingly sell[ing] a product to a distributor, contractor, or dealer with knowledge that the entity routinely violates any regional standard applicable to the product.” (42 U.S.C. 6302, 10 CFR 429.102(a)(10)) The Working Group had significant discussions on the scope of the term “product” as it relates to this prohibited act. During the Working Group meetings, the Department explained that it interprets the term “product” to include all classes of central air conditioners and heat pumps found within 10 CFR 430.32(c). Ultimately, the Working Group could not come to consensus on whether the scope of any prohibition on sales could be limited to split-system air conditioners and single-package air conditioners instead of the Department’s interpretation.<sup>17</sup> 80 FR 72373, 72380 (Nov. 19, 2015).

EPCA defines a “central air conditioner” as a “product ... which ... is a heat pump or a cooling only unit” and refers to all central air conditioners as one “product.” (42 U.S.C. 6291(21)) Therefore, to be consistent with EPCA, DOE proposed in the November 2015

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<sup>17</sup> For more details regarding this discussion, see the public meeting transcript for October 24, 2014, No. 88.



NOPR to interpret the term “product” to be inclusive of all central air conditioner and heat pump product classes listed in 10 CFR 430.32(c), meaning that manufacturers may be subject to civil penalties for sales to a routine violator of any unit within the central air conditioning product classes. 80 FR 72373, 72380 (Nov. 19, 2015).

DOE also proposed that, if a manufacturer sells a central air conditioner (including heat pumps) to a routine violator after a Notice of Finding of Routine Violation has been issued, then the manufacturer would be liable for civil penalties. 80 FR 72373, 72380 (Nov. 19, 2015). The maximum fine a manufacturer is subject to is \$200 per unit sold to a routine violator. (42 U.S.C. 6303(d), 10 CFR 429.120)

CA IOUs commented in support of DOE’s decision to fine manufacturers for violations of the regional standard. CA IOUs explained that ultimately manufacturers are responsible for where their units are shipped for end use sale and should bear the penalty of being out of compliance. (CA IOUs, No. 99 at p. 2)

In response, DOE clarifies that manufacturers are only subject to penalties if they commit a prohibited act. See 10 CFR 429.120. The violations DOE established in today’s rulemaking are a pathway to establishing whether or not a manufacturer is knowingly selling to a distributor, contractor, or dealer with knowledge that the entity routinely violates any regional standard.

DOE also proposed to adopt the Working Group’s recommendation that DOE provide manufacturers with 3 business days from the issuance of a Notice of Finding of Routine

Violation to stop all sales of central air conditioners and heat pumps to the routine violator. During this time, manufacturers would not be liable for sales to a routine violator. DOE noted that, consistent with its penalty guidance<sup>18</sup>, it would consider the manufacturer's efforts to stop any sales in determining whether (or to what extent) to assess any civil penalties for sales to a routine violator after that three day window. 80 FR 72373, 72380 (Nov. 19, 2015).

If the routine violator is appealing the finding, the Working Group recommended that manufacturers be allowed to continue to sell central air conditioners and heat pumps to the routine violator during the pendency of the appeal. In order to provide parties notice that a routine violator is appealing the determination, the routine violator must file a Notice of Intent to Appeal with the Office of Hearings and Appeals within three business days after the issuance of the Notice of Finding of Routine Violator. If the finding is ultimately upheld, then the manufacturers could face civil penalties for sale of any products rated below the regional standards to the routine violator. DOE proposed to adopt this recommendation in the November 2015 NOPR. 80 FR 72373, 72380 (Nov. 19, 2015).

The Working Group also recommended that DOE provide an incentive for manufacturers to report routine violators. The Working Group recommended that if a manufacturer has knowledge of a routine violator, then the manufacturer can be held liable for all sales made after the date such knowledge is obtained by the manufacturer. However, if the manufacturer reports such knowledge to DOE within 15 days of receipt of the knowledge, then the Department will not hold the manufacturer liable for sales to the suspected routine

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<sup>18</sup> The DOE civil penalty guidance is available at <http://energy.gov/gc/enforcement> under "Enforcement Guidance."

violator made prior to notifying DOE. DOE proposed to adopt this recommendation in the November 2015 NOPR. 80 FR 72373, 72380 (Nov. 19, 2015).

In the November 2015 NOPR, DOE proposed to adopt the clarifications of manufacturer liability, as recommended by the Working Group, and requested comment on this proposal. Interested parties submitted comments on DOE's proposed scheme for manufacturer liability. One commenter supported DOE's proposed scheme. Some commenters agreed in part with DOE's proposed scheme but offered additional, suggested clarification. Some commenters disagreed with DOE's use of the term "product."

Lennox supported DOE's proposed scheme for manufacturer liability. (Lennox, No. 95 at p. 3) ADP agreed with DOE's proposal as it pertains to independent coil manufacturers, with the clarification that the independent coil manufacturer would not be responsible for noncompliant installations performed after the combination has been removed from the certification database and is no longer being distributed in commerce. (ADP, No. 93 at p. 2) Rheem agreed with the proposed scheme. (Rheem, No. 98 at p. 3) Carrier also expressed in basic agreement with the scheme for manufacturer liability. (Carrier, No. 97 at p. 5)

Accordingly, DOE adopts the proposed framework and procedures for making findings of violations.

Rheem commented that the prohibited act should only apply to manufacturers of products subject to regional standards. Rheem stated that the November 2015 NOPR language gives the Department the ability to fine manufacturers for the sale of product even if there is

no regional standard applicable to that product and stated that it believes this to be outside the authority of this NOPR. (Rheem, No. 98 at p. 3) Rheem further stated that regional standards products were specifically defined in the ground rules of the working group as residential split-system and single package air conditioners that are subject to the regional standards. (Rheem, No. 98 at p. 3). Carrier also did not agree with the NOPR's scope relative to manufacturer's liability for covered products. Carrier stated the focus of the Working Group was on split systems and single package systems. Carrier also stated that manufacturer liability should be limited to these specific classes that are not subject to regional standards,<sup>19</sup> and fully supported AHRI's position in their more extensive comments relative to this matter. (Carrier, No. 97 at p. 5) AHRI stated that to accept DOE's expansive view of the "products" affected by the regional standards enforcement would result in DOE's ability to ban the sale of products that are not subject to a regional standard, and that are fully compliant with the applicable national standard. AHRI believed that DOE ignored the Working Group's Ground Rules, which referred specifically to split systems and single package systems. AHRI commented that, instead, when interpreting the prohibited act as it relates to regional standards, DOE focused exclusively on the word "product" in isolation from both the Working Group's approved scope and EPCA's statutory text. (AHRI, No. 101 at p. 5) AHRI stated that manufacturers of central air conditioning products (other than split system and single package) were provided no notice that the Working Group would be developing an enforcement standard that would ban the sale of their equipment even though it is not subject to regional standards. (AHRI, No. 101 at pp. 5-6)

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<sup>19</sup> Read in context, DOE believes Carrier intended to say that liability should be limited to classes that are subject to regional standards.

As DOE explained in the November 2015 NOPR, EPCA defines a “central air conditioner” as a “product ... which ... is a heat pump or a cooling only unit” and refers to all central air conditioners as one “product.” (42 U.S.C. 6291(21)) EPCA also sets forth a prohibited act for a manufacturer to “knowingly sell a product to a distributor, contractor, or dealer with knowledge that the entity routinely violates *any* regional standard applicable to the product.” (42 U.S.C. 6302(a)(6) emphasis added) Accordingly, DOE interprets the term “product” in 42 U.S.C. 6302 to be inclusive of all central air conditioner and heat pump product classes listed in 10 CFR 430.32(c), meaning that manufacturers may be subject to civil penalties for sales to a routine violator of any unit within the central air conditioning product classes. 80 FR 72373 (November 19, 2015).

In response to Rheem, DOE notes that, with respect to national standards, the prohibited act reads “for any manufacturer or private labeler to distribute in commerce any new covered product which is not in conformity with an applicable energy conservation standard established in or prescribed under this part, except to the extent that the new covered product is covered by a regional standard that is more stringent than the base national standard.” (42 U.S.C. 6302(a)(5)) In contrast, the prohibited act with respect to regional standards does not mention the “conformity” of the product being distributed with respect to the regional standard. Instead, the relevant analysis is whether the sale of the product is to a routine violator. (*See* 42 U.S.C. 6302(a)(6).)

In arriving at its interpretation, DOE notes that the installer, distributor, and manufacturer have multiple opportunities to remediate violations and to avoid further violations. In the course of the negotiation, the regulated parties have ensured that there is a

very high bar for DOE to make a finding that a manufacturer has knowingly sold a product to a distributor, contractor, or dealer with knowledge that the entity is a routine violator.

Therefore, not only does the plain language of EPCA support the interpretation, DOE finds that the remedy is proportionate to the violation.

AHRI, Carrier and Rheem suggested in their comments that DOE's interpretation is at odds with the scope of the Working Group. DOE disagrees. The parties agreed to negotiate a procedure for enforcement of regional standards under 42 U.S.C. 6295(o)(6)(G), which are applicable only to split systems and single package CAC systems. DOE is not enforcing a regional standard against heat pumps. DOE's interpretation is that the ramifications for a distributor, contractor, or dealer that is a routine violator of regional standards include a limitation on the availability of all classes of central air conditioners. Nothing prevents manufacturers from selling to other distributors, contractors, or dealers.

With respect to AHRI's contention that this interpretation results in DOE's ability to ban the sale of products that are not subject to a regional standard, DOE notes that it is not banning the sale of products – it is only asserting authority to assess civil penalties for commission of prohibited acts. As mentioned above, manufacturers can continue to sell products to entities that have not been found to routinely violate the regional standards without penalty. Manufacturers can continue to sell central air conditioners to entities that have been found to routinely violate the regional standards, albeit subject to penalty. Manufacturers may continue to sell other types of covered products or equipment (other than central air conditioners) and products that are not subject to standards to entities that have been found to routinely violate the regional standards without penalty. Manufacturers are only subject to

penalty for the sale of central air conditioners to a distributor, contractor, or dealer that has been found to routinely violate the regional standards.

AHRI also commented that this interpretation would prevent manufacturers from selling products that are fully compliant with the applicable national standard to an entity that has been found to routinely violate the regional standards. Again, manufacturers could do so but would be subject to penalty—it is not a ban. More to the point, however, DOE agrees that it would be a prohibited act to sell a central air conditioner that meets the base national standard to an entity that has been found to routinely violate the regional standards. This is entirely consonant with the statutory language, which is markedly different with respect to regional standards than national standards. If an entity has failed to remediate past violations and has continued to violate the regional standards, there should be a significant consequence. The likely lack of availability of central air conditioners should produce a significant incentive for a routine violator to remediate past violations—or, hopefully, to avoid being identified as a routine violator at all.

As DOE noted in the NOPR, nothing in this rulemaking impacts DOE's ability to determine that a manufacturer has manufactured and distributed a noncompliant central air conditioner in accordance with the existing procedures at 10 CFR 429.104–114. Furthermore, those processes apply to DOE's determination of a manufacturer's manufacture and distribution of a central air conditioner that fails to meet a regional standard. With respect to liability, if DOE determines that a model of condensing unit fails to meet the applicable regional standard(s) when tested in a combination certified by the same manufacturer (i.e., one entity manufactures both the indoor coil and the condensing unit), the condensing unit

manufacturer will be responsible for this model's noncompliance. If DOE determines that a basic model fails to meet regional standards when tested in a combination certified by a manufacturer other than the outdoor unit manufacturer (e.g., an independent coil manufacturer (ICM)), the certifying manufacturer will be responsible for this combination's noncompliance. The responsible manufacturer will be liable for distribution in commerce of noncompliant units. That manufacturer can minimize liability by demonstrating on a unit-by-unit basis that the noncompliant combination was installed in a region where it would meet the standards. For example, if a 14 SEER split-system air conditioner was tested by the Department and determined to be 13.5 SEER, then the manufacturer may minimize its liability by proving only a portion of sales for this combination was installed in the Southeast and Southwest. Manufacturers represented during the course of the negotiations that the bulk of sales are of minimally compliant units and so they expect most of the products that comply with the Southeast and Southwest regional standards would be sold in those regions. Given this, the Working Group agreed that there should be a presumption that the units were sold in a region subject to a regional standard and that DOE would presume all units of a model rated as compliant with a regional standard but determined to be noncompliant with that standard were in fact installed illegally. Manufacturers can rebut this presumption by providing evidence that a portion of the units were instead installed in a location where they would have met the applicable energy conservation standards. 80 FR 72373, 72380 (Nov. 19, 2015).

#### L.Impact of Regional Enforcement on National Impacts Analysis

In the June 2011 DFR, DOE considered the economic impacts of amending the standards for central air conditioners and heat pumps. Included in the economic analyses was a National Impacts Analysis (NIA) which estimated the energy savings and the net present value



(NPV) of those energy savings that consumers would receive from the new energy efficiency standards of central air conditioners (CAC) and heat pumps (HP). This NPV was the estimated total value of future operating-cost savings during the analysis period (2015-2045), minus the estimated increased product costs (including installation), discounted to 2011. However, DOE did not account for the financial burden on distributors and installers related to record retention requirements necessary to demonstrate compliance with the regional standards in the June 2011 DFR.

From the enforcement plan proposed in the November 2015 NOPR, DOE estimated that manufacturers, distributors, and contractors face some financial burden related to the proposed record retention requirements. DOE assumed that the proposed records retention requirements would cause manufacturers, distributors, and contractors additional labor costs from collecting and filing such records. These labor costs would be an annual burden to the market participants. At the Working Group public meetings, distributors stated that, if they had to update their enterprise resource planning (ERP) systems to track the necessary information electronically, initial costs could be as high as \$46,340,000. DOE did not receive any quantitative comments on its assumptions for the financial burden from the proposed record retention requirements, but upon review, has increased the estimated total annual cost to manufacturers. Because DOE is not requiring distributors to track the necessary information electronically and therefore distributors are not required to update their ERP systems, DOE has not included that cost in the updated cost of retaining records on each market participant, which is summarized in Table II.2.

**Table II.2 Cost of Records Retention Due to Regional Standards Enforcement for Central Air Conditioner and Heat Pump Market Participants**

	<b>Manufacturers</b>	<b>Distributors</b>	<b>Contractors</b>
<b>Total Annual Burden Hours</b>	574,167	287,083	359,949
<b>Estimated Total Annual Cost</b>	\$57,416,667	\$2,081,354	\$2,609,631

In the November 2015 NOPR, DOE re-evaluated the NIA to include the cost of the proposed record retention requirements to manufacturer, distributors, and contractors. DOE conservatively estimated the consumer benefits by assuming that the annual cost from the proposed record retention requirements would be passed on to consumers and thus decreasing the NPV. DOE revised this analysis for the final rule using the updated costs to manufacturers and excluding initial ERP costs, which are not required by the rule. The updated NPV results are summarized in Table II.3. The impact of including the proposed record retention requirement costs on the NPV is estimated to reduce the benefit by \$1.86 billion (11-percent) at a 3% discount rate and \$0.99 billion (25-percent) at a 7% discount rate. The costs of the record retention requirements are estimated to have no impact on national energy savings. DOE’s economic justification of the energy conservation standards chosen and published in the 2011 DFR would be unaffected by the quantification and inclusion of enforcement plan costs. In today’s final rule, DOE reaffirms the 2011 DFR energy conservation standards based on this analysis and adopts its evaluation in the November 2015 NOPR. 80 FR 72373, 72382 (Nov. 19, 2015).

**Table II.3 National Impacts Analysis Results with Costs from Proposed Regional Enforcement Plan for Central Air Conditioners and Heat Pumps**

	<b>National Impacts estimated from 2011 DFR for the chosen energy conservation standards</b>	<b>National Impacts estimated from 2011 DFR for the chosen energy conversation standards with enforcement plan costs</b>
<b>Savings (quads)</b>	3.20 to 4.22	3.20 to 4.22

<b>NPV of Consumer Benefits at 3% discount rate (2009\$ billion)</b>	14.73 to 17.55	12.88 to 15.69
<b>NPV of Consumer Benefits at 7% discount rate (2009\$ billion)</b>	3.93 to 4.21	2.94 to 3.22

### **III.Procedural Issues and Regulatory Review**

#### A. Review Under Executive Order 12866

The Office of Management and Budget (OMB) has determined that test procedure rulemakings do not constitute “significant regulatory actions” under section 3(f) of Executive Order 12866, Regulatory Planning and Review, 58 FR 51735 (Oct. 4, 1993). Accordingly, this action was not subject to review under the Executive Order by the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB).

#### B.Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 et seq.) requires preparation of a regulatory flexibility analysis (FRA) for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, “Proper Consideration of Small Entities in Agency Rulemaking,” 67 FR 53461 (August 16, 2002), DOE published procedures and policies on February 19, 2003 to ensure that the potential impacts of its rules on small entities are properly considered during the DOE rulemaking process. 68 FR 7990. DOE has made its procedures and policies available on the Office of the General Counsel’s website: <http://energy.gov/gc/>.

DOE reviewed the proposed requirements under the provisions of the Regulatory Flexibility Act and the procedures and policies published on February 19, 2003. As discussed in more detail below, DOE found that the entities impacted by this rule (central air conditioning manufacturers, distributors, and contractors) could potentially experience a financial burden associated with these new requirements. Additionally, the majority of central air conditioning contractors and distributors are small business as defined by the Small Business Administration (SBA). DOE determined that it could not certify that the proposed rule, if promulgated, would not have a significant effect on a substantial number of small entities. Therefore, DOE has prepared an RFA for this rulemaking. The RFA describes potential impacts on small businesses associated with the requirements adopted in today's rulemaking.

DOE has transmitted a copy of this RFA to the Chief Counsel for Advocacy of the Small Business Administration for review.

#### 1. Description and Estimated Number of Small Entities Regulated

The SBA has set a size threshold for manufacturers, distributors, and contractors of central air conditioning products that define those entities classified as "small businesses." DOE used SBA's size standards to determine whether any small businesses would be impacted by today's rule. 65 FR 30836, 30849 (May 15, 2000), as amended at 65 FR 53533, 53545 (Sept. 5, 2000) and codified at 13 CFR part 121. The size standards are listed by North American Industry Classification System (NAICS) code and industry description, and are available at [http://www.sba.gov/sites/default/files/files/Size\\_Standards\\_Table.pdf](http://www.sba.gov/sites/default/files/files/Size_Standards_Table.pdf). The size standards and NAICS codes relevant to this rulemaking are listed in Table III-1.

To estimate the number of companies that could be small business manufacturers, distributors, and contractors of equipment covered by this rulemaking, DOE conducted a

market survey using available public information. DOE's research involved examining industry trade association websites, public databases, and individual company Web sites. DOE also solicited information from industry representatives such as AHRI, HARDI, ACCA, and PHCC. DOE screened out companies that do not offer products covered by this rulemaking or are not impacted by this rulemaking, do not meet the definition of a “small business,” or are foreign owned and operated. In addition, DOE prepared an IRFA and requested comment in the November 2015 NOPR proposing the concepts adopted in today’s rule. DOE did not receive any substantive comments in response to its IRFA.

**Table III.1 Small Business Classification Summary Table**

<b>Impacted Entity</b>	<b>NAICS Code</b>	<b>NAICS Definition of Small Business</b>	<b>Total Number of Impacted Businesses</b>	<b>Total Number of Small Businesses</b>
Contractors <sup>20</sup>	238220	\$15 million or less in revenue	22,207 <sup>21</sup>	21,763
Distributors	423730	100 or less employees	2,317 <sup>22</sup>	2,000
Manufacturers	333415	750 or less employees	29	12

## 2. Description and Estimate of Regional CAC Requirements

As discussed in the preamble of this rule, the Working Group recommended an enforcement plan for central air conditioners that would include public awareness efforts, records retention requirements, and voluntary efforts like remediation and labeling. The Working Group also made explicit the terms “violation” and “routine violator.” While most of the regulations in today’s rule will not have an impact on manufacturers, distributors, and

<sup>20</sup> The number of impacted contractors and small contractors is based on the number of contractors installing in the Southwest and Southeast regions.

<sup>21</sup> Chapter 18: Regional Standards Impacts on Market Participants. Technical Support Document: Energy Efficiency Program for Consumer Products: Residential Central Air Conditioners, Heat Pumps, and Furnaces. <<http://www.regulations.gov/#!documentDetail;D=EERE-2011-BT-STD-0011-0012>>.

<sup>22</sup> "Statistics of U.S. Businesses: 2008: NAICS 423730 - HVAC equip. merchant wholesalers United States." U.S. Census Bureau. <<http://www.census.gov/epcd/susb/2008/us/us423730.htm>>.

contractors that adhere to the central air conditioner regional standards, the records retention requirements may result in some financial burden.

At the Working Group meetings, HARDI stated that distributors track equipment and sales in ERP systems and are expected to incorporate the proposed recordkeeping requirements into their ERP systems. HARDI expected that 40% of distributors currently retain the proposed records and will not need to update their ERP systems. HARDI expected 50% of distributors would need to make some changes to their ERP systems and 10% of distributors would need to make major changes to their ERP system. HARDI expected that small distributors are more likely to require major changes to their ERP systems because typically small distributors have older and more inflexible systems. HARDI estimated that changes to ERP systems to accommodate the record retention proposals may cost \$20,000 to \$100,000 depending on the type of change needed to the system. According to HARDI, the entire central air conditioner distribution industry would incur an initial conversion cost of around \$46,340,000 to modify the ERP systems. To help alleviate some of the financial burden, the Working Group recommended that DOE not require distributors to retain records for sales of central air conditioner indoor coils or air handlers, which were identified as difficult components to track for the distributors. Additionally, the Working Group recommended that distributors should not have to start retaining records until November 31, 2015, at the earliest, which DOE has delayed until [INSERT DATE 30 days following publication].

The Working Group worked to negotiate records retention requirements that would have limited financial burden on the impacted parties—manufacturers, distributors, and contractors. The Working Group made a few general provisions regarding the records retention requirements to help mitigate some of the financial burden. The Working Group tried

to reduce the impact of the records retention requirements by staggering the length of time for which records must be maintained. Manufacturers, the entities understood to have the most resources and sophistication, would have to retain records for the longest time period (60 months); distributors would have to retain records for less time (54 months); and contractors would have to retain records for the least amount of time (48 months). Additionally, in the case that records are requested, the Working Group recommended that the party from whom the records were requested should have an extended period of 30 days to produce such records. The Working Group also explicitly recommended that manufacturers, distributors, and contractors should not have to create new forms to retain such records, and that the records would not have to be retained electronically.

DOE expects central air conditioning manufacturers to be the least burdened entity of all the affected entities by the record retention requirements proposed in today's notice. Manufacturers have the fewest record retention requirements. Many of the record retention requirements being proposed in today's notice expand on DOE's existing certification requirements and thus should only slightly increase the recordkeeping burden. DOE does not expect manufacturers to incur any capital expenditures as a result of the proposals since the rulemaking does not impose any product-specific requirements that would require changes to existing plants, facilities, product specifications, or test procedures. Rather, this proposed rule imposes record retention requirements, which may have a slight impact on labor costs. DOE included certification and enforcement requirements associated with the regional standards for central air conditioners in the June 27, 2011<sup>23</sup> energy conservation standards final rule for

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<sup>23</sup> Chapter 12: Manufacturer Impact Analysis. Technical Support Document: Energy Efficiency Program for Consumer Products: Residential Central Air Conditioners, Heat Pumps, and Furnaces. <<http://www.regulations.gov/#!documentDetail;D=EERE-2011-BT-STD-0011-0012>>.

central air conditioners and heat pumps. To avoid the potential costs to distributors, the Working Group recommended DOE not require electronic record retention, and DOE is neither requiring records to be retained in electronic form nor mandating that distributors make changes in their ERP systems to retain the information proposed in this notice.

DOE believes central air conditioning contractors will experience a minimal recordkeeping burden. DOE is limiting the records retention requirements on contractors to installations in the Southeast and Southwest. For all central air conditioner installations in those regions, contractors must keep a record of installation location, date of installation, and purchaser. Contractors must keep records specific to the type of units (outdoor condensing unit, indoor coil or air handler, or single-package air conditioner) installed as well. A contractor trade association remarked at the public meetings that most contractors already retain such records and the record retention requirements would have limited financial impacts. (ACCA, Public Meeting Transcript, No. 77 at 12–13) DOE estimates that any additional expense caused by the records requirements adopted in today’s rule would be related to the time required to file these records. DOE estimates that contractors may spend an additional 10 minutes per installation to comply with the records retention requirements.

### 3. Duplication, Overlap, and Conflict with Other Rules and Regulations

DOE is not aware of any rules or regulations that duplicate, overlap, or conflict with the proposed rule being considered today.

### 4. Significant Alternatives to the Rule

DOE could mitigate the potential impacts on small manufacturers, distributors, or contractors by reducing or eliminating the proposed types of information to be maintained. However, these requirements were negotiated as an acceptable compromise among the



participants in the Working Group. While there may be some financial burden, the Working Group unanimously agreed to the record retention requirements for manufacturers, distributors, and contractors. Furthermore, DOE believes that the record retention requirements are the least burdensome requirements possible to provide DOE sufficient information to determine whether manufacturers, distributors and contractors are complying with regulatory requirements. Thus, in the November 2015 NOPR, DOE rejected the alternative of reducing or eliminating the record retention requirements and is proposing these record retention requirements for the aforementioned parties. DOE adopts this proposal in today's final rule. 80 FR 72373, 72383–84 (Nov. 19, 2015).

### C. Review Under the Paperwork Reduction Act of 1995

#### 1. Description of the Requirements:

In today's final rule, DOE is adopting record retention requirements for central air conditioner manufacturers, distributors, and contractors. DOE requested approval for a new information collection associated with these requirements. These requirements were developed as part of a negotiated rulemaking effort for regional central air conditioner enforcement. These requirements are described in detail in section II.H.

#### 2. Information Collection Request Title: Enforcement of Regional Standards

#### 3. Type of Request: New

#### 4. Purpose:

Generally, DOE is requiring that manufacturers retain records of the model number and serial number for all split system and single-package air conditioners, when these units were manufactured, when these units were sold, and to whom the units were sold.

Manufacturers must retain these records for 60 months. Distributors must retain the manufacturer, model number and serial number for all their split system outdoor condensing units and single-package units. In addition, distributors must keep track of when and from whom each of these types of units was purchased, and when and to whom each of these units was sold. Distributors must retain these records for 54 months. Contractors must retain records of all split system and single-package air conditioner installations in the Southeast and Southwest region. These records are required to include what was installed (e.g., manufacturer and model number), date of sale, and the party to whom the unit was sold. Contractors must retain these records for 48 months.

Today's final rule primarily requires central air conditioner manufacturers, distributors, and contractors to retain records for CAC installations. If DOE has a "reasonable belief" that an installation in violation of regional standards occurred, then it may request records specific to an ongoing investigation from the relevant manufacturer(s), distributor(s), and/or contractor(s). The Working Group recommended that DOE determine if it has a "reasonable belief" of a CAC violation based on the factors described in section II.I. Once DOE establishes reasonable belief and requests records from the relevant parties, then the entity from whom DOE requested records has 30 days to produce those records. The party from whom DOE requested records may ask for additional time with a written explanation of the circumstances.

The following are DOE estimates of the total annual recordkeeping burden imposed on manufacturers, distributors, and contractors of central air conditioners. These estimates take into account the time necessary collect, organized and store the record required by this notice of proposed rulemaking. See the supporting statement for detailed explanations of the estimates.

## Manufacturers

Estimated Number of Impacted Manufacturers: 29

Estimated Time per Record: 10 minutes

Estimated Total Annual Burden Hours: 574,167 hours

Estimated Total Annual Cost to the Manufacturers: \$57,416,667

## Distributors

Estimated Number of Impacted Distributors: 2,317

Estimated Time per Record: 5 minutes

Estimated Total Annual Burden Hours: 287,083 hours

Estimated Total Annual Cost to the Distributors: \$2,081,354

## Contractors

Estimated Number of Impacted Contractors: 22,207

Estimated Time per Record: 10 minutes per installation

Estimated Total Annual Burden Hours: 359,949 hours

Estimated Total Annual Cost to the Contractors: \$2,609,631

5. Annual Estimated Number of Respondents: 24,553

6. Annual Estimated Number of Total Responses: 24,553

7. Annual Estimated Number of Burden Hours: 1,221,199

8. Annual Estimated Reporting and Recordkeeping Cost Burden: \$62,107,652

### D. Review Under the National Environmental Policy Act of 1969

DOE has determined that this rule falls into a class of actions that are categorically excluded from review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and DOE's implementing regulations at 10 CFR part 1021. Specifically, this proposed

rule would adopt changes to the manner in which regional standards for central air conditioners are enforced, which would not affect the amount, quality or distribution of energy usage, and, therefore, would not result in any environmental impacts. Thus, this rulemaking is covered by Categorical Exclusion A5 under 10 CFR part 1021, subpart D, which applies to any rulemaking that interprets or amends an existing rule without changing the environmental effect of that rule. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

#### E.Review Under Executive Order 13132

Executive Order 13132, “Federalism,” 64 FR 43255 (August 4, 1999), imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have Federalism implications. The Executive Order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The Executive Order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have Federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations. 65 FR 13735. DOE examined this final rule and determined that it will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. EPCA governs and prescribes Federal preemption of State regulations as to energy conservation for the products that are the subject of this final rule. States can petition DOE for exemption from such preemption to the extent, and based on

criteria, set forth in EPCA. (42 U.S.C. 6297(d)) No further action is required by Executive Order 13132.

#### F. Review Under Executive Order 12988

Regarding the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, “Civil Justice Reform,” 61 FR 4729 (Feb. 7, 1996), imposes on Federal agencies the general duty to adhere to the following requirements: (1) eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; (3) provide a clear legal standard for affected conduct rather than a general standard; and (4) promote simplification and burden reduction. Section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in sections 3(a) and 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this final rule meets the relevant standards of Executive Order 12988.

#### G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. Pub. L. No. 104-4, sec. 201 (codified at 2 U.S.C. 1531).

For a regulatory action resulting in a rule that may cause the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of \$100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a), (b)) The UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a proposed “significant intergovernmental mandate,” and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect small governments. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. 62 FR 12820; also available at <http://energy.gov/gc/office-general-counsel>. DOE examined this final rule according to UMRA and its statement of policy and determined that the rule contains neither an intergovernmental mandate, nor a mandate that may result in the expenditure of \$100 million or more in any year, so these requirements do not apply.

#### H. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105-277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. This final rule will not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

#### I. Review Under Executive Order 12630

DOE has determined, under Executive Order 12630, “Governmental Actions and Interference with Constitutionally Protected Property Rights” 53 FR 8859 (March 18, 1988), that this final rule will not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

#### J. Review Under Treasury and General Government Appropriations Act, 2001

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB’s guidelines were published at 67 FR 8452 (Feb. 22, 2002), and DOE’s guidelines were published at 67 FR 62446 (Oct. 7, 2002). DOE has reviewed this final rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

#### K. Review Under Executive Order 13211

Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,” 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to OMB, a Statement of Energy Effects for any significant energy action. A “significant energy action” is defined as any action by an agency that promulgated or is expected to lead to promulgation of a final rule, and that: (1) is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (3) is designated by the Administrator of OIRA as a significant energy action. For any significant energy action, the agency must give a detailed statement of any adverse effects on energy supply,

distribution, or use if the regulation is implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

Today's final rule adopting a regional standards enforcement plan for central air conditioners is not a significant regulatory action under Executive Order 12866. Moreover, it would not have a significant adverse effect on the supply, distribution, or use of energy, nor has it been designated as a significant energy action by the Administrator of OIRA.

Therefore, it is not a significant energy action, and, accordingly, DOE has not prepared a Statement of Energy Effects.

#### L. Review Under Section 32 of the Federal Energy Administration Act of 1974

Under section 301 of the Department of Energy Organization Act (Pub. L. 95-91; 42 U.S.C. 7101), DOE must comply with section 32 of the Federal Energy Administration Act of 1974, as amended by the Federal Energy Administration Authorization Act of 1977. (15 U.S.C. 788; FEAA) Section 32 essentially provides in relevant part that, where a proposed rule authorizes or requires use of commercial standards, the notice of proposed rulemaking must inform the public of the use and background of such standards. In addition, section 32(c) requires DOE to consult with the Attorney General and the Chairman of the Federal Trade Commission (FTC) concerning the impact of the commercial or industry standards on competition. Today's final rule does not require use of any commercial standards.

#### M. Congressional Notification

As required by 5 U.S.C. 801, DOE will report to Congress on the promulgation of this final rule before its effective date. The report will state that it has been determined that the rule is not a "major rule" as defined by 5 U.S.C. 804(2).



#### **IV. Approval of the Office of the Secretary**

The Secretary of Energy has approved publication of this final rule.

##### **List of Subjects**

###### **10 CFR Part 429**

Administrative practice and procedure, Confidential business information, Energy conservation, Reporting and record keeping requirements.

###### **10 CFR Part 430**

Administrative practice and procedure, Confidential business information, Energy conservation, Household appliances, Imports, Incorporation by reference, Intergovernmental relations, Small businesses.

Issued in Washington, DC, on June 10, 2016.



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

For the reasons stated in the preamble, DOE amends parts 429 and 430 of Chapter II of Title 10, Code of Federal Regulations as set forth below:

**PART 429 – CERTIFICATION, COMPLIANCE AND ENFORCEMENT FOR CONSUMER PRODUCTS AND COMMERCIAL AND INDUSTRIAL EQUIPMENT**

1. The authority citation for part 429 continues to read as follows:

**Authority:** 42 U.S.C. 6291–6317.

2. Amend §429.102 to add paragraph (c) to read as follows:

**§429.102 Prohibited acts subjecting persons to enforcement action.**

\* \* \* \* \*

(c) Violations of regional standards:

- (1) It is a violation for a distributor to knowingly sell a product to a contractor or dealer with knowledge that the entity will sell and/or install the product in violation of any regional standard applicable to the product.
- (2) It is a violation for a distributor to knowingly sell a product to a contractor or dealer with knowledge that the entity routinely violates any regional standard applicable to the product.
- (3) It is a violation for a contractor or dealer to knowingly sell to and/or install for an end user a central air conditioner subject to regional standards with the knowledge that such product will be installed in violation of any

regional standard applicable to the product.

(4) A “product installed in violation” includes:

(i) A complete central air conditioning system that is not certified as a complete system that meets the applicable standard. Combinations that were previously validly certified may be installed after the manufacturer has discontinued the combination, provided the combination meets the currently applicable standard.

(ii) An outdoor unit with no match (*i.e.*, that is not offered for sale with an indoor unit) that is not certified as part of a combination that meets the applicable standard.

(iii) An outdoor unit that is part of a certified combination rated less than the standard applicable in the region in which it is installed.

3. Add an undesignated center heading before §429.140 in subpart C to read as follows:

**Regional standards enforcement procedures.**

4. Add §429.140 to subpart C to read as follows:

**§429.140 Regional standards enforcement procedures.**

Sections 429.140 through 429.158 provide enforcement procedures specific to the violations enumerated in §429.102(c). These provisions explain the responsibilities of manufacturers, private labelers, distributors, contractors and dealers with respect to central

air conditioners subject to regional standards; however, these provisions do not limit the responsibilities of parties otherwise subject to 10 CFR Parts 429 and 430.

5. Add §429.142 to subpart C to read as follows:

**§429.142 Records retention.**

(a) Record retention. The following entities must maintain the specified records.

(1) Contractors and dealers.

(i) Contractors and dealers must retain the following records for at least 48 months from the date of installation of a central air conditioner in the states of Alabama, Arizona, Arkansas, California, Delaware, Florida, Georgia, Hawaii, Kentucky, Louisiana, Maryland, Mississippi, Nevada, New Mexico, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, or Virginia or in the District of Columbia:

A. For split-system central air conditioner outdoor units: the manufacturer name, model number, serial number, location of installation (including street address, city, state, and zip code), date of installation, and party from whom the unit was purchased (including person's name, full address, and phone number); and

B. For split-system central air conditioner indoor units: the manufacturer name, model number, location of installation (including street address, city, state, and zip code), date of installation, and party from whom the unit was purchased

(including person's name, full address, and phone number).

(ii) Contractors and dealers must retain the following, additional records for at least 48 months from the date of installation of a central air conditioner in the states of Arizona, California, Nevada, and New Mexico:

A. For single-package central air conditioners: the manufacturer name, model number, serial number, location of installation (including street address, city, state, and zip code), date of installation, and party from whom the unit was purchased (including person's name, full address, and phone number).

B. Reserved.

(2) Distributors. Beginning July 1, 2016, all distributors must retain the following records for no less than 54 months from the date of sale:

(i) For split-system central air conditioner outdoor units: the outdoor unit manufacturer, outdoor unit model number, outdoor unit serial number, date unit was purchased from manufacturer, party from whom the unit was purchased (including company or individual's name, full address, and phone number), date unit was sold to contractor or dealer, party to whom the unit was sold (including company or individual's name, full address, and phone number), and, if delivered, delivery address.

(ii) For single-package air conditioners: the manufacturer, model number, serial number, date unit was purchased from manufacturer, party from whom the unit was purchased (including company or individual's name,

full address, and phone number), date unit was sold to a contractor or dealer, party to whom the unit was sold (including company or individual's name, full address, and phone number), and, if delivered, delivery address.

(3) Manufacturers and Private Labelers. All manufacturers and private labelers must retain the following records for no less than 60 months from the date of sale:

(i) For split system air conditioner outdoor units: the model number, serial number, date of manufacture, date of sale, and party to whom the unit was sold (including person's name, full address, and phone number);

(ii) For split system central air conditioner indoor units: the model number, date of manufacture, date of sale, and party to whom the unit was sold (including person's name, full address, and phone number); and

(iii) For single-package central air conditioners: the model number, serial number, date of manufacture, date of sale, and party to whom the unit was sold (including person's name, full address, and phone number).

6. Add §429.144 to subpart C to read as follows:

**§429.144 Records request.**

(a) DOE must have reasonable belief a violation has occurred to request records specific to an on-going investigation of a violation of central air conditioner regional standards.

(b) Upon request, the manufacturer, private labeler, distributor, dealer, or contractor

must provide to DOE the relevant records within 30 calendar days of the request.

(1) DOE, at its discretion, may grant additional time for records production if the party from whom records have been requested has made a good faith effort to produce records.

(2) To request additional time, the party from whom records have been requested must produce all records gathered in 30 days and provide to DOE a written explanation of the need for additional time with the requested date for completing the production of records.

7. Add §429.146 to subpart C to read as follows:

**§429.146 Notice of violation.**

- (a) If DOE determines a party has committed a violation of regional standards, DOE will issue a Notice of Violation advising that party of DOE's determination.
- (b) If, however, DOE determines a noncompliant installation occurred in only one instance, the noncompliant installation is remediated prior to DOE issuing a Notice of Violation, and the party has no history of prior violations, DOE will not issue such notice.
- (c) If DOE does not find a violation of regional standards, DOE will notify the party under investigation.

8. Add §429.148 to subpart C to read as follows:

**§429.148 Routine violator.**

- (a) DOE will consider, inter alia, the following factors in determining if a person is a routine violator: number of violations in current and past cases, length of time over which violations occurred, ratio of compliant to noncompliant installations or sales, percentage of employees committing violations, evidence of intent, evidence of training or education provided, and subsequent remedial actions.
- (b) In the event that DOE determines a person to be a routine violator, DOE will issue a Notice of Finding of Routine Violation.
- (c) In making a finding of Routine Violation, DOE will consider whether the Routine Violation was limited to a specific location. If DOE finds that the routine violation was so limited, DOE may, in its discretion, in the Notice of Finding of Routine Violation limit the prohibition on manufacturer and/or private labeler sales to a particular contractor or distribution location.

9. Add §429.150 to subpart C to read as follows:

**§429.150 Appealing a finding of routine violation.**

- (a) Any person found to be a routine violator may, within 30 calendar days after the date of Notice of Finding of Routine Violation, request an administrative appeal to the Office of Hearings and Appeals.
- (b) The appeal must present information rebutting the finding of violation(s).
- (c) The Office of Hearings and Appeals will issue a decision on the appeal within 45 days of receipt of the appeal.
- (d) A routine violator must file a Notice of Intent to Appeal with the Office of Hearings



and Appeals within three business days of the date of the Notice of Finding of Routine Violation, serving a copy on the Office of the Assistant General Counsel for Enforcement to retain the ability to buy central air conditioners during the pendency of the appeal.

10. Add §429.152 to subpart C to read as follows:

**§429.152 Removal of finding of “routine violator”.**

- (a) A routine violator may be removed from DOE’s list of routine violators through completion of remediation in accordance with the requirements in § 429.154 of this subpart.
- (b) A routine violator that wants to remediate must contact the Office of the Assistant General Counsel for Enforcement via the point of contact listed in the Notice of Finding of Routine Violation and identify the distributor(s), manufacturer(s), or private labeler(s) from whom it wishes to buy compliant replacement product.
- (c) DOE will contact the distributor(s), manufacturer(s), or private labeler(s) and authorize sale of central air conditioner units to the routine violator for purposes of remediation within 3 business days of receipt of the request for remediation. DOE will provide the manufacturer(s), distributor(s), and/or private labeler(s) with an official letter authorizing the sale of units for purposes of remediation.
- (d) DOE will contact routine violators that requested units for remediation within 30

days of sending the official letter to the manufacturer(s), distributor(s), and/or private labeler(s) to determine the status of the remediation.

- (e) If remediation is successfully completed, DOE will issue a Notice indicating a person is no longer considered to be a routine violator. The Notice will be issued no more than 30 days after DOE has received documentation demonstrating that remediation is complete.

11. Add §429.154 to subpart C to read as follows:

**§429.154 Remediation.**

- (a) Any party found to be in violation of the regional standards may remediate by replacing the noncompliant unit at cost to the violator; the end user cannot be charged for any costs of remediation.

- (1) If a violator is unable to replace all noncompliant installations, then the Department may, in its discretion, consider the remediation complete if the violator satisfactorily demonstrates to the Department that it attempted to replace all noncompliant installations.

- (2) The Department will scrutinize any “failed” attempts at replacement to ensure that there was indeed a good faith effort to complete remediation of the noncompliant unit.

- (b) The violator must provide to DOE the serial number of any outdoor unit and/or indoor unit installed not in compliance with the applicable regional standard as well as the serial number(s) of the replacement unit(s) to be checked by the Department against warranty and other replacement

claims.

- (c) If the remediation is approved by the Department, then DOE will issue a Notice of Remediation and the violation will not count towards a finding of “routine violator”.

12. Add §429.156 to subpart C to read as follows:

**§429.156 Manufacturer and private labeler liability.**

- (a) In accordance with §429.102, paragraphs (a)(10) and (c), manufacturers and private labelers are prohibited from selling central air conditioners and heat pumps to a routine violator.
  - (1) To avoid financial penalties, manufacturers and/or private labelers must cease sales to a routine violator within 3 business days from the date of issuance of a Notice of Finding of Routine Violation.
  - (2) If a Routine Violator files a Notice of Intent to Appeal pursuant to §429.150, then a manufacturer and/or private labeler may assume the risk of selling central air conditioners to the Routine Violator during the pendency of the appeal.
  - (3) If the appeal of the Finding of Routine Violator is denied, then the manufacturer and/or private labeler may be fined in accordance with §429.120, for sale of any units to a routine violator during the pendency of the appeal that do not meet the applicable regional standard.

(b) If a manufacturer and/or private labeler has knowledge of routine violation, then the manufacturer can be held liable for all sales that occurred after the date the manufacturer had knowledge of the routine violation. However, if the manufacturer and/or private labeler reports its suspicion of a routine violation to DOE within 15 days of receipt of such knowledge, then it will not be liable for product sold to the suspected routine violator prior to reporting the routine violation to DOE.

13. Add §429.158 to subpart C to read as follows:

**§429.158 Product determined noncompliant with regional standards.**

- (a) If DOE determines a model of outdoor unit fails to meet the applicable regional standard(s) when tested in a combination certified by the same manufacturer, then the outdoor unit basic model will be deemed noncompliant with the regional standard(s). In accordance with §429.102(c), the outdoor unit manufacturer and/or private labeler is liable for distribution of noncompliant units in commerce.
- (b) If DOE determines a combination fails to meet the applicable regional standard(s) when tested in a combination certified by a manufacturer other than the outdoor unit manufacturer (e.g., ICM), then that combination is deemed noncompliant with the regional standard(s). In accordance with §429.102(c), the certifying manufacturer is liable for distribution of noncompliant units in commerce.

(c) All such units manufactured and distributed in commerce are presumed to have been installed in a region where they would not comply with the applicable energy conservation standard; however, a manufacturer and/or private labeler may demonstrate through installer records that individual units were installed in a region where the unit is compliant with the applicable standards.

**PART 430 – ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS**

14. The authority citation for part 430 continues to read as follows:

**Authority:** 42 U.S.C. 6291-6309; 28 U.S.C. 2461 note.

15. Amend §430.2 by adding, in alphabetical order, new definitions for “contractor,” “dealer,” “distributor,” and “installation of a central air conditioner” to read as follows:

**§ 430.2 Definitions.**

\* \* \* \* \*

Contractor means a person (other than the manufacturer or distributor) who sells to and/or installs for an end user a central air conditioner subject to regional standards. The term “end user” means the entity that purchases or selects for purchase the central air conditioner. Some examples of typical “end users” are homeowners, building owners, building managers, and property developers.

\* \* \* \* \*

Dealer means a type of contractor, generally with a relationship with one or more specific manufacturers.

\* \* \* \* \*

Distributor means a person (other than a manufacturer or retailer) to whom a consumer appliance product is delivered or sold for purposes of distribution in commerce.

\* \* \* \* \*

Installation of a central air conditioner means the connection of the refrigerant lines and/or electrical systems to make the central air conditioner operational.

\* \* \* \* \*

16. Amend §430.32, by revising paragraph (c) to read as follows:

**§ 430.32 Energy and water conservation standards and their compliance dates.**

\* \* \* \* \*

(c) *Central air conditioners and heat pumps.* The energy conservation standards defined in terms of the heating seasonal performance factor are based on Region IV, the minimum standardized design heating requirement, and the provisions of 10 CFR 429.16 of this chapter.

(1) Each basic model of single-package central air conditioners and central air conditioning heat pumps and each individual combination of split-system central air conditioners and central air conditioning heat pumps manufactured on or after January 1, 2015, shall have a Seasonal Energy Efficiency Ratio and Heating Seasonal Performance Factor not less than:

<b>Product class</b>	<b>Seasonal energy efficiency ratio (SEER)</b>	<b>Heating seasonal performance factor (HSPF)</b>
(i) Split-system air conditioners	13	
(ii) Split-system heat pumps	14	8.2
(iii) Single-package air conditioners	14	
(iv) Single-package heat pumps	14	8.0
(v) Small-duct, high-velocity systems	12	7.2
(vi)(A) Space-constrained products—air conditioners	12	
(vi)(B) Space-constrained products—heat pumps	12	7.4

(2) In addition to meeting the applicable requirements in paragraph (c)(1) of this section, split-system air conditioners that are installed on or after January 1, 2015, in the States of Alabama, Arkansas, Delaware, Florida, Georgia, Hawaii, Kentucky, Louisiana, Maryland, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, or Virginia, or in the District of Columbia, must have a Seasonal Energy Efficiency Ratio (SEER) of 14 or higher. Any outdoor unit model that has a certified combination with a rating below 14 SEER cannot be installed in these States. The least efficient combination of each basic model must comply with this standard.

(3) In addition to meeting the applicable requirements in paragraph (c)(1) of this section, split-system air conditioners and single-package air conditioners that are installed on or after January 1, 2015, in the States of Arizona, California, Nevada, or New Mexico must have a Seasonal Energy Efficiency Ratio (SEER) of 14 or higher and have an Energy Efficiency Ratio (EER) (at a standard rating of 95 °F dry bulb outdoor temperature) not less than the following:

<b>Product class</b>	<b>Energy efficiency ratio (EER)</b>
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(i) Split-system rated cooling capacity less than 45,000 Btu/hr	12.2
(ii) Split-system rated cooling capacity equal to or greater than 45,000 Btu/hr	11.7
(iii) Single-package systems	11.0

Any outdoor unit model that has a certified combination with a rating below 14 SEER or the applicable EER cannot be installed in this region. The least efficient combination of each basic model must comply with this standard.

(4) Each basic model of single-package central air conditioners and central air conditioning heat pumps and each individual combination of split-system central air conditioners and central air conditioning heat pumps manufactured on or after January 1, 2015, shall have an average off mode electrical power consumption not more than the following:

<b>Product class</b>	<b>Average off mode power consumption <math>P_{W,OFF}</math> (watts)</b>
(i) Split-system air conditioners	30
(ii) Split-system heat pumps	33
(iii) Single-package air conditioners	30
(iv) Single-package heat pumps	33

(v) Small-duct, high-velocity systems	30
(vi) Space-constrained air conditioners	30
(vii) Space-constrained heat pumps	33

\* \* \* \* \*