Regional Standards Enforcement Working Group Discussion

Enforcement Plan

Regional Standards
Enforcement Working Group

Energy Efficiency & Renewable Energy
Components

- Basics
- Public Awareness
- Training
- Reporting Violations
- Records Retention
- Finding of Routine Violation
- Labels
- Manufacturer Liability
Components

- **Basics**
- Public Awareness
- Training
- Reporting Violations
- Records Retention
- Finding of Routine Violation
- Labels
- Manufacturer Liability
“14 SEER” interpretation

- Least efficient rating combination for a specified model of condensing unit must be 14 in the SE and SW regions.
- Least efficient rating combination for a specified model of condensing unit must meet minimum EER requirement in the SW region.
- Any condensing unit model that has a certified combination that is below the regional standard cannot be installed in the region.
- A condensing unit model certified below a regional standard by the OEM cannot be installed in a region subject to regional standard(s) even with an ICM indoor coil or air handler combination that may have a certified rating meeting the applicable regional standard

Vote: unanimous (1 abstention)
Definitions

• Contractor
  – 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

• Dealer
  – A type of contractor, generally with a relationship with one or more specific manufacturers

• Installation
  – Installation of a central air conditioner is the connection of the refrigerant lines and/or electrical systems to make the central air conditioner operational

• In the preamble DOE will describe that internet sales fall into the category of contractor, dealer, or distributor

Vote: unanimous
Components

- Basics
- **Public Awareness**
- Training
- Reporting Violations
- Records Retention
- Finding of Routine Violation
- Labels
- Manufacturer Liability
• DOE will establish a webpage with information on regional standards
• Others can link to this page from their own websites
• Will include link to print:
  – Consumer information trifold
  – Distributor counter/bulletin board flier
• Also link to file complaints via email

Vote: unanimous
Components

- Basics
- Public Awareness
- **Training**
- Reporting Violations
- Records Retention
- Finding of Routine Violation
- Labels
- Manufacturer Liability
• Manufacturers will provide training to distributors and contractors/dealers
• Distributors will also conduct training
• Contractors will also conduct own training
• DOE will provide webinar on standards and enforcement

Vote: unanimous
Components

- Basics
- Public Awareness
- Training
- **Reporting Suspected Violations**
- Records Retention
- Finding of Routine Violation
- Labels
- Manufacturer Liability
• DOE will accept complaints in Enforcement inbox
  – EnergyEfficiencyEnforcement@hq.doe.gov
• DOE will set up voicemail box for call-in complaints
• Complainant will have confidentiality to maximum extent authorized by law
• DOE will look into all credible complaints

Vote: unanimous
• If funding is available, DOE will consider conducting a survey of homes in any region to determine if a noncompliant unit has been installed

Vote: unanimous
Components

- Basics
- Public Awareness
- Training
- Reporting Violations
- **Records Retention**
- Finding of Routine Violation
- Labels
- Manufacturer Liability
Contractors/dealers

- **Scope:** applies to installations in the Southeast and Southwest
- **Split-system central air conditioner:**
  - outdoor condensing unit: manufacturer, model and serial number
  - indoor coil or air handler: manufacturer and model number
    - Do not need to keep track of components (e.g., uncased coil)
- **Single package air conditioner:** manufacturer, model and serial number
- **For all such units:**
  - location of the installation (including street address, city, state, and zip code)
  - date of the installation; and
  - party from whom the unit was purchased, including company or individual’s name, full address and phone number

**Vote:** unanimous
Distributors

- Split-system central air conditioner:
  - outdoor condensing unit: manufacturer, model and serial number
- Single package: manufacturer, model and serial number
- For all such units:
  - 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 dealer/contractor
  - party to whom the unit was sold, including company or individual’s name, full address and phone number
  - if delivered, delivery address
- Implementation date:
  - November 30, 2015

Vote: unanimous
• Split-system central air conditioner:
  – outdoor condensing unit: model and serial number
  – indoor coil or air handler: model number
    • Do not need to keep track of components (e.g. uncased coil)
• Single package air conditioner: model and serial number
• For all such units:
  – date of manufacture;
  – date of sale; and
  – party to whom the unit was sold, including company or individual’s name, full address and phone number

Vote: unanimous
Other issues

• Maintain records for 48 months for contractors, 54 for distributors, and 60 for manufacturers
  – Dealers/contractors from date of install
  – Manufacturers and distributors from date of sale
  – Can be archived, just not deleted or disposed

• Records shall be produced within 30 days of request

• DOE can grant extra time if make good faith production and explain need for additional time
  – Produce what have gathered in 30 days
  – Written explanation of need for more time with requested date for completing production

• No requirement to create “new” forms

• Not required to be electronic or “searchable”

Vote: unanimous
Threshold for records request

• DOE must have “reasonable belief” to request records specific to an ongoing investigation

• DOE will look at following factors to determine:
  – Address of suspected noncompliant install or attempted install?
  – Identifying information for equipment?
  – Physical Evidence?
    • Picture of condensing unit with nameplate depicting model and serial number
    • Copy of EnergyGuide label
    • Copy of completed work order/invoice
    • Bill of sale for equipment
    • Copy of bid for installation
    • Distributor prepared price book for customer in regions
  – Repeat complaints about party?
  – Complainant has history of substantiated complaints?

Vote: unanimous
Components

- Basics
- Public Awareness
- Training
- Reporting Violations
- Records Retention
- **Finding of Routine Violation**
- Labels
- Manufacturer Liability
Distributor:
– 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
– knowingly sell a product to a contractor or dealer with knowledge that the entity routinely violates any regional standard applicable to the product

Contractor/Dealer:
– knowingly sell to and/or install for an end user a central air conditioner subject to regional standards with the knowledge that such product shall be installed in violation of any regional standard applicable to the product

Vote: unanimous
Product installed in violation

- Complete system installed is not certified as a complete system that meets the applicable standard
  - may install combinations that were previously validly certified after manufacturer has discontinued the combination
  - But: if discontinued because noncompliant with applicable standard, cannot install
- Replacement outdoor unit is not certified as part of a combination that meets the applicable standard
  - not necessarily as installed
- Outdoor unit installed has a certified combination less than standard applicable in region

Vote: unanimous (1 abstention)
Investigation may include:
- Discussion with end user
- Request for retained records
- Discussion with alleged violator

If no violation found, DOE will issue case closed letter to party being investigated.

If a non-compliant installation in one residence (or equivalent) remediated before DOE makes a finding, then DOE will issue a case closed letter to party being investigated.

If violation found, DOE will issue Notice of Violation and post it publicly.

Vote: unanimous
• Party found to be in violation can remediate
• Sole method is replacement of noncompliant unit
  – A party may remediate by replacement of noncompliant units or demonstrate to the Department’s satisfaction the attempted replacement of all noncompliant units
  – Remediation is at cost to party in violation
• Must provide DOE serial number of old and new unit
• DOE will provide these numbers to the manufacturer(s) and distributor(s)
  – check against warranty or other replacement claims
• If clear, violation will not count towards finding of “routine violator” unless repeated
• DOE will issue Notice of Remediation

Vote: unanimous
If Routine Violator wants to remediate it must contact DOE Office of Enforcement (POC listed in notice) and identify distributor or manufacturer it wishes to buy compliant replacement product from.

DOE will contact distributor or manufacturer and authorize sale for purposes of remediation within 3 business days

- DOE will send an official letter for sellers records.

Party must provide documentation to DOE once remediation is completed.

DOE will follow up with Routine Violator within 30 days of official letter for sellers records to determine status of remediation.

Vote: unanimous.
• DOE will consider these factors:
  – number of violations (both found in current investigation and any past investigations)
  – length of time over which committed violations
  – ratio of compliant/noncompliant installations or sales
  – percentage of employees committing violation
  – evidence of effort/intent
  – evidence of training/education
  – subsequent remedial actions
• DOE will issue Notice of Finding of Routine Violation if determined to be routine violator
  – Posted on Enforcement website
  – Blasted via email
Vote: unanimous
• In determining a Routine Violation, DOE shall consider whether the Routine Violation was limited to a specific location. If DOE, in its discretion, finds that the routine violation was so limited, DOE will in the public notice of “Routine Violation” state that the prohibition on manufacturer sales is limited to a particular contractor or distribution location. In making such determination DOE would rely on the factors considered in determining whether a routine violation occurred.

Vote: unanimous
Right to appeal

- Party will have right to administrative appeal finding of routine violator
- Must file appeal within 30 days of Notice of Finding of Routine Violation
- Office of Hearing and Appeals will receive administrative appeals
- Appeal must present information rebutting finding of violation(s)
- Appeal will be decided within 45 days of filing

Vote: unanimous
Removal from “Routine Violator” list

• Can be removed through remediation of violations
• Will be removed no longer than 30 days after completes all remediation
• DOE will issue Notice indicating no longer considered a routine violator

Vote: unanimous
Components

• Basics
• Public Awareness
• Training
• Reporting Violations
• Records Retention
• Finding of Routine Violation
• Labels
• Manufacturer Liability
EnergyGuide Label

- Recommend FTC initiate rulemaking with simplified label
- Make consistent with 14 SEER interpretation

Vote: unanimous (1 abstention)
• Manufacturers will add label to outdoor unit
  – Near or as part of current nameplate
  – Ruggedized to withstand elements
• States “Install Prohibited in [pertinent regions]”
  – Southwest or Southeast and Southwest
• In the preamble DOE will state:
  – Manufacturers have agreed to label outdoor units
  – AHRI agreed that as part of its certification program it will require participants to label outdoor units
• To be implemented by March 1, 2015
  – Also target date for AHRI certification program

Vote: unanimous
Components

- Basics
- Public Awareness
- Training
- Reporting Violations
- Records Retention
- Finding of Routine Violation
- Labels
  - Manufacturer Liability
Once DOE issues Notice of Finding of Routine Violation, manufacturer can be fined for selling product to routine violator
  – Manufacturer has 3 business days from date of issuance of notice before it will be liable for sales to routine violator
  – Maximum fine is $200 per unit sold to routine violator
If a Notice of Intent to Appeal is filed within 3 business days of Notice of Finding of Routine Violation then manufacturer may sell to routine violator during pendency of appeal
  – But: if appeal denied, mfgs are liable for products below either applicable regional standards sold to routine violator during that time
If manufacturer has knowledge of routine violation before DOE finding, can be held liable for sales after date of knowledge
  – No liability for products sold if reported to DOE within 15 days of receipt of such knowledge

Vote: unanimous
Scope of “Product”

Preamble language: The working group had significant discussions on the scope of the term product as it relates to the statutorily defined prohibited act. The Department explained that it interpreted 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 of sales could be limited to split system central air conditioners and single package systems instead of this broad interpretation. See the public meeting transcript for October 24, 2014.

Vote: unanimous
If DOE determines model of outdoor unit fails to meet regional standard when tested in a combination certified by the same manufacturer, model of outdoor unit will be deemed noncompliant with regional standard.

– outdoor unit manufacturer responsible

If DOE determines combination fails to meet regional standard when tested in a combination certified by a manufacturer other than the outdoor unit manufacturer (e.g., ICM), combination is deemed noncompliant with regional standard.

– indoor unit manufacturer responsible

Manufacturer of model determined noncompliant with regional standard will be liable for distribution in commerce of noncompliant units

– Can minimize liability by demonstrating installed in region where would be compliant

– Manufacturer bears burden of proving

Vote: unanimous
Additional Prohibited Acts

Preamble language: The working group had significant discussions on whether to include additional prohibited acts and ultimately could not come to consensus on whether to include additional prohibited acts. See the public meeting transcript for October 16, 2014.

Vote: 1 objection
• All nongovernmental participants conditionally approve this report contingent upon the issuance of the final guidance on documents 0032 and 0033 consistent with the understanding of the Working Group as set forth in these recommendations.
Submission of the Report

Vote: unanimous