

United States Department of Energy
Supporting Statement
OMB Control Number 1910-xxxx
“Regional Standards Compliance Information”

This supporting statement provides additional information regarding the Department of Energy (DOE) request for processing of a new information collection, “Regional Standards Compliance Information.” The numbered questions correspond to the order shown on the Office of Management and Budget (OMB) Form 83-I, “Instructions for Completing OMB Form 83-I.”

A. Justification

- 1. Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements that necessitate the collection. Attach a copy of the appropriate section of each statute and regulation mandating or authorizing the information collection.**

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. Part A of Title III (42 U.S.C. 6291–6309) provides for the Energy Conservation Program for Consumer Products Other Than Automobiles.¹ The Department of Energy (“DOE”) is charged with implementing these provisions.

Under EPCA, this program consists essentially of four parts: (1) testing; (2) labeling; (3) Federal energy conservation standards; and (4) certification and enforcement procedures. The Federal Trade Commission (FTC) is primarily responsible for labeling of consumer products, and DOE implements the remainder of the program. Sections 6299-6305 of EPCA authorize DOE to enforce compliance with the energy and water conservation standards established for certain consumer products. (42 U.S.C. 6299-6305) EPCA directs the Secretary of Energy to prescribe reporting and recordkeeping rules for the covered products. The authority for this information collection are sections 6296(d) of EPCA, which states:

For purposes of carrying out this part, the Secretary may require, under this part or other provision of law administered by the Secretary, each manufacturer of a covered product to submit information or reports to the Secretary with respect to energy efficiency, energy use, or, in the case of showerheads, faucets, water closets, and urinals, water use of such covered product ... to ensure compliance with the requirements of this part;

and section 6295(o)(6)(G)(ii) of EPCA, which states, in relevant part:

(ii) Regional standards.— (I) ... [T]he Secretary shall initiate a rulemaking to develop and implement an effective enforcement plan for regional standards for the

¹ For editorial reasons, Parts B (consumer products) of Title III of EPCA was re-designated as part A in the United States Code.

products that are covered by the final rule. (II) Responsible entities.—Any rules regarding enforcement of a regional standard shall clearly specify which entities are legally responsible for compliance with the standards and for making any required information or labeling disclosures.

The Energy Independence and Security Act of 2007 (EISA 2007) modified EPCA to authorize DOE to consider regional standards for certain products. (42 U.S.C. 6295(a)(6)(A)) Such regional standards may be established only if the Secretary determines both that the standards will produce significant energy savings in comparison to establishing only a single national standard and that additional regional standards are economically justified. (42 U.S.C. 6295(a)(6)(D)(i)) EISA 2007 authorizes DOE to establish, in addition to national standards, up to two additional regional standards for central air conditioners and heat pumps and one additional regional standard for furnaces. (42 U.S.C. 6295(o)(6)(B)(ii)(II))

On June 27, 2011, DOE promulgated a direct final rule for central air conditioners and heat pumps and furnaces that established regional standards. 76 FR 37549. In addition to the current base national standards, DOE established one additional regional standard for furnaces and two additional regional standards for central air conditioners and heat pumps. The Department published a notice of effective date and compliance dates for the direct final rule on October 31, 2011 (76 FR 67037), requiring compliance for non-weatherized furnaces on May 1, 2013, and for weatherized furnaces and central air conditioners and heat pumps on January 1, 2015.

EISA 2007 also requires DOE to initiate an enforcement rulemaking to develop and implement an effective enforcement plan for regional standards. (42 U.S.C. 62905(o)(6)(G)(ii) (I)) EISA 2007 directs DOE to determine which parties are responsible for making information disclosures as part of that rulemaking. (42 U.S.C. 62905(o)(6)(G)(ii)(II))

On June 13, 2014, DOE published a Notice of Intent to establish a negotiated rulemaking working group under the Appliance Standards and Rulemaking Federal Advisory Committee (ASRAC) in accordance with the Federal Advisory Committee Act (FACA) and the Negotiated Rulemaking Act (NRA). The purpose of the working group was to discuss and, if possible, reach consensus on a proposed rule for enforcement of the regional standards for central air conditioners and heat pumps. The working group consisted of representatives of parties having a defined stake in the outcome of the proposed standards.

As part of the negotiated rulemaking, the working group determined that the imposition of new record retention requirements on certain parties (i.e., manufacturers, distributors and contractors) is required in order to allow for effective DOE enforcement of the regional standards as required under EISA 2007. (Docket ID EERE-2011-BT-CE-0077.) The working group agreed as follows:

- Beginning 30 days after a final rule, all manufacturers must retain:
 - For split-system central air conditioner outdoor 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 coils or air handlers (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 November 30, 2015, all distributors must retain:
 - For split-system central air conditioner outdoor 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 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 a final rule contractors must retain:
 - For split-system central air conditioner outdoor 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 coils or air handlers (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 also determined that, based on the nature of the products at issue, the current two year maintenance of records requirement set forth in 10 CFR 429.71 is not sufficient to ensure effective enforcement of regional standards. Instead, the working group recommended that contractors be required to retain records for 48 months after the date of installation; that distributors be required to retain records for 54 months after the date of sale; and that manufacturers and manufacturer-owned distributors be required to retain records for 60 months after the date of sale. The working group explicitly noted that the record retention requirement

can be satisfied by archiving the records, as long as the records are not deleted or otherwise disposed of. The working group also clarified that the records retention requirements do not mandate that contractors, distributors, or manufacturers create new forms for the purpose of tracking central air conditioners, nor are the records required to be retained electronically.

The working group submitted a final report to ASRAC on October 24, 2014, summarizing the group's recommendations regarding enforcement of regional standards for central air conditioners. ASRAC subsequently voted to approve these recommendations, which are set forth in the accompanying Notice of Proposed Rulemaking.

In line with the recommendations of ASRAC, DOE is proposing to require information retention regarding the sale and installation of certain consumer products manufactured for distribution in commerce in the United States. Specifically, DOE submits for approval the paperwork and record retention requirements set forth above, except that DOE has proposed that distributors would not be required to retain documents until July 1, 2016, rather than November 30, 2015.

This new collection would add information collection requirements for manufacturers, distributors and contractors with respect to central air conditioners.

2. Indicate how, by whom, and for what purpose the information is to be used. Except for a new collection, indicate the actual use the agency has made of the information received from the current collection

This is a request for a new collection (Control #1910-xxxx, Regional Standards Compliance Information). The data maintained by manufacturers, distributors and contractors will be provided to DOE upon request so that DOE can verify whether a basic model is compliant with the applicable regional or national Federal energy conservation standards and, in the event of a DOE determination of noncompliance, to verify the number of units of a basic model sold in violation of the applicable standard.

The new information will be used by the Department as evidence to demonstrate that a party has violated the statute, to determine the number of violations, and to determine all of the relevant parties. The statute also prohibits distribution by manufacturers to parties who routinely violate the statute, and the information will be used to establish whether a party routinely violates the statute and whether a manufacturer did, in fact, distribute to that party. The information may also be used by a party to demonstrate that it has not violated the statute or to limit its (or another party's) liability under the proposed regulation.

3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

DOE currently allows manufacturers to submit information in electronic and/or in paper format using whatever layout an entity may wish to provide. DOE typically receives such submissions via email. The new information will be required to be retained by the manufacturer,

distributor or contractor but will not be routinely submitted to the Department. The working group explicitly noted that the record retention requirement can be satisfied by archiving the records, as long as the records are not deleted or otherwise disposed of. The working group also clarified that the records retention requirements do not mandate that contractors, distributors, or manufacturers create new forms for the purpose of tracking central air conditioners, nor are the records required to be retained electronically. DOE permits electronic storage and production of records, however.

4. Describe efforts to identify duplication.

With respect to the new information to be collected, there is no other source for DOE to obtain this information. DOE understands that manufacturers already maintain similar types of records as a practical matter in the normal course of manufacturing and distributing a product, and that distributors and contractors already maintain similar types of records in the normal course of distribution and installation of a product. Thus, DOE believes the proposed records retention requirements are part of everyday business for most manufacturers, distributors and contractors. DOE encourages entities to utilize the same record retention mechanisms currently used in order to minimize the duplication as much as possible.

5. If the collection of information impacts small businesses or other small entities, describe any methods used to minimize burden.

Small businesses that manufacture, distribute, and/or install central air conditioners and heat pumps would be subject to the record retention requirements described above. Consequently, DOE expects small businesses to be impacted by this collection of information. However, DOE understands that such businesses already maintain similar types of records as a practical matter in the normal course of manufacturing, distributing, and/or installing such products. Further, such small business interests were represented during the negotiated rulemaking, both directly and through participation of advocacy groups. That these interests have been protected is represented in the unanimous working group decision to move forward with these record retention requirements.

To limit the potential of burden associated with producing records at the request of the Department for all entities, including small businesses, the working group recommended that DOE must have a reasonable belief a violation occurred before requesting records. DOE will determine if it has reasonable belief by assessing factors such as:

- Whether it has an address of suspected noncompliant installation or attempted installation;
- Whether it has identifying information for equipment;
- Whether it has physical evidence (such as a picture of an installed, noncompliant condensing unit and its nameplate, a copy of an EnergyGuide label, a copy of a completed work order or invoice, a bill of sale for equipment, a copy of bid for installation, or a distributor-prepared price book);
- Whether there have been repeat complaints about the party; or
- Whether the complainant has a history of filing complaints of violations that have been substantiated by the Department through investigation.

Once DOE determines it has a reasonable belief, then it may request records from the appropriate manufacturers, distributors, and/or contractors. Records would be required to be produced within 30 days of a request by the Department. However, DOE may, at its discretion, grant additional time for production of records if the affected entity makes a good faith effort to produce records within 30 days. A good faith effort means that the entity provides DOE with all the records gathered within 30 days and that the entity provides DOE with an explanation for the need for additional time and the requested date for completing the records request.

6. Describe the consequence to Federal program or policy activities if the collection is not conducted or is conducted less frequently, as well as any technical or legal obstacles to reducing burden.

The record retention requirements described above (including the type of record required to be retained and the time frame over which an entity is required to retain such records) are vital to ensure effective DOE enforcement of the regional efficiency standards promulgated by DOE, as provided under EPCA and EISA 2007. DOE can only enforce the regional energy efficiency standards if it can determine whether noncompliant products were distributed in commerce in violation of an applicable standard and, if so, how many such units. DOE must be able to verify the number of units sold or installed and the location of installation in violation of an applicable regional standard in order to determine an appropriate civil penalty for the violation, and to ensure that those to whom such products were distributed can be informed of the violation. Thus, the records described above must be retained by the appropriate entity and available to DOE upon request.

Extending the timeframe over which such records must be retained is also essential, as, due to the nature of the product, the frequency of maintenance of the product, and the location of the product as installed, it would be very unlikely that anyone would come to know a noncompliant product was installed in violation of an applicable regional standard within a two-year timeframe. Like the required records, this extended timeframe is necessary to ensure an effective enforcement of the regional standards by DOE.

Legally, DOE will be required to produce evidence to demonstrate that a violation occurred. Absent a requirement for the manufacturer, distributor, and/or contractor to retain the documents, DOE likely would not be able to establish the facts necessary to prove the violation occurred. EISA 2007 charged DOE with developing an effective enforcement plan. Because the statute requires a sufficient level of record retention to permit DOE to perform its enforcement function effectively, there is a legal obstacle to reducing burden further. The parties in the negotiation agreed that this information collection is the minimum amount of information needed for the Department to enforce the regional standards.

7. Explain any special circumstances that require the collection to be conducted in a manner inconsistent with OMB guidelines. (a) requiring respondents to report information to the agency more often than quarterly; (b) requiring respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it; (c) requiring respondents to submit more than an original and two copies

of any document; (d) requiring respondents to retain records, other than health, medical government contract, grant-in-aid, or tax records, for more than three years; (e) in connection with a statistical survey, that is not designed to product valid and reliable results that can be generalized to the universe of study; (f) requiring the use of statistical data classification that has not been reviewed and approved by OMB; (g) that includes a pledge of confidentiality that is not supported by authority established in stature of regulation, that is not supported by disclosure and data security policies that are consistent with the pledge, or which unnecessarily impedes sharing of data with other agencies for compatible confidential use; (h) requiring respondents to submit proprietary trade secrets, or other confidential information unless the agency can demonstrate that it has instituted procedures to protect the information's confidentiality to the extent permitted by law.

Of the special circumstances listed above, two may apply to this information collection: (d) requiring respondents to retain records, other than health, medical government contract, grant-in-aid, or tax records, for more than three years; and (h) requiring respondents to submit proprietary trade secrets, or other confidential information unless the agency can demonstrate that it has instituted procedures to protect the information's confidentiality to the extent permitted by law.

The working group unanimously agreed that manufacturers, distributors and contractors should be required to retain records and that the record retention requirement should be to maintain records for between 48 and 60 months, depending on whether the entity retaining the record is a manufacturer, distributor, or contractor.

Much of the information the Department would collect under this information collection would not be made public. Currently (under a different information collection), DOE collects both public and confidential information from manufacturers as part of its certification and compliance process. The Department believes that making data accessible to the public provides increased transparency and accountability to the Department's regulatory regime. At the same time, the Department recognizes that certain information may be confidential in nature and exempt by law from public disclosure. To balance these interests, DOE has adopted a framework for addressing the public disclosure of information submitted to DOE under Part 429, while protecting valid claims of confidential business information. First, certain categories of information are considered a matter of public record that DOE makes available to the public on its website. Second, for all other information submitted pursuant to Part 429, DOE provides a mechanism for submitting parties to claim confidentiality on a case-by-case basis at the time of submission. DOE may defer acting on any requests for confidentiality until DOE receives a request for the disclosure of the information covered by the request. The information is treated as confidential until DOE acts on the request and all subsequent appeal proceedings have been exhausted. This approach provides submitters with an opportunity to express claims of confidentiality with particularity at the time the information is submitted, including a request for information to remain confidential for a set period of time, such as prior to a public product launch. Furthermore, it allows the Department to determine whether a particular piece of information is exempt from public disclosure by law on a case-by-case, fact-specific basis. In

this way DOE can both consider confidentiality claims effectively and respond to disclosure requests promptly, while protecting against unlawful disclosure of information.

None of the information DOE would collect under this information collection would be treated as public directly as received from the manufacturer, distributor or contractor. DOE expects that most, if not all, of the specific information is likely to be of the type a company would normally hold as confidential business information. DOE will follow its existing processes to ensure that the information is protected, as described above.

- 8. If applicable, provide a copy and identify the date and page number of publication in the Federal Register of the agency's notice, required by 5CFR 320.8(d), soliciting comments on the information collection prior to submission to OMB. Summarize public comments received in response to that notice and describe actions taken in response to the comments. Specifically address comments received on cost and hour burden. Describe efforts to consult with persons outside DOE to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or report.**

The Department published or intends to publish the following Federal Register notices regarding the collection of information subject to this approval:

Notice of Proposed Rulemaking -- Energy Conservation Program: Enforcement of Regional Standards for Central Air Conditioners. Docket No. EERE-2011-BT-CE-0077. RIN: 1904-AC68.

Published in Federal Register on November 19, 2015.

DOE has not received any specific comments regarding the information collection estimates at this time.

- 9. Explain any decision to provide any payment or gift to respondents, other than reenumeration of contractors or grantees.**

There is no payment or gift to any respondents. Respondents are required to comply by regulation.

- 10. Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulation, or agency policy.**

DOE has a regulatory process for the agency's handling of confidential information produced to DOE in an enforcement context in 10 CFR § 429.7. DOE's regulations also provide that DOE shall make its own determination with regard to any claim that information submitted be exempt from public disclosure, as provided by the Freedom of Information Act.

- 11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly**

considered private. This justification should include the reasons why DOE considers the questions necessary, the specific uses to be made of the information, the explanation to be given to persons from whom the information is requested, and any steps to be taken to obtain their consent.

There are no questions of a sensitive nature in this collection of information.

12. Provide estimates of the hour burden of the collection of information. The statement should indicate the number of respondents, frequency of response, annual hour burden, and an explanation of how the burden was estimated. Unless directed to do so, DOE should not conduct special surveys to obtain information on which to base hour burden estimates. Consultation with a sample fewer than 10 potential respondents is desirable.

DOE expects this new information collection to result in the following burdens:

Manufacturers

Estimated Number of Impacted Manufacturers: 29
Estimated Time per Record: 10 minutes
Estimated Total Annual Burden Hours: 574,167 hours

Distributors

Estimated Number of Impacted Distributors: 2,317
Estimated Time per Record: 5 minutes
Estimated Total Annual Burden Hours: 287,083 hours

Contractors

Estimated Number of Impacted Contractors: 22,207
Estimated Time per Record: 10 minutes per installation
Estimated Total Annual Burden Hours: 359,949 hours

The Air-Conditioning, Heating, and Refrigeration Institute and the Air Conditioning Contractors of America helped develop these estimates, including providing the numbers of impacted manufacturers, distributors and contractors and the time estimates to generate and store the records for each type of respondent.

13. Provide an estimate for the total annual cost burden to respondents or recordkeepers resulting from the collection of information.

DOE used shipments data from 2008 (the data used to support the regional standards direct final rule) to estimate that manufacturers will generate approximately 3,445,000 records per year, distributors will generate approximately 3,445,000 records per year, and contractors will generate approximately 2,159,695 records per year. DOE estimated that manufacturers and distributors will generate records for every unit shipped but that contractors will only generate records for units installed in a region subject to a regional standard.

DOE used a labor rate of \$7.25 per hour for contractors and distributors, which was the value recommended by ACCA, as the recordkeepers are expected to be minimum wage employees. DOE has adjusted its labor rate to \$100 per hour (a conservative value) for manufacturers, which

is consistent with the fully burdened labor rate DOE uses for certification recordkeeping requirements.

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

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

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

14. Provide estimates of annualized cost to the Federal government.

DOE estimates the total annual reporting and recordkeeping burden imposed on the Federal government by this information collection will be less than \$900 (60 minutes to prepare a data request at an average fully burdened wage \$150/hour). DOE already has document management systems in place, and specific records will be submitted by manufacturers, distributors, and/or contractors only upon request. In addition, DOE only requests information upon a reasonable belief that a violation has occurred.

15. Explain the reasons for any program changes or adjustments reported in Items 13 (or 14) of OMB Form 83-I.

Program Change: A change in the statute required DOE to develop an effective enforcement plan. Through a negotiated rulemaking, parties agreed that these record retention requirements were the least burdensome possible while still achieving the statutory mandate.

16. For collections whose results will be published, outline the plans for tabulation and publication.

As described in response to question 7, DOE expects that the information in this information collection will likely contain confidential business information. DOE does not expect to publish the information. DOE does publish findings of violation, including any final agency orders, as required by the Freedom of Information Act. Those findings would be based on the information in this information collection.

17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons why display would be inappropriate.

There are no forms associated with this information collection.

18. Explain each exception to the certification statement identified in Item 19 of OMB Form 83-I.

There are no exceptions.