

U.S. DEPARTMENT OF ENERGY
OFFICE OF ENERGY EFFICIENCY
AND RENEWABLE ENERGY

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REGIONAL STANDARDS ENFORCEMENT AND
DISCLOSURE FOR FURNACES, CENTRAL AIR
CONDITIONERS, AND HEAT PUMPS

+ + + + +

PUBLIC MEETING

+ + + + +

FRIDAY, DECEMBER 16, 2011

+ + + + +

The meeting convened in Room 8E-089 of the Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C., at 9:00 a.m., Doug Brookman, Facilitator, presiding.

PRESENT:

- DOUG BROOKMAN, Public Solutions, Facilitator
- KARIM AMRANE, Air-conditioning, Heating, and Refrigeration Institute
- ASHLEY ARMSTRONG, Department of Energy
- DAN ARNOLD, Nordyne, LLC
- NICHOLAS ATWOOD, Natural Resources Defense Council
- LAURA BARHYDT, Office of General Counsel, Department of Energy
- WARREN L. BEETON, Emerson Climate Technologies, Inc.
- DONALD BRUNDAGE, Southern Company Services
- DAN BUUCK, National Association of Home Builders
- DAVID CALABRESE, Air-conditioning, Heating, and Refrigeration Institute

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DAVE CASE, Office of General Counsel,
Department of Energy
ROGER COOPER, Cleveland Park Policy
Consulting, LLC
JOHN CYMBALSKY, Department of Energy
LUCY DeBUTTS, Department of Energy
ANDREW deLASKI, Appliance Standards
Awareness Project
PAUL DOPPEL, Mitsubishi Electric
GARY FERNSTROM, Pacific Gas & Electric
J. KEITH GATES, Cause of Action
TALBOT GEE, Heating, Air-conditioning &
Refrigeration Distributors International
KYLE GILLEY, Lennox International
JEFF HARRIS, Alliance to Save Energy
BRIAN JAMES, Southern California Edison
KATHERINE KENNEDY, Natural Resources Defense
Council
JIM KIBLER, AGL Resources
MATT LATTANZI, Nordyne, LLC
PAUL C. LIN, Regal Beloit
BENJAMIN LONGSTRETH, Natural Resources
Defense Council
JOSEPH MATTINGLY, Air-conditioning, Heating,
and Refrigeration Institute
JOANNA MAUER, Appliance Standards Awareness
Project
MICHAEL McCABE, Department of Energy
CHARLES McCRUDDEN, Air Conditioning
Contractors of America
JONATHAN MELCHI, Heating, Air-conditioning &
Refrigeration Distributors International
KAREN MEYERS, Rheem Manufacturing Company
SOFIE MILLER, Charles Koch Institute
SCOTT MORRISON, American Public Gas
Association
HAMPTON NEWSOME, Federal Trade Commission
ELIZABETH NOLL, American Gas Association
JAY PERKINS, Mitsubishi Electric
STEVE PORTER, Johnstone Supply
DAVID D. RANSOM, McDermott, Will & Emery
HARVEY SACHS, American Council for an
Energy-Efficient Economy

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DAVE SCHRYVER, American Public Gas
Association
FRANK STANONIK, Air-conditioning, Heating,
and Refrigeration Institute
LOIS STARKEY, Manufactured Housing Institute
CHARLIE STEPHENS, Northwest Energy
Efficiency Alliance
RICHARD STEYER, Howe, Anderson & Steyer, PC
ARTURO THUR de KOOS, Fujitsu General America
JENNIFER TIEDEMAN, Office of General
Counsel, Department of Energy
MEG WALTNER, Natural Resources Defense
Council
JONATHAN WIENER, Earthjustice
DANIEL WILLIAMS, Lennox
TED WILLIAMS, American Gas Association

WEBINAR PARTICIPANTS:

JENNIFER AMANN, ACEEE
MARK ANDERSON, Cortez
WES ANDERSON, DOE
SHANE ANGLE, Emerson Climate Technologies,
Inc.
TIMOTHY BALLO, Earthjustice
ALLAN BASS, Bass Air Conditioning
MARK BERNARD, Bud Anderson Heating & Cooling
DAN BRAMBLETT, ACCA
JESSE BURD, Air Flow Designs
STEPHEN BUSH, Res-com Heating & ac
LES CALAHAN, Clark County Mechanical
RYAN CARROLL, HPBA
ABIGAIL CHINGOS, DOE
ROBERT COCHELL, Gulf Coast Air Systems
JIM CRAWFORD, Trane
DAVE CULVER, KB Complete
JOEY DAVENPORT, Lee County B.O.C.
TANYA DAVIS, Franks AC
PETER DEMPSEY, South Jersey Energy Service
Plus
LAURA DIFILIPPO, ACCA
MARIANNE DIMASCIO, Appliance Standards
Awareness Project
JOE DISCEPOLA, Grace Energy

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TODD FERRARA, Standard Heating & AC
TOM FESEMYER, Emerson Climate Technologies
MARCO FORTUNATO, Conversation Services Group
RICHARD FOSTER, ZONEFIRST
TIM GALLIGOS, Regal Beloit
GREG GANNON, First Company
MIKE GLOWKA, Airtron
MARCUS GOODMAN, Houk AC
TOM GOODNIGHT, Johnson Controls
CHARLIE HARAK, National Consumer Law Center
ABRAHAM HARVEY, Triple H Air Conditioning
DEREK HENDRICKSON, Hendrickson HVAC
TARI HENDRICKS, Reflectix
FEY HIGHMAN, Pure Air
JOHN HUDELSON, G.W. Berkheimer
RAY ISAAC, Isaac Heating and Air
Conditioning
BILL JEFF, Comfort Designs
MARK JENKINS, Comfort Professionals
WESLEY KIZER, The A/C Guy, LLC
BRENT KOERBER, Van Sant
DOMINIC KOLANDAYAN, Daikin AC Americas
MARK KREBS, Laclede Gas
JULIE KRITZ, AGL Resources
BIJIT KUNDU, Energy Solutions
LAURIE LETTNER, Pure Air
DAVID LIS, NEEP
DON LLOYD, DHL Home Services
LARISSA MARK, NAHB
LOUIS MARRONGELLI, CSG
SARAH MEDEPALLI, ICF International
MARK MENZER, Intertek
WILLIAM MILLER, American Public Gas
Association
CHRISTOPHER MORIN, Conservation Services
Group
MARK NAYES, Southside Heating and Air
Conditioning
WILLIAM NEELY, Premier Heating and Cooling
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TED NISSLY, The McKee Group
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MARY PAULUS, Emerson Climate Technologies
DAVID PAYNE, Northern High Performance
STEPHEN PERKINS, Habitat for Humanity
JASON PIPER, Weather Master
JOHN RITTERPUSCH, NAHB
BARRY RIVEN, City of Bloomington
BRYAN ROCKY, Johnson Controls
ANIRUDDH ROY, AHRI
ROBIN ROY, NRDC
GREG SANDERS,
GREG SCHLEIFER, Standard Heating & Air
Conditioning
FRANK SCHNEIDER, R.E. Michel Co.
GARY SCHULTZ, Porter & Heckman
KIMBERLY SCHWARTZ, The ACHR NEWS
PAUL SELKING, Regal Beloit
BEN SHERMAN, Brockman
RONALD SHERMAN, Brockman Furnace
JEFF SHRIVER, ACCA
TERRELL SMALL, Mortex Products
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JASON STANEK, Metropolitan Utilities
District
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THOMAS STROUD, HPBA
JERRY SUTHERLAND, Metfab Heating
JASON THORSON, Fluid Market Strategies
LOWELL UNGAR, Alliance to Save Energy
TODD VAN ANTWERP, Van Antwerp Mechanical
JIM VERSHAW, Ingersoll Rand-Trane
JEFF WARAN, ACCA
JACK WATSON, Watson A/C & Electric
HEATHER WHEELER, Middletown Air Conditioning
& Heating
CHUCK WHITE, PHCC
LINDA WILSON, NYS Office of the Attorney
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DAVID WINIARSKI, Pacific Northwest National
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1 P-R-O-C-E-E-D-I-N-G-S

2 (9:06 a.m.)

3 FACILITATOR BROOKMAN: Good
4 morning, everybody, and welcome. This is the
5 Regional Standards Enforcement and Disclosure
6 for Furnaces and Central Air Conditioners and
7 Heat Pumps.

8 Today is Friday, December 16,
9 2011, here at the Forrestal Building in
10 Washington, D.C.

11 Glad you could make it, get an
12 early start on the day. We are going to have
13 welcoming remarks from John Cymbalsky to start
14 us off.

15 MR. CYMBALSKY: Thank you, Doug.
16 I would like to welcome everybody to the Joint
17 Public Meeting by the Department of Energy and
18 the Federal Trade Commission. To my
19 knowledge, we have never done this before. So
20 certainly this will be an interesting meeting.

21 I can tell by the attendance we
22 have more than a few people who are interested

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1 in this issue, so that's good. We hope to
2 have a lively discussion.

3 I'm not going to waste too much
4 time with an opening remark, but thanks to all
5 for coming, and Happy Holidays as we go
6 through the holiday season here.

7 FACILITATOR BROOKMAN: Thank you.

8 We typically start with introductions around
9 the room. And you can get used to turning
10 these microphones on and off, those of you
11 that are sitting the first table. Those of
12 you in the back, if you will just stand up
13 when it's your turn.

14 May I start with you? Will you
15 say your name and organizational affiliation?
16 and make sure the little green button comes
17 on.

18 MR. STEYER: My name is Richard
19 Steyer. I'm with Howe, Anderson & Steyer,
20 representing First Company.

21 FACILITATOR BROOKMAN: Thank you.

22 MR. ARNOLD: I'm Dan Arnold with

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1 Nordyne.

2 MS. WALTNER: Meg Waltner,
3 National Resource Defense Council.

4 MR. KIBLER: I'm Jim Kibler with
5 AGL Resources, but I'm here on behalf of the
6 American Gas Association.

7 MR. McCRUDDEN: Charlie McCrudden,
8 Air Conditioning Contractors of America.

9 MR. LIN: Paul Lin with Regal
10 Beloit.

11 MR. GEE: Talbot Gee with the
12 Heating, Air Conditioning & Refrigeration
13 Distributors International.

14 MR. PORTER: Steve Porter,
15 Johnstone Supply.

16 DR. AMRANE: Karim Amrane, Air
17 Conditioning, Heating, and Refrigeration
18 Institute.

19 MS. MEYERS: Karen Meyers, Rheem
20 Manufacturing.

21 MR. DOPPEL: Paul Doppel,
22 Mitsubishi Electric.

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1 MR. FERNSTROM: Gary Fernstrom,
2 Pacific Gas & Electric Company.

3 MR. deLASKI: Andrew deLaski,
4 Appliance Standards Awareness Project.

5 MR. SACHS: Harvey Sachs, American
6 Council for an Energy Efficient Economy.

7 MR. CYMBALSKY: John Cymbalsky,
8 DOE.

9 MS. ARMSTRONG: Ashley Armstrong,
10 DOE.

11 MS. BARNHYDT: Laura Barnhydt,
12 DOE.

13 MR. NEWSOME: Hampton Newsome,
14 Federal Trade Commission.

15 FACILITATOR BROOKMAN: And let's
16 proceed, please. Stand up.

17 MS. TIEDMAN: Hi. Jennifer
18 Tiedman, DOE.

19 MR. CASE: Dave Case, DOE.

20 MR. STEPHENS: Charlie Stephens,
21 Northwest Energy Efficiency Alliance.

22 MR. HARRIS: Jeff Harris, the

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1 Alliance to Save Energy.

2 MR. WILLIAMS: Ted Williams,
3 American Gas Association.

4 MR. STANONIK: Frank Stanonik,
5 AHRI.

6 MR. BEETON: Warren Beeton,
7 Emerson.

8 MR. MATTINGLY: Joe Mattingly,
9 AHRI.

10 MR. CALABRESE: Dave Calabrese,
11 AHRI.

12 MS. MAUER: Joanna Mauer,
13 Appliance Standards Awareness Project.

14 MR. BUUCK: Dan Buuck, National
15 Association of Home Builders.

16 MR. COOPER: Roger Cooper on
17 behalf of the American Gas Association.

18 MR. JAMES: Brian James, Southern
19 California Edison.

20 MR. BRUNDAGE: Don Brundage,
21 Southern Company.

22 MR. THUR de KOOS: Arturo Thur de

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1 Koos, Fujitsu.

2 MR. PERKINS: Jay Perkins,
3 Mitsubishi Electric.

4 MR. GATES: Keith Gates, Cause of
5 Action.

6 MR. LATTANZI: Matt Lattanzi,
7 Nordyne.

8 MS. NOLL: Elizabeth Noll,
9 American Gas Association.

10 MR. MELCHI: John Melchi, HARDI.

11 MR. MORRISON: Scott Morrison,
12 American Public Gas Association.

13 MR. SCHRYVER: Dave Schryver,
14 American Public Gas Association.

15 MR. RANSOM: Dave Ransom. I
16 represent equipment manufacturing.

17 MS. STARKEY: Lois Starkey, the
18 Manufactured Housing Institute.

19 MR. WILLIAMS: Dan Williams. I'm
20 here on behalf of Lennox.

21 FACILITATOR BROOKMAN: Thank you.

22 Did everyone get a chance?

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1 Once again, welcome, and thanks
2 for being with us this morning. It is typical
3 that the Department -- when each of you
4 registered this morning, they took a business
5 card, and they will create a photocopy of
6 those business cards, so everybody has got a
7 record of who is attending here today, just so
8 you'll know -- make that available.

9 My name is Doug Brookman from
10 Public Solutions in Baltimore. I'm going to
11 do a very brief agenda review. All of you
12 received a rather slim packet coming in the
13 door today -- 20 or so slides.

14 The agenda, as you see reflected
15 on page 2, immediately following this agenda
16 review there is an opportunity for those that
17 wish to do so to make opening statements,
18 hopefully fairly brief summarized statements.

19 If you've got a lengthy, lengthy statement,
20 then let's talk about how that can get in the
21 record effectively.

22 Following that, a presentation

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1 followed by a discussion on regional standards
2 enforcement overview. We'll take a break mid-
3 morning around about 10:45 or so. Immediately
4 following the break we will talk about
5 information disclosure overview and have
6 discussion and presentation on that.

7 There is an opportunity yet again
8 for closing remarks, any other issues that
9 haven't been raised sufficiently for you at
10 the end of the day today. Actually, it is
11 going to be more like noon-ish according to
12 the agenda, as listed here. We'll see how we
13 do with the timing of that.

14 Questions and comments on the
15 agenda?

16 (No response.)

17 I would ask for your
18 consideration. If you would, please, speak
19 one at a time as we are going along today.
20 Please say your name for the record each time
21 you speak. You don't need to say your
22 organizational affiliation every time. Some

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1 of you are in the habit of doing that. That's
2 just fine. But please say your name, because
3 there will be a complete transcript of this
4 meeting today.

5 I'm going to be queuing
6 individuals by name as best I can to speak. I
7 wish to encourage follow-on comments. It is
8 sometimes very helpful for the Department to
9 have that back and forth. It can be
10 illuminating.

11 Please be concise, share the air
12 time today. There is a lot to be said on this
13 subject, I'm sure, and if you could keep the
14 focus here. Please turn your cell phones on
15 silent mode. Please limit side bar
16 conversations.

17 These microphones actually work
18 pretty well, but you need to turn them on. If
19 you are going to be talking a lot, you might
20 as well leave it on. Okay?

21 So questions and comments about
22 the agenda or about the process that we intend

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1 to follow today? You received this packet.
2 Slides will be broadcast up on the screen.

3 We also have individuals joining
4 us via webinar. How many? Forty-seven via
5 webinar. That's a new record. There will be
6 more. Welcome to those joining via webinar.

7 We will endeavor to answer short
8 questions that come in over the webinar, if
9 it's at all possible. So let us know if
10 that's something you would like to do.

11 We are ready to proceed, then.
12 Yes? Let's proceed.

13 We typically start off by having
14 brief summary comments, opening remarks here
15 at the outset. So let's do that. Who would
16 like to start? Gary? Gary Fernstrom.

17 MR. FERNSTROM: Very briefly, I
18 would like to outline PG&E's interest in this
19 meeting. PG&E, Southern California Edison,
20 and Sempra Utilities are authorized by the
21 California Public Utilities Commission to
22 operate a codes and standards efficiency

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1 improvement advocacy program.

2 We have been endeavoring for
3 probably a decade to work with the heating and
4 air conditioning industry to develop regional
5 standards, so that we could have air
6 conditioning products in California more
7 commensurate with that state's needs.

8 I have three simple goals for this
9 meeting. One is to hope to make sure that air
10 conditioning products are clearly, easily, and
11 recognizably marked in terms of their
12 compliance for hot, dry climates.

13 Two, to be able to identify where
14 those units are installed. The California
15 Energy Commission replicates DOE standards in
16 its Title 20 appliance standards, and in order
17 to assure compliance in California it is going
18 to be necessary to track this equipment and
19 know where it is installed.

20 And, thirdly, to have a mechanism
21 for assuring that equipment shipped into
22 California is tracked in terms of its

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1 production, so that one can ascertain that
2 equipment produced matches what was
3 represented to be delivered into the state of
4 California.

5 Thank you.

6 FACILITATOR BROOKMAN: Okay.

7 Thank you. Yes, Karim. Karim Amrane.

8 DR. AMRANE: Karim Amrane with
9 AHRI. I'll read a brief statement. It is
10 going to be very brief, so -- "AHRI believes
11 that effective energy savings through
12 implementation of regional standards is
13 reliant upon the development and
14 implementation of a strong enforcement policy.

15 However, we recognize that the regional
16 standard developed by DOE presents unique
17 enforcement challenges.

18 "We feel that the enforcement
19 approaches proposed by DOE are not adequate,
20 in particular with respect to split air
21 conditioners, whether matching of the same
22 condensing unit with different indoor coils

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1 could result in different energy efficiency
2 ratings.

3 "In this particular case, the
4 tracking of serial numbers from the point of
5 manufacture to the point of distribution or
6 installation presents serious logistical
7 issues and is likely to be overly burdensome
8 or even impractical.

9 "We believe that an effective
10 enforcement plan for regional standards should
11 require compliance at the point of
12 installation and can be accomplished without
13 the complicated and burdensome tracking
14 process.

15 "However, given that the
16 standards' effective date of May 1, 2013, for
17 regional -- or residential furnaces is just
18 around the corner, AHRI recommends that DOE
19 focus its efforts on developing an enforcement
20 plan for furnaces first.

21 "Focusing on furnaces first would
22 significantly reduce the complexity of the

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1 test, and will increase the probability of
2 putting a credible enforcement plan in place
3 before the effective date of the standards.

4 "On the other hand, the regional
5 standard for central air conditioners and heat
6 pumps would be effective much later, on
7 January 1, 2015. And while we understand that
8 the Energy Policy and Conservation Act
9 requires that the enforcement rulemaking be
10 completed within 15 months from issuance of
11 the final rule on energy conservation
12 standard, AHRI will not object if DOE takes
13 more time to complete the enforcement
14 provisions of the rule impacting central air
15 conditioners and heat pumps.

16 "It is critical for the
17 development of a successful enforcement plan
18 that all interested parties, such as
19 manufacturers, distributors, contractors,
20 energy advocacy groups, and possibly code
21 officials, be involved in the discussion. As
22 such, AHRI looks forward to working with the

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1 Department and others in establishing a
2 workable and credible enforcement plan."

3 Thank you.

4 FACILITATOR BROOKMAN: Thank you.

5 How are we doing with the webinar folks? Are
6 they getting the information? Yes. Okay.

7 Then, let's continue with these
8 opening remarks. Who else would like to make
9 a brief opening statement? Yes, please.

10 MR. KIBLER: Jim Kibler on behalf
11 of American Gas Association. Our comments
12 don't focus so much on the enforcement
13 mechanisms, as relate to the hard work by a
14 lot of stakeholders around a waiver from the
15 high efficiency standard in the northern
16 region residential furnaces.

17 I have a set of 14 principles that
18 the stakeholders have been working on now for
19 over a month, and at some point -- at the
20 appropriate point I would like to present
21 those for the agencies to hear.

22 FACILITATOR BROOKMAN: Okay. And

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1 at the appropriate point you will say more
2 about who those stakeholders are.

3 MR. KIBLER: I will.

4 FACILITATOR BROOKMAN: Thank you.

5 Other opening remarks here before we launch
6 into this content? Good morning. Yes,
7 please, Talbot.

8 MR. GEE: Talbot Gee with HARDI,
9 the distributors in the industry.
10 Interestingly enough, we have a situation
11 where we are talking about, you know, what has
12 traditionally been a manufacturing-specific
13 compliance obligation being now possibly moved
14 into an installation-specific enforcement
15 situation.

16 But when we see the measures
17 presented in the framework document, they seem
18 to have the most direct effect and burden on
19 the distributors who have no control over
20 either one of those two aspects. So that
21 presents a bit of a problem.

22 This leads into another issue of

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1 having policy that may potentially be
2 unenforceable. And our friends and colleagues
3 in California I think can attest to some of
4 the challenges we have had with Title 24
5 compliance -- very rigorous and well meaning
6 code that has a very, very low compliance
7 rate, because the state is unable to put the
8 feet -- the boots on the ground, frankly, to
9 enforce it.

10 So I think going forward in
11 today's proceeding DOE needs to think long and
12 hard about what type of infrastructure it
13 could be prepared to put on the street to
14 enforce this, because certainly distributors
15 are not in a position to do it. I am not
16 quite sure why they have been targeted so much
17 in the framework document.

18 And, frankly, there is not a lot
19 of incentive to think of ways to take on
20 responsibility, because we have no idea what
21 that liability could look like or what the
22 enforcement or what the penalties that we

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1 could be exposing distributors to could look
2 like. In fact, we don't even know how the
3 penalties are decided.

4 So that is a difficult thing to
5 think about. And then, you add on top of it
6 this concept of a waiver, that actually just
7 adds another whole level of uncertainty to an
8 already difficult, if not impossible to
9 enforce, environment.

10 So I think this -- the objective
11 of the meeting today should really try to
12 think long and hard about how in actual
13 practice, in the common instance, this is
14 going to be enforced, because we have looked
15 at this for two and a half years and have not
16 yet found a way that we think we could do it.

17 FACILITATOR BROOKMAN: Gary, let
18 me entertain other opening remarks before we
19 do the back and forth. Other -- yes, please.

20 MS. KENNEDY: Doug, I apologize
21 for being late, Kit Kennedy for NRDC. I have
22 a few remarks to make, both about labeling,

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1 enforcement, and about the waiver process. My
2 comments might logically follow Jim's, because
3 they agree with his without being a spoiler.
4 So would you like those comments --

5 FACILITATOR BROOKMAN: Sure, right
6 now.

7 MS. KENNEDY: -- now or --

8 FACILITATOR BROOKMAN: Yes.

9 MS. KENNEDY: Would you like to --

10 FACILITATOR BROOKMAN: Oh, you
11 want to do your 12 principles now?

12 MR. KIBLER: Whenever it is
13 appropriate.

14 FACILITATOR BROOKMAN: Yes, let's
15 wait until we get into the content then,
16 because I think there is an opportunity for it
17 to fit into the detailed content and the
18 presentation material. Did you have a brief
19 statement you wanted to make, Kit?

20 MS. KENNEDY: Yes, I'll make a
21 brief statement --

22 FACILITATOR BROOKMAN: Yes.

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1 MS. KENNEDY: -- if I may. And I
2 just wanted to sort of provide a little --
3 NRDC's views about the context for this
4 particular meeting and the two rulemakings
5 here. This process started, of course, with
6 the Department's issuance of a direct final
7 rule for furnaces and air conditioners, which
8 for the first time contained regional
9 standards.

10 That standard or set of standards
11 became final in October, and I wanted to start
12 by commending the Department for their work on
13 that standard. It was a long road. It was a
14 difficult process, and that standard will
15 deliver tremendous energy savings, consumer
16 savings, and environmental savings. So thanks
17 for your work on that.

18 I also wanted to recognize the
19 efforts of the many folks around this table --
20 manufacturers, states, consumer groups, energy
21 efficiency advocates, utilities -- who came
22 together to negotiate the consensus standards

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1 that formed the basis for the Department's
2 rule.

3 And we are now in a different
4 forward-looking moment where the Department
5 and FTC are taking on two distinct but related
6 rules -- the disclosure rule and the
7 enforcement framework for the furnace rule.
8 Both are critically important to the smooth
9 and full implementation of the regional
10 standards.

11 NRDC will be submitting written
12 comments with detailed comments on both the
13 labeling issues and the enforcement framework
14 issues in the future, and will be contributing
15 to the conversation today.

16 Without stealing AGA's thunder, I
17 do want to thank AGA for their leadership role
18 in bringing together a wide array of
19 stakeholders, including NRDC, to develop some
20 principles for a very specific, limited waiver
21 process that we think will help to ensure a
22 smooth and full implementation of the furnace

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1 standards and help to capture all of those
2 important benefits.

3 So I will close it there for now
4 and hope to contribute to the discussion.

5 FACILITATOR BROOKMAN: Okay.
6 Thank you. And, Jim, as you look through
7 these slides, figure out where your 12
8 principles would best fit. Okay?

9 Harvey Sachs.

10 MR. SACHS: Harvey Sachs, ACEEE.
11 And I would certainly echo Kit's comments.
12 But I do want to say three very brief things.

13 The first is, the goal in regional standards
14 enforcement must be substantial compliance.
15 Nobody is proposing that DOE special agents
16 with pistols on their belts follow every
17 installer to every site. Just as our Tax Code
18 is based on substantial compliance with
19 penalties, we must adopt that philosophy.

20 The second point is I think this
21 can work, and I think it can work with minimum
22 burden, but it will require a 21st century

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1 approach that is explicitly built upon
2 minimally invasive but adequate database
3 development and compliance assurance largely
4 through data mining.

5 The third thing that I want to say
6 is I was really struck in the regional
7 standards enforcement framework document --
8 and in its very nice summary table -- no role
9 laid out of significance for DOE in making
10 this happen. And I think that this thing will
11 require a DOE role in guiding the development
12 of the information architecture that will
13 underlie an enforcement mechanism that is
14 realistic, achievable, and minimum burden.

15 FACILITATOR BROOKMAN: Thanks,
16 Harvey. Okay.

17 So that was a good start.
18 Additional opening remarks? Did you have one?
19 No? Okay.

20 Yes, Gary, please. Follow on.

21 MR. FERNSTROM: I wanted to --
22 Gary Fernstrom. I wanted to rebut the

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1 allegation that compliance is generally
2 thought to be low with California's building
3 standard Title 24. The California utilities
4 -- PG&E, Edison, Sempra - operate energy
5 efficiency programs for new construction
6 through which we give incentives to builders
7 to exceed the building standards in
8 California.

9 We have done studies to determine
10 what the baseline is for those incentive
11 programs, which include compliance with
12 Title 24, and those studies have shown
13 compliance to be quite high. And I would be
14 happy to submit that information to the
15 record.

16 FACILITATOR BROOKMAN: Okay. I
17 guess that's relevant.

18 So then I take it, casting my eyes
19 around the room, that we are now done with
20 opening remarks and we can then proceed with
21 the presentation materials. All of you have
22 this packet, and all of you also received the

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1 regional standards enforcement framework
2 document, which I thought was a very useful
3 document, good information in there.

4 Okay. So let's proceed. Ashley
5 Armstrong.

6 MS. ARMSTRONG: I'm going to --
7 for those -- in your packets, I'm going to
8 skip straight to Slide 7 to start off with,
9 because Doug has been nice enough to kind of
10 go over our ground rules and our agenda.

11 Really, the purpose of this
12 meeting is to gather your ideas and your
13 feedback. I mean, one of the main reasons
14 that I think the Department put out a
15 framework document first is because we wanted
16 to get, with some just potential ideas, was
17 because we wanted to get feedback to better
18 inform any proposal we might put forth.

19 So I am going to go through the
20 presentation. And as I do -- there is comment
21 boxes throughout -- I encourage you to provide
22 feedback on any aspect, provide ideas you

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1 might have, even if they are not related to
2 what is in the presentation itself, any
3 thoughts you may have on what a workable,
4 regional standards enforcement scheme may look
5 like, we are open to at this point.

6 So just to go over a couple of
7 things, which I think have pretty much already
8 been stated, but DOE issued a direct final
9 rule for regional standards in June. The
10 statute then requires DOE to initiate an
11 enforcement rulemaking on regional standards
12 as well as it requires FTC to initiate a
13 rulemaking on information disclosures.

14 So compliance with standards --
15 typically, as stated earlier, compliance with
16 the base national standards will be based on
17 the date of manufacture, and that includes the
18 date that a product is imported.
19 Manufacturers of the equipment themselves,
20 including the importers, must comply with the
21 national base standard beginning in the
22 compliance date specified. It differs

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1 depending on product class and product type.

2 For regional standards, things are
3 a little different, and this is something new.

4 Compliance with the regional standards are
5 actually based on the installation location of
6 a covered product. The distributors and
7 installers are responsible for installing
8 equipment in that applicable region that meets
9 the regional standards, beginning on the
10 compliance date of the regional standards. So
11 installation date and location are key there
12 for the regional standards.

13 And then, obviously, at the bottom
14 the responsible parties include the
15 manufacturers, the distributors and dealers,
16 and the contractors and installers. So it is
17 all the key people throughout the chain.

18 Okay. So this is kind of an open-
19 ended question. And before I get the question
20 the issue numbers throughout the presentation
21 match up with the way they are listed in the
22 framework. So that is why you will see Issue

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1 Number 3 here. It's not Issue 1; I know that
2 through some of my colleagues.

3 But -- so we are seeking just an
4 open-ended question here, information that
5 would be necessary to help determine if the
6 basic model is compliant with the Department's
7 standards. So what information should the
8 Department look for?

9 Right now, we ask for
10 certification information from the
11 manufacturers, and that really just has to do
12 with the basic model numbers and some limiting
13 characteristics of the equipment, as well as
14 the efficiency.

15 But what type of information will
16 the Department need, or do you think the
17 Department would need, to enforce its regional
18 standards?

19 Don't be shy.

20 FACILITATOR BROOKMAN: Frank
21 Stanonik, please.

22 MR. STANONIK: Frank Stanonik,

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1 AHRI.

2 FACILITATOR BROOKMAN: Hey, Frank,
3 get a microphone, please. Sorry about that.
4 Maybe you can sit -- you can sit close if you
5 wanted to.

6 MR. STANONIK: Ashley, a simple
7 question. Why do you think you need more than
8 what you have today?

9 MS. ARMSTRONG: Frank, this is
10 Ashley. I'm not sure that we do. I think
11 it's open-ended.

12 MR. STANONIK: Okay.

13 MS. ARMSTRONG: Do we or don't we?

14 MR. STANONIK: Well, I was taking
15 inference from the question, but I would say
16 that the information being provided to DOE
17 today, as you mentioned, includes the
18 efficiency information. So you have the
19 information to determine whether a model
20 complies with the national standard or the
21 respective regional standard. I don't think
22 that aspect you need anything more than you

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1 have today.

2 MS. ARMSTRONG: So --

3 FACILITATOR BROOKMAN: What about
4 the other aspects, Frank?

5 MS. ARMSTRONG: As I was saying --

6 MR. STANONIK: I was answering the
7 first question.

8 (Laughter.)

9 MS. ARMSTRONG: I was going to
10 say, as a follow-on, you know, and how would
11 that information or what changes would need to
12 be made for the Department to consider if it
13 has been properly installed in a specific
14 location?

15 MR. STANONIK: If I had the answer
16 to that question right now, we could all go
17 home.

18 (Laughter.)

19 MS. ARMSTRONG: That's fair
20 enough.

21 MR. STANONIK: Hopefully, we will
22 work that out.

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1 I have one related question, and
2 maybe we can park it aside. You have talked
3 about date of manufacturer -- I'm sorry, date
4 of installation. Has the Department given any
5 thought to -- granted, it is going to be a
6 very unique situation.

7 But let's say that date of
8 installation is looming, and I'm a consumer
9 and the -- you know, I've got bids from the
10 contractor, and I'm buying the furnace in the
11 north, okay? And I agreed on, let's say, two
12 days before the effective date I've agreed to
13 buy this model from this contractor. You
14 know, I have given them my credit card, all
15 that stuff.

16 I have made the purchase, as far
17 as I'm concerned, but it's not going to get
18 installed because contractors don't
19 necessarily control the amount of their
20 business, let's say until five days later
21 after the date of installation effective date.

22 And yet I bought a -- at that

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1 point, I purchased legally a -- let's say an
2 82 percent furnace. Have you thought about
3 that situation?

4 MS. ARMSTRONG: I think we have --
5 so I think we have thought about it, but I
6 don't think we have answer to it. How about
7 that?

8 MR. STANONIK: Okay. Well, so
9 I'll ask that maybe we park that, because I
10 think that --

11 MS. ARMSTRONG: Sure.

12 MR. STANONIK: -- needs to be
13 solved also.

14 MS. ARMSTRONG: Do you have a
15 suggestion as to how the Department should
16 deal with that?

17 MR. STANONIK: Off the top of my
18 head, because we haven't really talked about
19 it that much, but off the top of my head I
20 would consider the date of the consumer's
21 purchase to be effectively the date of
22 installation, because they will be

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1 disconnected.

2 FACILITATOR BROOKMAN: Harvey
3 Sachs.

4 MR. SACHS: Harvey Sachs. Just as
5 a follow-on to Frank Stanonik's question, it
6 might fit within my perception of minimal
7 additional database development work to ask
8 that AHRI mark each model. And conceptually I
9 am focused on furnaces now, additional work
10 for split systems, with the region for which
11 it is compliant, the analog being the
12 EnergyStar Windows program.

13 So we might for furnaces have one
14 that is 50-state for a condensing furnace
15 versus one that is southern only marked in a
16 column as an S in the database. And this
17 might be something that is helpful as we -- as
18 giving information that is more accessible to
19 contractors and consumers and others involved.

20 FACILITATOR BROOKMAN: Well, it
21 does seem as though the Department is here to
22 seek specific ideas about how this could be

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1 implemented. Do you want to comment now,
2 Karim?

3 DR. AMRANE: Karim Amrane, AHRI.
4 I think just to follow up on what Harvey just
5 said, I think it is something that AHRI
6 intends to do moving forward, for not just
7 furnaces but central A/C as well.

8 FACILITATOR BROOKMAN: And AHRI
9 has the capacity to do that and --

10 DR. AMRANE: Yes, AHRI will --
11 yes, yes, we'll do it.

12 FACILITATOR BROOKMAN: Okay.
13 Thank you. That was constructive.

14 Other thoughts in response to
15 Ashley's question, information for the
16 Department to look for? Yes, Talbot.

17 MR. GEE: Talbot Gee with HARDI.
18 It may be more of a question back to DOE. I
19 mean, there is a very, very important
20 difference in nature of information between
21 model numbers and sales information. Has DOE
22 thought about how you would treat those two

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1 different types of information differently?

2 MS. BARHYDT: I actually am not
3 sure I understand the question.

4 FACILITATOR BROOKMAN: That's
5 Laura speaking. Nor did I, Talbot. Can you
6 say a little more about that?

7 MS. ARMSTRONG: By "sales
8 information," I mean, do you mean like
9 shipments, or do you mean like serial numbers?
10 Or do we mean --

11 MR. GEE: Frankly, it doesn't
12 matter, the point being, you know, right now
13 you receive information about model numbers
14 from manufacturers, but it is decoupled from
15 actual sales transactions. To start talking
16 about installation location, there is a
17 variety of sales transactions that happen
18 between there, and that type of data is of
19 highly different nature than just simple model
20 number stuff. So how would you plan on
21 handling that?

22 FACILITATOR BROOKMAN: And so --

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1 and proprietary data. That's one of the big
2 concerns there, correct?

3 MR. GEE: Absolutely.

4 FACILITATOR BROOKMAN: Yes, okay,
5 just to be explicit. Do you have --

6 MS. ARMSTRONG: So --

7 FACILITATOR BROOKMAN: Ashley?

8 MS. ARMSTRONG: I don't have an
9 explicit answer, but, you know, we have
10 information that we collect now about certain
11 -- obviously, it is on a smaller scale, just
12 on model numbers. And we have information
13 that we consider confidential and stays in --
14 right? It stays within the Department, and it
15 is not -- we are not putting it on our online
16 database.

17 So if there is information about
18 geographic location, to the extent that sales
19 information was considered confidential in our
20 regs out in 429, in Part 429, we have set up a
21 system for which we identify information the
22 Department collects that it considers

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1 confidential in nature.

2 FACILITATOR BROOKMAN: Talbot?

3 MR. GEE: Does that mean it's not
4 subject to a FISA request or something, then?
5 Or FOIA, I'm sorry.

6 FACILITATOR BROOKMAN: FOIA, yes.
7 Laura?

8 MS. BARHYDT: Confidential
9 business information is exempt from release
10 under FOIA. But the Department makes the
11 ultimate determination about releasability.

12 MS. ARMSTRONG: So we got a
13 question from -- if everyone is done with that
14 topic, we've got a question from the web that
15 says, "For proper geographic location, will it
16 be determined by zip code?"

17 And I think at this point the
18 Department doesn't know. We're open to ideas.

19 The regional standards that were adopted are
20 based on the state -- are at the state level,
21 so it -- I guess I'd ask, is there a reason
22 that someone thinks we may need zip code for

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1 the location?

2 FACILITATOR BROOKMAN: Would I
3 guess the -- go ahead, Harvey. Harvey Sachs.

4 MR. SACHS: Harvey Sachs. Very
5 much conceptual. I have circulated a little
6 bit on this and will try to flesh it out. But
7 in the mental architecture that I am thinking
8 about of basing this on data mining, the zip
9 code and street address are critical
10 information to get into the system, so one can
11 look for egregious patterns of violation --
12 someone who is shipping 10 units as installed
13 at my house's address, things like that.

14 Now, there is no problem with that
15 information remaining confidential. There is
16 no reason for that information to include
17 anything about price, but I don't think we can
18 get a solid enforcement mechanism unless we
19 have the ability to see what installers are
20 moving product to what addresses and look for
21 anomalous patterns.

22 FACILITATOR BROOKMAN: A state --

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1 that would not be sufficient.

2 MR. SACHS: It would absolutely be
3 insufficient in my opinion, but I am certainly
4 open to much smarter folks, much more
5 experienced folks showing me I'm wrong.

6 FACILITATOR BROOKMAN: Please say
7 your name.

8 MR. BUUCK: Yes. Dan Buuck with
9 National Association of Home Builders.

10 FACILITATOR BROOKMAN: That's not
11 turned on, I don't think.

12 MR. BUUCK: Thank you.

13 FACILITATOR BROOKMAN: Yes, that's
14 better.

15 MR. BUUCK: Dan Buuck, National
16 Association of Home Builders. Speaking to the
17 enforcement part, when the enforcement
18 framework came out at our office we realized
19 that using the states as the northern region
20 for the furnaces was a way to simplify
21 enforcement.

22 However, we feel that it would

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1 actually complicate things by not going --
2 using the climate zone maps that are in the
3 energy codes, which are used around the
4 country. And so we would feel that the zip
5 codes would be the way to track these.

6 And if you look at the map, and
7 overlay it with the climate zones, there are
8 many large metropolitan areas in the northern
9 region, which are actually in a more milder
10 climate zone, that those metropolitan areas
11 include New York, much of New Jersey,
12 Philadelphia, and on and on and on.

13 And we feel that -- I think Mr.
14 Sachs was speaking to the data mining
15 database. It is easily done to track these by
16 zip code. It does not need to be by state.

17 Thank you.

18 FACILITATOR BROOKMAN: Karim, do
19 you want to comment here?

20 DR. AMRANE: Well, just to say
21 that the climate zones in the ECC -- there
22 were like eight climate zones and they go by

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1 -- even cut the states, I mean, they cut
2 cities. So I don't know. I mean, it could be
3 -- I guess, I don't know. I'm not saying that
4 we cannot choose zip code, but that is going
5 to complicate the situation.

6 FACILITATOR BROOKMAN: Charlie.

7 MR. McCRUDDEN: Charlie McCrudden,
8 Air Conditioning Contractors of America. I
9 have two comments about essentially the
10 question that is posed here. The first is
11 that my members, their sales numbers, their
12 customers' location/addresses, that is their
13 confidential business information. That is
14 their whole business.

15 They are very, very careful and
16 very skeptical of providing that information
17 to the government, to even some of their
18 industry partners. So I would just put that
19 out there.

20 Secondly, you know, in terms of
21 collecting information, I think there is a
22 piece here that we may be overlooking. How is

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1 that information transmitted? You know, how
2 would a distributor or a contractor or someone
3 transmit that information to DOE? What would
4 that look like? Could it be -- would it only
5 be electronic? Could it be paper filing? Not
6 all contractors are as sophisticated as to be
7 able to probably abide by I think what Harvey
8 might have -- as a 21st century database.

9 And this is I think sometimes the
10 unintended burdens -- not the unintended
11 consequences but the unintended burdens on the
12 smaller contractors. So I think we need to
13 think about, how does this -- how is this
14 information transmitted? How are you going to
15 use it?

16 You know, the fact that it is not
17 FOIA-able, you know, may make some folks still
18 very skeptical, and there -- it may be that
19 DOE has to do some type of education on this.

20 But again, there just -- there is a lot of
21 concern there. So --

22 FACILITATOR BROOKMAN: Thank you.

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1 Karen, do you have a comment?

2 MS. MEYERS: Just a comment. This
3 is Karen Meyers with Rheem. You know, I would
4 be very concerned if there was some type of
5 online searchable database by state or zip
6 code, because it could easily release
7 manufacturers' market share data and -- by
8 location, and we would definitely consider
9 that confidential business information, and we
10 would be very much against that type of
11 information being released to anyone.

12 FACILITATOR BROOKMAN: Harvey
13 Sachs.

14 MR. SACHS: Harvey Sachs. Karen,
15 we agree. Again, I don't want to push any
16 particular approach except as a kind of thing
17 -- the database, as some of us think about it,
18 would be an internal to DOE database, perhaps
19 analogous -- and I hate to even use the
20 metaphor -- to IRS data, which are searchable
21 by IRS staff, but are certainly not an online
22 database that anyone without sophisticated

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1 hacking skills could reach.

2 So we absolutely agree on the
3 importance of protecting proprietary
4 information, and absolutely agree with Charlie
5 on the need to do a large educational
6 component. And beyond that, as the advocates
7 have thought about this entire process, we
8 have tried to bear in mind how much of the
9 actual energy saving is attributable to the
10 work of the quality installer, a mission which
11 ACCA has taken on and which we wholeheartedly
12 endorse.

13 And if the enforcement of these
14 regulations happens to be a little bit more
15 difficult for the archetypal, let's call it
16 inadequate contractor, it does not -- the one
17 pickup, one magnetic sign "In Business One
18 Year" model, it does not particularly bother
19 us, because we don't think these people are in
20 the business of doing quality installations
21 and really serving their customers.

22 I may be a wide-eyed idealist, but

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1 that's where I am.

2 FACILITATOR BROOKMAN: Okay. Kit
3 Kennedy.

4 MS. KENNEDY: Kit Kennedy for
5 NRDC. I mean, I think we are all hearing the
6 importance of keeping proprietary business
7 information confidential for all of your
8 members.

9 And, Laura and Ashley, I'm just
10 wondering if as part of this rulemaking there
11 might be some more guidance on the interplay
12 between FOIA and confidential business
13 information, as applied in this situation, or
14 I hate to provide more work, but an additional
15 rulemaking, so folks in advance would know
16 exactly what the definition of CBI is and
17 there could be confidence that -- you know,
18 what's in and what's out.

19 MS. BARHYDT: We certainly
20 appreciate the comments. As we did in the
21 certification enforcement rule where we began
22 requiring additional information that we

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1 hadn't required before, we did take efforts to
2 make clear exactly which pieces of information
3 we considered to be public information.

4 And I see no reason why, within
5 the context of this rulemaking, we couldn't do
6 something similar to make absolutely clear
7 which types of information appear to be
8 proprietary information.

9 FACILITATOR BROOKMAN: Dan?

10 MR. ARNOLD: Yes. I'll make my
11 comments real brief, because several people
12 already stole my thunder.

13 FACILITATOR BROOKMAN: Give your
14 name first.

15 MR. ARNOLD: Dan Arnold, Nordyne.
16 I'm echoing Karen, Charlie, and others, so
17 I'm just glad to hear the discussion taking
18 place about proprietary data. We just second
19 that --

20 FACILITATOR BROOKMAN: Okay.
21 Thank you.

22 MR. ARNOLD: -- that concern.

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1 There was a situation in California a number
2 of years ago that we submitted data directly
3 to the State of California. It was not to be
4 made public, and inadvertently we found a back
5 door way that we found information on all our
6 competitors, so we just want to make sure that
7 -- that's, again, a concern. I'm glad to hear
8 the discussion taking place.

9 FACILITATOR BROOKMAN: Good.
10 Thank you. And that's a useful illustration.
11 Charlie.

12 MR. McCRUDDEN: Yes, I just was
13 going to follow up on Harvey's comment. You
14 may be -- what was it, a wet-eyed idealist,
15 but I think you overgeneralized the industry.
16 I think there are more one-van legitimate
17 contractors than there are one-van
18 illegitimate or, you know, unscrupulous
19 contractors.

20 But nonetheless, this is a new
21 filing burden potentially, or this is a new
22 requirement on the contractors. And those

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1 one-van operations, you know, of our
2 membership, 80 percent are less than 10
3 employees. And so a bulk of those are going
4 to be one in two.

5 And I think that we have to think
6 about how they are going to maintain
7 compliance, so I just have to stick up for my
8 folks.

9 FACILITATOR BROOKMAN: So this is
10 a rather open-ended question, Issue Number 3.

11 I thought I would just ask, does anybody have
12 a distinctly different perspective on this for
13 the Department to consider?

14 MS. ARMSTRONG: Well, actually,
15 can I --

16 DR. AMRANE: Karim Amrane, AHRI.
17 Just one comment here. I hope it's -- we are
18 just talking here about enforcement of the
19 standard above the base national standard. We
20 see no reason why DOE should change its
21 enforcement that is currently in place for the
22 base national standard, so we are talking

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1 about the levels above the base only. I guess
2 I'd like clarification from DOE on that.

3 MS. ARMSTRONG: So I think they
4 work hand in hand, right? I think at this
5 point, you know, our enforcement is up and
6 running for the base national standards. But
7 if something we do with respect to regional
8 standards warrants the changes there, I mean,
9 the Department would consider that. But we
10 hear your opinion that it should stay the
11 same.

12 So I actually have a question from
13 the web, and I'm going to defer this question
14 to Charlie and ask him hopefully to explain,
15 because they asked if we would work with ACCA
16 on your EnergyStar program as far as paperwork
17 with the information you currently collect on
18 model and serial number. And, unfortunately,
19 I am less familiar with that, so I was going
20 to wonder if you could explain what you
21 currently do with the EnergyStar program.

22 It asks if the Department will

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1 work with ACCA's EnergyStar program as far as
2 paperwork, including model, serial number, and
3 all of the startup information addressed to
4 the property. So I'm wondering what you
5 currently collect for the EnergyStar program.

6 MR. McCRUDDEN: Well, this is a --
7 this is a program that we have sort of just
8 developed. I don't know all the collection --
9 the information that we collect for that
10 program, so I'll have to get back to you on
11 that, and I will confer with my folks who run
12 that. So, but that's potentially a model or
13 --

14 MS. ARMSTRONG: Yes, I think the
15 Department would be very interested in
16 learning what you are going to do for that,
17 because -- to the extent that the information
18 seems to be like the information that people
19 in the room feel the Department should be
20 interested in.

21 MR. McCRUDDEN: Okay. I'll have
22 to get back to you on that one.

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1 MS. ARMSTRONG: Okay. Thank you.

2 FACILITATOR BROOKMAN: Talbot.

3 MR. GEE: Yes. Just on -- and I
4 don't know exactly what that is pertaining to.

5 But if it -- I know there is the EnergyStar
6 program that ACCA partners on for new
7 construction, and I hope everyone is clear
8 that there is a vast distinction between
9 compliance and enforcement of all of this for
10 new construction versus how it would actually
11 be in a retrofit situation.

12 So even if there is some model on
13 new construction that -- I don't think it
14 gleans as many lessons for a retrofit
15 application.

16 FACILITATOR BROOKMAN: Thank you.

17 MS. ARMSTRONG: So we have another
18 question from the web, and I'm going to get
19 hopefully Laura to answer this question. But
20 it says, "What efforts will be in place to
21 assure that units cannot be sold online or
22 shipped from the south to the north, creating

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1 a black market for HVAC equipment?"

2 MS. BARHYDT: I definitely think
3 that's one of the issues that we are concerned
4 with, and that's certainly one of the things
5 that we are hoping to get substantive comments
6 from you on. What is it that you think is
7 workable and yet still will prevent that type
8 of black market?

9 FACILITATOR BROOKMAN: Gary
10 Fernstrom.

11 MR. FERNSTROM: Gary Fernstrom. I
12 think all of this discussion serves to focus
13 our attention on the importance of the
14 contractor in all of this, because ultimately
15 the contractor -- there are very few
16 homeowners that install their own HVAC
17 equipment.

18 Contractors know where they have
19 installed it and whether it's compliant or
20 not. I think it is -- it's tough for the
21 distributors, other than, you know, they know
22 what state they sold it into.

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1 FACILITATOR BROOKMAN: Thank you.
2 Charlie.

3 MR. McCRUDDEN: On the issue of
4 internet sales, I have had a lot of members
5 tell me -- and this is anecdotal -- I have had
6 a lot of members tell me that they get calls
7 once a week now. And it's someone who said,
8 "I bought this condensing unit on the
9 internet. What will you charge to install
10 it?" Or "I bought this furnace online."

11 One of my members told me she got
12 a call from a dentist, and he had purchased a
13 condensing unit online and wanted it installed
14 in his office. And she said, "What would you
15 say if I said, 'I bought some amalgam online.
16 Would you put it in my mouth?'"

17 (Laughter.)

18 And she declined, but --

19 (Laughter.)

20 She declined to do the job. But
21 the point is, it's happening, it's happening a
22 lot. And I think -- and this was in our

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1 comments on the DFR -- I think this is
2 something that we really have to look at,
3 because it is going to make the issue of
4 noncompliance along the borders moot, because
5 now potentially a furnace or an air
6 conditioner could come from Florida and arrive
7 in Maine.

8 And in those cases -- and, look,
9 these are folks probably -- you know, we don't
10 know who is selling them, we don't know who is
11 buying them, but I think it's an issue.

12 FACILITATOR BROOKMAN: So are you
13 in part agreeing with Gary's emphasis on the
14 installer, the contractor?

15 MR. McCRUDDEN: Well, obviously,
16 the contractor knows where things are going.
17 But I just think that in terms of how DOE sees
18 this, these are things -- I mean, this black
19 market exists, and it likely will get worse.

20 MR. FERNSTROM: Gary Fernstrom.
21 Let's explore that a little bit in terms of
22 the applicability of the regulations. And it

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1 appears to be somewhat of a dilemma to me that
2 regulations I believe apply to the sale of the
3 product, so the internet firm that sold the
4 product to the dentist in a noncompliant area
5 is violating the regulation.

6 I suppose the ethical thing for
7 contractors to do would be to say, "I'm sorry,
8 I can't install that unit." But there is no
9 prohibition on the dentist buying it. The
10 prohibition was on the distributor who sold it
11 into a noncompliant address.

12 FACILITATOR BROOKMAN: How about,
13 Laura, did you want to comment here? I'm
14 coming back to you, Paul.

15 MS. BARHYDT: So the current
16 standards are on the manufacturer and on the
17 importer. They are not currently on the
18 distributor, and so the distributor, unless
19 they were an importer or a manufacturer, is
20 not in violation of DOE regulations.

21 FACILITATOR BROOKMAN: Let's let
22 Talbot follow on here, Paul. Go ahead,

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1 Talbot.

2 MR. GEE: Well, I would also point
3 out another great example for why this is
4 going to be a challenge, because there
5 actually is a prohibition against that dentist
6 buying that condensing unit. He is supposed
7 to have his EPA certification to be able to
8 purchase those things and you can't police
9 that right now. That was supposed to have
10 been one of those controls to help do this.

11 And this is the slippery slope we
12 get into where the whole industry is agreed
13 that it does not want to encourage internet
14 sales. But this regulation, in and of itself,
15 could encourage the explosion of internet
16 sales. So we've got a problem there.

17 FACILITATOR BROOKMAN: Paul.

18 MR. DOPPEL: Well, if that example
19 included a furnace instead of a condenser,
20 then, you know, it would be wide open for
21 that. But the point I was going to make is
22 that this particular example illustrates from

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1 a manufacturer's perspective how difficult it
2 would be to track by serial number various
3 pieces of equipment, because once we sell to
4 distributors, then we essentially lose control
5 of where that equipment has gone.

6 FACILITATOR BROOKMAN: Kit?

7 MS. KENNEDY: Just a question for
8 Laura and Ashley. Is it the case that the
9 Department has taken enforcement actions
10 against online internet sellers of
11 noncompliant appliances in the case -- in the
12 past?

13 FACILITATOR BROOKMAN: Laura?

14 MS. BARHYDT: This is Laura
15 Barhydt. I'm trying to think if we have done
16 anything specifically on that. We have
17 certainly brought at least one action against
18 a company that we became aware of through the
19 internet, but I don't think they were selling
20 exclusively on the internet.

21 So we do monitor what is being
22 sold online. In all honesty, most of the

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1 things that we have identified online as being
2 noncompliant, being sold in the U.S., it was
3 noncompliant with EPA's regulations and not
4 DOE's, and in those cases we actually notify
5 EPA.

6 MS. KENNEDY: Just perhaps a quick
7 follow-on. I mean, we hear in the context of
8 many rulemakings on appliance efficiency that
9 rules will encourage internet sale of
10 products, and yet our sense is that when push
11 comes to shove appropriate products are sold
12 on the internet dependent on size,
13 availability of installation, and so forth.
14 So it's easy to buy a toaster over the
15 internet.

16 It's possible, of course, to buy
17 furnaces over the internet, as your dentist
18 example did. But I don't think we see in the
19 context of diverse efficiency rulemakings that
20 standards really influence what happens on the
21 internet, the availability of internet
22 products.

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1 FACILITATOR BROOKMAN: I saw Jim
2 first.

3 MR. KIBLER: Charlie and I just
4 did a quick Craigslist search for furnace, and
5 we found several listings, including an ad
6 here to buy a 92 percent AFUE up-flow furnace
7 starting at \$1,350, to be installed virtually
8 anywhere in the metro area. So it's an
9 illustration that it is happening today.

10 I'm not quite sure my neighbor
11 would want me to disclose this, but last year
12 on Christmas Day when I went to his home he
13 took me to the basement, because he was very
14 proud of his new tankless gas water heater
15 that he had bought on Craigslist and installed
16 himself.

17 So, I mean, this happens. And
18 many of our states don't even require
19 licensure of installers. So it is an
20 enforcement issue, and it needs to be
21 addressed. And we don't -- part of the
22 comments that I am going to deliver later talk

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1 about the unintended consequences of forcing
2 folks into making bad decisions, and we need
3 to be mindful of that is all I'm saying.

4 FACILITATOR BROOKMAN: Gary
5 Fernstrom.

6 MR. FERNSTROM: I would like to go
7 back to the applicability of the regulation
8 for a moment. So if I understood the
9 statement from DOE, DOE's current regulations
10 are applicable only to the manufacturer. If
11 that's the case, you know, that works fine for
12 a national standard, but I don't think it
13 works very well at all for regional standards,
14 because the manufacturer sells to distributors
15 and has no idea, you know, where the equipment
16 goes.

17 It would seem to me that the
18 applicability needs to take a step down to the
19 distributor that probably at least knows what
20 part of the country the equipment is going
21 into -- internet sales, you know, aside from
22 that.

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1 FACILITATOR BROOKMAN: Okay.

2 MS. BARHYDT: I have two comments
3 that came in over the internet.

4 FACILITATOR BROOKMAN: Yes.
5 Laura, please.

6 MS. BARHYDT: So I am just reading
7 comments. One is from Ted Ferrara and it
8 says, "We are very concerned about our data
9 being available to our competitors
10 demonstrating compliance could be obtained by
11 local inspectors and state codes being
12 enforced rather than a new federal law."

13 And the other one is from Chuck
14 White with PHCC and he said, "There are a lot
15 of small contractors filing documentation for
16 every furnace or air conditioner sold that
17 will be resisted by most contractors. If
18 contractors do the right thing, they are
19 facing additional paperwork and staff to
20 comply with this."

21 FACILITATOR BROOKMAN: Okay.
22 Thank you. And we encourage those comments

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1 and questions from the web to the extent we
2 can fit them in here.

3 Charlie Stephens.

4 MR. STEPHENS: Charlie Stephens.
5 I'm starting to get a little bit confused
6 here. Maybe DOE could help us out here and
7 define for all of us what, after the effective
8 date of the regional standards, constitutes a
9 violation of those standards.

10 FACILITATOR BROOKMAN: Do you want
11 to try that, Laura?

12 MS. BARHYDT: Could you repeat the
13 question? I was reading more comments coming
14 in from the internet.

15 MR. STEPHENS: I would like to
16 just hear what DOE believes a violation of the
17 regional standards after the effective date of
18 those standards is comprised of? How would
19 you violate those standards, and who would --
20 and who is in a position to violate those?

21 MS. BARHYDT: The installation of
22 an air conditioner that does not meet the

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1 regional standard at the time that the
2 standard is effective would be a violation,
3 and that's statutory.

4 MR. STEPHENS: So it's an
5 installation violation.

6 MS. BARHYDT: It is the -- yes, it
7 is the installation of a noncompliant product.

8 Now --

9 MR. STEPHENS: In the --

10 FACILITATOR BROOKMAN: Based on
11 the compliance state.

12 MS. BARHYDT: Based on the
13 compliance -- right.

14 MR. STEPHENS: Based on the states
15 that are listed as having a separate standard.

16 MS. BARHYDT: Yes. And there was
17 -- did you have a second part of that
18 question?

19 MR. STEPHENS: No, that's fine.

20 FACILITATOR BROOKMAN: Date and
21 state.

22 MS. BARHYDT: Okay. Yes, yes,

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1 it's a culmination of --

2 FACILITATOR BROOKMAN: Date and
3 state.

4 MS. BARHYDT: -- date and state.

5 FACILITATOR BROOKMAN: Right.

6 MR. FERNSTROM: Gary Fernstrom. I
7 have a second part to that question. So,
8 okay, if that's the violation, against whom
9 might be the recourse?

10 MS. BARHYDT: So there is also a
11 prohibited act that was added in EISA, and it
12 is -- it basically also makes it a violation
13 for a manufacturer or a distributor to sell a
14 product, basically to sell something that is
15 at the base national standard to a contractor
16 with a known history of installing products in
17 noncompliant regions.

18 So it also creates a potential
19 violation for distributors and manufacturers
20 that is not present for the base national
21 standard. It is specific to regional
22 standards.

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1 MR. FERNSTROM: Okay. So could I
2 go back to my question? If the improper
3 installation is the violation, against whom
4 would be the recourse? If you are limited in
5 your recourse only to the manufacturer, the
6 manufacturer didn't install it, so it doesn't
7 seem sensible to me that you could take
8 recourse against them.

9 FACILITATOR BROOKMAN: Back to
10 Laura, again.

11 MS. BARHYDT: This is Laura. So
12 when I said that the resource was against the
13 manufacturer, we were talking about you had
14 mentioned that it would be a violation for the
15 person who sold online the furnace to the
16 dentist, and I was just clarifying that that
17 right now is actually not a violation.

18 So my comment was limited to the
19 base national -- well, the national standard
20 in place right now. The whole idea of this
21 regional -- the enforcement plan for regional
22 standards is taking an entirely different

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1 attack.

2 MR. FERNSTROM: I'm confused.

3 FACILITATOR BROOKMAN: Okay. Jeff
4 Harris, please. Find a microphone.

5 MR. HARRIS: Thanks. Jeff Harris.

6 I don't want to pile on, Laura, but I want to
7 just follow up on Charlie's question and
8 understand whether the date of manufacture or
9 import of that furnace is or is not relevant.

10 In other words, is it only the installation
11 and the installation date, or is it also
12 whether the furnace was manufactured before or
13 after the standards took effect?

14 MS. BARHYDT: So for the base
15 national standard, it is going to be
16 manufacture date. That's the way the statute
17 is written. So the product has to be
18 manufactured after the -- well, so after the
19 effective date of the base national standard
20 products manufactured in the United States or
21 imported into the United States must meet the
22 base national standard.

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1 When products are imported, when
2 they are manufactured they are not -- they are
3 not set in a region yet, so there is no
4 applicable regional standard yet. It just --
5 conceptually, it doesn't make sense to say,
6 "Well, it doesn't meet the regional standard,
7 because it came in through the port of New
8 York."

9 It is -- as far as the
10 manufacturing and importation date is
11 concerned, that is for base national
12 standards. Regional standards just have no
13 meaning until the unit is actually tied to a
14 region.

15 MR. GEE: So I think what --

16 FACILITATOR BROOKMAN: Talbot,
17 please.

18 MR. GEE: I'm sorry. Talbot Gee.

19 I think that's what we're asking is, do you
20 interpret this, then, that DOE could start
21 issuing penalties or fines against the
22 installing contractor?

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1 MS. BARHYDT: Yes, we do.

2 MR. GEE: And what's the reference
3 point for that? I mean, how -- I guess I'm
4 just looking for clarity on that, because
5 you're right, the only thing that it really
6 says as far as enforcement actions is about
7 the manufacturer or importer.

8 MS. BARHYDT: So our reading of
9 the definition of "manufacturer," just like an
10 importer in normal common jargon does not
11 encompass an importer, but under the statute
12 "manufacturer" includes importers. And we
13 believe that the definition of "manufacturer,"
14 which includes "assemble", can bring in,
15 within the scope, installers.

16 (Laughter.)

17 MR. GEE: I'm going to guess the
18 likelihood of meeting the 12/15 end date just
19 changed.

20 (Laughter.)

21 MR. FERNSTROM: Gary Fernstrom.
22 Well, you know, regardless of our opinion of

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1 that interpretation, for this to work that is
2 the way it is going to have to be, because in
3 my view really only the installer knows where
4 this went. I mean, take into account the
5 internet sale, the complicated nature by which
6 this equipment might move through market
7 channels.

8 FACILITATOR BROOKMAN: Charlie.

9 MR. McCRUDDEN: I agree. I mean,
10 we are obviously the last one holding the box
11 before it's opened. So that's -- you know, I
12 agree with your point there. But I think the
13 question about the enforcement on the
14 manufacturer versus the shipper and the
15 contractor is about essentially, where in the
16 statute is the language that brings in the
17 contractor-distributor? Or is that your
18 interpretation? Or is that something that
19 this rule will set out?

20 MS. BARHYDT: So the statutory
21 authority is in the existing statutory
22 language. And we would -- through rulemaking,

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1 we would be defining which parties were
2 responsible for which items.

3 MR. McCRUDDEN: So you are going
4 to --

5 MS. BARHYDT: And that is part of
6 what we want comment on.

7 FACILITATOR BROOKMAN: So right
8 now you are thinking that -- am I interpreting
9 this correctly? That the chain from the
10 installer through the distributor to the
11 manufacturer, they could all be subject to
12 some enforcement action --

13 MS. BARHYDT: For different
14 possible violations.

15 FACILITATOR BROOKMAN: -- in a
16 regional context.

17 MS. BARHYDT: Yes.

18 MR. McCRUDDEN: And then, just a
19 follow up, how would an enforcement action
20 occur on a contractor? Have you considered or
21 contemplated that yet?

22 MS. BARHYDT: Well, I've certainly

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1 thought about it. But I really don't want to
2 take a position on that, because I don't want
3 people to feel locked in by kind of my thought
4 process. I would welcome comments on that.

5 FACILITATOR BROOKMAN: Talbot.

6 MR. GEE: So this concept of
7 broadening the definition of "manufacturer" to
8 fit in the enforcement action authority, I
9 mean, frankly, doesn't that have ramifications
10 well far and beyond even just this rulemaking
11 by doing that?

12 FACILITATOR BROOKMAN: Laura.

13 MS. BARHYDT: This is Laura. I
14 think what the Department is saying is that we
15 believe we have statutory authority to enforce
16 against installers. This rulemaking would
17 clarify when and how we might exercise that
18 authority. So within the scope of this
19 rulemaking, I think the only thing that we
20 have laid out in the framework is that for the
21 purposes of regional standards, we believe we
22 have authority over installers. But how that

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1 actually gets implemented --

2 FACILITATOR BROOKMAN: So the
3 issue of legal authority is one that is
4 hanging out there, if I understand it. That
5 is, DOE is going to have to make some
6 interpretation surrounding its authority and
7 how that gets translated into a rule. But I'm
8 just wondering about, maybe we could shift the
9 conversation to our practicalities, the kind
10 of practicality of making this system work.

11 I saw Gary first.

12 MR. FERNSTROM: Gary Fernstrom.
13 Doug, just as a point of reference, the
14 California regulations apply to products
15 offered for sale in the state of California,
16 and they apply to whoever sells it. So in
17 selling an HVAC unit, the contractor is
18 usually the last seller of that product,
19 except in the case where it might be purchased
20 through the internet and the contractor just
21 has to install it.

22 FACILITATOR BROOKMAN: Okay. So

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1 that's the tie-in. Charlie, go ahead.

2 MR. McCRUDDEN: I had one
3 followup, before we move on to the
4 practicality. You mentioned -- you talked
5 about the knowing issue, knowingly selling for
6 the manufacturer and distributors to
7 contractors. That assumes there is a list I
8 guess of violators, or is there -- I mean, and
9 I don't -- this is an awful word, but is this
10 -- would this be a blacklist of contractors
11 that would be maintained, or how would that --
12 I mean, I'm just trying to figure out how that
13 would work.

14 MS. BARHYDT: I think it could
15 work a lot of different ways, and we are
16 interested in your comments on what would --
17 not only how could that work, but how could
18 that even practically be applied by the
19 Department?

20 MR. McCRUDDEN: And I would just
21 add -- this is just my initial comment on that
22 -- is that there are a lot of contractors in

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1 this industry. Well, I shouldn't say -- there
2 are contractors in this industry who do fly
3 under our radar. There are states where there
4 is no licensing, and so nobody knows who is
5 out there installing, dealer or otherwise.

6 And it will be a challenge I
7 think, because I think you may -- keeping
8 track of those out there, so --

9 FACILITATOR BROOKMAN: Ashley, let
10 me ask you, should we talk about the
11 practicalities of this globally, or should we
12 go --

13 MS. ARMSTRONG: I'm going to move
14 forward.

15 FACILITATOR BROOKMAN: -- move
16 forward?

17 MS. ARMSTRONG: Yes.

18 FACILITATOR BROOKMAN: It strikes
19 me that --

20 MS. ARMSTRONG: But I have a
21 couple from the web, too.

22 FACILITATOR BROOKMAN: Yes, okay.

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1 Just a couple of additional comments, and
2 then we'll move on. But I think the specifics
3 that are in the slides will prompt more
4 specific comments. I saw Paul first, and then
5 to Harvey.

6 MR. DOPPEL: This is from the
7 manufacturer's perspective. In past when
8 there has been a change of the standard, the
9 manufacture date allows us to install products
10 that no longer meet the new standard.

11 Now, for the case of heat pumps,
12 split or A/C, the new standard would be 14.
13 So if a manufacturer, distributor, or
14 contractor still has those efficiency
15 products, manufactured prior to the date or
16 imported prior to the date, this is -- again,
17 the new standard is 14.

18 So for those products, does this
19 become a case where we have to scrap those?
20 Or would we still be permitted to install
21 those efficiency products?

22 FACILITATOR BROOKMAN: Harvey,

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1 let's see if the Department wants to comment
2 here.

3 MS. ARMSTRONG: We're looking at
4 each other.

5 MS. BARHYDT: The --

6 FACILITATOR BROOKMAN: This is
7 Laura again.

8 MS. BARHYDT: Sorry. I'll catch
9 on to that eventually. The effective date for
10 the regional standard applies to installation.

11 So the product that is installed after the
12 compliance date for the regional standard must
13 meet the standard.

14 MS. MEYERS: But heat pumps don't
15 have a regional aspect to them.

16 MS. ARMSTRONG: Right. So the --
17 if it's a base standard, right, it's -- the
18 base standard is on the date of manufacture,
19 period. So if they don't have a regional
20 standard, then the installation date is moot.

21 FACILITATOR BROOKMAN: Okay. Now,
22 Harvey, please.

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1 MS. ARMSTRONG: And that was
2 Ashley.

3 FACILITATOR BROOKMAN: Yes. Thank
4 you, Ashley.

5 MR. SACHS: Harvey Sachs. One of
6 them is, in every rulemaking there are
7 transition issues, one-time issues around the
8 date of implementation of the rule. These are
9 all very important. Talbot Gee has done a
10 great deal to educate me on some of the
11 specific issues that will arise, but they are
12 a separate class of issues from the general
13 issues ongoing after the rule is implemented.

14 And I want to turn to one of
15 those, which is of great concern to all of us,
16 which is the rise -- is finding legal ways to
17 make it harder to do internet sales that will
18 lead to poor quality installation of
19 noncompliant products.

20 And my naive view is that the
21 record keeping that will be required of
22 manufacturers and distributors is actually the

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1 only way that I have been able to think of to
2 prevent them from being harmed by such
3 unscrupulous sellers. That if -- you are
4 liable if you have sold what then was
5 installed illegally for having provided false
6 information.

7 This I think will be a protection
8 for the legitimate business people who are
9 trying to do the right thing.

10 FACILITATOR BROOKMAN: Since both
11 manufacturers and distributors would be
12 subject to potentially an enforcement action
13 by some unscrupulous installer.

14 MR. SACHS: If they have knowingly
15 -- to use Laura's words -- sold in a way that
16 will lead to a pattern of illegal
17 installations. So I view this, again perhaps
18 naively, as being a bulwark against
19 proliferation of poor practice.

20 FACILITATOR BROOKMAN: Karen, did
21 you wish to comment?

22 MS. MEYERS: Yes, this is Karen

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1 Meyers. Just a clarification, please. As far
2 as the enforcement of the standards and
3 records of installation, that would only apply
4 to products that have a regional aspect to
5 them. Is that correct?

6 MS. ARMSTRONG: I don't think we
7 know yet, right? I think that's what is on
8 the table as far as what records you need to
9 maintain, what might come into the Department,
10 what information. You know, we are going to
11 touch on that when we get to approaches. But
12 as far as -- it depends on how we set up who
13 is responsible for what and what
14 responsibility they need to do.

15 So, you know, one of the schemes
16 is to track serial numbers from manufacture
17 all the way to the installation, right? And
18 then, somehow someone in that scheme would
19 give that information to the Department by
20 serial number. So, obviously, that would
21 require all parties involved -- I'm not saying
22 that's an optimal approach. I'm not saying

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1 that's the Department's position. That was
2 just a potential, you know, talking point at
3 this point.

4 FACILITATOR BROOKMAN: Charlie
5 Stephens. Oh, go ahead, Karen.

6 MS. MEYERS: Can I ask just one
7 follow-up? So like for heat pumps where it's
8 a national standard, are you saying that we
9 would have to maintain installation, so -- and
10 serial number information on products that
11 have national standards, or is this discussion
12 strictly contained to split A/C and gas
13 furnaces?

14 MS. ARMSTRONG: I mean, I think
15 for all intents and purposes it is for
16 regional standards, right? It's just
17 applicable to regional standards, although the
18 Department could, as I said earlier, if it
19 needed to, expand the information it collects
20 for the national standards if it needed to.
21 But I hear your position in that the national
22 standards should stay the way they are.

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1 MS. MEYERS: Okay.

2 MS. ARMSTRONG: Now --

3 FACILITATOR BROOKMAN: And I'm
4 looking at Laura, who seemed to -- Ashley said
5 it -- says it all.

6 MS. ARMSTRONG: Can I jump in here
7 real quick, then?

8 FACILITATOR BROOKMAN: We've got
9 lots of comments from the web, and I note that
10 -- let's take these comments, or questions
11 perhaps. Who wants to do it?

12 MS. ARMSTRONG: I've got two --
13 well, I have two comments and a question up
14 here, and then Laura has a couple in her hand,
15 too.

16 So this one is from Frank
17 Schneider. He says, "A distributor sold
18 quantities of equipment which will not have
19 access to address or zip codes at the point of
20 sale. After sale, collection of information
21 is not filed."

22 Okay. So this is from Chuck White

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1 at PHCC. He says that, "We have lots of
2 internet sales. If we could stop it now, we
3 would. Customers think what contractors do is
4 easy, but don't find out otherwise until it's
5 too late."

6 And then, here is a question from
7 Bryan Rocky. Is the burden of proof on proper
8 installation the responsibility of the selling
9 contractor or the installing contractor?

10 FACILITATOR BROOKMAN: Laura.

11 MS. BARHYDT: As far as the last
12 question, I would say that I'm a lawyer and I
13 don't actually know what the difference is
14 between those two, but we would welcome your
15 comments and thoughts on what it should be.

16 FACILITATOR BROOKMAN: Okay.

17 MS. BARHYDT: I have a question
18 here from Mark Nayes. What is the penalty for
19 violation? Who enforces it?

20 And then, sort of a question and
21 comment. If the first penalty is not
22 sufficiently strict, what stops a homeowner

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1 from doing their own HVAC?

2 As far as the penalty for
3 violation, the statute sets a maximum penalty
4 at \$200 per unit. We issued penalty guidance
5 dealing with certification violations,
6 basically saying that in most cases the
7 penalty is \$20 instead of \$200.

8 We have similar discretion when it
9 comes to regional standards, so at this point,
10 obviously, we don't have any regional
11 standards, and we have no enforcement plan in
12 place. And so I can't tell you exactly what
13 the penalty would be, but I can tell you that
14 the statutory maximum is \$200 per unit.

15 And in terms of who enforces it,
16 the Department of Energy enforces it.

17 FACILITATOR BROOKMAN: I saw Kit
18 first.

19 MS. KENNEDY: I just wanted to
20 step back and sort of note where we are in the
21 process. This is -- we are talking about a
22 notice of data availability here that will

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1 kick off a process that will likely take 15
2 months. So I assume the Department of Energy,
3 at this early stage, pre-proposed rule, is
4 interested in comment on all of these issues
5 --

6 MS. BARHYDT: Absolutely.

7 MS. KENNEDY: -- legal authority,
8 who bears compliance, penalties, all of that.
9 And you'll take that into account --

10 MS. BARHYDT: Yes.

11 MS. KENNEDY: -- in fashioning a
12 proposed rule.

13 MS. BARHYDT: Right.

14 MS. KENNEDY: And then ask for
15 comment on --

16 MS. BARHYDT: Exactly

17 MS. KENNEDY: -- that again
18 before --

19 MS. BARHYDT: Exactly.

20 MS. KENNEDY: -- going to a final
21 rule, and there will be another public meeting
22 at that stage likely.

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1 MS. BARHYDT: Yes, probably.

2 FACILITATOR BROOKMAN: And let me
3 note also, in a little bit we are going to get
4 into more specifics, possible approaches that
5 the Department has laid out in this packet.

6 I saw Charlie first.

7 MR. STEPHENS: Charlie Stephens.
8 I just -- I'm making a few observations here.

9 One is it seems to me that if you're a
10 contractor or anybody in Minnesota, you know
11 what the rules are. I mean, you know, the
12 only people who really have to really pay
13 attention, as a contractor that is, or even a
14 distributor, is on the border states.

15 Now, I'm in Oregon, and I am one
16 of those -- I am on one of those border
17 states. We border California. And I have
18 only talked to a couple of contractors about
19 this so far, and I probably am going to talk
20 to a lot more before this is over. But their
21 solution was -- and they sell different
22 brands, so they're different -- in different

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1 distribution channels.

2 They each came to the same
3 conclusion on their own. Their solution is to
4 sell California-compliant air conditioning in
5 southern Oregon, and to sell Oregon-compliant
6 furnaces into northern California.

7 Now, they -- you know, their
8 concern was, how do I demonstrate to my
9 customers and to anybody else who is
10 interested that what I have done is compliant,
11 you know, easily? You know, what do I do to
12 make sure that everybody I deal with knows
13 that I've done compliant work?

14 And it seemed to me that that
15 could be done. The FTC may help us out in
16 that regard. But on the border states it just
17 seems like that's where whatever problem there
18 is is most obvious and where most of the
19 attention is going to have to be paid.

20 And I would like to hear from
21 other people if that's a similar view that
22 they have held or if I'm just being a Pollyana

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1 here. I mean, any waiver process
2 notwithstanding.

3 FACILITATOR BROOKMAN: I'm eager
4 for us to move on to describing these
5 approaches, but, Gary, go ahead.

6 MR. FERNSTROM: Well, I just
7 wanted to comment on the internet question
8 about whether this applies to the selling
9 contractor or the installing contractor and
10 what the difference is. The way it works in
11 California, the regulations apply to the
12 vendor, the seller of the equipment, not
13 necessarily the installing contractor.

14 Normally, the installing
15 contractor is the last seller of the equipment
16 to the customer. However, in the case of
17 internet sales, you know, that isn't
18 necessarily the case. And who knows where
19 this is going to go in the future? I mean, I
20 might go down to the, you know, local retail
21 store and buy an air conditioning compressor
22 and ask some contractor to install it.

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1 So who then would be responsible?
2 Whoever sold the equipment.

3 FACILITATOR BROOKMAN: Okay.
4 Should we proceed, then, with the next set of
5 slides? Let's do that.

6 MS. BARHYDT: Real quickly --

7 FACILITATOR BROOKMAN: Yes, Laura,
8 please.

9 MS. BARHYDT: I have several other
10 comments and questions here, and I think they
11 are largely raising some of the same issues.
12 So I just want to assure everyone that we will
13 get all of these comments into the record,
14 even though I don't know that we will take the
15 time to read each and every one of them.

16 FACILITATOR BROOKMAN: Okay. And
17 I note they are laid out like playing cards in
18 front of you, for the record, and so they are
19 written down in a manner that DOE can capture
20 them.

21 MS. BARHYDT: Yes.

22 FACILITATOR BROOKMAN: Okay.

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1 Then, let's proceed with these.

2 MS. ARMSTRONG: Okay.

3 FACILITATOR BROOKMAN: Back to
4 Ashley.

5 MS. ARMSTRONG: So what the
6 Department did in the framework document was
7 we came up with three just potential schemes.

8 And, really, this was meant to be talking
9 points. The Department could propose part of
10 a particular scheme. It could propose
11 something wholesale. It could propose
12 something completely different.

13 At this point, it's just a talking
14 point, and we have no proposal. What we
15 wanted to do is kind of -- some of the
16 feedback we had gotten during the rulemaking,
17 and some of the feedback we had gotten in
18 conversations we had had with people that were
19 concerned about this, you know, we wanted to
20 put these ideas out to talk about. We
21 understand that there is a lot of problems,
22 and here are some ideas that -- some potential

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1 solutions.

2 So we welcome your feedback in
3 terms of whether these are -- their
4 feasibility, their viability, what you
5 currently do in terms of the records
6 contractors or distributors or manufacturers
7 maintain.

8 So as I go through each of these
9 -- and I probably won't read all of the
10 aspects, but feel free to chime in on any
11 specific -- any specific, you know, aspects of
12 any of these.

13 So Approach 1 really is kind of an
14 overview. Basically, you are required to --
15 manufacturers are required to certify their
16 products, similar to what they do today. And
17 then, there are requirements to inform, you
18 know, down the chain about the appropriate
19 regions are there.

20 And then, just the requirements to
21 install things. So this is basically people
22 are supposed to do what they are required to

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1 do. This is that approach.

2 FACILITATOR BROOKMAN: Karen.

3 MS. MEYERS: This is Karen Meyers.

4 Just -- maybe this is just a syntax issue,
5 but on the third bullet under "manufacturer,"
6 be able to look up distributor by serial
7 number of installed units. I don't know what
8 the distributor has sold, and, therefore, I
9 don't know -- and I doubt they know what has
10 been installed, so as a manufacturer I could
11 not provide you serial numbers by distributor
12 of installed units.

13 MS. ARMSTRONG: Okay.

14 FACILITATOR BROOKMAN: If you ask
15 them for it, could they give it to you, or is
16 it just out of the realm of possibility?

17 MS. MEYERS: Well, you would have
18 to -- well, the distributor would have to
19 collect it from the contractor. I mean, I
20 could tell you what I sold by serial number to
21 distributor, period.

22 MS. ARMSTRONG: Okay.

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1 MS. MEYERS: But I could not tell
2 you, of those units, you know, which ones have
3 been installed.

4 MS. ARMSTRONG: Sure.

5 FACILITATOR BROOKMAN: So one
6 thing as we go along today, since this is at
7 the very front end of this process, not only
8 describing what is tough to do but describing
9 what is possible to do, what is practical to
10 do, in terms of making this work.

11 MS. MEYERS: Yes. This Bullet 3,
12 as written, would be impossible.

13 FACILITATOR BROOKMAN: Okay.

14 MS. MEYERS: I'll tell you what we
15 could do, but certainly we would not know
16 which of those units that we sold had been
17 installed.

18 FACILITATOR BROOKMAN: Okay.

19 MS. ARMSTRONG: Sure.

20 FACILITATOR BROOKMAN: Talbot.

21 MR. GEE: Yes, we'll just keep
22 going down the supply chain here.

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1 FACILITATOR BROOKMAN: Yes, yes.

2 (Laughter.)

3 MR. GEE: So, okay, now my
4 question is, your brand-new counter guy, first
5 week on the job, forgets to do whatever is
6 required to inform the installer, or forgets
7 to have them sign whatever they are supposed
8 to be signing. What does that mean? What
9 happens then?

10 MR. NEWSOME: I'm sorry. Can you
11 repeat the question?

12 (Laughter.)

13 I just -- I had a phone call and I
14 was looking --

15 FACILITATOR BROOKMAN: Talbot,
16 please repeat the question.

17 MR. GEE: What happens if a
18 distributor employee forgets to inform the
19 installer or forget to have them sign some
20 sort of acknowledgment?

21 MR. NEWSOME: So we're talking
22 about informational disclosures between the

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1 entities here?

2 MR. GEE: Well, that's what it
3 says you are required to do. What happens if
4 you don't do it?

5 MR. NEWSOME: Well, that's what we
6 will talk about in the next section. But the
7 -- and like DOE said, you know, FTC is in the
8 same position here. We have not proposed
9 anything on this, and this is to get ideas
10 about this.

11 Now, under the current rules,
12 there are disclosure requirements, in addition
13 to the labeling requirements, for these types
14 of products. And so the manufacturers have to
15 label the product. The manufacturers also
16 have to provide energy information about the
17 products to the distributors. Then, the
18 distributors have to provide that to the
19 installers, and the installers have to make
20 that available to consumers that are buying
21 the product. That's what the current rule is.

22 These additional information

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1 disclosures in order to deal with the regional
2 standards, they would presumably add
3 information that would help everyone in the
4 chain realize which products were compliant in
5 which areas.

6 If someone -- if those
7 requirements go in, the penalties are whatever
8 I assume would be the same as those that are
9 currently applied, which is, you know, if the
10 distributor does not provide information to
11 the installer like they are required to do
12 under the rule, then it would be a violation
13 and there is a civil penalty for, you know,
14 each unit that is involved.

15 But, you know, all of this is --
16 you know, it is very early to nail down
17 exactly, you know, how this is going to work.

18 What we want to talk about today is, you
19 know, what is the content, the right content
20 for those disclosures, just ideas about that,
21 what form should that take.

22 But obviously, if we are going to

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1 have requirements, to make sure that everyone
2 in the chain understands what products are
3 compliant and what are not, and to make sure
4 that these are not installed in the wrong
5 areas, there will need to be some enforcement
6 mechanism, so that everybody that is passing
7 this information has a responsibility.

8 FACILITATOR BROOKMAN: It seems
9 like we are trying today to describe some
10 basic architecture that has the potential to
11 work, if we -- right?

12 MR. GEE: Right.

13 FACILITATOR BROOKMAN: In addition
14 to saying what is not going to work, if we
15 could say what is possible that could work,
16 that would be a good thing.

17 MR. GEE: But I think the
18 confusion is we talked earlier about what the
19 illegal act is, and the illegal act is
20 manufacturing a noncompliant product or
21 installing a product in the wrong region. Are
22 we now expanding that definition to informing

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1 installers and maintaining records and
2 submitting records? I mean, are those all now
3 becoming part of this longer definition of
4 "illegal acts"?

5 MR. NEWSOME: Well, let's be
6 clear. This is Hampton again. What we have
7 been talking about in this first session are
8 the standards and how DOE is going to figure
9 out whether people are complying with the
10 standards or not.

11 My agency -- FTC -- we are
12 responsible for setting the disclosure
13 requirements, and Congress has asked us to set
14 disclosure requirements to help people,
15 everyone -- the industry members and the
16 consumers -- help them avoid installing
17 products that shouldn't be installed in
18 certain areas.

19 Those disclosure requirements are
20 the things that we have to develop. What I'm
21 saying is that there are already disclosure
22 requirements in the rules related to energy

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1 efficiency under the EnergyGuide Program. In
2 addition to the labels, there is also -- there
3 are also requirements that energy information
4 be passed from the manufacturer to the
5 distributor to the installer to the consumer.

6 Those requirements are there now,
7 and if that information is not passed through
8 it is a violation. So there is nothing new
9 being added here in terms of enforcement, in
10 terms of violations.

11 What would be new is this
12 additional information to ensure that people
13 understand that there are regional standards
14 and that there are certain products that can't
15 be installed in certain areas.

16 So we are not talking about -- at
17 least in the labeling area, which is, you
18 know, there are different things we are
19 talking about here, but the labeling, the
20 disclosure area, and the FTC framework, I
21 don't expect we are really talking about
22 anything entirely new in terms of enforcement

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1 or, you know, violations. So --

2 FACILITATOR BROOKMAN: Yes,
3 please. Steve?

4 MR. PORTER: Yes, that's not
5 really a labeling -- I'm Steve Porter,
6 Johnstone Supply, represent about 128
7 independent distributors across the United
8 States.

9 Maintaining the record is not --
10 or getting a signed signature is not a
11 labeling issue.

12 MR. NEWSOME: Yes, and that's why
13 I was a little confused by the question,
14 because the question seems to be a question
15 about labeling and disclosure.

16 In terms of information to DOE, to
17 allow them to enforce the standards, that is
18 an entirely different issue, and that is what
19 we are talking about in this session. So --

20 MR. PORTER: Right. And that's
21 what I think Talbot's question was, was what
22 happens when a distributor doesn't get a

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1 signed document?

2 MR. NEWSOME: Okay. Then, that is
3 a DOE question.

4 MS. BARHYDT: Okay. So --

5 MR. PORTER: Correct.

6 FACILITATOR BROOKMAN: Laura?

7 MS. BARHYDT: I think what we are
8 trying to do with the signed disclosures is to
9 actually create a paper trail to show that
10 people actually had knowledge of what it was
11 they were supposed to be doing. And, again,
12 this was an idea of something we might do to
13 create that paper trail.

14 And so I don't think I have an
15 answer to your question, because it was -- we
16 are throwing out ideas to try and generate
17 comments and ideas on how we can actually
18 create a plan by which we will be able to tell
19 where units are going.

20 FACILITATOR BROOKMAN: Yes,
21 please, Steve.

22 MR. PORTER: In reference back to

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1 the installed units by the manufacturer to
2 look up by distributor, we also sell multiple
3 units to contractors that don't go in for
4 immediate installation. Just so you're aware
5 that in rural areas all across the U.S. -- and
6 large contractors take positions and pre-
7 season buys on parts and equipment -- and,
8 therefore, they may not be installed for days
9 or months or a year later.

10 FACILITATOR BROOKMAN: Thank you.

11 Talbot, I was just thinking about the
12 practicalities of your question. So let's say
13 that the installer doesn't know that there is
14 something to sign off on. When he shows back
15 up to whomever with paperwork, would that be
16 caught at that point? Not caught? What?

17 MR. GEE: Well, I think perhaps
18 the root of this is -- I mean, it was kind of
19 a wake up call this morning talking about some
20 vast expansions of liability here. And I'm
21 trying to get a sense of exactly how broad
22 that universe is of actions that expose you to

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1 liability.

2 So, and any of this enforcement
3 only matters as much as the -- whether you
4 like it or not, the worst actor complies or
5 not. So if you are going to incur any cost in
6 compliance, you'd better be pretty certain
7 that everybody is going to incur that cost of
8 compliance.

9 So my question is: if there is a
10 requirement here that changes a business
11 practice, what happens if you don't do it?
12 Because, I mean, when you read the statement
13 of what an illegal act is, it doesn't list
14 anything about reporting or any of -- or
15 record keeping in the statute. You know, it
16 says it is manufacturing.

17 So that's -- I'm just worried,
18 because I'm afraid we're going to make maybe
19 -- by not asking the question now, will lead
20 to the assumption that it is an okay thing and
21 it is okay liability to assume. And I'm not
22 quite so sure it is yet.

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1 FACILITATOR BROOKMAN: Do we have
2 additional questions on potential Approach
3 Number 1? You see it laid out there on
4 Slide 11. Okay. Yes, Charlie. On Approach
5 Number 1, yes.

6 MR. McCRUDDEN: Charlie McCrudden.
7 The question on the contractor requirements
8 -- required to maintain records and paperwork
9 about installation location, serial number --

10 FACILITATOR BROOKMAN: Hang on
11 just a second, okay? Okay, now.

12 MR. McCRUDDEN: Okay. On the
13 requirement that a contractor is to maintain
14 records and paperwork, is that to be
15 searchable upon request? Or is it just
16 maintain records?

17 MS. ARMSTRONG: Yes. So there is
18 a couple of different ways, and I guess we are
19 open to comment. We put a couple of different
20 aspects in here. One is maintain records,
21 however that -- you know, to the extent the
22 Department ever decides to ask for them, that

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1 a contractor or distributor or manufacturer
2 can provide them.

3 Another option would be to
4 actually maintain them and then provide them
5 in some shape or form to the Department. And
6 that would have to be -- you know, right now
7 the only -- right now for most products,
8 except motors, we only collect information
9 electronically online through our
10 certification system. So that is another
11 option.

12 These approaches were meant to be
13 options. I don't know what they currently do
14 -- what type of records do contractors
15 currently maintain? And how long do they
16 maintain them for?

17 MR. McCRUDDEN: I would say that
18 most contractors are keeping records of
19 customers, so that is going to likely include
20 installation location addresses. I would say
21 most -- in those records they are going to
22 have probably model number. I'm not so sure

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1 they are going to have serial number or not.
2 I don't know. That may be getting too deep.

3 And my question was generated by
4 the idea that if you -- if DOE shows up and
5 wants to know where a serial number product
6 now exists, that is not going to be the file
7 name. That is -- and let's say it's paper
8 files. It is now the situation where the
9 contractor has to go through file by file by
10 hand, looking for a serial number on a form.

11 So my comment, since we are
12 generating comments here, is clarify that,
13 whether it should be searchable. But I will
14 also say that the requirement of making it
15 searchable, I don't know if there is a -- I'm
16 sure there are programs, software that our
17 members use, but maybe not all of them have
18 that. And so that may be a burden.

19 MS. ARMSTRONG: Okay. Thank you.

20 FACILITATOR BROOKMAN: Harvey
21 Sachs.

22 MR. SACHS: Harvey Sachs. I

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1 certainly hear you, Charlie, but the reasons I
2 would like to see the data submitted -- and
3 would prefer to see the data submitted
4 electronically -- is, again, the potential to
5 mine the database and find those miscreants
6 who are systematically violating the regional
7 regulations.

8 I don't know how I can do that
9 when my worst case in my mind is the fly-by-
10 night who is undercutting the legitimate
11 business person. And if I go back to his post
12 office box a year from now looking for the
13 records, I may have a long wait at that post
14 office box.

15 So, again, it is a question of,
16 what is the minimum burden that tilts the
17 field toward the legitimate business person?

18 End of comment.

19 FACILITATOR BROOKMAN: Okay.

20 MS. ARMSTRONG: Okay. So let's
21 talk about Approach 2. And it's similar along
22 the things we have already -- you know, it is

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1 similar to what we already talked about in
2 some of the aspects.

3 But I guess one of the questions I
4 have -- and, Talbot, this is for you -- what
5 records do your distributors maintain? And
6 how do they maintain them? Or, yes, either
7 one.

8 MR. GEE: Well, I think it is
9 actually not too dissimilar from what Karen
10 described from the manufacturer-distributor
11 level. The distributor is going to be able to
12 tell you what models were sold to maybe a
13 contracting company.

14 MS. ARMSTRONG: Okay.

15 MR. GEE: But they are certainly
16 not going to know where that product
17 eventually ended up. And, frankly, the
18 lifetime of that information is going to be
19 rather finite, because -- just because ABC
20 Heating and Air was there in January doesn't
21 necessarily mean ABC Heating and Air is there
22 in July.

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1 And so, again, it -- and the level
2 of data will, again, depend on the level of
3 sophistication of the distributor. I would
4 agree that we will be having model numbers,
5 but those model numbers change very, very
6 frequently. So that's not a real reliable
7 source.

8 Serial numbers -- in many
9 instances you will have that information, but
10 not always. So it is not necessarily a
11 certainty that you will always, in those
12 instances, have serial numbers.

13 MS. ARMSTRONG: Okay. So I guess
14 -- this is a question for everyone. If the
15 Department -- this is completely theoretical,
16 but if the Department got a complaint and
17 said, you know, "Unit number at address XYZ is
18 noncompliant with the regional standards," and
19 the Department wanted to track that all the
20 way back, how would it do that? What is a
21 feasible scheme that it would do? Or is that
22 just infeasible?

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1 FACILITATOR BROOKMAN: Talbot.

2 MR. GEE: Frankly, I was going to
3 ask you guys that question. Well, and I'm
4 serious, I'm not trying to be a wiseacre about
5 it. But literally, what was the thought
6 process that you would know -- would you be
7 working from the top down or bottom up?

8 In other words, would you be
9 thinking that you are going to have this
10 database that is going to show you all of the
11 80 percent furnaces and you are going to try
12 to see where -- make sure those 80 percenters
13 didn't go anywhere in the north? Are you
14 going to work it that way? That's one
15 question.

16 The other one is, is it more a
17 case of you think you might get like a whistle
18 blow and you want to try to work the other way
19 through the channel? I have no recommendation
20 on how you do that. I'm curious how you would
21 -- this is going to be a lot of data.

22 MS. ARMSTRONG: Right.

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1 MR. GEE: And, frankly, we have
2 had California consider this, and CEC even
3 acknowledged this is probably a little more
4 data than they might be able to handle. So I
5 don't know how you actually use this to
6 enforce anything.

7 MS. ARMSTRONG: Right. So let's
8 talk about what we do now, right? So now we
9 collect data to -- and it's much simpler for
10 the base products, but we just collect data on
11 our efficiencies, we check all the data that
12 comes in for compliance. So we do that from
13 the top -- as you were saying, top up.

14 And then, we also get complaints
15 where we -- we get complaints that, you know,
16 Model ABC is potentially noncompliant. So
17 that starts with the investigation from the
18 bottom up. We do it both ways now.

19 So we check from the certification
20 for compliance, and then we investigate from
21 the bottom up. So I don't know if that would
22 translate into regional -- and I think that's

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1 what a lot of our questions and some ideas --
2 how that would translate. So we are open at
3 this point.

4 MR. GEE: So of course a liability
5 concern that of course we, as distributors,
6 have -- and, you know, Steve may want to speak
7 on this, who runs large distribution centers
8 -- you could find a whole boatload of 80
9 percenters that got shipped to a northern
10 region. But that's just because that is where
11 the CEC is.

12 So, you know, does that trigger an
13 enforcement action at that point in time? And
14 then, how does -- you know, what is his CYA,
15 frankly, for making sure that those didn't all
16 stay in that northern region?

17 MS. ARMSTRONG: Right. And I
18 think that's part of our -- part of what we
19 are trying to flesh out now. In other words,
20 what kind of records are viable to maintain,
21 to basically show that you are doing the right
22 thing, you have done the right thing, that you

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1 are compliant with the regs? In case of the
2 point of an investigation.

3 So both -- all the entities
4 involved understand what they have to do and
5 the Department can actually, if it needs to
6 investigate -- hopefully that won't ever
7 happen. But if it does, that, you know, it
8 can get records that shows who might be doing
9 the wrong thing.

10 FACILITATOR BROOKMAN: Paul.

11 MR. DOPPEL: Yes, Paul Doppel,
12 Mitsubishi. I think just to put some numbers
13 on this, if you look at what is generally
14 released, condensers, you know, you are
15 looking at like three and a half, four million
16 furnaces, maybe up to two million. And, you
17 know, that is the amount of data that would
18 have to be tracked.

19 FACILITATOR BROOKMAN: That's
20 annually?

21 MR. DOPPEL: Annually.

22 MR. GEE: And so let's go the

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1 other route in the scenario we're playing
2 here. You get a call from somebody saying,
3 "Look, ABC Heating and Air I think just put an
4 80 in Minneapolis. He just installed an 80 in
5 Minneapolis."

6 How would you use the data to act
7 on that call? Because I don't know how you
8 would use the data to act on that call.

9 MS. ARMSTRONG: I'm not sure. So
10 that's assuming that we have a full line of --
11 so if we've collected serial number from the
12 point of manufacture all the way to the point
13 of installation.

14 MR. GEE: But you -- in that
15 instance, you have no serial number reference
16 point to start with.

17 MS. ARMSTRONG: For the complaint?
18 We would have location, no? Or we don't
19 know? You're just asking -- so if the
20 complaint comes in generally that contractor
21 -- everything Contractor or Installer ABC is
22 installing, you know, this is more for Laura

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1 to speak, but I think we'd start asking
2 questions which -- starting at the contractor
3 level, right?

4 And then, if the contractor says,
5 "Well, such and such distributor sold me all
6 these," you know, then we might start asking
7 more questions.

8 Does that make sense?

9 MR. GEE: That's reassuring.

10 (Laughter.)

11 MS. ARMSTRONG: But we're trying
12 to -- we're trying to understand -- and for
13 you guys to understand -- what information is
14 viable, not necessarily that needs to be sent
15 in -- I mean, that is an option -- but what
16 information is viable, or do you currently
17 keep now, that if we do start asking questions
18 are easily answered?

19 MR. GEE: I guess when I take that
20 scenario, though, wouldn't the next logical
21 question be you go to ABC and --

22 MS. ARMSTRONG: That's why I

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1 started with that.

2 MR. GEE: Right.

3 MS. ARMSTRONG: I started there.

4 MR. GEE: But then, frankly, at
5 that point, what else do you need anybody
6 else's data for? Either they installed an 80
7 in Minneapolis or they didn't.

8 MS. ARMSTRONG: I understand.

9 FACILITATOR BROOKMAN: Go ahead,
10 Harvey.

11 MR. SACHS: Harvey Sachs. I am
12 certainly learning a lot this morning and
13 appreciate that, but I think we need to
14 separate a couple of different questions. One
15 of them is, what data is required? And the
16 other is, what is done with the data? And
17 then, yet a third is, who is liable?

18 And if I envision this cloud of
19 data and think about what companies in
20 marketing do about their knowledge of me
21 today, I would be looking at the database for
22 patterns. Am I seeing an awful lot of 80s

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1 shipped to a zip code in Cleveland or
2 Minneapolis?

3 Am I looking -- I am looking for
4 patterns of that type, and you can think of a
5 lot of different ones. And those become the
6 triggers rather than looking installation by
7 installation.

8 I think that Talbot has raised
9 another important resource, which is
10 information that comes over the threshold
11 about potential suspect installations from
12 individuals, whether they are contractors who
13 have come in to clean up the mess by
14 somebody's DIY installation, or whatever the
15 source is.

16 And, again, I would expect DOE to
17 convert these to electronic information, and
18 at some trigger that, gee, I'm getting --
19 getting notes on a particular contractor, or
20 whatever, it would become a matter of
21 interest. But I don't think anyone is
22 thinking about this as combat-booted DOE

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1 agents walking out to every installation
2 behind the contractor.

3 FACILITATOR BROOKMAN: Let's hear
4 from Frank, and then to Dan.

5 MR. STANONIK: Frank Stanonik with
6 AHRI. Something Paul said, and then something
7 Ashley said, triggered a thought here. And
8 basically, the question I think Ashley said
9 was, "Well, what do we need to track?"

10 And I'm going to use furnace as an
11 example, actually because, as Karim said, we
12 kind of think we ought to focus on furnaces
13 first, because that's the immediate effective
14 date. And, in fact, maybe -- I hate to say it
15 -- we can maybe use that as a test learning
16 experience to tackle the much tougher issue of
17 what you're going to do with split systems.

18 But anyhow, the reason I'm up here
19 is consider this, okay, the only violation
20 relative to furnaces that will exist when the
21 regional standards become effective is the
22 installation of a lower than 90 percent

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1 furnace in the north. Okay? The only
2 information, theoretically, you really need is
3 information on 80 percent furnaces. You don't
4 -- any 90 percent AFUE furnace or above, okay,
5 can be sold, installed anywhere in the United
6 States. You don't need to track those
7 products.

8 The only issue that regional
9 standards present is the tracking of the
10 "noncompliant" in the north.

11 FACILITATOR BROOKMAN: Okay.
12 Thanks, Frank. Dan.

13 MR. ARNOLD: Yes, my question or
14 my comment will just kind of follow Frank's
15 train of thought there. I just want everybody
16 to be sensitive to the burdens. Again, it has
17 been mentioned, so maybe I'm piling on here,
18 but of collecting data.

19 There has got to be a solution
20 here somewhere, but, you know, our industry
21 has submitted mountains of data to various
22 agencies and states -- and California comes to

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1 mind -- over the years at a cost of hundreds
2 of thousands of dollars to our business, and I
3 would sort of challenge anybody to prove that
4 that saved a BTU of energy at the end of the
5 day, because the data goes in the hole and
6 what it's used for we don't know. You know,
7 the data should be useful to the extent that
8 it justifies the cost of us collecting it and
9 providing it.

10 So, again, we understand we are
11 here to find an enforcement solution, but to
12 send data into a black hole somewhere that
13 really doesn't add value is a burden to our
14 business that, you know, we already have
15 enough of.

16 FACILITATOR BROOKMAN: Okay. We
17 have been at this for almost two hours now.
18 I'm going to suggest we take a break. We have
19 covered DOE's possible or potential Approach 1
20 and 2. There is one more to go. We have had
21 a good starting point conversation. I'm sure
22 we will get further as the day goes on.

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1 It is now -- let's try and resume
2 at 10 minutes after 11:00. And the agenda
3 reflects that we are supposed to break today
4 at 12:30. It is conceivable we might go a
5 little longer, so be prepared for that if
6 that's what it turns out to be.

7 Wear your badges inside the
8 Forrestal Building. There are restrooms on
9 both ends of the hall. There is a coffee shop
10 directly below us, if you take the elevator
11 shaft down to the ground floor. So go quickly
12 if you are going for coffee.

13 We will resume at 10 minutes after
14 11:00, and thanks for a good start.

15 (Whereupon, the proceedings in the foregoing
16 matter went off the record at
17 10:54 a.m. and went back on the
18 record at 11:11 a.m.)

19 FACILITATOR BROOKMAN: Okay.
20 Let's start. First and foremost, I think all
21 of you received -- Brenda handed out a copy of
22 the photocopies of the business cards. If you

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1 didn't get one, they are available at the
2 registration table.

3 And, secondly, as a way of
4 resuming, Laura and Ashley both have been
5 receiving from Simone, who has been managing
6 the webinar portion, questions coming from
7 those listening online, and so we are going to
8 just listen to Laura now. She is going to
9 read some of these.

10 Perhaps -- I guess there are
11 dozens of questions. Maybe we will have a
12 sampling of them here, not a complete listing.
13 Go ahead.

14 MS. BARHYDT: Some are questions
15 and some are comments. And I think it might
16 be useful if some of the comments trigger
17 additional discussion -- we would certainly
18 appreciate that -- but maybe if I say
19 something that you want to comment on, if you
20 can hold that and then we will just take
21 comments at the end.

22 Frank Schneider says, "Equipment

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1 sales can be tracked the same way as product
2 safety recalls are tracked -- by brand and
3 serial number beginning with the manufacturer
4 to the distributor to the contractor."

5 Let's see. In response to a
6 comment from Harvey, Bryan Rocky says,
7 "Shipments and tracking patterns do not work
8 well if the waiver process is allowed, and
9 some additional reference to waivers would
10 have to be included."

11 Somebody else said that,
12 basically, they don't think that we can track
13 the data if we keep talking about regional
14 standards and tracking is impossible. If an
15 80 percent furnace is installed in the north,
16 the only way it can be detected is if another
17 company comes out to service the unit. At
18 that point, what happens to the consumer? Do
19 you condemn the furnace and they are without
20 heat? Do you force the consumer to purchase
21 the more expensive unit?

22 That is something I want to be

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1 very clear about. The Department does not
2 enforce against the consumers, ever. The
3 consumer, if they purchase a noncompliant
4 product, that is an issue we take up with the
5 -- in this case it would be the installer. In
6 other situations, it is the -- we take it up
7 with the manufacturer. It is not something
8 that the consumer is ever liable for, and we
9 don't require them to rip out their furnace
10 that they just purchased.

11 We got another comment from Louis
12 Marrongelli -- and I apologize, I probably
13 really messed up your name -- regarding record
14 keeping. "I believe the U.S. Consumer Product
15 Safety Commission requires HVAC contractors to
16 record and keep on file model and serial
17 numbers of equipment they install and where
18 they install them."

19 The main purpose is locating
20 equipment after a recall has been issued, with
21 the ability to locate this equipment and
22 address the recall. I believe the

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1 distributors have the same requirement in
2 regards to where they sold the equipment, and
3 so that is something I would definitely
4 appreciate additional comment on.

5 Let's see. Jim Vershaw suggests
6 that rather than each time there is an
7 exchange why not have a one-time signature in
8 order to do business with the distributor.

9 Mark Naves says, "As a contractor,
10 we keep records of model and serial numbers
11 for all customers from 1984 until today on a
12 computer system. We cannot buy anything from
13 a distributor without signing for it. A \$200
14 fine is about the same as the permit fee
15 application. It is a very light slap on the
16 wrist."

17 Chuck White from PHCC comments
18 that, "Some contractors do track serial
19 numbers, but others don't. The job records
20 are saved by customer, not equipment numbers.

21 Some records are kept for a long time, others
22 keep three years, some keep minimal records.

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1 And contractors would be very reluctant to
2 share all of that data with the local
3 wholesaler."

4 Mark Naves also asked, "Will there
5 be a whistle blowing reward as there is with
6 releasing refrigerant?" That is something
7 that I certainly had not considered, so we
8 would welcome comments on that idea.

9 Todd Ferrara with Standard Heating
10 and A/C says, "Manufacturers and distributors
11 have recalls and rebates that require
12 contractors to provide them serial numbers and
13 installed addresses. This is why they can and
14 should be held responsible. They, or at least
15 some, already have the infrastructure to pass
16 this information on."

17 Glen Dowding says, "What we are
18 discussing is what EPA is requiring for
19 Version 3.0. I don't think the information
20 about serial numbers is that big of a deal.
21 Version 3.0 also requires readings of
22 equipment to ensure proper installation."

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1 Let's see. Who is this? Karen
2 Oliver suggests that it is the responsibility
3 of the contractor to abide by state statutes
4 to permit every installation, including
5 component installation. Enforcement occurs
6 from the local building department, who then
7 can refer DOE repeat offenders. And I'm
8 paraphrasing some of these.

9 Todd Ferrara says, "If the
10 manufacturer and distributor were also fined
11 as a result of a violation, then as a
12 contractor I can better accept the burden of
13 enforcement. However, placing this on a
14 contractor or even a homeowner should be the
15 last and lowest priority." And then he asks,
16 "What if the contractor is unknown? What if
17 jobs are installed anonymously? This is the
18 reality of the contractor side of work, and I
19 would be interested in knowing more about
20 that."

21 Let's see. And Chuck White from
22 PHCC comments that, "As it applies to

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1 furnaces, you only need to track sub 90
2 percent furnaces. Higher efficiency would be
3 approved everywhere." I think we have -- I
4 think that issue has come up previously.

5 Karen Oliver comments that
6 recourse has to be against the end user, and,
7 again, says that local codes and energy code
8 will ensure compliance. If a system or
9 component is installed without a permit, the
10 end user is noncompliant.

11 William Neely asks, "What do you
12 do with homeowners that are lower income and
13 cannot afford to pay for higher efficiency
14 equipment? Tell them to go without heat or
15 will there be government financial help to
16 meet the new code?"

17 And that's the last question.

18 FACILITATOR BROOKMAN: Wow. Okay,
19 good. Thanks for that, Laura.

20 Those are now in the record -- you
21 received many questions. Did you read all of
22 them?

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1 MS. BARHYDT: No.

2 FACILITATOR BROOKMAN: Yes.

3 MS. BARHYDT: There were more.

4 FACILITATOR BROOKMAN: So maybe --
5 is there something you can say that you'll do
6 with those questions?

7 MS. BARHYDT: Yes. We will take
8 all of these, and we will add them to the
9 transcript. And that way it will all be on
10 the record and put into the docket.

11 FACILITATOR BROOKMAN: Excellent,
12 okay.

13 MS. ARMSTRONG: And the people on
14 the webinar want to know when the transcript
15 will be available. It's usually available
16 online on the DOE website certification and
17 enforcement page where you found the NODA and
18 framework document. Give us a week or two
19 after the meeting, and it should be posted up
20 there.

21 FACILITATOR BROOKMAN: Okay. So
22 then, I am hopeful that in the remaining time

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1 we have together today that, in addition to
2 reviewing the final slides that are here,
3 everybody in the room can be thinking towards
4 how practically to make a system like this
5 work.

6 It seems that most of you, perhaps
7 all of you, have an interest in helping the
8 Department of Energy figure out a way to
9 construct a system that both works and doesn't
10 put too much burden on all of you. So let's
11 see if we can zero in on that.

12 Yes, please, Talbot.

13 MR. GEE: Talbot from HARDI. To
14 kick us off on that point, we have concerns of
15 this premise that we should kind of separate
16 consideration for the furnaces from the
17 central air conditioners and heat pumps, as we
18 get into the more details of how -- any type
19 of reporting, because frankly, Frank was
20 right, the harder part is certainly the
21 cooling equipment.

22 And so just because maybe some

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1 theory could be thought up that is not too
2 hard for the furnaces, it just -- that just
3 kicks the problem down the road. I think this
4 has to be looked at holistically, because, I
5 mean, the fact is you are going to be talking
6 about 13 SEER condensing units that could be
7 compliant anywhere in the country, depending
8 on a lot of other factors.

9 So we can't ignore that when we
10 are thinking about this, if there were
11 reporting what it would look like.

12 FACILITATOR BROOKMAN: I recall
13 the origin of that comment was surrounding the
14 practicality of the implementation date.

15 MR. GEE: I mean, to be honest with you,
16 the enforcement is where the teeth are. And
17 to think that, you know, you can solve half
18 the problem now and then you are just going to
19 go back and tackle it again --

20 FACILITATOR BROOKMAN: Okay.

21 MR. GEE: -- because you then end
22 up with -- you end up with a patchwork of

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1 enforcement strategies, too, and that just
2 makes it even worse.

3 FACILITATOR BROOKMAN: Okay.
4 Thanks for that comment.

5 So then, do you want to proceed
6 with the next slide --

7 MS. ARMSTRONG: Yes.

8 FACILITATOR BROOKMAN: -- and then
9 we'll put on our thinking caps here.

10 MS. ARMSTRONG: I'm actually going
11 to go -- we have touched on a bunch of --
12 already the possible approaches, and the
13 different ideas that the Department threw out
14 there just to get some comments on.

15 So I'm going to move to some of
16 the questions that are in the framework
17 document that we are specifically seeking
18 comment on. So one of those is we were asking
19 comments on the data submissions, and we have
20 talked about this a little bit.

21 But the existing certification
22 requirements that currently reside with the

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1 manufacturers, is there any alterations that
2 people can think of that need to be made to
3 those to accommodate regional standards? And
4 we talked a little bit about that earlier,
5 whether it's, you know, certifying that your
6 equipment applies to an applicable region, or
7 a national standard, or whatever it is.

8 But specifically, you know, when
9 it comes to -- for central air conditioners,
10 you know, and independent coil manufacturers,
11 and how they might certify equipment,
12 especially in regional standards, you know, we
13 are open to feedback on that issue.

14 FACILITATOR BROOKMAN: Charlie.

15 MR. McCRUDDEN: Almost a point of
16 order. Did we skip Approach 3?

17 FACILITATOR BROOKMAN: We did.

18 MS. ARMSTRONG: Well, so I skipped
19 a slide. I thought we went through it all,
20 but do you want to talk about Approach 3? We
21 can go back.

22 MR. GEE: We can eliminate 3 if

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1 you want.

2 MS. ARMSTRONG: Okay. Well, so is
3 that -- that is a valid comment. Thank you.

4 (Laughter.)

5 FACILITATOR BROOKMAN: Well --

6 MS. ARMSTRONG: You know, it is
7 kind of -- basically, Approach 3 is everyone
8 is required to track all the way from the
9 point of manufacture to the point of
10 installation, by serial number, every unit,
11 and the Department will collect that
12 information.

13 FACILITATOR BROOKMAN: And if you
14 look at the side by side that is provided in
15 the framework document, in this thing, which
16 is on about -- it's page 6 -- you can see how,
17 from Approach 1 through Approach 3, the
18 requirements kind of ramp up.

19 Karen?

20 MS. MEYERS: Karen Meyers. I just
21 have one question about all of these
22 approaches. You know, there is always one

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1 bullet that says, like manufacturers are
2 required to inform distributors or
3 distributors are required to inform
4 contractors.

5 And my question is, does DOE have
6 any responsibility for letting contractors,
7 distributors, and manufacturers really know --
8 you know, informing them and educating them
9 about this process beyond, you know, what is
10 printed in the Federal Register? Because
11 that's --

12 MS. ARMSTRONG: Sure.

13 MS. MEYERS: -- not, you know,
14 daily reading for most people. So I was just
15 --

16 (Laughter.)

17 -- curious what you guys might do,
18 and if there is going to be an educational
19 process or --

20 MS. ARMSTRONG: I mean, I think,
21 you know, we are happy -- we are open to, you
22 know, doing webinars, doing presentations,

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1 going to annual meetings, whatever it may be.

2 You know, we are happy to present anything
3 that comes out of this to help better inform,
4 to answer questions, as we are doing right now
5 with the CC&E program.

6 Laura and I have done a half dozen
7 to a dozen webinars for all different covered
8 products, and we are happy to continue doing
9 that if you find that helpful.

10 FACILITATOR BROOKMAN: Yes, Paul.

11 MR. DOPPEL: Paul Doppel with
12 Mitsubishi. For the manufacturers, each of
13 the approaches is exactly the same. So if we
14 comply with those three, do we have any other
15 potential liability issues?

16 MS. ARMSTRONG: If you comply with
17 the regulations, then you're good. Is that
18 what you're asking? I mean, to the extent --
19 these are just ideas, right? And the ideas
20 for manufacturers are that you guys already
21 certify equipment.

22 What you certify might change

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1 slightly depending on regional standards and
2 the feedback we get, but I guess, you know, it
3 depends on what we come out with. As long as
4 you comply with what we come out with, yes,
5 you're fine.

6 FACILITATOR BROOKMAN: You're
7 referring to these three bullets.

8 MR. DOPPEL: The three bullets
9 here.

10 FACILITATOR BROOKMAN: Yes, at the
11 top of the page on each of the three
12 approaches.

13 MR. DOPPEL: Yes.

14 MS. ARMSTRONG: I mean, it would
15 be, you know, what comes out of this rule in
16 terms of a proposal, and then, you know,
17 whatever changes -- whatever comes out of this
18 rule that gets adopted. The requirements
19 would be specific to a manufacturer and
20 importer, or a distributor, or an installer,
21 and they would be laid out in such a manner.

22 MR. DOPPEL: Okay. Then, we

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1 would --

2 MS. ARMSTRONG: So you would know.

3 MR. DOPPEL: Well, the one point
4 -- and Karen brought this up earlier is that
5 -- the issue of look up distributors by serial
6 number of installed units. That is an
7 impracticality.

8 MS. ARMSTRONG: Right. We got
9 that, too.

10 MR. DOPPEL: Okay.

11 MS. ARMSTRONG: Yes, and these are
12 just ideas at that point, so that feedback is
13 very helpful.

14 FACILITATOR BROOKMAN: Yes,
15 Talbot.

16 MR. GEE: There are instances
17 where the same company could be all three of
18 those. Are they then subject to a \$600 per
19 unit violation?

20 (Laughter.)

21 MS. ARMSTRONG: I don't know. We
22 haven't thought about it. But that is a fair

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1 point.

2 FACILITATOR BROOKMAN: Please say
3 your name.

4 MR. BUUCK: Dan Buuck, NAHB. I
5 have a question for the three groups involved
6 in the supply chain. If you look at the
7 Approach Number 3, if doing all of that data
8 collection, would that affect the price of the
9 appliances? And if so, just any comments on
10 that.

11 FACILITATOR BROOKMAN: Steve?

12 MR. PORTER: I would be happy to
13 comment about that. The cost on any of these
14 data collection, as we do on warranty, we
15 usually figure that in distribution that is
16 going to cost us around two percentage points.

17 If you put two percentage points
18 on a product that is already -- our margin
19 range is anywhere from eight to the low teens,
20 it puts a significant burden in cost to the
21 industry, and we estimate that cost based on
22 product in the field at initial startup of

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1 this program would be in the range of over
2 \$200 million to the industry, just on the
3 distribution side, and that's only calculated
4 on the equipment, not on all the supporting
5 products.

6 FACILITATOR BROOKMAN: That's the
7 additional cost that distributors would bear
8 record keeping, labeling, all aspects of that
9 compliance.

10 MR. PORTER: That's correct. And
11 that's calculated on the low side.

12 FACILITATOR BROOKMAN: Do you want
13 a followup question, because --

14 MS. ARMSTRONG: No. I mean, I
15 guess I'm trying to understand. It seems like
16 for the number you just calculated, I am
17 trying to understand what exactly that
18 entails, and is it safe to say that that is --
19 you know, in totality, getting information
20 from the manufacturers and/or installation
21 locations and/or by serial number, and then
22 submitting all that and maintaining all of

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1 that infrastructure, building all of that
2 infrastructure electronically, that is what I
3 am trying to understand.

4 MR. PORTER: Yes, that would just
5 be collection, just like we do on warranty
6 right now if we were to put additional
7 information we would have to maintain and keep
8 on file just on our dealing with the
9 contractor side.

10 MS. ARMSTRONG: Okay.

11 MR. PORTER: So since you brought
12 it up -- all of that -- the burden would be
13 much higher.

14 MS. ARMSTRONG: Okay.

15 FACILITATOR BROOKMAN: Karen, did
16 you want to comment?

17 MS. MEYERS: Just making sure we
18 can have this discussion in this room about
19 price and margin.

20 FACILITATOR BROOKMAN: Thanks for
21 bringing that up. Dan?

22 MR. BUUCK: Excuse me. What was

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1 that comment?

2 MS. MEYERS: Just concerned, since
3 we have competitors in this room, whether we
4 can actually even address this question in
5 this room. We have a lot of attorneys in
6 here. No one is raising their hand, so I
7 guess we're okay. But I know that if it
8 continues, I will have to leave the meeting.
9 I am not allowed to stay in --

10 FACILITATOR BROOKMAN: Thanks for
11 that clarification. Dan.

12 MR. BUUCK: Thank you. The point
13 I wanted to make was the cost-benefit analysis
14 that was done on these -- going to a higher
15 efficiency furnace was based on prices from
16 '05 and '09 and not with the possible cost of
17 the data collection and labeling, and what
18 not. And our association has definite
19 concerns about the Approach Number 3.

20 Thank you.

21 FACILITATOR BROOKMAN: And, Dan,
22 the Department would really like to see any

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1 data your association can provide.

2 MR. BUUCK: Okay. Thank you.

3 FACILITATOR BROOKMAN: Yes, thank
4 you.

5 Okay. Ashley has laid out
6 Approach 3, and then she was going to her
7 questions, which you see up there on the
8 screen.

9 MS. ARMSTRONG: Yes. So I
10 adjusted this a little bit, but I don't know
11 if anyone has any specific comments or ideas
12 about, you know, the certification
13 requirements -- that is, the information the
14 Department would actually collect -- what
15 should be collected, from whom. Anyone?

16 FACILITATOR BROOKMAN: Talbot?

17 MR. GEE: I will just state for
18 the record that I don't think we agree
19 necessarily with the premise that you -- that
20 all of this information is still inherently
21 required to be -- for enforcement. So I'll
22 just leave it at that.

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1 FACILITATOR BROOKMAN: Well, I
2 guess --

3 MS. ARMSTRONG: Yes. Talbot, back
4 to you -- what do you think that -- what do
5 you think you would like to either maintain or
6 -- what information do you think is necessary
7 for the Department to enforce these?

8 MR. GEE: Well, you know, the best
9 case scenario you might see, I mean, the
10 manufacturers are already giving you at least
11 what the products available on the market are.

12 So you already have that. But, you know, I
13 have not heard anything from DOE staff saying
14 that you plan to set up some big task force of
15 all these people who are going to comb through
16 all of this data and come up with these
17 intricate strategies of how to slice and dice
18 it.

19 I am hoping you are not going to
20 outsource it to Harvey. I know he is
21 volunteering to do it.

22 (Laughter.)

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1 But so until -- I guess for me I
2 would like to hear that that is your plan, to
3 have this infrastructure, and then we are
4 talking about how you use the data and how
5 we'd get it to you. I'm not necessarily
6 thinking it is such a good idea that we think
7 of all these ways to give you all this
8 information to where there is no
9 infrastructure to do anything with it anyway.

10 That is a lot of exposure without a lot of
11 benefit.

12 MS. ARMSTRONG: Okay. So let me
13 explain what we do now, and I realize that
14 would have to change. But now what we do when
15 we collect information, either from
16 manufacturers or third party representatives,
17 it is submitted electronically. All of it is
18 checked, and it is not -- all of it is checked
19 for compliance purposes, and then it is housed
20 in a database.

21 So the Department can, at any
22 time, look up. It will be going online next

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1 year, end of this year. You know, and it will
2 be -- that information which is public will be
3 going online. But right now the Department
4 actually does do stuff with all the data, the
5 certification data it collects.

6 And I don't know if something
7 viable is -- something like that is viable for
8 regional standards or, you know, expanding to
9 that information, but that is kind of the
10 model we use right now.

11 FACILITATOR BROOKMAN: So DOE has
12 provided, for that database, its own
13 infrastructure, and it fits the data into that
14 infrastructure.

15 MS. ARMSTRONG: Yes.

16 MR. CYMBALSKY: We have already
17 collected over in the millions of records that
18 we have checked. So we can --

19 FACILITATOR BROOKMAN: Several
20 people wish to speak. I'm going to go to
21 Karim first, and then to Paul.

22 DR. AMRANE: Karim Amrane, AHRI.

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1 I guess we -- as far as the manufacturers, we
2 don't see why you should be changing what you
3 are already doing. So I think it will apply
4 as well for regional standards. So --

5 MS. ARMSTRONG: Okay.

6 DR. AMRANE: -- we are fine with
7 the requirement.

8 FACILITATOR BROOKMAN: Paul.

9 MR. DOPPEL: From the
10 manufacturer's perspective, I mean, to me
11 providing all of this information on where
12 things are installed is almost meaningless as
13 a -- I cannot see any manufacturer sending
14 information to DOE that would be of an
15 installation that was noncompliant. I'm not
16 saying that manufacturers would withhold. I'm
17 saying that they would check that out ahead of
18 time.

19 And so, you know, it just -- it
20 creates a situation where you are putting --
21 the other part of this is the first six months
22 after this goes into effect you are going to

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1 have so many contractors and distributors in
2 bad situations because they are going to have
3 inventories of products that overnight become
4 noncompliant. And what are they going to do
5 with all of that?

6 So that's the two situations. You
7 know, why would someone report something
8 that's a bad situation? You know, they would
9 check that out. I mean, you're reporting
10 thousands and thousands of good situations.
11 If there was something bad, I think they would
12 -- the manufacturers would take that and
13 report it individually. So maybe it should be
14 done on an exception basis rather than
15 reporting the thousands and thousands and
16 thousands of good installations.

17 FACILITATOR BROOKMAN: Okay.
18 Harvey.

19 MR. SACHS: Harvey Sachs. I very
20 much appreciate Talbot volunteering our
21 organization to generate this database. We
22 are not in that business. This is most to be

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1 -- this is not part of our work. We are not
2 soliciting, nor would we accept that task.

3 Thank you.

4 FACILITATOR BROOKMAN: Thank you.

5 Laura has a comment.

6 MR. SACHS: I'm flattered anyhow.

7 MS. BARHYDT: I actually have a
8 followup question to Paul's comment that isn't
9 -- isn't that an argument in favor of
10 requiring complete tracking of the serial
11 number from manufacturer to the end, so that
12 then the Department can identify all of the
13 serial numbers that vaporized, and then we can
14 work from there to figure out where those
15 went?

16 MR. DOPPEL: Okay. What you are
17 presuming, then, is that we would send in all
18 of the -- we wouldn't have -- as a
19 manufacturer, we wouldn't have the information
20 until there was an installation. Okay. And
21 if we got that information back. So that is
22 one thing.

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1 MS. BARHYDT: Well, so I'm
2 thinking this could work many different ways,
3 and so one argument would be, well, the
4 manufacturer knows the serial number they told
5 to distributor, and then if distributor is
6 providing information of distributor sold that
7 serial number to somebody else. Then, at some
8 point we noticed that that serial number just
9 vaporized.

10 And whether all of that
11 information is coming up and down the chain or
12 whether it is all coming individually or -- or
13 -- and then that gets back to the argument of,
14 should that information be coming into the
15 Department for everything? Or should people
16 just be retaining records that can be audited?
17 And there is that whole issue as well.

18 I mean, admittedly, there are many
19 different options and many different
20 alternatives. It just seemed like the
21 scenario you were posing seemed to be actually
22 arguing in favor of the Department getting all

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1 of the information.

2 MR. DOPPEL: No. Actually, what
3 -- the point I was trying to make is that as a
4 manufacturer, we wouldn't, you know -- we
5 would know if something was wrong, and we
6 wouldn't, you know, send it in without saying
7 something, you know, hoping you wouldn't
8 uncover it. You know, so it's -- that's the
9 whole point of that.

10 So that's -- if we send in all of
11 these, good. You know, it's just -- it's just
12 wasted time, wasted transmission. You know,
13 if there is something that is uncovered that
14 is bad, then it needs to be identified. So --

15 FACILITATOR BROOKMAN: Well, if
16 you uncover something bad, will you try and
17 fix it, or is that beyond your scope?

18 MR. DOPPEL: We would -- there
19 would have to be, you know, conversation with
20 the distributor and with that contractor. But
21 again, according to what you are saying, our
22 liability is only to the extent that we sell

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1 something to a distributor who sells something
2 to a contractor who knowingly installs a
3 noncompliant product.

4 And, you know, with a certain
5 distributor, I mean, we could have sold a
6 thousand units to a distributor, and this
7 contractor could have installed a hundred
8 noncompliant systems before we even know about
9 the first one.

10 FACILITATOR BROOKMAN: Thank you.
11 Harvey.

12 MR. SACHS: Harvey Sachs. Laura,
13 I think the Department needs some help in
14 understanding the business and the
15 transactions and the concerns out there in the
16 field. Lord knows I have no business speaking
17 for Charlie McCrudden, but I am going to do it
18 anyhow.

19 FACILITATOR BROOKMAN: Do you want
20 to defer?

21 (Laughter.)

22 MR. SACHS: Yes, I'll defer,

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1 because I think Charlie should have first
2 crack at this.

3 FACILITATOR BROOKMAN: Thank you.
4 That was generous of you. Charlie.

5 MR. McCRUDDEN: I'm not exactly
6 sure what I'm commenting on. I thought you
7 were just teasing, so --

8 (Laughter.)

9 -- I just -- I mean, honestly, I
10 was sort of just watching to see what people
11 were thinking, so -

12 MR. SACHS: Charlie said -- Harvey
13 Sachs again. Charlie said very early in this
14 meeting that contractors have enormous
15 concerns about potential for manufacturers
16 using -- or implied -- using data about the
17 end customers in ways that would not be good
18 for the contractor.

19 And I believe that if DOE does not
20 work to establish a firewall that protects
21 this information that the contractor regards
22 as her crown jewels, from the manufacturer,

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1 DOE is going to walk into a buzzsaw. And it's
2 a very big one, so --

3 FACILITATOR BROOKMAN: We've
4 covered that point now several times I think.

5 Charlie, do you want in here?

6 MR. McCRUDDEN: No. And I think
7 -- I think you are exactly right in looking at
8 just the contractor side of things. But I
9 think, Doug, you're right. I think we've
10 covered that. I think everybody has concerns
11 about what happens to this information.

12 FACILITATOR BROOKMAN: It's good
13 to raise that. I see Don Brundage. Don?

14 MR. BRUNDAGE: Don Brundage,
15 Southern Company. I'm not really involved
16 directly in this fight, but I've got some just
17 general observations on filling out federal
18 paperwork. You don't ask somebody to fill out
19 paperwork for what somebody else did. You can
20 only fill out paperwork on what you did.

21 I mean, if a manufacturer says, "I
22 shipped these units to this distributor with

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1 this serial number," that's the paperwork they
2 have. It's not fair to hold them responsible
3 for getting accurate information from somebody
4 downstream. Each step along the way you say
5 who you sold it to, and you can stick a
6 requirement that if you see suspicious
7 activities you might notify DOE.

8 But you can't ask somebody to
9 certify information that they got third-hand
10 from someone else. So I think if you just
11 limit it to manufacturers, I shipped these
12 units with these serial numbers to so and so;
13 for the distributors, we shipped these serial
14 numbers to so and so contractors, or we
15 installed directly through our own in-house
16 party; you just -- you need to have paperwork
17 based on what each party actually did, and
18 they can only certify what they actually did,
19 not what someone else did.

20 Thank you.

21 FACILITATOR BROOKMAN: Karen?

22 MS. MEYERS: Karen Meyers. And

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1 just a point I would like to make, that from
2 our perspective, you know, we would really
3 only be willing to do that if there was a
4 complaint or an issue/notice of perhaps
5 noncompliant. We would not be in favor of
6 supplying all of this information up front,
7 because that is our sales information, and we
8 would consider that confidential business
9 information that we --

10 FACILITATOR BROOKMAN: Even with a
11 complete firewall, confidentiality, all that
12 stuff.

13 MS. MEYERS: It's still sales
14 information, and that -- we would be against
15 that. Now, if there were a complaint and
16 somebody needed the information, then we would
17 of course, you know, be very helpful -- you
18 know, could tell you, you know, that serial
19 number who we sold it to. But to just -- on
20 every single transaction that we make, to
21 provide that information would be -- it would
22 be a very -- I just think we would be very

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1 against that.

2 MS. ARMSTRONG: So I think it's
3 fair to say that you would be in favor of like
4 maintaining records, just not --

5 MS. MEYERS: We maintain records,
6 but just to -- on every day have to supply our
7 sales information would not be --

8 FACILITATOR BROOKMAN: So as a
9 model, this would be like --

10 MS. MEYERS: We do maintain that
11 information. And if there were a complaint,
12 we could provide --

13 FACILITATOR BROOKMAN: Earlier in
14 the day someone referenced the model the IRS,
15 right? That would be maintain the records, do
16 some level of reporting, but have those
17 available for an audit-based system, or
18 something like that.

19 Talbot.

20 MR. GEE: So I think my -- the
21 concern here that I'm getting -- the
22 perception is that this is a lot cleaner

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1 transactional industry than it really is. And
2 I think -- I'm afraid that your assumption is
3 you are going to get this data that is going
4 to paint these nice pictures and everything
5 falls into good black and white boxes.

6 But, frankly, it is just not. I
7 mean, there is going to be the bulk shipments
8 where who knows what happens. Then, there is
9 going to be a lot of shipments in the regions
10 that might, on first blush, look like it is
11 leading the noncompliance, but ends up not.

12 Then, you have the whole issue of,
13 you know, the homeowner that purchases the
14 full system but only does the furnace in the
15 winter, and then waits until the spring to do
16 the condensing unit.

17 You know, I mean, you're going to
18 have a lot of mismatching data points that
19 could lead you to a lot of wrong conclusions,
20 if you were able to process to that level of
21 granularity. And I -- again, it kind of goes
22 back to questioning the premise as to whether

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1 all of this data is really going to help you.

2 And let's not forget central air
3 conditioners and heat pumps. You are going to
4 see -- if this all went this way, you are
5 going to get all of this data dump on
6 condensing unit and indoor air handler,
7 movements perhaps, but what does that help you
8 with? It really doesn't. You are not going
9 to see that nice, pretty picture until you
10 actually see, if possible, that last
11 transaction.

12 And I don't -- I just don't see a
13 feasible way, an affordable way you are going
14 to be able to do that.

15 FACILITATOR BROOKMAN: Is there
16 some way to capture that last transaction to
17 look for the bad actors?

18 MR. GEE: Well, the --

19 FACILITATOR BROOKMAN: The
20 noncompliant actors?

21 MR. GEE: Frankly, the bad actors
22 are probably going to be the ones that would

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1 be the hardest to document anyway. So, you
2 know, I mean, you are basically adding burden
3 to the folks who will go -- bend over
4 backwards to do it the right way, and they are
5 just going to get killed by those who don't,
6 because you really are not going to have a way
7 of finding them.

8 FACILITATOR BROOKMAN: Gary
9 Fernstrom.

10 MR. FERNSTROM: I can understand
11 why no one wants to give up confidential sales
12 data. But for this to work, we have got to
13 know the output, you know, where this
14 equipment was ultimately installed, and we've
15 got to make sure that that matches the input.

16 So let's take Contractor ABC. You
17 know, for example, if Contractor ABC were good
18 enough to tell somebody that they installed
19 five air conditioning units, how do we know
20 that Contractor ABC didn't get seven, and he
21 told us about the five that were compliant but
22 the two that weren't?

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1 At the contractor level, we have
2 kind of got to know the input and the output,
3 and then be able to go look and see whether or
4 not what that contractor said is in fact true
5 on some kind of spot check or audit basis.

6 FACILITATOR BROOKMAN: So does
7 that mean the records need to be kept for the
8 full stream?

9 MR. FERNSTROM: I don't believe
10 that needs to be kept for the full stream, if,
11 say, we trust the distributor to tell us that.

12 But maybe the distributor is not, you know,
13 matching in terms of input versus output.

14 Probably serial numbers and all of
15 this compounding information about the
16 ultimate installation location isn't necessary
17 just as long as the volumes match.

18 FACILITATOR BROOKMAN: Steve.

19 MR. PORTER: Yes. I mean, we
20 would -- the information you want in many
21 cases would be maybe handwritten down and have
22 to be keyed. I'm sure that's the same with

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1 the contracting group. They are not going to
2 have maybe even a database to put that in
3 right now, or exists today, so I think --

4 FACILITATOR BROOKMAN: That work
5 order is written up by hand, and the serial
6 number is --

7 MR. PORTER: Happens all the time.

8 FACILITATOR BROOKMAN: Yes.

9 MR. PORTER: Yes.

10 FACILITATOR BROOKMAN: Okay. Dan.

11 MR. BUUCK: Thank you. Dan Buuck,
12 NAHB. In order to get this last piece of
13 information with the installation, have you
14 considered working with the code officials in
15 their localities, in their jurisdictions?
16 Many of them will have to be onsite anyway at
17 the final installation, taking the burden off
18 the contractors and the distributors.

19 Also, they know the bad actors in
20 their area, in small towns and in rural areas.

21 Up until a year and a half ago I was a
22 building inspector in Minnesota, and so they

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1 will be able to track those wrong
2 installations, probably know offhand five
3 contractors who might have done it.

4 FACILITATOR BROOKMAN: Aside from
5 internet sales, do the great majority of these
6 installations require a permit to be pulled?
7 Does that work?

8 MR. BUUCK: Yes. Well, it doesn't
9 matter how they are sold. It is based on
10 installation. We are talking furnaces, we are
11 talking also the A/C units.

12 FACILITATOR BROOKMAN: Okay.
13 Paul.

14 MR. DOPPEL: Just, again, for --
15 make sure everyone understands, for split
16 systems, there are two serial numbers
17 involved. And in the case of multi-splits, it
18 could be, you know, many more than that. And
19 so, you know, that increases the burden of
20 reporting and trying to match.

21 Also, if a condenser only is
22 replaced, does the contractor then have to try

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1 to figure out what the model and serial number
2 is of the indoor unit? Or if he is installing
3 only an indoor unit, then does that also have
4 to be reported as, you know, a change?

5 FACILITATOR BROOKMAN: Yes.
6 Charlie.

7 MR. McCRUDDEN: Charlie McCrudden.
8 I was -- Dan's question about, have you
9 considered code officials? I didn't know if
10 there was an answer to that.

11 FACILITATOR BROOKMAN: Laura?

12 MS. BARHYDT: Considered. I guess
13 my question is how -- to throw it back to you
14 as to how exactly you would envision something
15 like that working.

16 MR. McCRUDDEN: To throw it back
17 to you --

18 (Laughter.)

19 I'll make a comment, though, is
20 that, you know, permitting is not required
21 everywhere. And code officials, permit
22 officials, have a burden now that they find

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1 very difficult to meet adding one -- I don't
2 even know if you have the authority to direct
3 local officials to carry out your police
4 operations. But I didn't know if it had been
5 considered.

6 FACILITATOR BROOKMAN: But they
7 would spot -- Dan says they know the bad
8 actors maybe, right? And they would spot bad
9 applications at least --

10 MR. McCRUDDEN: Potentially, yes.

11 FACILITATOR BROOKMAN: -- right,
12 some of the -- some.

13 Kit?

14 MS. KENNEDY: Yes. I mean, I
15 think that's an interesting concept, and, you
16 know, speaking for myself, I don't see a way
17 that you could place compliance
18 responsibilities on code officials.

19 But there is a whole piece of this
20 which is about education and training on top
21 of enforcement, and I'm hoping that some of
22 that can come out over the next year as we do

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1 this rulemaking. You know, what is the
2 education piece? What is the training piece?
3 Who are the partners? You know, local code
4 officials are now a good idea. Can you
5 leverage some of the information that is
6 already out there in a helpful way?

7 And, you know, I'm sure there are
8 a host of other people in this space, you
9 know, other organizations, you know, there are
10 code organizations, there are states, who,
11 again, aren't going to have a formal role in
12 compliance, but could be helpful if there
13 could be some convening.

14 And I'm not sure if that's DOE's
15 role or, you know, some of the trade
16 associations' role. You know, we are happy to
17 play a hand in sort of bringing together the
18 various different stakeholders to talk about
19 how education and training and partnering can
20 help with this effort.

21 Obviously, it doesn't replace, you
22 know, some of the compliance responsibilities

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1 we talked about today, but it could be helpful
2 to have that information.

3 FACILITATOR BROOKMAN: Dan.

4 MR. BUUCK: Dan Buuck, NAHB. I
5 understand that, yes, code inspections are not
6 carried out everywhere, but there are, you
7 know, the major metropolitan areas they are.
8 That would at least take a lot of burden off
9 of DOE as well.

10 Also, unfortunately, the train has
11 left the station. The rule has gone into
12 effect, and if this had gone through the
13 energy code route, and it had gotten into the
14 energy codes, then that would have simplified
15 all of this enforcement.

16 Also, it is made a little more
17 difficult by not meshing the regions with the
18 climate zones again.

19 FACILITATOR BROOKMAN: Thank you.

20 MS. ARMSTRONG: Okay. Moving on,
21 it seems like we have dealt with this as far
22 as record keeping schemes, tracking shipments.

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1 I don't think anyone else has much to add
2 there, but feel free if you do. I'm going to
3 keep going. Go ahead.

4 MR. McCRUDDEN: In the previous
5 slide --

6 FACILITATOR BROOKMAN: Charlie,
7 please.

8 MR. McCRUDDEN: I'm sorry.
9 Charlie McCrudden, ACCA. The previous slide
10 you -- DOE keeps coming up -- periodicity and
11 timing. So what were you thinking? Were you
12 thinking instant filing, monthly, quarterly?
13 You want comments.

14 MS. ARMSTRONG: That one.

15 MR. McCRUDDEN: Okay.

16 MS. ARMSTRONG: Yes. Currently,
17 the way we do it now, just so you know, every
18 time a new basic model, before it's entered
19 into commerce, a manufacturer must certify it,
20 and then annually they have to do a -- tell us
21 once what -- annually what they made. So
22 there is an annual cert requirement, too.

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1 MR. McCRUDDEN: The one
2 distinction I would make, though, you keep
3 talking about how much you are already
4 collecting. You are collecting that from
5 manufacturers.

6 MS. ARMSTRONG: Yes.

7 MR. McCRUDDEN: You are collecting
8 that from large corporations. And, yes, and
9 really a handful. This is very different, I
10 think, what you are proposing here. You are
11 asking small businesses to provide a level of
12 compliance.

13 So I don't think you can sort of
14 make the assumption that it's going to be the
15 same. I think it is going to be very --

16 MS. ARMSTRONG: Yes, and I don't
17 think we are at this point. I think we are
18 trying to understand what is feasible.

19 MR. McCRUDDEN: Okay.

20 FACILITATOR BROOKMAN: Karim?

21 DR. AMRANE: No, I was just about
22 to say that they are collecting it from AHRI.

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1 So we are doing the hard work for you guys.

2 (Laughter.)

3 MS. ARMSTRONG: I'm pleading the
4 Fifth on that one.

5 Okay. So I'm going to talk a
6 little bit, just a second, about something we
7 put forth in the framework document, and then
8 I am going to turn it over to someone who has
9 been waiting patiently to talk more about
10 this.

11 So we have had concerns expressed
12 to the Department by several interested
13 parties regarding select customers, that they
14 may be stranded as a result of these high
15 installation costs from difficult venting
16 situations. This is for furnaces.

17 DOE is open to alternatives to,
18 obviously, mitigate unintended consequences of
19 its direct final rule for the subset of
20 installations that may be severely impacted.
21 One of the things that we put in the framework
22 document -- a possible approach that DOE could

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1 consider would be some type of waiver process.

2 And with that, I am going to turn
3 it over.

4 MR. KIBLER: Thank you. Jim
5 Kibler from AGL Resources on behalf of the
6 American Gas Association. I have four pages
7 of comments that, in the interest of time, I
8 won't read fully into the record. And I'm
9 going to paraphrase some of it, but I do want
10 to pay particular attention to some
11 principles. And I will read from them,
12 because a lot of good work by a lot of very
13 smart and good intentioned folks have gone
14 into this.

15 And I will observe for any of my
16 friends here in the room who are members of a
17 trade association that the challenge of
18 obtaining consensus within your own trade
19 organizations is often a challenge, a
20 remarkable challenge. But getting consensus
21 among the variety of the stakeholders that
22 have been at the table for the last several

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1 weeks is something that I view as very
2 remarkable in the duration of my career.

3 And so I want to emphasize to the
4 agencies that, as you hear a lot of questions
5 today about implementation, there are some
6 organizations who are very talented and
7 committed to helping you find the light for
8 some of those questions, and we are here
9 today.

10 As a backdrop, just as it relates
11 to my company -- although we are based in
12 Atlanta and we have four and a half million
13 customers in the United States. We are the
14 largest natural gas only distributor in the
15 nation. Two and a half million of those
16 customers reside in the northern region.

17 So this is a very important issue
18 for us, and it is -- as perhaps with the
19 exception of the installers having the most
20 direct day-to-day interaction with our
21 customers, I think we have a fairly unique
22 vantage point.

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1 What I have been impressed by,
2 especially as we met with the other
3 stakeholders, is the willingness to entertain
4 the practical impact of the rule and how you
5 avoid some truly unintended consequences.

6 So we have -- the stakeholders
7 have agreement on a very broad set of
8 principles for a waiver design. And the
9 following stakeholders have agreed to these
10 principles and objectives: the Air
11 Conditioning Contractors of America, the
12 Alliance to Save Energy, the American Council
13 for an Energy Efficient Economy, the American
14 Gas Association, the Appliance Standards
15 Awareness Project, and the Natural Resources
16 Defense Council, as well as a number of AGA
17 member companies who participated in these
18 sessions.

19 There are other stakeholders who
20 have been actively involved in this process
21 and who are currently reviewing it. And there
22 is a lot of work still to be done.

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1 For those who have not been
2 involved, Elizabeth Noll with AGA is here
3 today. If you give her your business card, I
4 know we'd be happy to include you in the
5 conversations.

6 But there are 14 principles and
7 objectives that I do want to read from
8 specifically, just because we have spent a lot
9 of time making sure that we do agree to these.

10 The first is that the Department
11 should absolutely establish an installation
12 waiver provision as part of the enforcement
13 rule.

14 Second, the waiver, as we envision
15 it, should apply to furnace replacements in
16 existing homes only, including conversions of
17 oil-fired furnaces but excluding new
18 construction.

19 Third, the waiver must be
20 specific, limited, fair, easily enforced,
21 protect against fraud and abuse, but also
22 maintain the integrity and intent of the

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1 regional standard with regard to securing
2 efficiency gains. We all believe that.

3 Fourth, the use of a waiver should
4 not place any additional compliance
5 obligations on the homeowner beyond those
6 already established for standard
7 installations.

8 Fifth, the waiver implementation
9 process should not increase the time required
10 by an installer to replace a furnace or cause
11 delays for the owner or installer to comply
12 with its requirements. As an aside there,
13 most furnaces are not replaced as part of a
14 plan or design. They are replaced because
15 they fail and they usually fail in the winter.

16 So it is very important practically to
17 establish an easy system for the waiver.

18 Sixth, the waiver application
19 should be granted under a blanket pre-approval
20 for specified sets of conditions. So all of
21 the documents, the filings, and the
22 verification requirements can be completed

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1 after the installation is done.

2 Seventh, the installers must
3 evaluate whether the waiver conditions are met
4 before installing a furnace below 90 AFUE in
5 the northern region, and certify that, we
6 submit, using a standard form.

7 Eighth, while waiver calculations
8 -- qualifications, excuse me, and
9 documentation requirements should not add
10 significant time to the furnace installation,
11 the document requirements after installation
12 need not be so streamlined as to introduce a
13 general incentive to make the use of a waiver
14 the default approach to a furnace replacement.

15 Ninth, after a specific period of
16 time, to be determined later, the waiver
17 process should be reviewed by DOE and the
18 stakeholders to evaluate its effectiveness and
19 any needed modifications. This should include
20 an analysis of all, or a valid sample of all,
21 waivers issued prior to that date.

22 Tenth, the waiver, as we envision

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1 it, would apply only to those cases where
2 condensing furnace installation costs would be
3 unreasonable or prohibitively high in one
4 category or, alternatively, in another, where
5 the installation of a condensing furnace would
6 conflict with the zoning ordinance, building,
7 plumbing, or health safety provisions of local
8 codes, or historic preservation ordinances in
9 effect in the jurisdiction of the home.

10 Eleventh, the waiver is not
11 intended to address each instance where the
12 life cycle cost of a complying furnace would
13 likely be negative or to overcome the
14 difficulty of financing a furnace replacement.

15 We will make clear those are -- that's an
16 entirely different set of circumstances.

17 Twelfth, the qualification
18 criteria should be clearly defined, so they
19 can be easily demonstrated by the installer
20 and easily verified. They should be based on
21 the physical characteristics of the house and
22 the installation difficulties or costs, as

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1 documented by the installer, again, on a
2 standard form that we submit.

3 Thirteenth, in order to protect
4 against the unnecessary -- issuance of
5 unnecessary waivers and to ensure a smoothly
6 running system, contractors authorized to
7 request a waiver should meet stipulated
8 certification and/or training requirements.
9 Specifics are still being looked at in that
10 regard.

11 Lastly, we believe that DOE should
12 establish an enforcement system for the waiver
13 that is based on the consultation with this
14 group of stakeholders and others.

15 I do want to reiterate that those
16 who have been around the table have really
17 worked in good faith, and I am seeing great
18 promise in the work that we have done so far,
19 and I am optimistic that by the deadline on
20 February 16th -- or February 6th, excuse me --
21 we will have a much more detailed set of
22 comments around the enforcement rule.

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1 FACILITATOR BROOKMAN: Okay.
2 Thank you. And would those comments be
3 broader than the ones with respect to waivers?
4 Is that what you have in mind?

5 MR. KIBLER: Potentially broader,
6 but I think the waiver comments themselves are
7 going to need to be fairly specific, as we
8 have discussed previously.

9 FACILITATOR BROOKMAN: Okay.
10 Thanks. Good job with that presentation.
11 Don Brundage.

12 MR. BRUNDAGE: Don Brundage,
13 Southern Company. I've just got a question
14 for Mr. Kibler. I haven't been involved in
15 any of this process, but it seems that if the
16 penalty for noncompliance is \$200 per unit, it
17 would -- did you consider as an alternative
18 approach a streamlined method of just
19 declaring this unit as not in compliance and
20 paying the \$200?

21 MR. KIBLER: We did not.

22 MR. BRUNDAGE: Okay. That would

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1 seem -- if it's just a civil penalty and not
2 implying anything else, that would seem to be
3 more straightforward than doing a waiver,
4 which I have questions about what part of the
5 energy codes, the energy regulations, you
6 could justify that. I mean, they've got some
7 things in there for special waivers.

8 We had the high velocity -- low
9 temperature/high velocity system, HVAC, that
10 for years had special hardship waivers. But
11 it would seem like just declaring
12 noncompliance and sending in the money might
13 be a simpler and legally cleaner approach.

14 Thank you.

15 FACILITATOR BROOKMAN: Thank you.
16 Gary Fernstrom.

17 MR. FERNSTROM: That's
18 problematic, because contractor could easily
19 decide that changing the venting requirements
20 to accommodate a fully condensing furnace is
21 going to cost more than \$200. So, you know,
22 why not just have -- you know, pay a lot of

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1 \$200 fees, then, and not bother whenever the
2 condensing furnace is more expensive.

3 FACILITATOR BROOKMAN: Thank you.

4 Please say your name.

5 MR. SCHRYVER: Dave Schryver,
6 American Public Gas Association. Just by way
7 of background, our members are community-
8 owned. They are owned by their citizens,
9 owned by the city, and they are not for
10 profit.

11 We are interested in the waiver
12 option. We are discussing it with our
13 members. our members have a lot of concerns
14 in terms of the practicality of a waiver, as
15 well as ultimately the reasonableness of a
16 waiver.

17 In terms of the \$200 issue, our
18 concern with that, while it does make sense,
19 and it certainly would be cheaper for the
20 homeowner, ultimately the homeowner is bearing
21 the additional cost through no fault of their
22 own, and it is a disincentive for natural gas

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1 appliances, which, at the end of day,
2 ultimately hurts efficiency and greenhouse gas
3 emissions.

4 FACILITATOR BROOKMAN: Okay.
5 Thank you.

6 So additional comments related to
7 Jim's waiver presentation? And, Jim, you will
8 submit that entire document to the Department,
9 right?

10 MR. KIBLER: We will.

11 FACILITATOR BROOKMAN: Thank you.
12 Okay. Frank first.

13 MR. STANONIK: Frank Stanonik,
14 AHRI. I didn't hear it, but I certainly --
15 maybe just I inferred it. I just want to make
16 sure. It seems to me in this waiver process
17 that at the end of the process there would be
18 a requirement by the installing contractor to
19 notify DOE they have installed a waiver -- in
20 this example -- furnace, because, as an
21 example, if I am a manufacturer asking for a
22 waiver from a test procedure, I obviously have

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1 to ask for it.

2 But then, in my future reportings
3 to DOE, I have to tell them that this rating
4 is based on a waiver. And it seems to me in
5 this case that if the -- especially if it's a
6 blanket waiver, and Talbot's distributor has
7 sold me this noncomplying furnace, it seems to
8 me that would be the one case where there
9 would be an obligation by that contract --
10 installing contractor to tell DOE, "Oh, yes, I
11 installed an otherwise noncomplying model in
12 this ZIP code," or something.

13 FACILITATOR BROOKMAN: But I was
14 wondering, Jim, did your group consider that
15 issue?

16 MR. KIBLER: I believe that's
17 contemplated. The goal would be to have a
18 waiver that would apply to a certain set of
19 circumstances. The installer would be trained
20 and certified to make a site-based assessment
21 on whether those circumstances exist and sign
22 a certification that the homeowner is eligible

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1 for the waiver.

2 FACILITATOR BROOKMAN: Okay.

3 MR. KIBLER: It's that simple.
4 And there would be back end communication to
5 the Department that the installation had
6 occurred.

7 FACILITATOR BROOKMAN: I see
8 Ashley wants -- has a comment or question.

9 MS. ARMSTRONG: I actually have a
10 question, and it's going to go to the person
11 next to you. So you just mentioned that the
12 installer would be trained to identify the
13 sort of circumstances. Do you think you can
14 train your installers to do this, to handle
15 something like that, to be able to evaluate
16 this set of circumstances?

17 FACILITATOR BROOKMAN: That person
18 next to Jim is Charlie. Charlie.

19 MR. McCRUDDEN: I was waiting for
20 Kit. I thought she meant --

21 (Laughter.)

22 FACILITATOR BROOKMAN: I'm going

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1 to Kit next, after you.

2 MR. McCRUDDEN: Do we think we can
3 -- I think there is a way to create with the
4 form, and the elements that would exist from
5 the typical waiver situation, that a
6 contractor could recognize those situations,
7 make the evaluation, and file at the back end
8 that this is a waiver situation.

9 FACILITATOR BROOKMAN: Kit, did
10 you want in here? Yes, you earlier suggested
11 your comments would dovetail with Jim's.

12 MS. KENNEDY: Sure. And I just
13 want to, again, applaud the very constructive
14 problem-solving approach here, which a wide
15 variety of stakeholders have been engaged in,
16 I think in a short period of time.

17 As Jim says, we have made a great
18 deal of progress. Obviously, there are
19 details to be worked out. And as Jim said, it
20 is great to hear all of these comments, and,
21 you know, we can figure out going forward some
22 of these issues. And the input is helpful,

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1 and we hope that others will sort of join this
2 process moving forward of answering some of
3 these questions and taking a constructive
4 approach to implementation of the rule.

5 On the legal authority point, the
6 Department of Energy organizing statute does
7 set up a waiver process. There is a
8 delegation of authority to the Office of
9 Hearing and Appeals to run a hardship waiver
10 process, but the Secretary has the ability to
11 -- we believe to delegate authority to EERE or
12 to another appropriate entity to want a waiver
13 process. And the Department of Energy of
14 course has the authority to set up enforcement
15 policies and guidance as OGC has done over the
16 last two years. That might be another route.

17 So there are a variety of ways in
18 which a waiver process might be established
19 under the relevant statutes.

20 FACILITATOR BROOKMAN: Okay. Dan.

21 MR. ARNOLD: Dan Arnold. My
22 question is, does this set a precedent where

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1 the Department might consider, for example, a
2 waiver for 13 SEER systems in the south based
3 on space constrained installations of split
4 systems, package systems? You know, again,
5 you are setting a precedent here where, what
6 is the difference?

7 I've got a space -- a situation in
8 the north where I've got, you know, economic
9 hardship for installing a 90 percent furnace.

10 That same logic could be applied to the
11 south, where I've got an economic hardship to
12 apply a 14 SEER system where I have a closet,
13 for example, in a manufactured house, where
14 I've got to enlarge the closet. That leads to
15 installation costs that are higher.

16 FACILITATOR BROOKMAN: Gary
17 Fernstrom.

18 MR. FERNSTROM: Gary Fernstrom. I
19 just --

20 FACILITATOR BROOKMAN: Pardon me,
21 Gary. I dropped this gentleman out. Please
22 say your name.

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1 MR. MORRISON: Sure. Scott
2 Morrison, APGA. I just sort of -- on the
3 question of practicality, going back to the
4 fact that what was said earlier by DOE that
5 manufacturer encompasses -- the definition of
6 "manufacturer" encompasses an installer, and
7 the liability questions that arise from that,
8 I have serious questions about whether or not
9 distributors in the 30 northern states will
10 continue to carry an 80 percent AFUE furnace.

11 So that calls into question the
12 practicality of a waiver, in the sense that
13 even if I qualify for a waiver, how am I going
14 to get an 80 percent furnace? When they are
15 not available, hypothetically, in the 30
16 northern states, without having to ship one up
17 north and incur that additional cost.

18 And I would defer to my friends in
19 the distributor community, but it seems to me
20 that that is a serious practical question.

21 FACILITATOR BROOKMAN: Okay.
22 Thank you. Charlie.

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1 MR. STEPHENS: Charlie Stephens,
2 Northwest Energy Efficiency Alliance. I guess
3 I can confirm some of what people have been
4 saying. First of all, I kind of agree with
5 Don Brundage from a contractor's perspective.
6 If I just have to pay 200 bucks and report a
7 noncompliant installation, that may be the
8 cheapest thing for my customer and fastest way
9 to get them back into heat.

10 But I was one of those candidates
11 when my furnace died in January, and it was
12 cold, I can assure you. My contractor, a
13 little three-man shop, showed up and said,
14 "You know, it's going to cost me quite a bit
15 of time and money to get your venting system
16 straightened up for a 90 percent furnace."

17 And I said, "Well, I'm cold, my
18 wife is cold, what are you going to do?" And
19 he said, "Well," he said, "I've got" -- he
20 said, "My distributor doesn't stock 80 percent
21 furnaces. It is going to be a little while
22 before I can get one of those. But as luck

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1 would have it, I have eight or nine of those
2 things sitting in the shop that I have pulled
3 out that are perfectly serviceable. I will
4 put one of those in in the next two hours.
5 We'll fire it up. You're in heat. We'll come
6 in and put your venting in. And when you're
7 ready, we'll bring in the 90 and install it."

8 And that process all worked out,
9 quite frankly, very well. It did cost some
10 extra money, but it was actually pathetically
11 simple to accomplish.

12 However, he did say, "I'm sorry,
13 but I -- even the size and the space of your
14 closet here, I am not going to be able to put
15 in an air conditioning coil for you that meets
16 the standards." And so I don't have air
17 conditioning right now.

18 So, yes, you know, there are some
19 -- there are some circumstances out there, and
20 there are ways around some of them, and maybe
21 not for others.

22 FACILITATOR BROOKMAN: Okay.

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1 Thank you. Harvey.

2 MR. SACHS: Harvey Sachs. Ashley,
3 I want to respond to your question whether
4 trained contractors can do this and whether
5 the training is possible.

6 My own sense, having worked with
7 some contractors and watched some, is that, if
8 I were a contractor, I couldn't bid a job
9 unless I was cable of doing the things that
10 are asked for in the conceptual proposal that
11 Jim has brought forward. This is just
12 absolutely inherently required for bidding
13 without losing my shirt, for writing up the
14 contract.

15 Thank you.

16 FACILITATOR BROOKMAN: Okay.
17 Thanks. Talbot.

18 MR. GEE: Yes, I will echo
19 Harvey's comments. I mean, our industry won't
20 start selling furnaces the day the new
21 standard comes into place. They have been
22 doing this for a long time.

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1 So, yes, that core-based analogy
2 of assessing the situation is not a new thing,
3 which is why there are still 80 percenters in
4 the north. It is not because they didn't want
5 to sell them a high efficiency furnace, it's
6 because there is a reason they couldn't.

7 However, that is more of an issue
8 of what the standard should be, not this
9 waiver concept, because the first question I
10 have is, exactly who is supposed to be
11 verifying and making the judgment call on each
12 waiver claim? Who is that?

13 FACILITATOR BROOKMAN: Let me note
14 -- and Gary gets the final word -- there are
15 some additional content slides we need to
16 cover here. Gary, go ahead.

17 MR. FERNSTROM: Okay. Quickly, I
18 just wanted to clarify my previous comment
19 that waivers are preferred to paying the \$200
20 penalty to avoid mass circumvention of the
21 requirement. And that concerns me, because if
22 a contractor makes a habit of just paying the

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1 \$200, I would think the Department of Energy
2 ought to have the capacity to pursue further
3 recourse in order to avoid mass circumvention.

4 FACILITATOR BROOKMAN: Okay. If
5 you will look in your slide packet to 17, we
6 are going to hear some additional content yet
7 to be covered -- information disclosures, and
8 we are going to hear from Hampton Newsome.

9 MR. GEE: Is this separate to or
10 connected to the waiver?

11 MR. NEWSOME: Yes, I think we are
12 going to go to the disclosures now, to the
13 labeling section. Well, it depends. Are
14 you planning on considering it or not? I
15 mean, if you are --

16 MS. MEYERS: Can I make one more
17 comment on the waivers?

18 FACILITATOR BROOKMAN: Yes,
19 please, Karen. I didn't -- yes. Okay. We'll
20 keep going with waivers. I don't mean to
21 diminish the content on waivers.

22 MS. MEYERS: One concern that I

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1 have -- this is Karen Meyers with Rheem - is
2 if we, as a manufacturer, get an order from
3 somebody in Minnesota for 80 percent furnaces,
4 where can they ship it, I mean, what is the
5 liability back to the distributor and the
6 manufacturer? Likely, there will be
7 contractors that pop up that specialize in
8 this, and that is probably actually kind of a
9 good thing, because they will know the rules
10 inside and out.

11 But are we knowingly selling
12 products to -- noncompliant products to
13 people? Is there a process where the
14 distributor and the manufacturer get copies of
15 these waivers? Or, you know, how are we
16 covered in that instance? And that will just
17 be a question that I would make -- want to
18 make sure is clarified in the final rule is
19 that, you know, there may be contractors that
20 specialize in this.

21 And I'm not saying that's a bad
22 thing, but then we are knowingly selling

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1 noncompliant product to people who we I guess
2 assume have waivers. But I don't know if
3 there is an avenue in the process to make sure
4 that we are informed that they have waivers.
5 So that would just be, maybe as you guys flesh
6 out the program, you might kind of think about
7 and, you know, we would just kind of
8 appreciate that -- looking at that point.

9 FACILITATOR BROOKMAN: Laura, do
10 you want to comment on this?

11 MS. BARHYDT: I was just going to
12 comment that if the installation has a waiver,
13 then it is not noncompliant, because it has a
14 waiver.

15 MS. MEYERS: We wouldn't know
16 that. But we are being asked to ship a
17 noncompliant unit. That was just my point.

18 MS. BARHYDT: Okay.

19 MS. MEYERS: So --

20 MS. BARHYDT: We wouldn't know,
21 and so we are like, you know, hoping that that
22 does, but --

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1 MS. MEYERS: So are you suggesting
2 that we should post a list of all the people
3 who have used a waiver?

4 FACILITATOR BROOKMAN: What
5 difference does it make?

6 MS. BARHYDT: Yes. You know, I
7 don't know, but at least some way that, you
8 know, we are not held responsible for selling
9 noncompliant units, because I doubt that, you
10 know -- and I don't know that manufacturers
11 need a copy of every waiver installation,
12 because likely, you know, distributors may
13 stock these units before they even know where
14 those locations are, if they are going to --
15 so that they could service them if one came
16 in. You know, so it's just kind of a loophole
17 that we might need to kind of clarify.

18 FACILITATOR BROOKMAN: Paul.

19 MR. DOPPEL: Yes, Paul Doppel with
20 Mitsubishi. So I live in Minnesota. It is 10
21 below. I have an 80 percent furnace. How
22 long do I have to wait to get a waiver?

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1 FACILITATOR BROOKMAN: When it
2 goes bad.

3 MR. DOPPEL: Do I have to move
4 out, move into a hotel until --

5 MR. KIBLER: No, the hope and
6 expectation of the group that is working on
7 the waiver proposal is that that decision
8 would be made onsite by the contractor when
9 the contractor arrives to assess your
10 situation.

11 FACILITATOR BROOKMAN: Okay.
12 Thanks, Jim. Dan. Coming to you next.

13 MR. ARNOLD: Just my hunch, to
14 answer that question, would be there is going
15 to be entrepreneurs that spring up to help you
16 expedite your waivers, just like they help
17 expedite passports and other things. You are
18 creating, again, I'm not sure a slope that you
19 want to go down, but that's our position. I
20 just think, again, there is going to be
21 unintended consequences to that solution to
22 the unintended consequences.

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1 FACILITATOR BROOKMAN: And,
2 therefore --

3 MR. ARNOLD: And, instead, to
4 create a competitive advantage for some folks
5 that have the inside track, because when it is
6 20 below and they can get a waiver quick, you
7 know, they have a competitive advantage.

8 FACILITATOR BROOKMAN: Your name,
9 please.

10 MR. COOPER: Roger Cooper on
11 behalf of the American Gas Association.

12 Let me talk about the last two
13 points -- Karen's and how long you have to
14 wait. Jim is somewhat limited to talking
15 about what we have agreed on with the larger
16 stakeholder group. But our discussions have
17 gone into every one of these questions that
18 are being raised today.

19 We haven't reached consensus on
20 them. I expect we will. But generally, just
21 conceptually, to get an idea of what -- where
22 some of the thinking is going, this waiver

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1 form quite possibly would be something the
2 contractor would complete that would show each
3 cost that they would have to do -- say, power
4 venting, relining chimney flues, whatever --
5 that would be associated with putting in a 90
6 percent furnace that would not be associated
7 with putting in an 80 percent furnace. These
8 are the incremental costs.

9 And we might break down those for
10 all incremental and non-incremental costs.
11 That is all being discussed. But the thought
12 would be you would go down this checklist and
13 put amounts that would be the incremental cost
14 that the contractor was bidding for this. And
15 there is, again, a number of different ways
16 you could do it.

17 You could have the contractor
18 essentially bid an 80 percent and have him bid
19 a 90 percent, and show those differentials.
20 But when those differentials exceeded a
21 certain amount on the prong of being too
22 expensive -- and that amount is to be

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1 determined -- that itself would be the
2 trigger, and the contractor would sign this
3 document.

4 And our discussions have been a
5 copy to the homeowner, a copy to the customer,
6 presumably a copy could go to the distributor,
7 to be determined again, whether a copy goes to
8 the manufacturer or just the distributor, to
9 be determined.

10 But anyway, I wanted to make the
11 point that all of this is something that the
12 stakeholder group is delving into. We hope
13 to, at the end of this process, be able to put
14 forth something well beyond these principles
15 and actually perhaps even offer a sample
16 waiver form and how it would be completed, so
17 that would be -- and that is a stretch goal,
18 but that would be where we want to go.

19 So I just want to thank people for
20 the questions that are being raised here, and
21 encourage anyone who is not involved with this
22 discussion, we will be reconvening in January,

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1 that you are welcome to join us.

2 FACILITATOR BROOKMAN: Thank you.

3 That's a useful comment.

4 MS. ARMSTRONG: Doug, can I
5 actually follow up?

6 FACILITATOR BROOKMAN: Ashley,
7 please.

8 MS. ARMSTRONG: And I just have a
9 -- whomever may want to answer that. And
10 perhaps this is not an issue, but, you know,
11 some of the comments that have been raised
12 seem to point to whether this type of waiver
13 process may be utilized by people that are --
14 or may be taken advantage of per se.

15 So when you send in information to
16 the Department, how -- is the Department
17 supposed to believe it on its face? How will
18 we ever verify anything like this? Is this
19 something you are thinking about? I mean,
20 because if an influx of waivers come in, I
21 guess I -- what is the magnitude? What is the
22 scale of what this -- of when you think these

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1 waivers would be used?

2 FACILITATOR BROOKMAN: Harvey.

3 MR. SACHS: A couple of points.
4 Harvey Sachs. To amplify, these are -- the
5 effort now is to develop a set of call it
6 physical criteria and economic criteria which
7 would be used for a pre-approved waiver. So
8 we do not have the cold house phenomena. I
9 went through that one winter for five days.
10 All of us are sensitive to this issue.

11 In terms of -- and the second
12 point that Jim made, and Roger reinforced, is
13 this group of stakeholders is open. Dan, we
14 hope you guys, from the manufacturer's
15 perspective, will be providing your insights
16 and your concerns on anything from stocking to
17 safety.

18 And, thirdly, about the
19 enforcement -- again, I think that I speak --
20 I know I speak for myself and not for other
21 organizations. But the expectation would be
22 that DOE would be able to look for patterns

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1 that might be indicative of abuse. No one
2 expects this to work from the assumption that
3 every installer is an assassin, and that every
4 installer's goal is to circumvent the law. We
5 are looking for substantial compliance.

6 FACILITATOR BROOKMAN: Okay. Let
7 me see, Steve.

8 MR. PORTER: I was just concerned
9 about the ability of the DOE. If they are
10 concerned about handling waivers, wouldn't
11 they be just as concerned about enforcement
12 and all the data that they are going to get
13 around the installation and the -- well, you
14 seem concerned about the waiver and how you
15 would handle that and who would verify. I
16 don't see much difference in that than in what
17 we are talking about in general enforcement of
18 the rule on any of the approaches you talked
19 about earlier.

20 FACILITATOR BROOKMAN: Okay.
21 Thank you. Kit.

22 MS. KENNEDY: Ashley, just in

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1 response to your question, I mean, it is early
2 in the process. As with everything, again, we
3 don't even have a proposed rule yet from the
4 Department. We are all just sharing ideas.
5 But we have committed to these principles,
6 this group who Jim -- which Jim read off, and
7 the principles cover some of your concerns.

8 So, for instance, the third -- the
9 third waiver talks about protecting against
10 fraud and abuse and making sure -- maintaining
11 the integrity of the standard.

12 Now, of course we have work to do
13 to flesh that out, and this group is committed
14 to doing that. So by February 6th we hope to
15 have more details. And, you know, we were
16 pleased to see in the framework document that
17 the Department is open to a waiver concept,
18 that you are asking for comment on that.

19 And, you know, everything we have
20 discussed at this public meeting, you know,
21 the Department can't comment on. You haven't
22 taken any final position on any of the issues.

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1 It is all for determination during this
2 process.

3 I know the Department is always
4 interested in when stakeholders come together
5 and present consensus agreements, whether it's
6 on standards or anything else, and, you know,
7 the group of stakeholders here is committed to
8 continuing to work together to present sort of
9 a fully fleshed out set of proposals to you on
10 the 6th hopefully, and to kind of continue
11 down that process.

12 So we appreciate, you know, your
13 openness and the openness of folks who have
14 spoken.

15 FACILITATOR BROOKMAN: Yes, John,
16 John Cymbalsky.

17 MR. CYMBALSKY: John Cymbalsky,
18 DOE. Just to follow up I think on Ashley's
19 first question to Charlie about training the
20 Mom and Pop installers to do the waiver
21 process, I think earlier in the meeting, just
22 for consistency, these are the same people who

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1 I think you guys were saying couldn't even
2 fill out the basic paperwork to -- just the
3 record keeping, but they will be able to do
4 the waiver. I mean, is this a different set
5 of paperwork or --

6 FACILITATOR BROOKMAN: Charlie?

7 MR. McCRUDDEN: Well, you're
8 addressing two different things. One is, do
9 you have the -- essentially the infrastructure
10 to file, submit records that are related to
11 all installations, or potentially just those
12 80 percenters, if that's what you choose to
13 look at?

14 This is limited situations, and I
15 would hope there would be opportunities to
16 file non-electronically, because this is
17 limited situations. Perhaps it is by mail. I
18 mean, what we know in some of the comments
19 about whether these things will be -- will
20 people come out of the woodwork to expedite?
21 I mean, you know, it's essentially an
22 instantaneous assessment. You know, you are

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1 granting a blanket waiver. So all of the
2 legwork occurs post installation.

3 FACILITATOR BROOKMAN: Jim, do you
4 want to follow on?

5 MR. KIBLER: Yes. And just to go
6 back to the thirteenth principle that I
7 discussed, I think what we contemplate is that
8 anyone could install a 90 AFUE or higher
9 furnace. But only those who have been trained
10 and certified would have the authority to
11 apply the waiver.

12 So it would be a subset of
13 installers that would have the legal authority
14 to install the 80s.

15 FACILITATOR BROOKMAN: And that --
16 those individuals would be, as you said
17 earlier, working with established criteria,
18 qualifications, that sort of stuff as put
19 together by this working group.

20 MR. KIBLER: Yes.

21 FACILITATOR BROOKMAN: Okay.

22 Okay. Talbot.

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1 MR. GEE: Yes, and there will be a
2 thorough scenario planning of what happens if
3 an after-the-fact waiver is denied, and what
4 is the recompense for all of that for everyone
5 involved in that. I mean, that's a legitimate
6 concern, especially if you do figure that
7 there's supply issues with 80 percenters at
8 some point. You could go through considerable
9 expense just to get the 80 percent to them,
10 then find out later that the waiver gets
11 denied. What happens then?

12 FACILITATOR BROOKMAN: Harvey.

13 MR. SACHS: There is -- Harvey
14 Sachs. There is a lever there. And, again,
15 it is conceptual, it is not consensus, and you
16 all are part of it. But the lever there is we
17 are talking about needing some kind of
18 training or certification to be allowed to do
19 this install. That gets revoked if there is a
20 pattern of denials. Okay?

21 It doesn't mean that you have to
22 get -- go back and yank every one of those

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1 furnaces out at your expense as a contractor
2 or that the distributor has to bear that. But
3 your continued permission, your license, is --

4 FACILITATOR BROOKMAN: Your name
5 again, please.

6 MR. COOPER: Yes. Roger Cooper
7 again on behalf of the American Gas
8 Association.

9 Conceptually, there is no denial
10 of the waiver. When we talk about a blanket
11 certificate, it is a certificate. That means
12 if you comply with these requirements, you
13 have the waiver. The requirements are set out
14 in advance. And just by analogy, as we worked
15 on this, other federal agencies have dealt
16 with the same type of issue when they move
17 from dealing with large commercial entities to
18 the average consumer.

19 Federal Communications Commission
20 requires that any broadcaster be licensed -- a
21 very long, convoluted process. What happens
22 when they came up with CB radios? Every

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1 American was going to become now a broadcast
2 licensee, and you got a little card from the
3 FCC with the CB radio, you filled it out, you
4 sent it in, you are now licensed. That was
5 their blanket attempt to deal with the
6 licensing requirement.

7 The Federal Energy Regulatory
8 Commission has blanket waiver provisions for
9 their certification going through pipelines
10 when they are spending smaller amounts of
11 money, which in that case is usually millions
12 of dollars, but small millions of dollars.

13 So other agencies have dealt with
14 this. This is not new in the conceptual
15 process of dealing with it. And it makes
16 sense when you are moving from large --
17 relatively small number of large commercial
18 institutions to lots of smaller institutions.

19 So that is the thought behind the waiver
20 process.

21 Thank you.

22 FACILITATOR BROOKMAN: Thank you.

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1 John?

2 MR. CYMBALSKY: Just to be clear,
3 the Department is very open to the idea of the
4 waiver. My questions have nothing to do with
5 choosing A or B on that.

6 FACILITATOR BROOKMAN: So final
7 comments on waivers, because there is some
8 more content to be covered with respect to
9 labeling. And I would like to -- I would like
10 to just keep pushing and get this -- get this
11 taken care of rather than pause at this point.

12 So should we do that? Let's move ahead. No
13 additional comments on waivers?

14 (No response.)

15 We are moving ahead, then.

16 MR. NEWSOME: Okay. Is everybody
17 feeling fresh?

18 (Laughter.)

19 Pretty good? Okay. I'm Hampton
20 Newsome from FTC, and I believe that I gave
21 most of this presentation when I answered
22 Talbot's question that he wasn't asking

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1 earlier. So I'm not going to spend much time
2 on this.

3 I am supposed to say whenever I
4 speak at these meetings that these views are
5 my own and they don't necessarily represent
6 the Commission or any individual Commissioner.

7 So that's that.

8 Okay. So the statute --
9 basically, Congress tasked FTC as part of this
10 to -- to issue some disclosure requirements
11 that helps everyone easily determine whether
12 equipment meets the standard. We have -- FTC
13 is given a lot of flexibility here, so the
14 disclosures can go in the EnergyGuide label or
15 they can go in addition or in lieu of on other
16 things, you know, other methods to get this
17 information across.

18 We put out an ANPR at the end of
19 November. Everyone has seen that. Comments
20 are due in January. The current requirements
21 -- there are basically two sets of
22 requirements here. One is the EnergyGuide

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1 label that manufacturers put on the products
2 themselves. They go right on the product, not
3 on the packaging.

4 And the second are the
5 requirements I discussed earlier, which are
6 basically they have been around in one form or
7 another for decades. But they are basically
8 requirements that the manufacturer provides
9 energy information aside from the labeling,
10 additional label, and that is meant to go down
11 the chain and be available to consumers for
12 their purchase.

13 So in terms of what we are looking
14 for and what I hope we can discuss in the next
15 few minutes, basically there are two areas --
16 two basic topics that we are thinking about
17 here, but there may be a different way to
18 think about it.

19 But one is that the -- you know,
20 what is the content of this disclosure? In
21 the notice, we provided a bunch of examples.
22 Those should not be seen as any kind of formal

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1 proposal. They are just examples to kind of
2 get everybody started.

3 And basically the examples have --
4 there is, you know, a statement that would go
5 in the label, or whatever material we are
6 talking about that is passing through the
7 chain here that says, "This particular product
8 cannot be installed in the following states."

9 You know, very straightforward, but there may
10 be another way to do it. But that's the
11 content issue. You know, what is the content
12 of this disclosure?

13 And then, the other issue is, what
14 is the format? How should this be done?
15 Should it be on the label? The label is not
16 something that participants, you know, in the
17 chain here, the distributors, the installers,
18 are necessarily going to be looking at all the
19 time, because it is on the product.

20 Even the consumer is usually not
21 going to be looking at it. They are not
22 shopping for it like they are a refrigerator.

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1 But the label is certainly where most of the
2 disclosures are now, but are there other
3 options?

4 And these are the things that we
5 don't -- we don't know because I -- you know,
6 I am not an expert in this particular field or
7 industry, and we need to know from you what
8 are the easiest ways, the most effective ways,
9 to make sure this information is passed along
10 -- contracts, invoices, delivery tickets,
11 things like that, websites.

12 And another issue that we can
13 discuss -- and I hope you address in your
14 comments -- are how to -- is how to deal with
15 internet sales. Our rules have -- already
16 have requirements for labeling our energy
17 information for covered products that are sold
18 off of catalogs, which would include most
19 websites. And so how do we incorporate these
20 disclosures into those existing requirements?

21 That's all I have. But I'm going
22 to sit down, so -- you know, because I hope,

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1 you know, this is more of a discussion,
2 because we -- you know, I have a very open
3 mind on this, and also I -- you know, I hope
4 to learn about, you know, how these
5 transactions are done and what the easiest way
6 to do it is.

7 We will also -- you know, in doing
8 this, we will explore how Congress has
9 directed to us for these disclosures, how that
10 matches up with existing enforcement
11 provisions in the statute. And these are, you
12 know, things DOE is looking at with their
13 provisions.

14 But, you know, those are all
15 things that we will be looking at during this
16 process. So thanks.

17 FACILITATOR BROOKMAN: So comments
18 both on content and format. Charlie Stephens.

19 MR. STEPHENS: Charlie Stephens,
20 Northwest Energy Efficiency Alliance. I want
21 to just make a couple of observations. I
22 think the furnace information should be

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1 relatively straightforward, at least compared
2 to air conditioning and heat pumps.

3 But there were some issues raised
4 earlier in the group by people who wondered
5 how this will go when you are replacing only
6 the condensing unit or only the indoor unit,
7 and how those would get labeled.

8 At some point, the label for an
9 air conditioning condensing unit or an
10 evaporator is going to have to have some sort
11 of nominal rating, because any given outdoor
12 unit can deliver a pretty wide range of
13 efficiencies when combined with a wide range
14 of indoor units, and vice versa.

15 And so I am hoping that AHRI can
16 come forward with maybe some special report-
17 writing out of their database or something
18 that might make this the production of
19 something that would at least let someone
20 looking at any given piece of this thing, have
21 the information you need, because they're the
22 ones that have all of the combinations that in

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1 theory would lead to an actual rating of a
2 system that would meet the numbers that are in
3 the law.

4 So I'm just looking for more
5 discussion of this, but I see some issues when
6 implemented in the field.

7 FACILITATOR BROOKMAN: Okay.
8 Thank you. Don Brundage.

9 MR. BRUNDAGE: Just to comment on
10 formatting on the label, I think it would be
11 more descriptive and probably take up less
12 space, rather than listing 20 states in which
13 you can't install, to just stick a little map
14 of the country with an outline of where it can
15 and cannot be installed.

16 I think for most consumers, when
17 they are looking down through a long list,
18 that would be more descriptive. And I agree
19 with Charlie's comments also. That's
20 problematic, but they find some way now to get
21 a SEER rating on the unit, even with the
22 infinite number of coil possibilities. So it

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1 seems like there is a way to do it.

2 FACILITATOR BROOKMAN: Karim. No?

3 Go ahead.

4 DR. AMRANE: Karim Amrane. Right
5 now, what is happening right now for split
6 system is that we -- the label goes on the
7 condensing unit for the higher sells test
8 combination. So you get -- you give the label
9 for that, and then the -- actually, if you
10 look at the FTC label, it says it is -- it
11 says that for the combination the rating might
12 be slightly different.

13 The only difference today is that
14 everything -- it's the minimum. It's a base
15 standard. Now, when you have original
16 standard, obviously, you could have a
17 condensing unit. The same condensing unit
18 could get you a 13 or it could get you a 14.
19 So we will have to think about the other means
20 of providing the information, and I believe
21 the directory that we have could play a big
22 role here.

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1 FACILITATOR BROOKMAN: Karen,
2 follow on.

3 MS. MEYERS: Would the FTC
4 labeling changes apply to date of manufacture?

5 MR. NEWSOME: Generally, under the
6 statute, any labeling changes apply to date of
7 manufacture or import. So it is -- because
8 the labeling is done under the same statute
9 DOE operates under. So that's the general
10 approach.

11 I don't believe there is anything
12 different for these requirements.

13 FACILITATOR BROOKMAN: Thank you,
14 Hampton. Ashley?

15 MS. ARMSTRONG: I have a question
16 for Karim. It has to do with something you
17 just said. I guess right now what's on the
18 label is the representations based on highest
19 sales volume units. Do you see there needing
20 to be a highest sales volume unit for
21 different regions? Like, in other words, that
22 means something different now, because it's

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1 not just --

2 DR. AMRANE: I think that is going
3 to be problematic. I mean, again, the
4 condensing unit, when it is manufactured, can
5 be matched with a variety of indoor coils.
6 And I -- it is going to be very hard to say,
7 "Well, you know, this one is going just in the
8 north, this one is going just in the south."
9 I mean, I don't know. I mean, to be honest
10 with you, it is something we need to think
11 about.

12 MS. ARMSTRONG: Okay.

13 FACILITATOR BROOKMAN: Harvey?

14 MR. SACHS: Harvey Sachs. I want
15 to just flag two other issues on this agenda.

16 For air conditioning units, there are things
17 we are going to have to be considering. The
18 first one is an area where the ball got
19 dropped somewhere between the handoff between
20 DOE and EPA. If we still have R-22 units
21 being sold when this takes effect, dry shipped
22 R-22, we are in deep doodoo, because that

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1 allows you to easily keep the old evaporator.

2 We can be darn sure that is not going to be a
3 complying unit.

4 The second issue in this category
5 is that at the margin some combinations will
6 depend on whether they qualify at 14 on
7 whether or not there is an ECM or a PFC in the
8 air handler. I don't have any answers, don't
9 have any particular wisdom.

10 I'm told that is typically half of
11 a SEER point, but it is something that we will
12 all have to put our noggins together on and
13 see what can be done that gets substantial
14 compliance and keeps the burdens appropriated.

15 So I just want to cue those up for when we
16 have solved all the furnace issues.

17 FACILITATOR BROOKMAN: Okay.

18 MR. SACHS: Thank you.

19 FACILITATOR BROOKMAN: Other
20 comments related to both content and format?

21 MR. NEWSOME: I have two
22 questions.

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1 FACILITATOR BROOKMAN: Hampton,
2 please.

3 MR. NEWSOME: Well, just two
4 questions. One is the suggestion was given
5 that we use a map instead of state names, and
6 I was wondering if anyone has any thought on
7 that, because this is not just for the end use
8 consumer. It is mainly for the installer, to
9 make sure the installer is doing it correctly.

10 And the second is, I am interested
11 in details as to the -- you know, what is the
12 best vehicle for this disclosure in whatever
13 documentation is given, you know, from the
14 manufacturer to the distributor to the
15 installer?

16 And is it -- should this just be
17 required in sales contracts, or, you know,
18 what is the best way to do it? Aside from a
19 label or a website, I don't know what paper is
20 being exchanged and what people are most
21 likely to look at, and that's what I'm
22 interested in.

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1 FACILITATOR BROOKMAN: Let's see,
2 Harvey first, and maybe then I'll go to Steve.
3 No?

4 MR. SACHS: Thank you, Hampton.
5 Harvey Sachs. ACEEE has filed several times
6 comments on various aspects of the labels, and
7 what we have tried to do is to take a fact-
8 based approach, a research-based approach.
9 And I think everyone in this room would
10 encourage FTC to fund or find studies that
11 would illuminate with answers to questions
12 like map versus state list or map and state
13 list.

14 I don't think that any of us is
15 prepared now to know what is -- to state what
16 is obviously most effective for consumers.
17 But we do think it is discoverable.

18 Thank you.

19 MR. NEWSOME: Just to follow up on
20 that, given our time here, and given how long
21 it takes to do that kind of research with all
22 the clearances you need, it is something we

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1 can consider, but I'm not sure it's something
2 that is feasible in this -- in our timeframe.

3 But we will consider that.

4 MR. SACHS: In that case -- thank
5 you. This is Harvey, and I certainly
6 understand that. And one alternative is to
7 look at the experience from a similar type
8 thing, and I would refer you specifically to
9 the pioneering work on regional EnergyStar
10 levels for fenestration, for Windows. And
11 they did a little bit of work. They tried
12 hard on this, and found that a map is a good
13 way to illustrate where a product is
14 compliant, at least on the websites.

15 FACILITATOR BROOKMAN: Yes. So
16 let me reflect back Hampton's question,
17 specifically about maps and then other issues
18 as well. Talbot.

19 MR. GEE: Yes. The only
20 difference there is that is for -- actually
21 for recognition, not compliance. So that's a
22 big difference. But for this -- I think one

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1 thing that I would ask that you be especially
2 conscientious of is not creating a scenario
3 where essentially the same condensing unit
4 potentially has three different labels.

5 That -- I mean, to boil this down,
6 that is -- would be the worst possible
7 outcome, even though we know that one
8 condensing unit could potentially qualify in
9 all three regions. That same unit should not
10 have -- be subject to three models to where,
11 you know, Steve actually has three different
12 stocks of the exact same product, just because
13 of where they are projecting it might end up.

14 FACILITATOR BROOKMAN: Yes,
15 Charlie.

16 MR. McCRUDDEN: Charlie McCrudden.
17 From the contractor's point of view --
18 actually, let me go back to a previous one.
19 You asked about a map. You know, looking at
20 the EnergyGuide label as it is, you've got one
21 color.

22 So if you put up a map, and you

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1 say this appliance is legal in these states,
2 are those states black, or are they the
3 background yellow? And with only one color,
4 that I think may create more confusion,
5 because you -- how do you -- unless you say
6 "the states in black," and I don't know how a
7 map -- you would have to have a map that would
8 actually not just show all the states
9 contiguous. You would actually have to show
10 the borders.

11 I don't know if that's feasible.
12 I don't know -- I don't know enough about the
13 label itself. Is the label confined to this
14 size? Or can it get larger?

15 MR. NEWSOME: It can be -- we can
16 change the size of the label. But like I
17 mentioned earlier, you know, I would like
18 people to also think about whether the label
19 -- we can put these disclosures on the label,
20 and obviously that is kind of the first
21 candidate.

22 But whether that is enough -- you

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1 know, to put it on the label -- to make sure
2 that your people, you know, get the
3 information, because I don't know whether they
4 are looking at, you know, these labels all the
5 time, because they're on the product, or at
6 least before, you know, they're selling them.

7 So --

8 MR. McCRUDDEN: My guess is
9 keeping the label the same size would be
10 preferable. I would probably say that having
11 a list of the states over a map, with your
12 limited ability to distinguish between
13 essentially black and yellow.

14 The other question you asked about
15 was, what materials are in the transaction?
16 You know, according to the statute now, the
17 contractor is to provide some of this
18 information already. So if you were to put
19 this information on the label, I think that
20 would satisfy the requirements that the
21 consumer sees this.

22 But there are other -- you had

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1 mentioned there are other pieces of
2 information in the transaction that -- and
3 likely that is -- there is a way to -- and
4 maybe there is a uniform sheet from FTC that
5 explains -- that could apply to all
6 transactions, maybe all central air
7 conditioners, all heat pumps, and all furnace
8 transactions, that is just a one-pager that
9 you provide on your website that any
10 contractor can download or request by mail
11 free, just -- because I know there are other
12 federal programs that have similar information
13 disclosure requirements.

14 I'm thinking of EPA's lead
15 contractor rules and things like that. And
16 all of that is available for download. Those
17 are only used in specific situations where the
18 -- you invoke the lead rules. But that's --

19 FACILITATOR BROOKMAN: Karim.

20 DR. AMRANE: Karim Amrane, AHRI.
21 AHRI right now, when you use a directory, you
22 can print out a certificate. And so we could

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1 use that as well as a tool, for example, to
2 ask the contractor to print out a certificate
3 that would say this unit is complying to where
4 you live or the state you live or city or
5 whatever. So it's something that we can do.

6 MR. McCRUDDEN: And to follow up,
7 that form in a situation where the appliance
8 is eligible for a federal tax credit, is
9 required to be maintained by the taxpayer.

10 Now, as of today, we don't have a
11 tax credit available for May 1st of 2013. So
12 maybe that's -- you know, but this is a form
13 that actually is frequently provided to the
14 homeowner is the certificate.

15 FACILITATOR BROOKMAN: Charlie?

16 MR. STEPHENS: Charlie Stephens.
17 Just to pick up a little on what Karim was
18 saying, I kind of like what he mentioned in
19 terms of a certificate, because I think in the
20 end what you need to know, I think more people
21 than just an installer needs to have this
22 information.

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1 Ultimately, there is going to be
2 -- this is going to have to be consistent in
3 some cases, like in California and Oregon,
4 where this -- these things are written into
5 the code, code officials are going to be
6 looking at this.

7 There are other people who are
8 going to be wanting to know if what they are
9 looking at complies or doesn't comply, and so
10 there is more disclosure. But all they need
11 to know is where I live, where this building
12 is where I am standing, whether I'm an
13 installer or a -- whoever I am, is this piece
14 of equipment I am looking at legal or not?
15 And it is kind of a binary thing, depending on
16 what the rating of the thing is. It is or it
17 isn't.

18 FACILITATOR BROOKMAN: So is it
19 state by state, or zip code by zip code?

20 MR. STEPHENS: Well, it is state
21 by state, because there is northern states and
22 southern states, in the case of furnaces, and

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1 there is hot, dry states in case of air
2 conditioners. I mean, you know, there is a
3 collection of states, whether it's on a map or
4 whatever it is, you know, some shade of gray
5 in the background on the EnergyGuide label or
6 whatever it is.

7 It is just -- I know that these --
8 this piece of equipment -- I'm in Oregon, you
9 know? I know that when I'm in Oregon I need
10 to see a 90 plus furnace, or I need to see
11 this heat pump or this air conditioner. And
12 these ratings -- and it is just used to say
13 that this is legal in my state or it's not. I
14 mean, yes or no.

15 And so I don't think it's all that
16 complicated, and I think Karim sort of, you
17 know, highlighted one way in which we could
18 make it not so complicated.

19 FACILITATOR BROOKMAN: These are
20 good comments on the issues of labeling. Any
21 additional comments on -- yes, Hampton.

22 MR. NEWSOME: I'll just close it

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1 out. Just two things I would like everybody
2 to consider as you are preparing your
3 comments, and I appreciate your thoughts
4 today.

5 One is that most of the -- I think
6 all of the labels that FTC does under this
7 program are consumer labels. This is -- for
8 the first time is really a label or a
9 disclosure that is designed to help people
10 other than consumers, you know, in addition to
11 consumers. So when you are thinking about
12 your proposals, you have to think about that.
13 It's not just for the consumer.

14 And then, the second is I always
15 tell people to try to be as specific as
16 possible, so we -- you know, we can get a
17 proposal out that, you know, avoids the land
18 mines and, you know, works with how the
19 industry operates, you know, so we are not
20 proposing something that, you know, doesn't
21 work.

22 So thanks.

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1 FACILITATOR BROOKMAN: So say
2 again your timeline. What is your --

3 MR. NEWSOME: The comments are due
4 January 10th.

5 FACILITATOR BROOKMAN: Okay. Karim.

6 DR. AMRANE: Karim Amrane. I hope
7 you realize that January 10th is just around
8 the corner. With the holidays and things like
9 that, hopefully you will be accepting comments
10 if they come a little bit later than January
11 10th.

12 MR. NEWSOME: Generally, you know,
13 we can't guarantee that they are considered,
14 but, you know, if you have a problem meeting
15 January 10th, you know, let me know, so --

16 FACILITATOR BROOKMAN: Harvey.

17 MR. SACHS: Harvey Sachs.
18 Hampton, this onrush is getting to me. And
19 I'm hereby specifically requesting that you
20 align your date with DOE's, because so much of
21 the information we will want to provide is
22 relevant to both, and it is really pushing us

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1 all to have to get our act together for the
2 DOE comments very quickly in response to what
3 we have learned today.

4 FACILITATOR BROOKMAN: Okay.

5 MR. NEWSOME: We'll consider that.

6 MR. SACHS: Do you need that in
7 writing? Do you need us all to petition you?

8 MR. NEWSOME: It would probably
9 help if someone sent it in in writing, so we
10 can get it on the record.

11 DR. AMRANE: We would support
12 that, too.

13 MR. NEWSOME: Thank you.

14 MS. MEYERS: We'll support that.

15 FACILITATOR BROOKMAN: So several
16 individuals around the room have noted that
17 they would support that.

18 MS. KENNEDY: I think there's a
19 consensus.

20 (Laughter.)

21 FACILITATOR BROOKMAN: The first
22 one today.

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1 Okay. So thanks for that good
2 content there. I think we have now covered
3 the material that we intended to cover, and as
4 provided in the agenda there is yet another
5 opportunity for those that wish to do so to
6 make closing remarks, cover any issue that
7 needs to be covered that hasn't been covered
8 sufficiently.

9 Yes, Charlie.

10 MR. McCRUDDEN: Charlie McCrudden.

11 In the interest of time, I will keep this
12 short. The framework document has a footnote
13 on page 3 that alludes to an inadvertent
14 statement about products being manufactured
15 and installed.

16 This is big. This is really big
17 for a lot of us. So I don't know what
18 happened, but, I mean, this -- you know, this
19 -- I think a lot of people interpreted the
20 rule one way. I think it caused a lot of
21 confusion, and it may be part of why you get
22 late comments or whatever it is.

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1 But this addresses sell-through,
2 and, as we heard, I have been -- I have
3 contractors who, believe it or not, keep a
4 stock. And they need to figure out what is
5 going to happen with that stock very soon,
6 because we've got a furnace rule that takes
7 effect very soon.

8 FACILITATOR BROOKMAN: Okay.

9 MR. McCRUDDEN: That's my comment.

10 FACILITATOR BROOKMAN: Thank you.
11 Talbot.

12 MR. GEE: That was -- I want to
13 echo his comments. That was the one thing we
14 could not leave this room without bringing up.

15 This is a significant change in precedent for
16 how these standards are enforced. And the
17 sell-through -- you know, wholesaling is all
18 about inventory, and so you are talking about
19 trying to predict the day on which your
20 inventory goes to zero, and that day has to be
21 X day. That could be a back-breaking problem
22 for a lot of distributors. Absolutely.

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1 FACILITATOR BROOKMAN: Okay.
2 Steve.

3 MR. PORTER: Yes, I would like to
4 echo that also, you know, and many of the
5 distributors' equipment represents -- and I
6 will try and be careful here, Karen --

7 (Laughter.)

8 -- represents half of their
9 business, you know, of what they sell in a
10 year's time. The expense to rehandle that
11 equipment, stranded inventory in the field,
12 and get it back to where it could be sold
13 would negate any profitability and will
14 severely harm -- severely harm, if not end,
15 many wholesalers' businesses.

16 FACILITATOR BROOKMAN: Okay.
17 Thank you. Additional comments at this time?

18 (No response.)

19 You will note that I am handing
20 out the evaluation form. John, are those the
21 evaluation forms?

22 MR. CYMBALSKY: Yes.

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1 FACILITATOR BROOKMAN: Do you want
2 to hand them down, please? And so then, from
3 my perspective, I will just say thanks to all
4 of you. I hope you all have a lovely holiday.

5 I will turn it back to Ashley
6 and/or John for closing remarks. The final
7 slide?

8 MS. ARMSTRONG: That's fine. So
9 -- you can just let it go. So I just want to
10 thank everyone for coming. There's two --
11 everyone knows the Department's comment period
12 is open until the beginning of February.
13 Hampton has already heard what you would like
14 to do with the FTC's comment period.

15 So we appreciate all the feedback
16 and any ideas you may have that the Department
17 should consider as it develops its proposal.

18 Other than that, have safe travels
19 for those traveling and a good holiday.

20 (Whereupon, at 1:01 p.m., the proceedings in
21 the foregoing matter were
22 concluded.)
23

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2. I don't think you can track the data, if you keep talking about regional standards and tracking is impossible. If an 80% furnace is installed in the north the only way it can be detected is if another company comes out to service the unit. At that point what happens to the consumer? Do you condemn the furnace and they are without heat? Do you force the consumer to purchase the more expensive unit?
3. Why have regions? Why not use a national standard for all states. Why not use the same model used when 10seer units were phased out?

Neely, William
Premier Heating and Cooling

Questions Asked by Attendee

1. For Proper geographic location will it will be determined by zip code?
2. What do you do with homeowners that are lower income and cannot afford to pay for higher efficient equipment? Tell them to go without heat, or will there be government financial help to meet the new code.
3. Will you be working with ACCA's Energy Star program, as far as paper work, with model and serial numbers plus all the start-up information and address of the property?

Rocky, Bryan
Johnson Controls Inc.

Questions Asked by Attendee

1. Question to Ashley: TO DOE, is the burden of proof on proper installation the responsibility of the selling contractor or the installing contractor?
2. If waivers are allowed, every manufacturer will have to have inventory available to the distribution chain or they will lose that sales opportunity to another manufacturer who does have that inventory on hand.
3. Comment to Harvey Sachs comments: shipments and tracking patterns do not work well if the waiver process is allowed. Some additional cross reference to waivers would have to be included.
4. Comment: contractors do not sell AC systems based on the FTC energy guide label on the AC equipment - they sell off spec sheets, tech guides, etc. this issue is when label on the equipment does not match what

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1 consumer paid for due to ratings being different then the highest sales
2 volume system.

- 3
4 5. Jim's waiver process comments (14 points) will result in manufacturers
5 and distributors to ship non-compliant products to those contractors
6 desiring waivers, and then have to report that to DOE. How would DOE
7 reconcile those non-compliance shipment reports to waivers granted?
8
-

9
10
11 **Stewart, Arlene**
12 **AZS Consulting Inc.**

13
14 **Questions Asked by Attendee**

- 15
16 1. Will you be posting the transcript?
17
18 2. Someone said there would be a transcript?
19
20 3. And will the list of attendees be available?
21

22
23 **Marrongelli, Louis**
24 **CSG**

25
26 **Questions Asked by Attendee**

- 27
28 1. Regarding recording keeping, I believe the U.S. Consumer Product
29 Safety Commission requires HVAC contractors to record and keep on
30 file Model and Serial numbers of equipment they install and where they
31 install them. The main purpose is locating equipment if a recall has been
32 issued with the ability to locate this equipment and address the recall. I
33 believe the distributors have the same requirement in regards to where
34 they sold the equipment Regards, Lou Marrongelli
35
36 2. Regarding recording keeping, I believe the U.S. Consumer Product
37 Safety Commission requires HVAC contractors to record and keep on
38 file Model and Serial numbers of equipment they install and where they
39 install them. The main purpose is locating equipment if a recall has been
40 issued with the ability to locate this equipment and address the recall. I
41 believe the distributors have the same requirement in regards to where
42 they sold the equipment. Does some know if this it true? Regards, Lou
43 Marrongelli
44
-

45
46
47 **Ferrara, Todd**
48 **Standard Heating & AC Co**

49
50 **Questions Asked by Attendee**

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1. Standard Heating & AC Minneapolis, Todd Ferrara Owner, VP - #1. what efforts will be in place to assure that units cannot be sold on line or shipped from the south to the north creating a black market for HVAC equipment-
2. Standard Heating & AC Minneapolis, Todd Ferrara Owner, VP (ACCA) - #2. We are very concerned about our data being available to our competitors - demonstrating compliance could be obtained by local inspectors and state codes being enforced rather than a new federal
3. Standard Heating & AC Minneapolis, Todd Ferrara Owner, VP - Question #2 (continued) the federal gov. (in my opinion) should enforce manufactures and distributors, not contractors and the local inspectors and distributors can regulate contractors.
4. Standard Heating & AC Minneapolis, Todd Ferrara Owner, VP - Manufacturers & distributors have recalls & rebates that require contractors to provide them serial numbers and installed addresses all the time for years! This is why they can and should be held responsible- they (OR SOME) already have the infrastructure to pass this on.
5. Standard Heating & AC Minneapolis, Todd Ferrara Owner, VP - In Minnesota we have unities company that sell the equipment and subcontract to contractors who install - this adds another layer to the chain -!!
6. I have to go- now great discussion. Standard Heating & AC Minneapolis, Todd Ferrara Owner, VP -
7. Standard Heating & AC Minneapolis, Todd Ferrara Owner, VP - If the manufacturer and distributor were also fined as a result of a violation, then as a contractor, I can better accept the burden of enforcement. However, placing this on contractor or even homeowner should be the last and lowest priority. What if the contactor is unknown - what if jobs are installed anonymously (this is the reality of side work)
8. Standard Heating & AC Minneapolis, Todd Ferrara Owner, VP - (ACCA member). Local inspectors and local distributors need to see that this equipment is not approved for certain areas. Then we need stronger local enforcement requirements –

Nayes, Mark
Southside Heating and Air Conditioning

Questions Asked by Attendee

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- 1 1. Our installers are trained to install 90+ furnaces to code with venting
2 requirements, if there are any codes or rules that will allow a waiver
3 furnace, we can be trained to see those as well.
4
- 5 2. Mark Nayes, Southside Heating and Air Conditioning. I work in
6 Bloomington, Minnesota. We have done work in an apartment complex
7 with common vented 80% furnaces. To vent a 90%+ furnace to code I
8 would need to take the vent pipes out their closet wall, across their
9 kitchen, through their living room and out the sidewall of the home to
10 make all my clearances. Most of the installs that would be needing
11 waivers for are not economic in nature, but simply common sense.
12
- 13 3. Mark Nayes-A 13 SEER air conditioner condenser properly matched
14 with a furnace and a-coil can reach 14 or 14.5 SEER. How will that
15 condenser be labeled for sale?
16
- 17 4. Will there be a whistle blowing reward as with releasing refrigerant?
18
- 19 5. Mark Nayes (like a horse neighs) As a contractor we keep records of
20 model/serial numbers for all customers from 1984 until today on
21 computer system. We cannot buy anything from any distributor without
22 signing for it. A \$200 fine is about the same as a permit fee application,
23 it is a very light slap on the wrist.
24
- 25 6. Mark Nayes-Since the Recovery Act with the large tax credit for high
26 efficient equipment, we have given our customers the AHRI certificate
27 showing the matched efficiency ratings of the furnace, air conditioner,
28 and a coil. That AHRI number is all that makes most systems compliant
29 or not.
30
- 31 7. What is the penalty for violation, who enforces it, and if the first penalty
32 is not sufficiently strict, what stops a homeowner from doing their own
33 hvac?
34
- 35 8. Mark Nayes-as part of the waiver process being proposed would single
36 stage psc motor furnaces be allowable or would multiple stage variable
37 speed furnaces be required that use less gas and electricity and are
38 more in tune with the intent of this rule in using less energy by being
39 more efficient?
40

41

42 **Jenkins, Mark**
43 **Comfort Professionals**
44

45 **Questions Asked by Attendee**
46

- 47 1. Serial number and installation address to the distributor would be a
48 conflict of interest for the contractor as the distributor can now sell or
49 market our customers directly with exactly what equipment we have
50 installed. The consumer has no ties to the distributor as they are buying
51 us the contractor....

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2. model and serial numbers for each piece of equipment is already being required to be turned in on version 3 of Energy Star worksheets
-

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6
7 **Anderson, Wes**
8 **Dept. of Energy**
9

10 Questions Asked by Attendee
11

1. Ashley: It might be helpful to remind the audience that this is just the framework phase and there will be another opportunity to comment once DOE files the NOPR. This isn't the final rule. It appears that people are looking for answers
-

17
18
19 **Goodnight, Tom**
20 **Johnson Controls**
21

22 Questions Asked by Attendee
23

- 24 1. Question: How will the situation of 3rd party coil manufacturers being
25 responsible for split system ratings be handled? They could rate an AC
26 match as 14 SEER, but the homeowner will receive outdoor equipment
27 with a 13 SEER FTC hang tag.
28
 - 29 2. Comment: From a split condensing unit point of view, the installed
30 efficiency depends on the indoor section to which it is matched. The
31 same condensing unit may be compliant (14 SEER) with a large indoor
32 coil, but non-compliant with the same furnace or air handler with a
33 smaller coil. In other words, a southern region "13 SEER AC" could be
34 compliant in the northern region with an ECM indoor section; also, a "14
35 SEER AC" could be non-compliant in a retrofit installation with a small
36 indoor coil. Compliance can't be assured at point of sale, it must be
37 verified as installed.
38
 - 39 3. Comment: With respect to FTC hang tags, many "13 SEER" AC
40 condensing units can be compliant with the southern region 14 SEER
41 when matched with ECM indoor units. In this situation, a 14 SEER
42 system would arrive with a 13 SEER FTC hang tag on the outdoor unit.
43 In the case of split equipment, compliance can't be imposed on the
44 condensing unit only – it relates to the system as installed, which pushes
45 compliance verification to the point of installation rather than the point of
46 sale.
47
 - 48 4. Had northern/southern reversed in previous comment.
49
-

50
51
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1 **Oliver, Karen**
 2 **KO Energy Design, LLC**
 3

4 **Questions Asked by Attendee**
 5

- 6 1. Contractors will not comply with submitting information. This has to be
 7 done on a distributor level, possibly tracing location of shipments, and to
 8 what type of ultimate end user, ie,
 9
- 10 2. Contractor would be noncompliant with DOE and local codes.
 11
- 12 3. Thank you for your question, it has been passed along to the panelist to
 13 address.
 14
- 15 4. It is the responsibility of the homeowner to make sure the contractor
 16 obtains the proper permits. It is the responsibility and the Contractor
 17 must abide by the State statutes to permit every installation, including
 18 component installation. Enforcement occurs from the local bldg.
 19 department who then can pursue DOE and EPA for repeat offenders.
 20 5. Recourse has to be against the end user. Local codes and Energy code
 21 will ensure compliance. If a system or component is installed without a
 22 permit, the end user is non-compliant.
 23
-

24
 25
 26 **VerShaw, Jim**
 27 **Ingersoll Rand—Trane**
 28

29 **Questions Asked by Attendee**
 30

- 31 1. Please show agenda on webinar
 32
- 33 2. Why not have a one time signature in order to do business with a
 34 distributor?
 35
-

36
 37 **White, Chuck**
 38 **PHCC--National Association**
 39

40 **Questions Asked by Attendee**
 41

- 42 1. Chuck White PHCC As applies to furnaces; don't you only need to track
 43 sub 90% furnaces? Higher efficiency would be approved everywhere.
 44
- 45 2. Chuck White PHCC I agree with Charle, there are a lot of small
 46 contractors. Filing documentation for every furnace or A/C sold will be
 47 resisted by most contractors. If contractors do the right thing, they are
 48 facing additional paperwork and staff to comply with this.
 49

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- 1 3. Chuck White PHCC Some contractors do track SN's in customer
2 records, others do not, but the SN's are not saved first, the job records
3 are saved by customer not equip numbers. Some records are kept for a
4 long time (until someone sorts them and discards) others keep 3 years,
5 some keep minimal records. Contractors would be reluctant to share all
6 that data with a local wholesaler.
7
- 8 4. Chuck White PHCC Scenario: Contactor tired of losing job to xyz
9 heating because they haul in a truckload of 80% furnaces and here's an
10 address. Who is going to go look?
11
- 12 5. Chuck White PHCC permits are required in most jurisdictions not
13 necessarily all.
14
- 15 6. Chuck White, PHCC Lots of internet sales, if we could stop it now we
16 would. Customers think what contractors do is easy but don't find out
17 otherwise until it is too late.
18
- 19 7. Chuck White PHCC I think most inspection agencies don't have
20 additional funding for doing additional work. Perhaps they will create
21 fines also.
22
- 23 8. Chuck White PHCC A contractor that installs non-compliant equipment
24 has to buy it somewhere, even internet sales had to come from a
25 manufacturer. If these items are found, tracking back by Serial Number
26 will soon paint the picture of how this is happening.
27
- 28 9. Chuck White PHCC Manufacturers report on the Models, not each
29 individual item manufactured, sold, and installed. Much larger scale of
30 products.
31
- 32 10. Doesn't item 3 for Mfg. mean if you find an installed product, the
33 manufacturer can tell you who the distributor was not the manufacturer
34 knows where they all went?
35
36
37
38

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