

**BEFORE THE
U.S. DEPARTMENT OF ENERGY
Washington, D.C. 20585**

In the Matter of:

Ingersoll-Rand

(central air conditioners and heat pumps)

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) Case Number: 2012-SE-1608
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NOTICE OF PROPOSED CIVIL PENALTY

Date issued: February 27, 2013

Number of alleged violations: 4

Maximum possible assessment: \$800

Proposed civil penalty: \$800

The Office of the General Counsel of the U.S. Department of Energy ("DOE") alleges that Ingersoll-Rand has violated certain provisions of the Energy Policy and Conservation Act, 42 U.S.C. § 6291 *et seq.* ("the Act"), and 10 C.F.R. Part 429.

Specifically, DOE alleges:

1. Ingersoll-Rand manufactures and has manufactured a variety of central air conditioners that it distributes and has distributed in commerce in the United States of America, including, but not limited to, basic model 2TTA0060A4000C.
2. Ingersoll-Rand central air conditioner basic model 2TTA0060A4000C is a "covered product" as defined in 42 U.S.C. § 6292(a)(3) and 10 C.F.R. § 430.2.
3. Ingersoll-Rand has manufactured and distributed in commerce in the United States since January 1, 2011, at least 4 units of central air conditioner basic model 2TTA0060A4000C.
4. Pursuant to Ingersoll-Rand's response to a subpoena issued by DOE on February 15, 2012, this model operates at a seasonal energy efficiency ratio (SEER) of 10, which is below the required minimum SEER standard of 13 as required by 42 U.S.C. § 6295(d)(3)(B) and 10 C.F.R. § 430.32(c)(2) for units of this basic model manufactured on or after January 23, 2006.

The following information is provided in question and answer format to help explain your legal obligations and options.

What do I do now?

DOE is offering a settlement of \$800 (eight hundred dollars) if you submit the signed compromise agreement and pay the fine within thirty (30) days of the date of an Adopting Order adopting the compromise agreement.

You have other options as described below.

What are my other options?

Within thirty (30) calendar days, you must select Option 1 or Option 2 below if you do **not** agree to DOE's settlement offer.

Option 1: You may elect to have DOE issue an order assessing a civil penalty. Failure to pay the assessed penalty within sixty (60) calendar days of the order assessing such penalty will result in referral of the case to a U.S. District Court for an order affirming the assessment of the civil penalty. The District Court has the authority to review the law and the facts de novo.

Option 2: You may elect to have DOE refer this matter to an Administrative Law Judge (ALJ) for an agency hearing on the record. Upon a finding of violation by the ALJ, DOE will issue an order assessing a civil penalty. This order may be appealed to the appropriate U.S. Court of Appeals.

When must I respond?

You must submit a signed compromise agreement within thirty (30) calendar days of the date of this notice to pay the lowest fine. If you do not wish to settle AND you wish to choose Option 1 as described above, you must notify DOE within thirty (30) calendar days of the date you received this notice of your selection of Option 1. Otherwise, if you do not settle the case, DOE will refer to the case to an ALJ as described in Option 2.

How should I submit my response?

To assure timely receipt, DOE strongly encourages you to submit your response by e-mail, fax, or an express delivery service. DOE accepts scanned images of signed documents (such as PDFs). Responses may be sent by any of the following methods:

By email to: david.case@hq.doe.gov

By fax to: (202) 586-3274

By mail to: David Case
U.S. Department of Energy
Office of the General Counsel (GC-32)
1000 Independence Ave., SW
Washington, DC 20585

What happens if I fail to respond?

If you fail to respond within thirty (30) calendar days after receiving this notice, or by the time of any extension granted by DOE, DOE will refer the case to an ALJ for a full administrative hearing.

What should I include in my response?

1) If you wish to accept DOE's settlement offer, you should submit the signed compromise agreement. If you do not wish to accept DOE's settlement offer, you should specify if you wish to elect Option 1; otherwise, DOE will proceed with Option 2, as described above.

2) Provide your Taxpayer Identification Number ("TIN"). The Debt Collection Improvement Act requires all Federal agencies to obtain the TIN in any case which may give rise to a debt to the government.

How did you calculate the maximum possible assessment?

Federal law sets a maximum civil penalty for each unit of a covered product that does not meet an applicable energy or water conservation standard that is distributed in commerce in the U.S. 10 C.F.R. § 429.102(a)(6). In the maximum penalty calculation in this notice, DOE has determined that Ingersoll-Rand has distributed approximately four units of central air conditioner basic model 2TTA0060A4000C in the U.S. This number would be adjusted based on any additional information obtained if the case goes to hearing. The maximum penalty is \$200 per unit. *Id.* at § 429.120.

Issued by:



Laura L. Barhydt
Assistant General Counsel for
Enforcement

**BEFORE THE
U.S. DEPARTMENT OF ENERGY
Washington, D.C. 20585**

In the Matter of:

Ingersoll-Rand
Respondent

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) Case Number: 2012-SE-1608
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COMPROMISE AGREEMENT

The U.S. Department of Energy ("DOE") Office of the General Counsel initiated this action against Ingersoll-Rand ("Respondent") pursuant to 10 C.F.R. § 429.122 by Notice of Proposed Civil Penalty alleging that Respondent had distributed in commerce in the United States central air conditioners that are not in compliance with an applicable energy conservation standard. Respondent, on behalf of itself and any parent, subsidiary, division or other related entity, and DOE, by their authorized representatives, hereby enter into this Compromise Agreement for the purpose of settling this enforcement action.

I. DEFINITIONS

For the purposes of this Compromise Agreement, the following definitions shall apply:

- (a) "Act" means the Energy Policy and Conservation Act of 1975, as amended, 42 U.S.C. § 6291 *et seq.*
- (b) "Adopting Order" means an Order of the General Counsel adopting the terms of this Compromise Agreement without change, addition, deletion, or modification.
- (c) "DOE" means the U.S. Department of Energy.
- (d) "DOE Rules" means DOE's energy conservation regulations found in Title 10, Parts 429 and 430 of the Code of Federal Regulations.
- (e) "Notice" means the Notice of Proposed Civil Penalty issued by DOE to Respondent on February 27, 2013, and captioned as case number 2012-SE-1608.
- (f) "Parties" means DOE and Respondent.
- (g) "Respondent" means Ingersoll-Rand

II. RECITALS

WHEREAS, DOE, pursuant to the Act, is responsible for the promulgation and enforcement of the energy conservation requirements set forth in DOE Rules; and

WHEREAS, DOE has promulgated energy conservation standards for central air conditioners and heat pumps at 10 C.F.R. § 430.32(c); and

WHEREAS, DOE, pursuant to 42 U.S.C. §§ 6296, 6302, and 6303 and 10 C.F.R. Part 429, Subpart C, is authorized to assess civil monetary penalties for actions prohibited by the Act, including distribution in commerce of covered products that are not in compliance with an applicable energy conservation standard; and

WHEREAS, DOE, on February 27, 2013, initiated an action to assess a civil penalty for Respondent's distribution in commerce of four units of one basic model of central air conditioner that is not in conformity with an applicable energy conservation standard; and

WHEREAS, Respondent admits:

1. Respondent manufactures and distributes, and has manufactured and distributed, central air conditioners, including basic model 2TTA0060A4000C.
2. Respondent has manufactured and distributed in commerce in the United States four units of basic model 2TTA0060A4000C since January 1, 2011.
3. Central air conditioner basic model 2TTA0060A4000C does not meet the applicable energy conservation standard as set forth in 10 C.F.R. § 430.32(c)(2).

WHEREAS, DOE, as the agency charged with developing and administering a balanced and coordinated national energy policy, concludes that, in light of the circumstances, this Compromise Agreement properly balances the policies recognized in the Energy Policy and Conservation Act and is the appropriate way to resolve this matter;

NOW, THEREFORE, in consideration of the foregoing and the mutual agreements set forth below, the sufficiency and adequacy of which are hereby acknowledged, the Parties agree as follows:

III. TERMS OF THE AGREEMENT

1. **Adopting Order.** The Parties agree that the provisions of this Compromise Agreement shall be subject to final approval by the General Counsel by incorporation of such provisions by reference in the Adopting Order without change, addition, modification, or deletion.
2. **Obligations of Respondent.**
 - a. If this Compromise Agreement is executed within thirty (30) days of the date of the Notice, Respondent agrees to pay the sum of \$800 (eight hundred dollars), as full satisfaction of the civil penalty proposed in the Notice, within thirty (30) days of the issuance of an Adopting Order.
 - b. For any covered product that Respondent manufactures, sells, or holds for sale for export from the U.S. or imports for export, Respondent shall ensure that (i) each such covered product or any container in which it is enclosed, when distributed in commerce, bears a stamp or label stating, "NOT FOR SALE

FOR USE IN THE UNITED STATES"; and (ii) such covered product is, in fact, not distributed in commerce for use in the U.S.

3. **Obligations of DOE.**

- a. In express reliance on the covenants and representations in this Compromise Agreement and to avoid further expenditure of public resources, DOE agrees to accept Respondent's payment and performance pursuant to Paragraph 2 above in full satisfaction of the penalty authorized by the Act.
- b. DOE agrees promptly to issue an Adopting Order adopting this Agreement.
- c. DOE agrees to terminate the enforcement action with prejudice upon Respondent's completion of its Obligations in accordance with Paragraph 2 above.

4. **Jurisdiction.** This Compromise Agreement is entered pursuant to DOE's authority to interpret and enforce its rules for energy efficiency and to enter into its own agreements interpreting and applying those rules. The Parties agree that DOE has jurisdiction over Respondent and primary jurisdiction over the matters contained in this Compromise Agreement and has the authority to enter into this Compromise Agreement.

5. **Effective Date.** The Parties agree that this Compromise Agreement shall become effective on the date on which the General Counsel issues the Adopting Order. Upon release, the Adopting Order and this Compromise Agreement shall have the same force and effect as any other Order of the General Counsel. Any violation of the Adopting Order or of the terms of this Compromise Agreement shall constitute a separate violation of an agency Order, entitling DOE to exercise any rights and remedies attendant to the enforcement of an Agency Order.

6. **Waivers.** Respondent agrees not to seek judicial review or otherwise contest or challenge the validity of the terms and penalties set out in this Compromise Agreement or the Notice associated with this case, including any right to judicial review that may be available to the Respondent. If either Party (or the United States on behalf of DOE) brings a judicial action to enforce the terms of this Compromise Agreement, neither Respondent nor DOE shall contest the validity of the Compromise Agreement, and Respondent waives any statutory right to a trial *de novo*. Respondent hereby agrees to waive any claims it may otherwise have under the Equal Access to Justice Act, 5 U.S.C. § 504, relating to the matters addressed in this Compromise Agreement.

7. **Final Settlement.** The Parties agree and acknowledge that this Compromise Agreement shall constitute a final settlement between the Parties. This Compromise Agreement resolves only the violations alleged in the Notice.

8. **Merger.** This Compromise Agreement constitutes the entire agreement between the Parties and supersedes all previous understandings and agreements between the Parties, whether oral or written.

9. **Modifications.** This Compromise Agreement cannot be modified without the advance written consent of both Parties.

10. **Invalidity.** In the event that this Compromise Agreement in its entirety is rendered invalid by any court of competent jurisdiction, it shall become null and void and may not be used in any manner in any legal proceeding.
11. **Authorized Representative.** Each party represents and warrants to the other that it has full power and authority to enter into this Compromise Agreement.
12. **Counterparts.** This Compromise Agreement may be signed in any number of counterparts (including by facsimile or electronic mail), each of which, when executed and delivered, shall be an original, and all of which counterparts together shall constitute one and the same fully executed instrument.

Laura L. Barhydt
Assistant General Counsel for
Enforcement
U.S. Department of Energy

(Signature)
Typed Name: _____
Title: _____
Company Name: _____

Date

Date

Certificate of Service

This is to certify that on February 27, 2013, the undersigned served the designated copy of a Notice of Proposed Civil Penalty and a Compromise Agreement in case number 2012-SE-1608 on the party listed below in the manner indicated.

Nicole M. Clarke
Counsel - Litigation
Ingersoll-Rand Company
800-E Beaty Street
Davidson, NC 28036

Original
Certified Mail – Return Receipt Requested

Nicole.Clarke@irco.com

PDF, via email


David W. Case