

FINDINGS

Based on the facts stated above, DOE has determined, after applying the calculations set forth in Appendix A to Subpart C of 10 C.F.R. Part 429, that the basic model, including Heat Controller models CGREG-81H and REG-81J and all other models within the basic model, does not comply with the applicable energy conservation standard.

MANDATORY ACTIONS BY HEAT CONTROLLER

In light of the above findings, Heat Controller must take the following steps in accordance with 10 C.F.R. § 429.114(a):

- (1) Immediately cease distribution in commerce in the United States of all units within the basic model, including Heat Controller models CGREG-81H and REG-81J;
- (2) Provide immediate written notification of this noncompliance determination to all persons in the United States to whom Heat Controller has distributed units of any model within the basic model, including Heat Controller models CGREG-81H and REG-81J; and
- (3) Provide to DOE within 15 calendar days of the date of this Notice a copy of the written notification required by paragraph (2) and a list of the parties that Heat Controller notified.
- (4) DOE regulations require that Heat Controller provide to DOE within 30 calendar days of the date of this Notice all records, reports, and other documentation pertaining to the acquisition, ordering, storage, shipment, or sale of units of the basic model in the United States in the past three years. At this time, however, Heat Controller should only provide a summary page separately listing the total number of units Heat Controller (a) imported and (b) sold in the U.S. in the past three years. DOE may request additional documentation at a later date.

The response required by paragraph (4) must be dated, signed, and notarized, and must include a declaration under penalty of perjury that the contents of the response is true. Specifically, the person signing the response must attest the following: "I declare under penalty of perjury that the statements contained in this response are true, correct, and complete."

If you claim that any of the information sought by this Notice constitutes confidential commercial material within the meaning of 5 U.S.C. § 552(b)(4), or is protected from disclosure pursuant to 18 U.S.C. § 1905, you must (1) provide one complete and full copy and one copy with the confidential information deleted and (2) submit supporting information together with the materials that are the subject of the confidentiality request. *See* 10 CFR § 429.7. Failure to adhere to these procedures will result in a rejection of your request for confidential treatment.

OPTIONAL ACTIONS BY HEAT CONTROLLER

In addition to the mandatory steps listed above that Heat Controller must complete, Heat Controller may elect to modify a basic model to bring it into compliance with the applicable standard. A modified basic model shall be treated as a new basic model under the regulations and must be certified in accordance with the provisions of 10 C.F.R. Part 429. In addition to satisfying all requirements of this part, any models within the basic model must be assigned new model numbers and Heat Controller must also maintain, and provide upon request to DOE, records that demonstrate that modifications have been made to all units of the new basic model prior to distribution in commerce. Prior to distribution of the modified basic model in commerce in the United States, Heat Controller must provide to DOE test data demonstrating that the modified basic model complies with the applicable standard. All units must be tested in accordance with DOE regulations, and Heat Controller shall bear the costs of all such testing.

If, after this testing, DOE determines that the modified basic model complies with the applicable standard, DOE will issue a Notice of Allowance to permit Heat Controller to resume the distribution of the modified basic model in the United States. Until DOE determines that the modified basic model complies with the applicable standard, Heat Controller is prohibited from selling or otherwise distributing units in commerce in the United States.

CONSEQUENCES FOR FAILURE TO COMPLY WITH THIS NOTICE

Should Heat Controller fail to cease immediately the distribution in the United States of all units of models within the basic model, including Heat Controller models CGREG-81H and REG-81J, this letter serves as notice that DOE will seek a judicial order within 30 calendar days to restrain further distribution. If, however, Heat Controller provides DOE with a satisfactory statement within that 30-day period detailing the steps that Heat Controller will take to ensure that units of the noncompliant basic model will no longer be distributed in commerce in the United States, DOE may elect to defer seeking such an order until a more appropriate time, if needed.

The distribution of any units of a noncompliant basic model may result in DOE seeking all appropriate legal remedies available under federal law, including injunctive relief and civil penalties with respect to each unit of the basic model distributed in violation of federal law.

/S/

Laura L. Barhydt
Assistant General Counsel
for Enforcement