

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

In the Matter of:)
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)
Rheem Sales Company, Inc.) Case Number: 2016-SE-44004
(commercial water heating equipment))
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Issued: May 29, 2019

NOTICE OF NONCOMPLIANCE DETERMINATION

Commercial storage water heaters are covered equipment subject to federal energy conservation standards. 10 C.F.R. §§ 431.2, 431.102, 431.110. Manufacturers and private labelers are prohibited from distributing covered equipment that do not comply with an applicable conservation standard. 10 C.F.R. § 429.102(a)(6). Specifically, commercial gas-fired storage water heaters manufactured on or after October 29, 2003, must have a thermal efficiency that meets or exceeds the minimum of 80%. 10 C.F.R. § 431.110(a).

TESTING

The U.S. Department of Energy (“DOE”) tested four units of commercial gas-fired storage water heater basic model G75-75N (nameplate model PRO+G75-75N RH), manufactured by Rheem Sales Company, Inc. (“Rheem”). DOE’s testing in accordance with DOE test procedures (10 C.F.R. Part 431, Subpart G, Appendix A) yielded the following results. The thermal efficiency of the four units DOE tested were 74.1%, 75.8%, 76.2%, and 75.9%.

FINDINGS

Based on the facts stated above, DOE finds, after applying the calculations in 10 C.F.R. Part 429, Subpart C, Appendix B, that basic model¹ G75-75N (“the basic model”) does not comply with the applicable federal energy conservation standard of thermal efficiency of no less than 80%.

NOTICE

Distribution in commerce of covered equipment that does not meet the energy conservation standards is a violation subject to civil penalty, regardless of the issuance of this Notice. If Rheem continues to distribute the basic model, DOE may assess a higher civil penalty for units sold after the date of this Notice.

¹ For the purposes of this determination, the “basic model” means all water heaters manufactured by one manufacturer within a single equipment class, having the same primary energy source (e.g., gas or oil) and that have essentially identical electrical, physical and functional characteristics that affect energy efficiency. See 10 C.F.R. § 431.102.

MANDATORY ACTION BY RHEEM

In light of the above findings, Rheem must, within 30 calendar days of the date of this Notice, provide to DOE records sufficient to show the number of units of the basic model that Rheem distributed in commerce in the United States in the past five years. 10 C.F.R. § 429.114(a). This includes all units that remain in Rheem's inventory that were manufactured (including importation) on or after May 29, 2014.

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 C.F.R. § 429.7. Failure to adhere to these procedures will result in a rejection of your request for confidential treatment.

OPTIONAL ACTIONS BY RHEEM

In addition to the mandatory steps listed above that Rheem must complete, Rheem may elect to modify the basic model to bring it into compliance with the applicable standards. 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 part 429, any individual models within the basic model must be assigned new model numbers and Rheem 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 in commerce in the United States, Rheem must provide to DOE test data demonstrating that the modified basic model complies with the applicable standards.² All units must be tested in accordance with DOE regulations, and Rheem shall bear the costs of all such testing that is conducted.

If, after this testing, DOE determines that the modified basic model complies with the applicable standards, DOE shall issue a Notice of Allowance to permit Rheem to resume the distribution of the modified basic model in the United States.

CONSEQUENCES FOR FAILURE TO COMPLY WITH THIS NOTICE

Should Rheem fail to cease immediately the distribution in the United States of all units of the basic model, this letter serves as notice that DOE may seek a judicial order within 30 calendar days to restrain further distribution. If, however, Rheem provides DOE with a satisfactory statement within that 30-day period detailing the steps that Rheem will take to ensure that units of the noncompliant 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.

² DOE may require that an independent, third-party testing facility perform this testing.

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