

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

In the Matter of:)
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Nortek Global HVAC LLC) Case Number: 2017-SE-16012
(central air conditioners and heat pumps))
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Issued: May 16, 2019

NOTICE OF NONCOMPLIANCE DETERMINATION

Central air conditioners and heat pumps are covered products subject to federal energy conservation standards. 10 C.F.R. §§ 430.2, 430.32(c). Manufacturers and private labelers are prohibited from distributing covered products that do not comply with an applicable energy conservation standard. 10 C.F.R. § 429.102(a)(6). Specifically, single package air conditioners manufactured on or after January 1, 2015, and before January 1, 2023, must have a Seasonal Energy Efficiency Ratio (“SEER”) of no less than 14. 10 C.F.R. § 430.32(c).

TESTING

The U.S. Department of Energy (“DOE”) tested four units of single package air conditioner basic model P7RE-048K, manufactured by Nortek Global HVAC LLC (“Nortek”). DOE’s testing in accordance with DOE test procedures (10 C.F.R. Part 430, Subpart B, Appendix M) yielded the following results. The SEER of the four units DOE tested were 12.5, 13.275, 13.050, and 13.000.

FINDINGS

Based on the facts stated above, DOE finds, after applying the calculations in 10 C.F.R. Part 429, Subpart C, Appendix A, that basic model¹ P7RE-048K (“the basic model”) does not comply with the applicable federal energy conservation standard of no less than 14 SEER.

NOTICE

Distribution in commerce of covered products that do not meet the energy conservation standards is a violation subject to civil penalty, regardless of the issuance of this Notice. If Nortek 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” is all units manufactured by Nortek that have the same primary energy source and essentially identical electrical, physical and functional characteristics that affect energy consumption or energy efficiency. See 10 C.F.R. § 430.2.

MANDATORY ACTION BY NORTEK

In light of the above findings, Nortek 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 Nortek 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 Nortek's inventory that were manufactured (including importation) on or after January 1, 2015, and all units Nortek imported into the United States in the past five years.

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 NORTEK

In addition to the mandatory steps listed above that Nortek must complete, Nortek 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 Nortek 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, Nortek 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 Nortek 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 Nortek to resume the distribution of the modified basic model in the United States.

CONSEQUENCES FOR FAILURE TO COMPLY WITH THIS NOTICE

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