

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

In the Matter of:)
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)
Nortek Global HVAC) Case Number: 2016-SE-16020
(central air conditioners and heat pumps))
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Issued: January 3, 2018

NOTICE OF NONCOMPLIANCE DETERMINATION

Split-system central air conditioning heat pumps are covered products subject to federal energy conservation standards. 42 U.S.C. §§ 6292(a)(3), 6295(d), and 10 C.F.R. § 430.32(c). Manufacturers and private labelers are prohibited from distributing covered products in the United States that do not comply with applicable federal energy conservation standards. 10 C.F.R. § 429.102(a)(6); 42 U.S.C. § 6302(a)(5).

TESTING

The U.S. Department of Energy (“DOE”) tested four combinations of the split-system central air conditioning heat pump consisting of the outdoor model ET4BD-018K and indoor model B6BMM024K-A (together, and including all individual models covered by this basic model, the “basic model”). DOE’s testing in accordance with DOE test procedures (Appendix M to Subpart B of 10 C.F.R. Part 430¹) demonstrates that the basic model is not in compliance with the applicable energy conservation standard. The minimum permissible heating seasonal performance factor (“HSPF”) for split-system central air conditioning heat pumps manufactured on or after January 23, 2006, and before January 1, 2015, is 7.7. The four units that DOE tested performed at an HSPF of 7.40, 7.40, 7.35, and 7.35, respectively.

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 all combinations within the basic model, irrespective of branding and individual model number, do not comply with the applicable energy conservation standard.

¹ DOE published a final rule in June 2016 modifying the test procedure for central air conditioners and heat pumps set forth in Appendix M. 81 Fed. Reg. 37058 (June 8, 2016). DOE performed testing in this investigation in accordance with the test procedure in effect before the June 2016 final rule.

MANDATORY ACTIONS BY NORTEK

In light of the above findings, Nortek 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 the basic model;
- (2) Provide immediate written notification of this noncompliance determination to all persons in the United States to whom Nortek has distributed units of any individual model—whether an indoor unit, an outdoor unit, or both—within the basic model;
- (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 Nortek notified; and
- (4) Provide to DOE within 30 calendar days of the date of this Notice records sufficient to show the number of units of the basic model that Nortek distributed in commerce in the United States, including all units imported into the United States.²

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 ceasing distribution in commerce in the United States of the basic model, Nortek may elect to modify the basic model to bring it into compliance with the current 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 Nortek must also maintain, and provide upon request to DOE, records that demonstrate that necessary modifications have been made to all units prior to distribution in commerce. Prior to distribution of the modified basic model in commerce in the United States, Nortek 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, with at least one unit tested by an independent, third-party test facility, and Nortek shall bear the costs of all such testing.

² Please note that “[t]he terms ‘to distribute in commerce’ and ‘distribution in commerce’ mean to sell in commerce, to import, to introduce or deliver for introduction into commerce, or to hold for sale or distribution after introduction into commerce.” 42 U.S.C. § 6291(16). Accordingly, units manufactured and held in inventory must be reported.

If, after this testing, DOE determines that the modified basic model complies with the current applicable standard, DOE will issue a Notice of Allowance to permit Nortek 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, Nortek is prohibited from selling or otherwise distributing units in commerce 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 models within the basic model, this letter serves as notice that DOE will 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 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