

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

In the Matter of:

Friedrich Air Conditioning Co.
(room air conditioners)

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) Case Number: 2014-SE-15010
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Issued: September 17, 2014

NOTICE OF NONCOMPLIANCE DETERMINATION

Room air conditioners are covered products subject to federal energy conservation standards as described in 42 U.S.C. §§ 6292(a)(2), 6295(c), and 10 C.F.R. § 430.32(b). Manufacturers and private labelers are prohibited from distributing covered products 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).

On December 15, 2013, DOE completed testing of one unit of Friedrich Air Conditioning Co. (“Friedrich”) room air conditioner basic model SQ10N10. On May 18, 2014, DOE completed testing of three additional units of the same basic model. DOE conducted all four tests in accordance with DOE test procedures (Appendix F to Subpart B of 10 C.F.R. Part 430).

The results of DOE’s testing demonstrate that basic model SQ10N10 does not comply with the applicable energy conservation standard. The minimum permissible energy efficiency ratio (EER) for this basic model manufactured prior to June 1, 2014, is 9.8. 10 C.F.R. § 430.32(b). The EER for the four units DOE tested were 9.51, 9.62, 9.42, and 9.37.

FINDING

Based on the facts stated above, DOE finds, after applying the calculations set forth in 10 C.F.R. Part 429, Subpart C, Appendix A, that Friedrich basic model SQ10N10 does not comply with the applicable federal energy conservation standard.

MANDATORY ACTIONS BY FRIEDRICH

In light of the above findings, Friedrich 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 of basic model SQ10N10;

(2) Provide immediate written notification of this noncompliance determination to all persons in the United States to whom Friedrich has distributed units of basic model SQ10N10;

(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 Friedrich notified; and

(4) 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; and a summary page listing the total number of units Friedrich distributed in commerce in the U.S.¹ in the past three years.

The response required by paragraph (3) must be dated, signed, and notarized.

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 FRIEDRICH

In addition to the mandatory steps listed above that Friedrich must complete, Friedrich 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 Friedrich 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, Friedrich 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 Friedrich 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 Friedrich 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, Friedrich is prohibited from selling or otherwise distributing units in commerce in the United States.

¹ 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). Thus, the summary sheet must include all units that Friedrich has imported into the U.S., as well as any other units that otherwise meet the definition in 42 U.S.C. § 6291(16).

CONSEQUENCES FOR FAILURE TO COMPLY WITH THIS NOTICE

If Friedrich fails to cease immediately the distribution in the United States of all units of basic model SQ10N10, this letter serves as notice that DOE will seek a judicial order within 30 calendar days to restrain further distribution. If, however, Friedrich provides DOE with a satisfactory statement within that 30-day period detailing the steps that Friedrich 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, including during any manufacturer-initiated testing as described above, 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