

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

In the Matter of:)
)
Temspec Incorporated) Case Number: 2016-SE-43010
(small commercial package air conditioning)
and heating equipment))
)

Issued: May 8, 2019

NOTICE OF NONCOMPLIANCE DETERMINATION

Small commercial package air conditioning and heating equipment, including single package vertical air conditioners, are covered equipment subject to federal energy efficiency standards. 42 U.S.C. § 6311(1)(B); 42 U.S.C. § 6311(22); 42 U.S.C. § 6313(a)(1); 10 C.F.R. § 431.97. Manufacturers and private labelers are prohibited from distributing covered equipment 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. § 6316(a). Specifically, single package vertical air conditioners with a cooling capacity of less than 65,000 Btu/h, and manufactured on or after January 1, 2010, but before September 23, 2019, must have an energy efficiency ratio (“EER”) of at least 9.0. 10 C.F.R. §§ 431.97(d)(1) and (d)(2).

TESTING

On August 8, 2016, the U.S. Department of Energy (“DOE”) tested one unit of Temspec Incorporated (“Temspec”) single package vertical air conditioner model VHC60 (“the basic model”). DOE’s testing in accordance with DOE test procedures (10 C.F.R. § 431.96; Appendix A to Subpart F of 10 C.F.R. Part 431) demonstrated that the basic model is not in compliance with the applicable energy conservation standards at 10 C.F.R. § 431.97(d). The basic model is a single package vertical air conditioner with a cooling capacity of less than 65,000 Btu/h.¹ Based on its performance during testing, the tested unit demonstrated an EER performance of 8.7.

On March 20, 2019, Temspec provided DOE with a statement admitting that the basic model does not comply with the applicable energy conservation standards at 10 C.F.R. § 431.97(d)(1)-(2).

¹ DOE’s test of one unit of the basic model measured a cooling capacity of 54,062 Btu/h. Temspec also certified the basic model to DOE in March 2018 as having a rated cooling capacity of 51,890 Btu/h.

FINDINGS

Based on the facts stated above, DOE finds² (and Temspec admits) that the basic model (including each individual model within the basic model) does not comply with applicable federal energy conservation standards.

NOTICE

Distribution in commerce of a product that does not meet the energy conservation standards is a violation subject to civil penalty, regardless of the issuance of this Notice.

MANDATORY ACTIONS BY TEMSPEC

Temspec has already provided to DOE records sufficient to show the number of units of the basic models that Temspec distributed in commerce in the United States in the past five years. 10 C.F.R. § 429.114(a).

OPTIONAL ACTIONS BY TEMSPEC

Temspec 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 Temspec 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, Temspec must provide to DOE test data demonstrating that the modified basic model complies with the applicable standards.³ All units must be tested in accordance with DOE regulations, and Temspec 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 Temspec to resume the distribution of the modified basic model in the United States.

CONSEQUENCES FOR FAILURE TO COMPLY WITH THIS NOTICE

Should Temspec 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, Temspec provides DOE with a satisfactory statement within that 30-day period detailing the steps that Temspec 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 In making its finding, DOE applied the calculations set forth in 10 C.F.R. Part 429, Subpart C, Appendix B, as modified by 10 C.F.R. § 429.110(e)(7) and (e)(8).

³ 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