

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

In the Matter of:)
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Bard Manufacturing Co., Inc.) Case Number: 2018-SE-43003
(single package vertical air conditioners))
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Issued: August 23, 2019

NOTICE OF NONCOMPLIANCE DETERMINATION

Single package vertical air conditioners are covered equipment subject to federal energy conservation standards. 10 C.F.R. §§ 431.92, 431.97. Manufacturers and private labelers are prohibited from distributing covered equipment that does not comply with an applicable conservation standard. 10 C.F.R. § 429.102(a)(6). Specifically, single package vertical air conditioners with a cooling capacity of at least 65,000 and less than 135,000 Btu/h, and manufactured on or after October 9, 2015, and before September 23, 2019, must have an energy efficiency ratio (“EER”) that meets or exceeds the minimum of 10.0. 10 C.F.R. § 431.97(d)(2) Table 10.

TESTING

The U.S. Department of Energy (“DOE”) tested four units of single package vertical air conditioner basic model W72AA-A/W72LA-A, manufactured by Bard Manufacturing Co., Inc. (“Bard”). DOE’s testing in accordance with DOE test procedures at 10 C.F.R. § 431.96 yielded the following results. The capacities of the four units DOE tested were 68,371, 69,679, 70,334, and 71,943 Btu/h. The EERs of the four units DOE tested were 9.40, 9.59, 9.50, and 9.92.

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 W72AA-A/W72LA-A (“the basic model”) does not comply with the applicable federal energy conservation standard of no less than 10.0 EER.

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 Bard

¹ For the purposes of this determination, the “basic model” is all units manufactured by Bard 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.

continues to distribute the basic model, DOE may assess a higher civil penalty for units sold after the date of this Notice.

MANDATORY ACTION BY BARD

In light of the above findings, Bard 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 Bard distributed in commerce in the United States in the past five years, categorized by year. 10 C.F.R. § 429.114(a). This includes all units that remain in Bard's inventory that were manufactured (including importation) on or after October 9, 2015, and all units, if any, Bard 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.

Units manufactured on or after September 23, 2019, must comply with the applicable standard(s) in 10 C.F.R. § 431.97(d)(2) Table 11.

OPTIONAL ACTIONS BY BARD

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

CONSEQUENCES FOR CONTINUING TO DISTRIBUTE THE BASIC MODEL

Should Bard 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

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

days to restrain further distribution. If, however, Bard provides DOE with a satisfactory statement within that 30-day period detailing the steps that Bard 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.

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