

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

In the Matter of:

AeroSys, Inc.
(Central Air Conditioners)

Case Numbers: 2010-CE-01/0201
2010-SE-0302

NOTICE OF NONCOMPLIANCE DETERMINATION

TEST DATA

Pursuant to the July 1, 2010 Compromise Agreement and Adopting Order ("Agreement") between DOE and AeroSys, Inc. (AeroSys), two units of each of four models of split system, through-the-wall central air conditioning systems using R-22 refrigerant and manufactured by AeroSys were tested by Intertek in Cortland, New York, to determine compliance with applicable energy efficiency requirements. Under Section IV of the Agreement, if the results of the Intertek testing show a tested model does not meet energy efficiency requirements under 10 C.F.R. § 430.24(m), AeroSys will notify all persons to whom AeroSys has distributed a noncompliant unit of the basic model that the model is noncompliant and offer to buy back, replace, or repair any noncompliant units.

The Department has received the test data developed by Intertek pursuant to the Agreement. DOE has reviewed the test data and calculated the Seasonal Energy Efficiency Ratio (SEER) values for each of the four basic models, as provided in the table below. Under DOE regulations, split system, through-the-wall air conditioners, such as those manufactured by AeroSys that are the subject of the above-referenced investigation, manufactured prior to January 23, 2010, must have a SEER of no less than 10.9. These products manufactured after January 23, 2010, must have a SEER of no less than 12.¹ See 10 C.F.R. § 430.32(c)(2). The date of manufacture of the tested units is unclear. However, regardless of which standard applies to the units, they fail to meet applicable Federal energy conservation standards as all have a SEER of less than 10.9.

<u>Basic Model</u>	<u>SEER</u>
THDC-18S	10.0
THDC-18T	10.2
THDC-24S	10.1
THDC-24T	10.2

¹ Through-the-wall air conditioners manufactured after January 23, 2010, were reclassified as space constrained products pursuant to a 2004 rulemaking (69 Fed. Reg. 50997, 51000 (Aug. 17, 2004)).

FINDINGS

Based on the facts stated above, DOE has determined that the split system, through-the-wall central air conditioning system basic models listed above, and other systems within each basic model (if any), fail to meet the applicable Federal energy conservation standards.

MANDATORY ACTIONS BY AEROSYS

In light of the above findings, AeroSys must take the following steps in accordance with 10 C.F.R. § 429.114(a) and the Agreement:

- (1) Immediately cease distribution in commerce of all models within basic models THDC-18S, THDC-18T, THDC-24S, and THDC-24T;
- (2) Provide immediate written notification to all persons to whom AeroSys has distributed any unit(s) of basic models THDC-18S, THDC-18T, THDC-24S, and THDC-24T that the system does not meet the applicable standard and offer to buy back, replace, or repair² any noncompliant units;
- (3) Provide 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 AeroSys notified; and
- (4) Provide within 30 calendar days of the date of this Notice any and all records, reports, and other documentation pertaining to the acquisition, ordering, storage, shipment, or sale of the split-system air conditioning and air conditioning/heat pump systems listed above.

OPTIONAL ACTIONS BY AEROSYS

In addition to the mandatory steps listed above that AeroSys must complete, AeroSys may elect to modify one or more of the basic models listed above to bring it into compliance with the applicable standard. The 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. § 429.12 and § 429.16. Prior to distribution in commerce, AeroSys must provide to DOE test data demonstrating the modified basic model complies with the applicable standard. All units must be tested in accordance with DOE regulations, and AeroSys shall bear the costs of all testing that is conducted.

If, after this testing, DOE determines that the modified basic model complies with the applicable standard, DOE shall issue a notice of allowance to permit AeroSys to resume the distribution of the modified basic model. Until DOE determines that the modified basic model complies with the applicable standard, no units of the basic model may be sold or otherwise distributed by AeroSys in the United States.

² Before providing any repair, AeroSys must certify the model as a new basic model (supported by complete test data) meeting the applicable energy conservation standard.

DOE notes that, effective January 1, 2010, the U.S. Environmental Protection Agency (EPA) banned the sale and distribution of central air conditioning systems and heat pump systems manufactured after January 1, 2010, that are designed to use R-22 refrigerant. 74 Fed. Reg. 66450 (Dec. 15, 2009). Thus, since a modified basic model shall be treated as a new basic model under DOE regulations, any modification must include modifying the unit to use a refrigerant not banned by the EPA or otherwise prohibited, and the basic model must be certified to the current 12 SEER standard under 10 C.F.R. § 430.32(c).

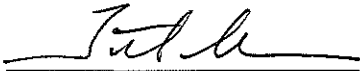
CONSEQUENCES FOR FAILURE TO COMPLY WITH THIS NOTICE

Should AeroSys fail to cease immediately the distribution of all basic models listed above, this letter serves as notice that DOE will seek a judicial order within 30 calendar days to restrain further distribution. If, however, AeroSys provides DOE with a satisfactory statement within that 30-day period detailing the steps that AeroSys will take to ensure that units of the noncompliant basic model will no longer be distributed in commerce, DOE may elect to defer seeking such an order until a more appropriate time, if necessary.

The distribution of any non-compliant 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 models distributed in violation of Federal law.

Date issued: September 27, 2011

Issued by:



Timothy G. Lynch
Deputy General Counsel for
Litigation and Enforcement