

U.S. Department of Energy
1000 Independence Ave, SW
Washington, DC 20585

In the matter of:)
Air-Con International)
_____)

Case Number: 2010-SE-0301

SUBPOENA
FOR INFORMATION AND PRODUCTION OF DOCUMENTS

To: Jaime Maldonado Service by fax and certified mail
Air-Con International
5610 NW 12th Ave Suite 210
Fort Lauderdale, FL 33309

To: Spiegel & Utrera, P.A. Copy by certified mail
1840 SW 22nd Street, 4th Floor
Miami, FL 33145

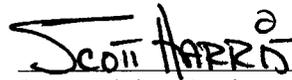
Issued: March 23, 2010

The Department of Energy (DOE) issues this Subpoena for Information and Production of Documents to Air-Con International (Air-Con) pursuant to 42 U.S.C. §§ 6299 and 6316 of the Energy Policy and Conservation Act and the regulations promulgated thereunder (10 CFR 430.72 and 10 CFR 431.406). As you should be aware, DOE also has the authority to issue a test notice, which the agency may do subsequent to the issuance of this subpoena. (10 CFR 430.70).

Failure to provide information and documents violates 42 U.S.C § 6302 and DOE's accompanying regulations (10 CFR 430.61 and 10 CFR 431.382). Failure to obey this subpoena may result in penalties imposed by a court of law.

Air-Con is required by law to maintain records of underlying test data for all certification testing and to organize and index such documentation to ensure that they are readily accessible for review by DOE upon request. Such records include supporting test data on any tested units and must be retained by Air-Con for two years following the date production of the model has ceased. (10 CFR 430.62 and 10 CFR 431.403).

Air-Con's responses to the request for information and documents must be received by DOE no later than 30 days after the date of this subpoena.



Scott Blake Harris
General Counsel

QUESTIONS

- 1) **Models in Distribution.** List all basic models of residential central air conditioners and heat pumps and commercial air conditioners and heat pumps that Air-Con currently has in commerce in the United States and identify:
 - a) the product type (example: residential central air-conditioner and heat pumps), product class (example: through-the-wall air conditioners and heat pumps-single package), the model number(s) of indoor and/or outdoor units¹;
 - b) the cooling capacity of each model listed in response to Item 1a);
 - c) the date production began for any units in commerce in the United States for each model;
 - d) the date any units were placed in commerce in the United States for each model; and
 - e) the heating capacity of each heat pump model.

- 2) **Products in Distribution.** For each basic model rated 10 SEER, identify:
 - a) the number of units sold after January 23, 2006;
 - b) the month and year of manufacture for each unit listed in response to Item 2a);
 - c) the number of units in stock and being offered for sale;
 - d) the month and year of manufacture for each unit listed in response to Item 2c);
 - e) the number of units imported after January 23, 2006; and
 - f) the month and year of manufacture for each unit listed in response to Item 2e).

- 3) **Compliance Statement and Certification Report.** For each basic model that Air-Con listed in Response to Question 1, state whether Air-Con submitted a compliance statement and a certification report to DOE and if so, state the date and manner by which Air-Con first submitted each document.

- 4) **Discontinued products.** List all basic models which Air-Con stopped producing (discontinued) and identify the date on which Air-Con ceased manufacturing each product. If a product continued to be offered for sale after this date, also identify the date on which Air-Con stopped offering the product for sale.

- 5) **Discontinued Products - Notice.** For each basic model that Air-Con discontinued after January 23, 2006, state whether Air-Con notified DOE and provide the date and manner by which Air-Con notified DOE for each basic model that Air-Con discontinued.

¹ Use the definitions provided above and those contained in the regulations to specify the type of product. Example: packaged terminal air-conditioner for consumers, commercial split system, etc.

- 6) **Alternative Rating Method (ARM).** If Air-Con used an alternative rating method referred to in 10 CFR 430.24(m)(5) in lieu of the uniform method in Appendix M to Subpart B of Part 430 to certify for compliance any products listed in Response to Question 1, identify each and every product by type, class and model number(s) and specify when it was done, and by whom (name, address and phone).
- 7) **Uniform Testing.** For all basic models Air-Con currently sells or has sold for which an ARM was not relied on for compliance certification purposes, state whether Air-Con followed the procedure set out in Appendix M to Subpart B of Part 430 (consumer products) and 10 CFR 431.96 (commercial products) and if Air-Con deviated from it, state how.
- 8) **Testing.** For each basic model listed in Response to Questions 1 and 4, state the dates Air-Con conducted testing pursuant to Appendix M to Subpart B of Part 430 (other than ARM rating) to determine whether the model meets the SEER and HSPF for heat pumps required by 10 CFR 430.32(b) and (c) (for consumer products) and 10 CFR 431.97 (for commercial products), the place of testing (i.e., name of the and address of the test laboratory), the number of units tested for each basic model (or, as appropriate, model), and who conducted the testing (name, address and phone).
- 9) **Standard – before January 23, 2006.** For each basic model “Split System” central air-conditioner, heat pumps, and “single packaged” air-conditioner manufactured by Air-Con before January 23, 2006, provide the SEER and HSPF, as appropriate, determined by Air-Con and the date and method of such determination (laboratory testing or ARM).
- 10) **Standard – after January 23, 2006.** For each basic model “Split System” central air-conditioner, and “single packaged” air-conditioner manufactured by Air-Con after January 23, 2006, provide the SEER as determined by Air-Con and the date and method of such determination (laboratory testing or ARM).
- 11) **Other products.** Identify all other covered products that Air-Con manufactures and distributes, including those products produced for, or on behalf of, other manufacturers, private labelers, or other entities.
- 12) **Number of units.** For each basic model that Air-Con has distributed in commerce, state the number of air conditioner and heat pump units that Air-Con has manufactured and distributed. Identify the recipients of each basic model and the number of units of that model that were distributed to each recipient.

REQUEST FOR DOCUMENTS

- 1) **Certification requirements.** All certification reports and compliance statements filed with DOE for each basic model (or, as appropriate, model), placed in commerce and all notices submitted to DOE for each discontinued product.
- 2) **Testing.** All records and other documentation pertaining to the laboratory testing for SEER and HSPF (other than ARM rating) for each basic model (organized by model), in distribution now or discontinued after January 23, 2006.
- 3) **ARM rating.** All records and other documentation representing alternative rating methods, or computer simulation, used to determine SEER and HSPF, including but not limited to computer code, if computer simulation is performed. If the document itself does not so indicate, specify for which basic model and type such rating was applied, and the date it was performed.
- 4) **Technical documents.** All detailed technical specifications and documents related to each basic model certified by Air-Con as compliant with DOE standards, including each basic model's:
 - a) service and owner's manuals;
 - b) operating instructions;
 - c) electrical ratings;
 - d) schematics; and
 - e) descriptions and specifications for each component.
- 5) **Other documents.** All documents, not otherwise specifically requested, based on which Air-Con has concluded that the products Air-Con has in commerce the United States meet the energy efficiency standards in 10 CFR 430.32 (consumer) and 10 CFR 431.97 (commercial).

Definitions for Consumer Air-Conditioners and Heat Pumps²:

Air-Con means Air-Con International, its corporate parents, subsidiaries, and affiliates, and all of their officers, employees, and agents.

Central air conditioner means a product, other than a packaged terminal air conditioner, which is powered by single phase electric current, air cooled, rated below 65,000 Btu per hour, not contained within the same cabinet as a furnace, the rated capacity of which is above 225,000 Btu per hour, and is a heat pump or a cooling unit only.

Heat pump means a product, other than a packaged terminal heat pump, which consists of one or more assemblies, powered by single phase electric current, rated below 65,000 Btu per hour, utilizing an indoor conditioning coil, compressor, and refrigerant-to-outdoor air heat exchanger to provide air heating, and may also provide air cooling, dehumidifying, humidifying circulating, and air cleaning.

Heating Seasonal Performance Factor means the total space heating required during the space heating season, expressed in Btu's, divided by the total electrical energy consumed by the heat pump during the same season, expressed in watt-hours.

Mini-split air conditioners and heat pumps means systems that have a single outdoor section and one or more indoor sections. The indoor sections cycle on and off in unison in response to a single indoor thermostat.

Non-ducted system means an air conditioner or heat pump that is designed to be permanently installed equipment and directly heats or cools air within the conditioned space using one or more indoor coils that are mounted on room walls and/or ceilings. The unit may be of a modular design that allows for combining multiple outdoor coils and compressors to create one overall system. Non-ducted systems covered by this test procedure are all split systems.

Packaged terminal air conditioner means a wall sleeve and a separate unencased combination of heating and cooling assemblies specified by the builder and intended for mounting through the wall. It includes a prime source of refrigeration, separable outdoor louvers, forced ventilation, and heating availability energy.

Room air conditioner means a consumer product, other than a "packaged terminal air conditioner," which is powered by a single phase electric current and which is an encased assembly designed as a unit for mounting in a window or through the wall for the purpose of providing delivery of conditioned air to an enclosed space. It includes a prime source of refrigeration and may include a means for ventilating and heating.

Seasonal energy efficiency ratio or SEER means the total heat removed from the conditioned space during the annual cooling season, expressed in Btu's, divided by the

² For these and other definitions applicable to Air-Con products, see 10 CFR 430.2, and Appendix M to Subpart B of part 430.

total electrical energy consumed by the air conditioner or heat pump during the same season, expressed in watt-hours.

United States means a State, the District of Columbia, Puerto Rico, the Trust Territory of the Pacific Islands, or any territory or possession of the United States.

Definitions for Commercial Air-Conditioners and Heat Pumps³

Air-Con means Air-Con International, its corporate parents, subsidiaries, and affiliates, and all of their officers, employees, and agents.

Commercial package air-conditioning and heating equipment means air-cooled, water-cooled, evaporatively-cooled, or water source (not including ground water source) electrically operated, unitary central air conditioners and central air-conditioning heat pumps for commercial application.

Heating seasonal performance factor means the total heating output of a central air-conditioning heat pump during its normal annual usage period for heating, expressed in Btu's and divided by the total electric power input, expressed in watt-hours, during the same period.

Packaged terminal air conditioner means a wall sleeve and a separate unencased combination of heating and cooling assemblies specified by the builder and intended for mounting through the wall, and that is industrial equipment. It includes a prime source of refrigeration, separable outdoor louvers, forced ventilation, and heating availability by builder's choice of hot water, steam, or electricity.

Seasonal energy efficiency ratio or SEER means the total cooling output of a central air conditioner or central air-conditioning heat pump, expressed in Btu's, during its normal annual usage period for cooling and divided by the total electric power input, expressed in watt-hours, during the same period.

Single package unit means any central air conditioner or central air-conditioning heat pump in which all the major assemblies are enclosed in one cabinet.

Small commercial package air-conditioning and heating equipment means commercial package air-conditioning and heating equipment that is rated below 135,000 Btu per hour (cooling capacity).

Split system means any central air conditioner or central air conditioning heat pump in which one or more of the major assemblies are separate from the others.

United States means a State, the District of Columbia, Puerto Rico, the Trust Territory of the Pacific Islands, or any territory or possession of the United States.

Very large commercial package air-conditioning and heating equipment means commercial package air-conditioning and heating equipment that is rated—

- (1) At or above 240,000 Btu per hour; and
- (2) Below 760,000 Btu per hour (cooling capacity).

³ For these and other definitions, see 10 CFR 431.92.

INSTRUCTIONS FOR RESPONDING TO THIS SUBPOENA

- Both the responses to the questions and the responses to the requests for documents must be dated, signed by a person authorized to speak for Air-Con, and notarized with the following statement:

“I declare under penalty of perjury that the foregoing is true and correct.
Executed on (date).”

- Responses and documents subject to this subpoena must be submitted whether or not Air-Con believes that DOE already has been provided the information or documents sought by this subpoena.
- The responses to the questions must be numbered and the numbers must correspond to the numbered questions.
- For document requests, in addition to providing copies of the requested documents, provide a written response, with numbers corresponding to the requests, indicating whether you are providing the requested documents, or, if you are not – the reason for not providing the requested documents. If a claim for attorney-client or other privilege is asserted, provide a description of the document by date, author(s) and/or recipient(s), subject matter and the type of privilege you claim.
- All documents produced in response to this subpoena must be organized with the number of the document production request to which they respond. When the documents would not, standing alone, be self-explanatory, an explanation should be provided in the response to the request.
- The singular includes the plural; the plural includes the singular. "And" as well as "or" shall be construed either disjunctively or conjunctively, to bring within the scope of this subpoena all responses that might otherwise be construed to be outside its scope. "Each" shall be construed to include "every" and "every" shall be construed to include "each." "Any" shall be construed to include "all" and "all" shall be construed to include "any." The use of a verb in any tense shall be construed as the use of the verb in a past or present tense, whenever necessary to bring within the scope of the document request all responses which might otherwise be construed to be outside its scope.
- If you claim that any of the information or documents sought by this subpoena constitute confidential commercial material within the meaning of 5 U.S.C. § 552(b)(4), or are protected from disclosure pursuant to 18 U.S.C. § 1905, you must follow the procedure set out in 10 CFR 430.75 (provide one complete and full copy and 15 copies with the confidential information deleted) and submit supporting information together with the materials that are the subject of the

confidentiality request. Failure to adhere to these procedures will result in a rejection of your request for confidential treatment.

- The information and documents to be provided in response to this subpoena include any and all information, from whatever source derived, which is known to, or in the possession or under the control of, Air-Con.
- If any information is submitted electronically, the information should be submitted on a CD-ROM that is labeled with the subject matter ("Air-Con") and the date of its submission to the agency. Each file should be named and labeled in a manner that readily identifies the question or request for documents to which the information contained therein is responsive. If a particular file is not provided in a common format (e.g. Word or PDF) and requires the use of special software that is not readily available, Air-Con must provide a copy of that software with its submission. If Air-Con seeks confidential treatment on the basis of Exemption 4 of the Freedom of Information Act for any of the materials it submits, it must follow the procedures set out in 10 CFR § 1004.11.
- Where documents responsive to this subpoena include photographs, actual photographs rather than photostatic copies must be provided.
- Air-Con may provide a copy in lieu of the original document only if the copy is complete and legible.
- Air-Con's response to this subpoena, together with all responsive documents and any confidentiality request, must be sent by FedEx and addressed to:

Laura L. Barhydt
Office of the General Counsel
United States Department of Energy
Suite No. 6A-245
1000 Independence Ave., SW
Washington, DC 20585-0121

- Failing to provide an accurate and full response to this subpoena could subject Air-Con to penalties under 42 U.S.C. § 6303 as well as those under 18 U.S.C. § 1001.