

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

In the Matter of:)
)
Sears, Roebuck & Co.) Case Number: 2011-SE-1418
(freezers))
)
)

Issued: June 26, 2012

NOTICE OF NONCOMPLIANCE DETERMINATION

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; 42 U.S.C. § 6302.

On September 22, 2011, DOE completed testing of one compact chest freezer, Kenmore-brand model number 255.19702010 (“19702”), privately labeled and distributed in commerce in the U.S. by Sears, Roebuck & Co. (“Sears”) and manufactured in China. In December 2011 and January 2012, DOE completed testing of three additional units of 19702. DOE’s testing was conducted in accordance with the relevant DOE test procedure (10 C.F.R. Part 430, Subpart B, Appendix B1).

DOE’s testing demonstrated that Kenmore-brand chest freezer model number 19702 is not in compliance with federal law. Given the tested units’ measured volumes, their respective maximum permissible rates of energy consumption were 261, 262, 263, and 262 kilowatt-hours per year (kWh/yr).¹ Based on their performance during testing, the four units that DOE tested consumed energy at the rates of 374, 413, 388, and 449 kWh/yr, an average of more than 50 percent over the federal limit.

In addition, in December 2011 and January 2012, DOE completed testing of four units of another Kenmore-brand compact chest freezer, model number 255.19502010 (“19502”), also privately labeled and distributed in commerce in the U.S. by Sears and manufactured in China. This testing was also conducted in accordance with the relevant DOE test procedure.

DOE’s testing demonstrated that Kenmore-brand chest freezer model number 19502 is not in compliance with federal law. Given the tested units’ measured volumes, their respective maximum permissible rates of energy consumption were 239, 241, 236, and 237 kWh/yr. Based on their performance during testing, the four units that DOE tested consumed energy at the rates of 294, 306, 306, and 315 kWh/yr, an average of more than 25 percent over the federal limit.

¹ Under 10 C.F.R. § 430.32(a), the maximum energy use, in kWh/yr, of a compact chest freezer may not exceed 152 plus the product of 10.45 and the total adjusted volume of the particular freezer (10.45AV+152.0).

FINDINGS

Based on the facts stated above, and having conducted the analysis required by 10 C.F.R. Part 429, Subpart C, Appendix A, DOE has determined that Kenmore-brand basic models 19702 and 19502 do not comply with the applicable federal energy conservation standards.

MANDATORY ACTIONS BY SEARS

In light of the above findings, Sears 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 models 19702 and 19502, if Sears has not already done so;²
- (2) Provide immediate written notification of this noncompliance determination to all persons in the United States to whom Sears has distributed units of basic model 19702 or 19502;
- (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 Sears notified; and
- (4) Provide to DOE 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 units of basic models 19702 and 19502 in the United States on or after January 1, 2010.

The responses required by paragraphs (3) and (4) must be dated, signed, and notarized, and must include a declaration under penalty of perjury that the contents of the responses are true. Specifically, the person signing the response must attest the following: "I declare under penalty of perjury that the statements contained in this response are true, correct, and complete."

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.

OPTIONAL ACTIONS BY SEARS

In addition to the mandatory steps listed above that Sears must complete, Sears may elect to modify basic model 19702 and/or basic model 19502 to bring it into compliance with the applicable standard. Each 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. Prior to distribution in commerce in the United States, Sears must provide to DOE test data

² Sears stated, in a letter dated December 2, 2011, that it had already ceased sale of basic models 19702 and 19502.

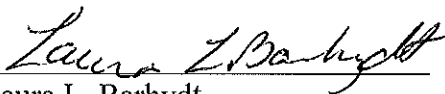
demonstrating that any modified basic model complies with the applicable standard. All units must be tested in accordance with DOE regulations, and Sears shall bear the costs of all such testing that is conducted.

If, after this testing, DOE determines that the modified basic model complies with the applicable standard, DOE shall issue a Notice of Allowance to permit Sears 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, no units of the basic model may be sold or otherwise distributed by Sears in the United States.

CONSEQUENCES FOR FAILURE TO COMPLY WITH THIS NOTICE

Should Sears fail to cease immediately the distribution in the United States of all units of basic models 19702 and 19502, this letter serves as notice that DOE will seek a judicial order within 30 calendar days to restrain further distribution. If, however, Sears provides DOE with a satisfactory statement within that 30-day period detailing the steps that Sears will take to ensure that units of the noncompliant basic models 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 each basic model distributed in violation of federal law.



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for Enforcement