

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

In the Matter of:

Hudson Reed, Ltd.
(Showerheads)

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Case Number: 2011-SW-2909

Issued: September 28, 2011

NOTICE OF NONCOMPLIANCE DETERMINATION

Manufacturers and private labelers are prohibited from distributing covered products that do not comply with applicable Federal water conservation standards. 10 C.F.R. § 429.102; 42 U.S.C. § 6302.

On July 20, 2011, DOE tested four units of Hudson Reed brand showerhead model HEAD16, manufactured by Hudson Reed, Ltd. ("Hudson Reed"), in accordance with DOE test procedures (10 C.F.R. Part 430, Subpart B, Appendix S).

DOE's testing demonstrated that Hudson Reed showerhead model number HEAD16 is not in compliance with Federal law. Federal water conservation standards require that the water flow for a showerhead may not exceed 2.5 gallons of water per minute (gpm). Hudson Reed showerhead model number HEAD16 consumed 8.1 gpm. The units obtained by DOE did not have pre-installed flow control inserts, and no such inserts were contained in the showerhead packaging.

FINDINGS

Based on the facts stated above, DOE has determined that Hudson Reed basic model HEAD16 does not comply with the applicable Federal water conservation standards.

Hudson Reed had represented to DOE that it had modified its business practices to ensure that all showerheads distributed in the U.S. would comply with applicable water conservation standards, including having flow control inserts installed when needed. DOE has found that at least one model, HEAD16, is not being distributed in commerce in the U.S. with a flow control insert installed.

MANDATORY ACTIONS BY HUDSON REED

In light of the above findings, Hudson Reed 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 model HEAD16;

- (2) Provide immediate written notification of this noncompliance determination to all persons to whom Hudson Reed has distributed units of basic model HEAD16;
- (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 Hudson Reed 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 model HEAD16 in the United States.

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 CFR § 429.7. Failure to adhere to these procedures will result in a rejection of your request for confidential treatment.

Furthermore, Hudson Reed must ensure that all showerheads being distributed in the United States have a flow control insert installed if necessary to comply with the applicable water conservation standard.

OPTIONAL ACTIONS BY HUDSON REED

In addition to the mandatory steps listed above that Hudson Reed must complete, Hudson Reed may elect to modify basic model HEAD16 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. Part 429. Prior to distribution in commerce, Hudson Reed must provide to DOE test data demonstrating that the modified basic model complies with the applicable standard. All units must be tested in accordance with DOE regulations, and Hudson Reed 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 Hudson Reed 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 Hudson Reed in the United States.

CONSEQUENCES FOR FAILURE TO COMPLY WITH THIS NOTICE

Should Hudson Reed fail to cease immediately the distribution of all units of basic model HEAD16, this letter serves as notice that DOE will seek a judicial order within 30 calendar days to restrain further distribution. If, however, Hudson Reed provides DOE with a satisfactory statement within that 30-day period detailing the steps that Hudson Reed 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 needed.

Should DOE discover additional models of showerheads being distributed in commerce in the U.S. without flow control inserts installed, DOE may seek more generalized injunctive relief against Hudson Reed.

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 the basic model distributed in violation of Federal law.



Timothy G. Lynch
Deputy General Counsel for
Litigation and Enforcement