

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

In the Matter of: )

**Grainger International Inc.,** )  
(freezers) )

Case Number: 2013-SE-1411

Issued: April 29, 2013

**NOTICE OF NONCOMPLIANCE DETERMINATION**

Manufacturers and private labelers are prohibited from distributing covered products in the United States that do not comply with applicable federal energy conservation standards. 10 C.F.R. § 429.102; 42 U.S.C. § 6302. Grainger International Inc. (“Grainger”), a subsidiary of W.W. Grainger, Inc., is a private labeler and uses the “Dayton” trademark owned by its parent corporation to distribute refrigerators, freezers, and refrigerator-freezers in the United States.

**TESTING**

1. The U.S. Department of Energy (“DOE”) tested four units of [REDACTED]<sup>1</sup> model number [REDACTED], manufactured in [REDACTED], that had been distributed in the United States by a third-party private labeler. The [REDACTED] is privately labeled and distributed in the United States by Grainger as the Dayton 5NTX4.<sup>2</sup>

DOE’s testing in accordance with DOE test procedures (10 C.F.R. Part 430, Subpart B, Appendix B1) demonstrated that [REDACTED] basic model [REDACTED] is not in compliance with the applicable federal energy conservation standard. Given the tested units’ measured volumes, the maximum permissible rate of energy consumption was [REDACTED] kilowatt-hours per year (kWh/yr).<sup>3</sup> The four units that DOE tested consumed energy at the rates [REDACTED] kWh/yr. Furthermore, in a Compromise Agreement executed April 29, 2013, Grainger admitted that the Dayton 5NTX4 does not comply with the applicable federal energy conservation standard.

2. DOE tested four units of [REDACTED] model number [REDACTED], manufactured in [REDACTED], that had been distributed in the United States by a third-party private labeler. The

<sup>1</sup> [REDACTED] for the purposes of this Notice means [REDACTED] or one or more of those [REDACTED] companies, all of which are subsidiaries or affiliates of [REDACTED]

<sup>2</sup> [REDACTED] informed DOE through compelled sales records that that it sold model [REDACTED] to Grainger to be privately labeled and distributed in the United States as the Dayton 5NTX4.

<sup>3</sup> 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).

██████████ is privately labeled and distributed in the United States by Grainger as the Dayton 5NTX5.<sup>4</sup>

DOE's testing in accordance with DOE test procedures (10 C.F.R. Part 430, Subpart B, Appendix B1) demonstrated that ██████████ basic model ██████████ is not in compliance with the applicable federal energy conservation standard. Given the tested units' measured volumes, the maximum permissible rate of energy consumption was ██████████ kilowatt-hours per year (kWh/yr). Based on their performance during testing, the four units that DOE tested consumed energy at the respective rates of ██████████ kWh/yr. Furthermore, in a Compromise Agreement executed April 29, 2013, Grainger admitted that the Dayton 5NTX5 does not comply with the applicable federal energy conservation standard.

3. In accordance with DOE test procedures (10 C.F.R. Part 430, Subpart B, Appendix B1), DOE tested four units of ██████████ basic model ██████████, manufactured in ██████████ and distributed in the United States by a third-party private labeler. The ██████████ is privately labeled and distributed in the United States by Grainger as the Dayton 5NTX6.<sup>5</sup>

Given the tested units' measured volumes, the maximum permissible rate of energy consumption was ██████████ kilowatt-hours per year (kWh/yr). Based on their performance during testing, the four units that DOE tested consumed energy at the respective rates of ██████████ kWh/hr. Accordingly, none of the tested units met the energy conservation standard set forth in 10 C.F.R. § 430.32(a). Furthermore, in a Compromise Agreement executed April 29, 2013, Grainger admitted that the Dayton 5NTX6 does not comply with the applicable federal energy conservation standard.

#### FINDINGS

Based on the facts stated above, DOE has determined, after applying the calculations set forth in 10 C.F.R. Part 429, Subpart C, Appendix A, that the Dayton 5NTX4, the Dayton 5NTX5, and the Dayton 5NTX6 do not comply with the applicable federal energy conservation standard.

#### MANDATORY ACTIONS BY GRAINGER

In light of the above finding, Grainger 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, regardless of label, within the Dayton 5NTX4, the Dayton 5NTX5, and the Dayton 5NTX6 basic models;

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<sup>4</sup> ██████████ informed DOE through compelled sales records that it sold model ██████████ to Grainger to be privately labeled and distributed in the United States as the Dayton 5NTX5.

<sup>5</sup> ██████████ informed DOE through compelled sales records that it sold model ██████████ to Grainger to be privately labeled and distributed in the United States as the Dayton 5NTX6.

(2) Provide immediate written notification of this noncompliance determination to all persons in the United States to whom Grainger has distributed units, regardless of label, of the Dayton 5NTX4, the Dayton 5NTX5, and the Dayton 5NTX6 in the past three years; and

(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 that Grainger notified.

The response required by paragraph (3) 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 GRAINGER

In addition to the mandatory steps listed above that Grainger must complete, Grainger may elect to modify the Dayton 5NTX4, the Dayton 5NTX5, and/or the Dayton 5NTX6 to bring any or all into compliance with the applicable standard. Any 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, Grainger must provide to DOE test data demonstrating that any modified basic model complies with the applicable standard. All units must be tested in accordance with DOE regulations, and Grainger shall bear the costs of all such testing that is conducted.

If, after this testing, DOE determines that any modified basic model complies with the applicable standard, DOE shall issue a Notice of Allowance to permit Grainger to resume the distribution of that 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 Grainger in the United States.

CONSEQUENCES FOR FAILURE TO COMPLY WITH THIS NOTICE

Should Grainger fail to cease immediately the distribution in the United States of all units, regardless of label, of the Dayton 5NTX4, the Dayton 5NTX5, and the Dayton 5NTX6 basic models, this letter serves as notice that DOE will seek a judicial order within 30 calendar days to restrain further distribution. If, however, Grainger provides DOE with a satisfactory statement within that 30-day period detailing the steps that Grainger 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 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