

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

Issued: November 5, 2013

## **NOTICE OF NONCOMPLIANCE DETERMINATION**

Refrigerator-freezers are covered products subject to federal energy conservation standards as described in 42 U.S.C. § 6295(b) and 10 C.F.R. § 430.32(a). Manufacturers (including importers) 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(a)(6); 42 U.S.C. § 6302(a)(5).

## TESTING

On October 15, 2012, DOE completed testing of one unit of basic model 8TAR81 (“the basic model”), manufactured by Whirlpool Corporation (“Whirlpool”). On January 21, 2013, DOE completed testing of three additional units of the basic model.<sup>1</sup> All four tests were conducted in accordance with the applicable DOE test procedure. *See* 10 C.F.R. Part 430, Subpart B, Appendix A1.

DOE's testing demonstrated that the basic model is not in compliance with the applicable federal energy conservation regulations. Given the tested units' measured volumes, their respective maximum permissible rates of energy consumption were 475, 474, 475, and 475 kilowatt-hours

<sup>1</sup> The first unit that DOE tested bore the model number “W8TXNGFWB02”. Each of the three additional tested units bore the model number “W8TXNGMWQ03”. In a certification report submitted to DOE, CCMS # 16530, Whirlpool certified both individual model W8TXNGFW\*0\* and individual model W8TXNGMW\*0\* as falling within basic model 8TAR81.

On July 16, 2013, Whirlpool submitted another certification report, CCMS # 31347, listing the same two individual models (W8TXNGFW\*0\* and W8TXNGMW\*0\*) as part of a different basic model, basic model 3tai81. Whirlpool, however, never submitted a certification report indicating that it had discontinued basic model 8TAR81. In addition, in CCMS # 31347, Whirlpool listed basic model 3tai81 as an existing basic model rather than a new basic model. Therefore, DOE assumes for the purpose of this Notice that Whirlpool's entry of "3tai81" was a clerical error and that units of individual models W8TXNGFW\*0\* and W8TXNGMW\*0\*, and units of all other individual models previously certified as part of 8TAR81, are part of the same basic model.

per year (kWh/yr).<sup>2</sup> Based on their performance during testing, the four units that DOE tested consumed energy at the rates of 505, 521, 540, and 493 kWh/yr, an average of eight percent above the federal limit.

## FINDING

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 basic model does not comply with the applicable federal energy conservation standard.

## MANDATORY ACTIONS BY WHIRPOOL

In light of the above finding, Whirlpool 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 the basic model;
- (2) Provide immediate written notification of this noncompliance determination to all persons in the United States to whom Whirlpool has distributed units of the basic model;
- (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 Whirlpool notified; and
- (4) Provide to DOE within 30 calendar days of the date of this Notice all records, reports, and other documentation pertaining to the acquisition, ordering, storage, shipment, or sale of units of the basic model in the United States in the past three years, in addition to a summary page listing the total number of units Whirlpool distributed in commerce in the U.S. in the past three years.

The responses required by paragraphs (3) and (4) must be dated and signed and must include a declaration that the contents of the responses are true. 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.

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<sup>2</sup> Under 10 C.F.R. § 430.32(a), the maximum energy use, in kWh/yr, for a refrigerator-freezer in product class 3 is 276.0 plus the product of 9.80 and the total adjusted volume of the particular refrigerator freezer (9.80AV+276.0). The tested basic model falls into product class 3 because it is a refrigerator-freezer with automatic defrost and a top-mounted freezer but without through-the-door ice service. *See* 10 C.F.R. § 430.32(a).

To ensure timely receipt, DOE strongly encourages you to submit your responses by e-mail, fax, or an express delivery service. DOE accepts scanned images of documents (such as PDFs).

Responses may be sent by any of the following methods:

By email to: abigail.chingos@hq.doe.gov

By fax to: (202) 586-3274

By private carrier to: Abigail Burger Chingos  
Trial Attorney (GC-32)  
U.S. Department of Energy  
1000 Independence Ave., SW  
Washington, DC 20585

#### OPTIONAL ACTIONS

In addition to the mandatory steps listed above that Whirlpool must complete, Whirlpool may elect to modify the basic model to bring it into compliance with the applicable standard. A 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. In addition to satisfying all requirements of this part, any models within the basic model must be assigned new model numbers and Whirlpool must also maintain, and provide upon request to DOE, records that demonstrate that modifications have been made to all units of the new basic model prior to distribution in commerce. Prior to distribution in commerce in the United States, Whirlpool 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 Whirlpool 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 Whirlpool 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 may be sold or otherwise distributed by Whirlpool in the United States.

#### CONSEQUENCES FOR FAILURE TO COMPLY WITH THIS NOTICE

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

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Laura L. Barhydt  
Assistant General Counsel  
for Enforcement