

In the Matter of:)
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Haier America Trading, L.L.C.) Case Number: 2015-SE-14034
(refrigerators, refrigerator-freezers, and freezers))
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NOTICE OF NONCOMPLIANCE DETERMINATION

Refrigerators, freezers and refrigerator-freezers are covered products subject to federal energy conservation standards. 10 C.F.R. §§ 430.2, 430.32(a). Manufacturers and private labelers are prohibited from distributing in commerce¹ covered products in the United States that do not comply with applicable federal energy conservation standards. 10 C.F.R. § 429.102(a)(6).

TESTING

The U.S. Department of Energy (“DOE”) tested four units of the basic model that includes Haier brand refrigerator individual model number HBF05EABB (“the basic model”). DOE’s testing in accordance with applicable DOE test procedures (Appendix A1 to Subpart B of Part 430 of the January 1, 2014 edition of the Code of Federal Regulations) demonstrates that the basic model is not in compliance with the applicable energy conservation standard. Basic model HBF05EABB belongs to the product class “Compact refrigerator-freezers—automatic defrost with top-mounted freezer and compact all-refrigerator—automatic defrost.” 10 C.F.R. § 430.32(a). The maximum annual energy use (AEU) for this product class for units with an adjusted volume equal to the average of the tested units and manufactured on or after July 1, 2001, and before September 15, 2014, is 435 kWh/year. The four units that DOE tested performed at an AEU of 459, 524, 498, and 505 kWh/year, respectively, an average of 14% above the applicable 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 basic model (including each individual model within the basic model) does not comply with the applicable energy conservation standard.

¹The terms ‘to distribute in commerce’ and ‘distribution in commerce’ mean to sell in commerce, to import, to introduce or deliver for introduction into commerce, or to hold for sale or distribution after introduction into commerce. 42 U.S.C. § 6291(16).

MANDATORY ACTIONS BY HAIER AMERICA TRADING, L.L.C.

In light of the above findings, Haier America Trading, L.L.C. (“Haier”) 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 Haier has distributed units of any model within 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 that Haier notified; and
- (4) Provide to DOE within 30 calendar days of the date of this Notice records sufficient to show the number of units of the basic model that Haier distributed in commerce in the United States, including all units imported into the United States, in the past five years.

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 HAIER

In addition to the mandatory steps listed above that Haier must complete, Haier may elect to modify a basic model to bring it into compliance with the current 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 Haier 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 of the modified basic model in commerce in the United States, Haier 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 Haier shall bear the costs of all such testing.

If, after this testing, DOE determines that the modified basic model complies with the applicable standard, DOE will issue a Notice of Allowance to permit Haier 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, Haier is prohibited from selling or otherwise distributing units in commerce in the United States.

CONSEQUENCES FOR FAILURE TO COMPLY WITH THIS NOTICE

Should Haier fail to cease immediately the distribution in the United States of all units of models within the basic model, this letter serves as notice that DOE may seek a judicial order within 30 calendar days to restrain further distribution. If, however, Haier provides DOE with a satisfactory statement within that 30-day period detailing the steps that Haier 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 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