

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

In the Matter of:)
)
)
Harrington Creations, LLC) Case Number: 2014-SW-28011
d/b/a Harrington Brass Works)
(faucets))
)
)

Issued: July 30, 2014

NOTICE OF NONCOMPLIANCE DETERMINATION

Faucets are covered products subject to federal energy conservation standards as described in 42 U.S.C. § 6295(j) and 10 C.F.R. §430.32(o). Manufacturers and private labelers are prohibited from distributing covered products that do not comply with the applicable water conservation standards. 10 C.F.R. § 429.102(a)(6); 42 U.S.C. § 6302(a)(5).

TESTING AND STANDARD

On October 21, 2013, DOE completed testing one unit of kitchen faucet individual model 20-210-026¹, manufactured by Harrington Creations, LLC d/b/a Harrington Brass Works (“Harrington”). On June 12, 2014, DOE completed testing of three additional units of the same individual model. DOE followed the faucet test procedure for all four tests. *See* 10 C.F.R. Part 430, Subpart B, Appendix S.

Kitchen faucets manufactured on or after January 1, 1994, must not exceed the maximum flow rate of 2.2 gallons/minute. 42 U.S.C. § 6295(j), 10 C.F.R. § 430.32(o). The flow rates of the four units DOE tested at a flowing water pressure of 80 pounds per square inch were 3.1, 3.0, 3.1, and 3.1 gallons/minute.

FINDING

Based on the facts stated above, DOE finds, after applying the calculations in 10 C.F.R. Part 429, Subpart C, Appendix A, that the basic model that includes Harrington kitchen faucet individual model 20-210-026 does not comply with the applicable federal water conservation standard.²

¹ Individual model 20-210-026 has a polished chrome finish. Available finishes of part number 20-210 include polished nickel (20-210-014), satin nickel (20-210-015), perma brass (20-210-030), antique brass, satin brass, light bronze, antique copper, oil rubbed copper, and pewter.

² To date, DOE has not received a certification report for a Harrington basic model including individual model 20-210-026 or any models with similar individual model numbers. A faucet “basic model” is all units of a given type of covered product (or class thereof) manufactured by one manufacturer, which have essentially identical physical, and functional (or hydraulic) characteristics that affect water consumption or water efficiency, and the

MANDATORY ACTIONS BY HARRINGTON

Harrington 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 that includes individual model 20-210-026;
- (2) Provide immediate written notification of this noncompliance determination to all persons in the United States to whom Harrington has distributed units of the basic model that includes individual model 20-210-026;
- (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 Harrington 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 the basic model that includes individual model 20-210-026 in the United States on or after January 13, 2010, in addition to a summary page listing the total number per year of units Harrington distributed in commerce in the United States on or after January 13, 2010.³

Harrington must date, sign, and notarize the responses required by paragraphs (3) and (4).

If Harrington claims 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, Harrington 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 Harrington's request for confidential treatment.

OPTIONAL ACTIONS BY HARRINGTON

In addition to the mandatory steps listed above that Harrington must complete, Harrington may elect to modify the basic model that includes individual model 20-210-026 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. Prior to distribution in commerce in the United States, Harrington must provide to

identical flow control mechanism attached to or installed within the fixture fittings, or the identical water-passage design features that use the same path of water in the highest flow mode. 10 C.F.R. §430.2. At a minimum, this basic model includes all models that differ only in finish, namely every model of part number 20-210.

³ Please note that "[t]he 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). Thus, the summary page must include all units that Harrington has imported into the United States, as well as any other units that otherwise meet the definition in 42 U.S.C. § 6291(16).

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 Harrington must 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 will issue a notice of allowance to permit Harrington to resume the distribution of the modified basic model in the United States. Until DOE determines that the modified model complies with the applicable standard, Harrington is prohibited from selling or otherwise distributing units of the basic model that includes individual model 20-210-026 in commerce in the United States.

CONSEQUENCES FOR FAILURE TO COMPLY WITH THIS NOTICE

If Harrington fails to cease immediately the distribution in the United States of all units of the basic model that includes individual model 20-210-026, this letter serves as notice that DOE will seek a judicial order within 30 calendar days to restrain further distribution. If, however, Harrington provides DOE with a satisfactory statement within that 30-day period detailing the steps that Harrington will take to ensure that units of the noncompliant 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.

_____/S/_____
Laura L. Barhydt
Assistant General Counsel
for Enforcement

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In the Matter of:)

Harrington Creations, LLC)
d/b/a Harrington Brass Works)
(faucets))

Case Number: 2014-SW-28011

Issued: October 15, 2014

NOTICE

This Notice corrects an error in the Notice of Noncompliance Determination issued in this case on July 30, 2014.

On July 30, 2014, the Department of Energy (“DOE”) issued a Notice of Noncompliance Determination (“Noncompliance Determination”) to Harrington Creations, LLC d/b/a Harrington Brass Works (“Harrington”) finding that the basic model that includes Harrington kitchen faucet individual model 20-210-026 does not comply with the applicable federal water conservation standard.

As explained in that Noncompliance Determination, DOE made this finding based on testing of a total of four units of kitchen faucet individual model 20-210-026. Although DOE followed the faucet test procedure for all four tests, *see* 10 C.F.R. Part 430, Subpart B, Appendix S, the Noncompliance Determination contained a typographical error. It incorrectly stated the test pressure was 80 psi. DOE tested the units at 60 psi, the correct test pressure for faucets.

Harrington is not required to take any additional action as a result of this Notice.

_____/S/_____
Laura L. Barhydt
Assistant General Counsel
for Enforcement