

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

In the Matter of:)
)
Perlick Corporation) Case Number: 2013-SE-14001
(refrigerators/refrigerator-freezers/freezers))
)

Issued: February 27, 2015

NOTICE OF NONCOMPLIANCE DETERMINATION

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 June 27, 2013, DOE completed testing of three units of freezer basic model HP24F (“the basic model”), manufactured by Perlick Corporation (“Perlick”).¹ These three tests were conducted in accordance with the applicable DOE test procedure. See 10 C.F.R. Part 430, Subpart B, Appendix B1.

DOE’s testing demonstrated that the basic model is not in compliance with the applicable federal energy conservation regulations. Given these three tested units’ measured volumes, their respective maximum permissible rates of energy consumption were 494, 493, and 494 kilowatt-hours per year (kWh/yr).² Based on their performance during testing, these units consumed energy at the rates of 646, 659, and 624 kWh/yr, an average of more than twenty percent above the federal limit.³

¹ All units that DOE tested bore the model number HP24FS. On August 1, 2013, Perlick submitted certification report CCMS # 32150, in which it listed individual model HP24F as falling within basic model HP24F; as of the date DOE completed its testing, Perlick had not separately certified individual model HP24FS. Accordingly, DOE assumes, for the purpose of this Notice, that the tested units bearing the model number HP24FS fall within basic model HP24F.

² Under 10 C.F.R. § 430.32(a), the maximum energy use, in kWh/yr, for a freezer in product class 17 is 391.0 plus the product of 11.40 and the total adjusted volume of the particular freezer (11.40AV + 391.0). The tested basic model falls into product class 17 because it is a compact upright freezer with automatic defrost. See 10 C.F.R. § 430.32(a).

³ Prior to testing the three units discussed above, DOE also conducted an assessment test on an initial unit of the basic model. Based on DOE’s assessment test, the unit’s annual energy use

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

MANDATORY ACTIONS BY PERLICK

In light of the above finding, Perlick 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 Perlick 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 Perlick 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 on or after April 1, 2010, in addition to a summary page listing the total number of units Perlick distributed in commerce in the U.S. on or after April 1, 2010.

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

was 848 kWh/yr. At Perlick's request, DOE re-tested this unit in a slightly different configuration. Based on the re-test, the unit's annual energy use was 897 kWh/yr.

Given the variance in the performance of this unit for the two tests, DOE has excluded the unit from the calculations underlying its finding in this Notice. Because DOE has only included three units, it has used the calculations applicable to low-volume products and equipment. *See* 10 C.F.R. Part 429, Subpart C, Appendix B. DOE notes, however, that the basic model would also fail to comply with the applicable standard if either test result for the initial unit were included and DOE used the calculations for high-volume products and equipment. *See* 10 C.F.R. Part 429, Subpart C, Appendix A.

Finally, DOE notes that the initial unit, which was the most consumptive unit, was purchased on the market by DOE. The other three units, which were less consumptive, were built and provided by Perlick in response to a Test Notice.

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.

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 Perlick must complete, Perlick may elect to modify the basic model to bring it into compliance with the applicable standard. If Perlick has already modified the basic model to bring it into compliance with the applicable standard, Perlick must immediately submit test data demonstrating that the modified basic model complies 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 Perlick 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, Perlick 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 Perlick 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 Perlick 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 Perlick in the United States.

CONSEQUENCES FOR FAILURE TO COMPLY WITH THIS NOTICE

If Perlick 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, Perlick provides DOE with a satisfactory statement within that 30-day period detailing the steps that Perlick 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.

/s/

Laura L. Barhydt
Assistant General Counsel
for Enforcement