

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

In the Matter of:)
)
Perlick Corporation) Case Number: 2013-SE-14002
(refrigerators/refrigerator-freezers/freezers))
)

Issued: January 13, 2014

NOTICE OF NONCOMPLIANCE DETERMINATION

Refrigerators 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 December 21, 2012, DOE completed testing of one unit of refrigerator basic model HP48RR (“the basic model”), manufactured by Perlick Corporation (“Perlick”). On June 27, 2013, DOE completed testing of three additional units of the basic model.¹ 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 standards. Given the tested units’ measured volumes, their respective maximum permissible rates of energy consumption were 391, 390, 390, and 391 kilowatt-hours per year (kWh/yr).² Based on their performance during testing, the four units that DOE tested

¹ The first unit that DOE tested and one of the three additional units tested bore the model number HP48RT-S. The other two additional units tested bore the model number HP48RR-S. In its most recent certification report, CCMS # 32150, Perlick indicated that individual models HP48RT and HP48RR are in two different basic models (basic models HP48RT and HP48RR, respectively). However, as of June 27, 2013, the date on which DOE completed its testing, Perlick’s most recent certification report, CCMS # 10663, indicated that individual models HP48RR and HP48RT were part of the same basic model (basic model HP48RR). Therefore, for the purpose of this Notice, all four tested units are part of the same basic model.

² Under 10 C.F.R. § 430.32(a), the maximum energy use, in kWh/yr, for a refrigerator in product class 3 is 276.0 plus the product of 9.80 and the total adjusted volume of the particular refrigerator (9.80AV + 276.0). The tested basic model falls into product class 3 because it is an “all-refrigerator” (i.e., it does not have a freezer compartment) with automatic defrost.

consumed energy at the rates of 574, 555, 552, and 619 kWh/yr, an average of approximately forty-seven 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 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 January 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 January 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 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. 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 part 429, 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