

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

In the Matter of:

Bradford White Corporation
(water heater)

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) Case Number: 2015-SE-44010
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Issued: June 13, 2019

NOTICE OF NONCOMPLIANCE DETERMINATION

Water heaters are covered consumer products subject to federal energy conservation standards. 10 C.F.R. § 430.2. Commercial water heaters are covered equipment also subject to federal energy conservation standards. 10 C.F.R. §§ 431.2, 431.110. Manufacturers and private labelers are prohibited from distributing covered products and equipment that do not comply with an applicable conservation standard. 10 C.F.R. § 429.102(a)(6). Specifically, electric storage water heaters manufactured on or after January 20, 2004, and before April 16, 2015, must have an energy factor of at least $0.97 - (0.00132 * \text{rated storage volume (gallons)})$. 10 C.F.R. § 430.32 (from Federal regulations in effect on January 1, 2015). Commercial electric storage water heaters manufactured on and after October 29, 2003, must have a standby loss of no greater than $0.30 + (27/V_m) (\%/hr)$, where V_m is the measured storage volume in gallons. 10 C.F.R. § 431.110(a).

DOE performed enforcement testing using the test procedure applicable to commercial electric storage water heaters, as Bradford White certified the model as such; however, the units Bradford White provided to DOE for enforcement testing satisfy the definition of ‘consumer’ electric storage water heater as the input power of the provided units is 6 kW. As noted below, this basic model does not meet the standard applicable to commercial electric storage water heaters.

TESTING

The U.S. Department of Energy (“DOE”) tested four units of Bradford White brand electric storage water heater model 80A, manufactured by Bradford White Corporation (“Bradford White”). DOE’s testing in accordance with DOE test procedures applicable to commercial storage water heaters (10 C.F.R. Part 431, Subpart G, Appendix B) yielded the following results. The measured storage volume of the four units DOE tested were 71.7, 71.7, 71.5, and 71.6 gallons. Based on the tested volumes of the four units subject to enforcement testing, the maximum standby loss for a model of commercial storage water heater with these measured storage volumes is 0.68 percent per hour. The tested standby loss of the four units DOE tested were 0.85, 0.89, 0.82, and 0.73 percent per hour, respectively.

FINDINGS

As an initial matter, DOE notes that, although the test procedures and metrics differ between consumer and commercial water heaters, the standard applicable to ‘consumer’ electric storage water heaters is more stringent than that applicable to commercial electric storage water heaters. Therefore, a model that fails to meet the commercial electric storage water heater standard *de facto* also fails to meet the consumer electric storage water heater standard. Based on the facts stated above, DOE finds that, after applying the calculations in 10 C.F.R. Part 429, Subpart C, Appendix B, the basic model¹ that includes nameplate model 80A-6-3-102B-AA (“the basic model”) does not comply with the applicable federal energy conservation standard of no more than 0.68 percent per hour.

NOTICE

Distribution in commerce of a covered product that does not meet the energy conservation standards is a violation subject to civil penalty, regardless of the issuance of this Notice. If Bradford White continues to distribute the basic model, DOE may assess a higher civil penalty for units sold after the date of this Notice. DOE notes that Bradford White certified basic model 80A as “D” discontinued in May 2018 and again in May 2019, which indicates that Bradford White no longer manufactures or distributes the model in commerce in the United States.

MANDATORY ACTION BY BRADFORD WHITE

In light of the above findings, Bradford White must, within 30 calendar days of the date of this Notice, provide to DOE records sufficient to show the number of units of the basic model that Bradford White distributed in commerce in the United States in the past five years. 10 C.F.R. § 429.114(a). This includes all units that remain in Bradford White’s inventory that were manufactured (including importation) on or after October 29, 2003, and all units Bradford White 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.

CONSEQUENCES FOR FAILURE TO COMPLY WITH THIS NOTICE

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

¹ For the purposes of this determination, the “basic model” is all units manufactured by Bradford White within the same equipment class, having the same primary energy source and essentially identical electrical, physical and functional characteristics that affect energy consumption or energy efficiency. *See* 10 C.F.R. § 431.102.

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 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