

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

In the Matter of:)
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Danby Products Limited) Case Number: 2019-SE-20005
(clothes washers))
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Issued: May 28, 2020

NOTICE OF NONCOMPLIANCE DETERMINATION

Clothes washers are covered products subject to federal energy conservation standards. 10 C.F.R. §§ 430.2, 430.32(g). Manufacturers¹ and private labelers are prohibited from distributing covered products that do not comply with an applicable energy conservation standard. 10 C.F.R. § 429.102(a)(6). Specifically, clothes washers belonging to the product class “Top-loading, Standard (1.6 ft³ or greater capacity)” manufactured on or after January 1, 2018, must have an integrated modified energy factor (IMEF) that meets or exceeds the minimum of 1.57 cu.ft./kWh/cycle. 10 C.F.R. § 430.32(g)(4).

TESTING

The U.S. Department of Energy (“DOE”) tested four units of Danby brand clothes washer basic model DWM055WDB (“the basic model”), manufactured by Danby Products Limited (“Danby”). DOE’s testing in accordance with DOE test procedures (10 C.F.R. Part 430, Subpart B, Appendix J2) yielded the following results. The capacities of the four units that DOE tested were 1.63, 1.63, 1.64, and 1.64 ft³. The IMEFs of the four units that DOE tested were 1.42, 1.31, 1.32, and 1.34 cu.ft./kWh/cycle.

FINDINGS

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 model² does not comply with the applicable federal energy conservation standard of no less than 1.57 cu.ft./kWh/cycle.

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

¹ The term “manufacture” means to manufacture, produce, assemble or import. 42 U.S.C. § 6291(10).

² A “basic model” is all units manufactured by one manufacturer that have the same primary energy source and essentially identical electrical, physical and functional characteristics that affect energy consumption or energy efficiency. 10 C.F.R. § 430.2.

Danby continues to distribute the basic model, DOE may assess a higher civil penalty for units sold after the date of this Notice.

MANDATORY ACTION BY DANBY

In light of the above findings, Danby 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 Danby imported into the United States on or after January 1, 2018. This includes all such units that Danby further distributed in commerce in the United States, and all such units that remain in Danby's inventory in the United States. 10 C.F.R. § 429.114(a).

If Danby 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, Danby 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 Danby's request for confidential treatment.

OPTIONAL ACTIONS BY DANBY

In addition to the mandatory steps listed above that Danby must complete, Danby may elect to modify the basic model to bring it into compliance with the applicable standards. 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 individual models within the basic model must be assigned new model numbers and Danby 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, Danby must provide to DOE test data demonstrating that the modified basic model complies with the applicable standards.³ All units must be tested in accordance with DOE regulations, and Danby 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 standards, DOE shall issue a Notice of Allowance to permit Danby to resume the distribution of the modified basic model in the United States.

CONSEQUENCES FOR CONTINUING TO DISTRIBUTE THE BASIC MODEL

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

³ DOE may require that an independent, third-party testing facility perform this testing.

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.

Laura L. Barhydt
Assistant General Counsel
for Enforcement