

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

In the Matter of:)

Haier America Trading, LLC)
(freezers))

Case Number: 2011-SE-1428

Issued: April 23, 2013

NOTICE OF NONCOMPLIANCE DETERMINATION

Manufacturers and private labelers are prohibited from distributing covered products that do not comply with applicable federal energy conservation standards. 10 C.F.R. § 429.102; 42 U.S.C. § 6302. Haier America Trading, LLC (“Haier”) is a private labeler that owns the “Haier” trademark to distribute refrigerators, freezers, and refrigerator-freezers in the United States.¹

DOE completed testing of four units of [REDACTED] basic model [REDACTED], manufactured in [REDACTED] and distributed in the United States by Haier as Haier model HMCM106EA (“the Haier HMCM106EA”). These tests were conducted in accordance with the relevant DOE test procedures. See 10 C.F.R. Part 430, Subpart B, Appendix B1.

On March 21, 2012, DOE issued a Test Notice pursuant to 10 C.F.R. § 429.110(b), requiring Haier to ship four units of the Haier HMCM106EA to a designated test lab. These units were also tested in accordance with DOE test procedures (10 C.F.R. Part 430, Subpart B, Appendix B1).

Given the tested units’ measured volumes, the maximum permissible rate of energy consumption was [REDACTED] kilowatt-hours per year (kWh/yr). Based on their performance during testing, the eight units that DOE tested consumed energy at the respective rates of [REDACTED]. Accordingly, the units did not meet the energy conservation standard set forth in 10 C.F.R. § 430.32(a). Furthermore, in a Compromise Agreement executed April 23, 2013, Haier admitted that the Haier HMCM106EA does not comply with the applicable federal energy conservation standard.

¹ [REDACTED] informed DOE through compelled sales records that it sold model [REDACTED] to Haier to be privately labeled and distributed in the United States. Haier also admits that it purchased, privately labeled, and distributed in the United States units of [REDACTED] basic model [REDACTED].

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 Haier HMCM106EA, does not comply with the applicable federal energy conservation standard.

MANDATORY ACTIONS BY HAIER

In light of the above finding, Haier 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, regardless of label, of the Haier HMCM106EA;
- (2) Provide immediate written notification of this noncompliance determination to all persons in the United States to whom Haier has distributed units, regardless of label, of the Haier HMCM106EA in the past three years;
- (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 Haier notified; and

The responses required by paragraph (3) must be dated, signed, and notarized, and must include a declaration under penalty of perjury that the contents of the responses are true. Specifically, the person signing the response must attest the following: "I declare under penalty of perjury that the statements contained in this response are true, correct, and complete."

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 CFR § 429.7. Failure to adhere to these procedures will result in a rejection of your request for confidential treatment.

OPTIONAL ACTIONS BY HAIER

In addition to the mandatory steps listed above that Haier must complete, Haier may elect to modify the Haier HMCM106EA to bring it into compliance with the applicable standard. The 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, Haier 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 Haier 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 Haier 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 of the basic model may be sold or otherwise distributed by Haier in the United States.

CONSEQUENCES FOR FAILURE TO COMPLY WITH THIS NOTICE

Should Haier fail to cease immediately the distribution in the United States of all units, regardless of label, of the Haier HMCM106EA, this letter serves as notice that DOE will seek a judicial order within 30 calendar days to restrain further distribution. If, however, Haier provides DOE with a satisfactory statement within that 30-day period detailing the steps that Haier 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 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