

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

In the Matter of:)
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Bu Sung America Corporation d/b/a) Case Number: 2015-SE-42007
Everest Refrigeration)
(commercial refrigeration equipment))
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Issued: April 9, 2015

NOTICE OF NONCOMPLIANCE DETERMINATION

Commercial refrigerator-freezers are covered equipment subject to federal energy conservation standards as described in 42 U.S.C. § 6313(c) and 10 C.F.R. § 431.66. Manufacturers (including importers) and private labelers are prohibited from distributing covered equipment in the United States that does not comply with applicable federal energy conservation standards. *See* 10 C.F.R. § 429.102(a)(6) and 42 U.S.C. §§ 6316(a) and 6302(a)(5).

TESTING

On January 22, 2015, DOE completed testing of one unit of the commercial refrigerator-freezer basic model that includes nameplate model ESRF2 (“the basic model”), manufactured by Bu Sung America Corporation d/b/a Everest Refrigeration (“Everest”). In March 2015, DOE complete testing of three additional units of the basic model. All four tests were conducted in accordance with the applicable DOE test procedure. *See* 10 C.F.R. § 431.64.

DOE’s testing demonstrated that the basic model is not in compliance with the applicable federal energy conservation regulations. Given the tested units’ measured volumes, their respective maximum permissible rates of energy consumption were 12.00, 12.03, 12.03, and 12.03 kilowatt-hours per day (kWh/day).¹ Based on their performance during testing, these units consumed energy at the rates of 13.63, 14.04, 14.31, and 13.88 kWh/day, an average of more than fifteen percent above the federal limit.

¹ Under 10 C.F.R. § 431.66(b)(1), the maximum daily energy consumption, in kWh/day, for a refrigerator-freezer with solid doors and a self-contained condensing unit designed for holding temperature applications is the greater of either (1) -0.71 plus the product of 0.27 and the adjusted volume of the particular refrigerator-freezer ($0.27AV-0.71$) or (2) 0.70 .

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 EVEREST

In light of the above finding, Everest 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 Everest 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 Everest 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 June 1, 2010, in addition to a summary page listing the total number of units Everest distributed in commerce in the U.S. on or after June 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, accurate 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 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 Everest must complete, Everest 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 this part, any models within the basic model must be assigned new model numbers and Everest 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, Everest 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 Everest 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 Everest 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 Everest in the United States.

CONSEQUENCES FOR FAILURE TO COMPLY WITH THIS NOTICE

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