

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

In the Matter of:)
)
Fagor Commercial, Inc.) Case Number: 2015-SE-42034
(commercial refrigeration equipment))
)

Issued: April 8, 2016

NOTICE OF NONCOMPLIANCE DETERMINATION

Commercial refrigerators, freezers and refrigerator-freezers are covered equipment subject to federal energy conservation standards. 42 U.S.C. §§ 6311(1)(E), 6313(c), and 10 C.F.R. § 431.66(b). Manufacturers 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. § 6316(a).

TESTING

In April 2015, the U.S. Department of Energy (“DOE”) tested one unit of Fagor Commercial Inc. (“Fagor”) commercial refrigeration equipment nameplate model number FWF-48 (“the nameplate model”). On October 8, 2015, DOE issued a Test Notice pursuant to 10 C.F.R. § 429.110(b), requiring Fagor to ship three units of the nameplate model to a designated test facility. In October 2015, DOE completed testing of these three additional units of the nameplate model, in accordance with DOE test procedures. In November 2015, DOE again tested the assessment test unit.

DOE’s testing in accordance with DOE test procedures (10 C.F.R. § 431.64) demonstrates that the nameplate model is not in compliance with the applicable energy conservation standard. Nameplate model FWF-48 is a self-contained commercial freezer with solid doors designed for holding temperature application. 10 C.F.R. § 431.66(b)(1).

Given the tested units’ mean chilled compartment volume, their maximum permissible rate of energy consumption was 5.18 kilowatt hours per day (kWh/day).¹ Based on their performance during enforcement testing, the four units that DOE tested consumed energy at the rates of 8.38, 8.59, 8.19, and 8.39 kWh/day.

On October 15, 2015, Fagor also conceded via email that their own testing demonstrated that nameplate model FWF-48 would not meet the applicable standard.

¹ Under 10 C.F.R. § 431.66(b)(1), the maximum energy use, in kWh/day, of self-contained commercial freezer with solid doors designed for holding temperature application may not exceed 1.38 plus the product of 0.40 and the chilled compartment volume of the freezer (0.40V + 1.38).

FINDINGS

Based on the facts stated above, DOE has determined that the basic model that includes commercial freezer nameplate model FWF-48 (“the basic model”), including each individual model within the basic model, does not comply with the applicable energy conservation standard.

MANDATORY ACTIONS BY FAGOR

In light of the above findings, Fagor 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 Fagor (or any affiliated or parent company), has distributed units of any model within 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 that Fagor notified; and
- (4) Provide to DOE within 30 calendar days of the date of this Notice any and 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 in the past five years.²

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 FAGOR

In addition to the mandatory steps listed above that Fagor must complete, Fagor may elect to modify a basic model to bring it into compliance with the current 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 Fagor must also maintain, and provide upon request to DOE, records that

² Please note that “[t]he terms ‘to distribute in commerce’ and ‘distribution in commerce’ mean to sell in commerce, to import, to introduce or deliver for introduction into commerce, or to hold for sale or distribution after introduction into commerce.” 42 U.S.C. § 6291(16).

demonstrate that modifications have been made to all units of the new basic model prior to distribution in commerce. Prior to distribution of the modified basic model in commerce in the United States, Fagor must provide to DOE test data demonstrating that the modified basic model complies with the applicable standard.³ All units must be tested in accordance with DOE regulations, and Fagor shall bear the costs of all such testing.

If, after this testing, DOE determines that the modified basic model complies with the applicable standard, DOE will issue a Notice of Allowance to permit Fagor to distribute the modified basic model in the United States. Until DOE determines that the modified basic model complies with the applicable standard, Fagor is prohibited from selling or otherwise distributing units in commerce in the United States.

CONSEQUENCES FOR FAILURE TO COMPLY WITH THIS NOTICE

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

³ DOE may require that this testing be performed at an independent, third-party testing facility.