

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

In the Matter of:

**SandenVendo America, Inc.**  
(refrigerated bottled or canned beverage  
vending machines)

Case Number: 2015-SE-52002

Issued: January 3, 2018

**NOTICE OF NONCOMPLIANCE DETERMINATION**

Refrigerated bottled or canned beverage vending machines are covered equipment subject to federal energy conservation standards. 42 U.S.C. §§ 6291(40) and 10 C.F.R. § 431.296. Manufacturers and private labelers are prohibited from distributing covered equipment in the United States that does not comply with applicable federal energy conservation standards. 10 C.F.R. § 429.102(a)(6); 42 U.S.C. § 6316(a).

**TESTING**

The U.S. Department of Energy (“DOE”) tested two units of basic model VUE 40 manufactured<sup>1</sup> by SandenVendo America, Inc. (“SandenVendo”). DOE’s testing in accordance with DOE test procedures (10 C.F.R. § 431.294 and Appendix A to Subpart Q of 10 C.F.R. Part 431) demonstrates that the basic model is not in compliance with the applicable energy conservation standard. The maximum permissible daily energy consumption (“MDEC”) for this model is 4.58 kilowatt hours per day. 10 C.F.R. § 431.296(a). The two units that DOE tested performed at an MDEC of 5.604 and 5.360 kilowatt hours per day, respectively.<sup>2</sup> Note that the tested MDEC results do not include the energy consumed by the payment mechanisms.

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<sup>1</sup> Please note that “[t]he term ‘manufacture’ means to manufacture, produce, assemble or import.” 42 U.S.C. § 6311(7).

<sup>2</sup> Note that these tested MDEC results include the energy consumed by the payment mechanisms. When the energy consumed by the payment mechanisms are not considered, the two units performed at an MDEC of 5.516 and 5.272 kilowatt hours per day, respectively. When using the default payment mechanism energy consumption value in the current version of the test procedure, the two units performed at an MDEC of 5.716 and 5.472 kWh/day, respectively.

## FINDINGS

Based on the facts stated above, DOE has determined, after applying the calculations set forth in Appendix B to Subpart C of 10 C.F.R. Part 429, that the basic model, including all models within the basic model, does not comply with the applicable energy conservation standard.

### MANDATORY ACTIONS BY SANDENVENDO

In light of the above findings, SandenVendo 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 SandenVendo 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 SandenVendo notified, identifying each party as an importer, distributor, private labeler, and/or end user, as applicable; and
- (4) Provide to DOE within 30 calendar days of the date of this Notice records sufficient to show the number of units of the basic model that Sanden Vendo distributed in commerce in the United States, including all units imported into the United States.<sup>3</sup>

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.

### OPTIONAL ACTIONS BY SANDENVENDO

In addition to ceasing distribution in commerce in the United States of all units of the basic model, SandenVendo may elect to modify a 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 SandenVendo must also maintain, and provide upon request to DOE, records that demonstrate that modifications have been made to all units of the new basic

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<sup>3</sup> 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. § 6311(7).

model prior to distribution in commerce. Prior to distribution of the modified basic model in commerce in the United States, SandenVendo 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, with at least one unit tested by an independent, third-party test facility, and SandenVendo 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 SandenVendo 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, SandenVendo is prohibited from selling or otherwise distributing units in commerce in the United States.

#### CONSEQUENCES FOR FAILURE TO COMPLY WITH THIS NOTICE

Should SandenVendo 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 will seek a judicial order within 30 calendar days to restrain further distribution. If, however, SandenVendo provides DOE with a satisfactory statement within that 30-day period detailing the steps that SandenVendo 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.

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Laura L. Barhydt  
Assistant General Counsel  
for Enforcement