

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

In the Matter of:)
)
HMC Enterprises LLC) Case Number: 2015-SE-42069
(commercial refrigerators, freezers and)
refrigerator-freezers))

Issued: November 9, 2017

NOTICE OF NONCOMPLIANCE DETERMINATION

Commercial refrigerators, freezers and refrigerator-freezers are covered equipment subject to federal energy conservation standards. 10 C.F.R. §§ 431.2, 431.66. Manufacturers and private labelers are prohibited from distributing in commerce¹ covered products that do not comply with applicable federal energy conservation standards. 10 C.F.R. § 429.102(a)(6).

TESTING

On May 25, 2015, the U.S. Department of Energy (“DOE”) tested one unit of HMC Enterprises LLC (“HMC”) commercial refrigeration equipment nameplate model S32E-3 (“the nameplate model”). On October 27, 2015, DOE issued a Test Notice pursuant to 10 C.F.R. § 429.110(b), requiring HMC to ship three units of the nameplate model to a designated test facility.² In December 2015, DOE completed testing of these three additional units of the nameplate model, in accordance with DOE test procedures.

DOE’s testing in accordance with DOE test procedures (10 C.F.R. § 431.64) demonstrates that the basic model that includes nameplate model S32E-3 (“the basic model”) is not in compliance with the applicable energy conservation standard. The basic model is a self-contained semi-vertical commercial refrigerator without doors. 10 C.F.R. § 431.66(d)(1). Given the tested units’ mean total display area, the maximum permissible rate of energy consumption for the model was 14.97 kilowatt hours per day (kWh/day).³ The four units that DOE tested consumed energy at the rates of 17.04, 17.76, 21.66, and 22.06 kWh/day.

¹ 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).

² Upon receipt of the Test Notice, HMC requested additional time to build three units of model S32E-3. HMC shipped the units to the designated test facility on December 1, 2015.

³ Under 10 C.F.R. § 431.66(d)(1), the maximum energy use, in kWh/day, of a self-contained semi-vertical commercial refrigerator without doors manufactured on or after January 1, 2010, and before March 27, 2017, may not exceed 4.59 plus the product of 1.73 and the total display area of the refrigerator.

FINDINGS

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 (including each individual model within the basic model) does not comply with the applicable energy conservation standard.⁴

MANDATORY ACTIONS BY HMC

In light of the above findings, HMC 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 HMC (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 HMC notified; 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 HMC distributed in commerce in the United States, including all units imported into the United States, in the past five years.

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 HMC

In addition to the mandatory steps listed above that HMC must complete, HMC may elect to modify the basic model to bring it into compliance with the current standard. New standards for commercial refrigeration equipment came into effect in March 2017; models manufactured on or after March 27, 2017 (including pre-existing models that continue to be manufactured after March 27, 2017), are required to meet the applicable standard at 10 C.F.R. § 431.66(e). 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, HMC must provide to DOE test data

⁴ DOE notes that the basic model would also fail to comply with the applicable standard if DOE applied the statistics at 10 C.F.R. Part 429, Subpart C, Appendix B to any subset of the four tested units.

demonstrating that the modified basic model complies with the applicable standard.⁵ All units must be tested in accordance with DOE regulations, and HMC 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 HMC 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, HMC is prohibited from selling or otherwise distributing units in commerce in the United States.

CONSEQUENCES FOR FAILURE TO COMPLY WITH THIS NOTICE

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

⁵ DOE may require that this testing be performed at an independent, third-party testing facility.