

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

In the Matter of: )  
 )  
**Beverage-Air Corporation** ) Case Number: 2018-SE-42005  
(commercial refrigerators, freezers and )  
refrigerator-freezers) )

Issued: January 23, 2019

**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 commerce<sup>1</sup> covered equipment that does not comply with applicable federal energy conservation standards. 10 C.F.R. § 429.102(a)(6).

**TESTING**

On August 22, 2016, the U.S. Department of Energy (“DOE”) tested one unit of Beverage-Air Corporation (“Beverage-Air”) commercial refrigeration equipment nameplate model number MF48-S (also known as MF48 Deep Well Freezer) (“the basic model”). DOE’s testing in accordance with DOE test procedures (10 C.F.R. § 431.64) demonstrated that the basic model is not in compliance with the applicable energy conservation standard at 10 C.F.R. § 431.66(b)(1). The basic model is a self-contained, horizontal closed solid, commercial freezer designed for holding temperature applications. The maximum daily energy consumption of the basic model, given a chilled compartment volume of 7.99 ft<sup>3</sup>, for units manufactured on or after January 1, 2010, and before March 27, 2017, is 4.58 kilowatt hours per day (kWh/day).<sup>2</sup> Based on its performance during testing, the tested unit consumed energy at a rate of 5.89 kWh/day.

On November 20, 2018, DOE issued a Test Notice pursuant to 10 C.F.R. § 429.110(b), requiring Beverage-Air to ship three units of nameplate model MF48-S to a designated test facility. In lieu of providing the requested units, on November 26, 2018, Beverage-Air provided DOE with a statement admitting that the basic model does not comply with the applicable energy conservation standard at 10 CFR 431.66(b)(1).

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<sup>1</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. § 6291(16).

<sup>2</sup> Under 10 C.F.R. § 431.66(b)(1), the maximum energy use, in kWh/day, of a self-contained commercial freezer with solid doors designed for holding temperature applications manufactured on or after January 1, 2010, and before March 27, 2017, 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 finds<sup>3</sup> (and Beverage-Air admits) that the basic model (including each individual model within the basic model) does not comply with the applicable energy conservation standard at 10 C.F.R. § 431.66(b)(1).

## NOTICE

Distribution in commerce of covered equipment that does not meet an applicable energy conservation standard is a violation subject to civil penalty. If Beverage-Air continues to distribute the basic model, DOE may assess a higher civil penalty for units sold after the date of this Notice.

## MANDATORY ACTIONS BY BEVERAGE-AIR

In light of the above findings, Beverage-Air must, within 30 calendar days of the date of this Notice, provide to DOE records sufficient to show the number of units of the basic model that Beverage-Air distributed in commerce in the United States, including all units imported into the United States, since January 1, 2010.<sup>4</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 CFR § 429.7. Failure to adhere to these procedures will result in a rejection of your request for confidential treatment.

## OPTIONAL ACTIONS BY BEVERAGE-AIR

In addition to the mandatory steps listed above that Beverage-Air must complete, Beverage-Air may elect to modify the basic model to bring it into compliance with the applicable standard.<sup>5</sup> 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 part 429, any individual models within the basic model must be assigned new model numbers and Beverage-Air 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, Beverage-Air must provide to DOE test data demonstrating that the modified basic model complies with the applicable standards.<sup>6</sup> All units must be tested in accordance with DOE regulations, and Beverage-Air shall bear the costs of all such testing that is conducted.

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<sup>3</sup> In making its finding, DOE applied the calculations set forth in 10 C.F.R. Part 429, Subpart C, Appendix B, as modified by 10 C.F.R. § 429.110(e)(7) and (e)(8).

<sup>4</sup> Beverage-Air already satisfied this Mandatory Action via email to DOE on December 5, 2018.

<sup>5</sup> Under 10 C.F.R. § 431.66(e)(1), the maximum energy use, in kWh/day, of a self-contained, horizontal commercial freezer with solid doors designed for holding temperature applications manufactured on or after March 27, 2017, may not exceed 1.12 plus the product of 0.06 and the chilled compartment volume of the freezer (0.06V + 1.12).

<sup>6</sup> DOE may require that an independent, third-party testing facility perform this testing.

If, after this testing, DOE determines that the modified basic model complies with the applicable standards, DOE shall issue a Notice of Allowance to permit Beverage-Air to resume the distribution of the modified basic model in the United States.

CONSEQUENCES FOR FAILURE TO COMPLY WITH THIS NOTICE

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