

FINDINGS

Based on the facts stated above, DOE finds that the basic model² that includes model Focus 73 (“the basic model”) is a commercial ice-cream freezer with a self-contained condensing unit designed for holding temperature applications, horizontal closed transparent doors, and a total display area of 3.41 square feet, that is subject to the federal energy conservation standard at 10 C.F.R. § 431.66(e)(1). After applying the calculations in 10 C.F.R. Part 429, Subpart C, Appendix B, DOE finds that the basic model does not comply with the applicable federal energy conservation standard.

NOTICE

Distribution in commerce of covered equipment or covered products that do not meet the applicable energy conservation standards is a violation subject to civil penalty, regardless of the issuance of this Notice. If FSI continues to distribute the basic model, DOE may assess a higher civil penalty for units sold after the date of this Notice.

MANDATORY ACTION BY FSI

In light of the above findings, FSI 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 FSI distributed in commerce in the United States in the past five years, categorized by year. 10 C.F.R. § 429.114(a). This includes all units that remain in FSI’s inventory that were manufactured (including importation) on or after April 3, 2018. You may send those records to the undersigned attorney via electronic mail at dion.casey@hq.doe.gov.

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 FSI

In addition to the mandatory steps listed above that FSI must complete, FSI may elect to modify the basic model to bring it into compliance with the applicable standard.³ 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

² A “basic model” is all units manufactured by one manufacturer that have the same primary energy source and essentially identical electrical, physical, and functional characteristics that affect energy consumption or energy efficiency. *See* 10 C.F.R. § 430.2.

³ Under 10 C.F.R. § 431.66(e)(1), the maximum daily energy consumption, in kWh/day, of a commercial ice-cream freezer with a self-contained condensing unit designed for holding temperature applications, horizontal closed transparent doors, and a total display area of 3.41 square feet, manufactured on or after March 27, 2017, is 0.43 plus the product of 0.56 and the total display area (0.56TDA + 0.43).

of 10 C.F.R. Part 429, any individual models within the basic model must be assigned new model numbers.

In addition, FSI must maintain, and provide to DOE upon request, 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, FSI must provide to DOE test data demonstrating that the modified basic model complies with the applicable standard.⁴ All units must be tested in accordance with DOE regulations, and FSI 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 standards, DOE shall issue a Notice of Allowance to permit FSI to resume the distribution of the modified basic model in the United States.

CONSEQUENCES FOR CONTINUING TO DISTRIBUTE THE BASIC MODEL

Should FSI fail to cease immediately the distribution in the United States of all units of 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, FSI provides DOE with a satisfactory statement within that 30-day period detailing the steps that FSI 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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⁴ DOE may require that an independent, third-party testing facility perform this testing.

Certificate of Service

This is to certify that on March 31, 2023, the undersigned served the designated copy of the Notice of Noncompliance Determination issued in DOE Case Number 2020-SE-42009 on the party listed below in the manner indicated.

Paul Storch
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PDF
Email

Dion Casey
Trial Attorney