

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

In the Matter of:

**Felix Storch**  
(Freezers)

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Case Number: 2011-SE-1420

Issued: October 5, 2011

**NOTICE OF NONCOMPLIANCE DETERMINATION**

Manufacturers and private labelers are prohibited from distributing covered products that do not comply with applicable Federal energy conservation standards. 10 C.F.R. § 429.102; 42 U.S.C. § 6302.

On October 5, 2010, DOE completed testing of a chest freezer, model number CF11ES (“CF11ES”), privately labeled by the Summit Appliance Division of Felix Storch, Inc. (“Storch”), in accordance with DOE test procedures (10 C.F.R. Part 430, Subpart B, Appendix A). On May 5, 2011, DOE completed testing of three additional units of CF11ES, in accordance with the same procedures.

DOE’s testing demonstrated that Storch chest freezer model number CF11ES is not in compliance with Federal law. Given its volume, CF11ES may not consume more than 317 kilowatt hours per year (kWh/yr).<sup>1</sup> Based on their performance during testing, the four units that DOE tested consumed energy at the rates of 356, 353, 330, and 334 kWh/yr.

**FINDINGS**

Based on the facts stated above, DOE has determined that basic model CF11ES does not comply with the applicable Federal energy conservation standards.

**MANDATORY ACTIONS BY STORCH**

In light of the above findings, Storch 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 basic model CF11ES, if Storch has not already done so;<sup>2</sup>

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<sup>1</sup> Under 10 C.F.R. § 430.32(a), the maximum energy use, in kWh/yr, of a chest freezer may not exceed 143.7 plus the product of 9.88 and the total adjusted volume of the particular freezer (9.88AV+143.7).

<sup>2</sup> DOE believes Storch may have already ceased distribution of CF11ES.

- (2) Provide immediate written notification of this noncompliance determination to all persons in the United States to whom Storch has distributed units of basic model CF11ES in the past three years;
- (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 Storch 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 basic model CF11ES in the United States in the past three years.

The responses required by paragraphs (3) and (4) must be dated, signed, and notarized, and must include a declaration under penalty of perjury that the contents of the responses are true. Specifically, the person signing the response must attest the following: "I declare under penalty of perjury that the statements contained in this response are true, correct, and complete."

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 STORCH

In addition to the mandatory steps listed above that Storch must complete, Storch may elect to modify basic model CF11ES to bring it into compliance with the applicable standard. 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, Storch 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, and Storch 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 Storch 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, no units of the basic model may be sold or otherwise distributed by Storch in the United States.

CONSEQUENCES FOR FAILURE TO COMPLY WITH THIS NOTICE

Should Storch fail to cease immediately the distribution in the United States of all units of basic model CF11ES, this letter serves as notice that DOE will seek a judicial order within 30 calendar days to restrain further distribution. If, however, Storch provides DOE with a satisfactory statement within that 30-day period detailing the steps that Storch 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, including during any manufacturer-initiated testing as described above, 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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Timothy G. Lynch  
Deputy General Counsel for  
Litigation and Enforcement