

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

In the Matter of:)

Bu Sung America Corporation)
(dba Everest Refrigeration))

(commercial refrigerators, freezers and)
refrigerator-freezers))

Case Number: 2015-SE-42001

Issued: April 24, 2015

NOTICE OF NONCOMPLIANCE DETERMINATION

Commercial refrigerators, freezers and refrigerator-freezers are covered equipment subject to federal energy conservation standards. 42 U.S.C. §§ 6311(1)(E), 6313(c), and 10 C.F.R. § 431.66(b). Manufacturers and private labelers are prohibited from distributing covered products in the United States that do 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 one unit of Bu Sung America Corporation (dba Everest Refrigeration) (“Bu Sung”) commercial refrigeration equipment model number ESGR3 (“the basic model”). DOE’s testing in accordance with DOE test procedures (10 C.F.R. § 431.64) demonstrates that the basic model is not in compliance with the applicable energy conservation standard. Bu Sung certified the basic model as product class 2, which indicates a self-contained commercial refrigerator with transparent doors for holding temperature application. 10 C.F.R. § 431.96(b)(1). The maximum daily energy consumption (“MDEC”) for this product class for units with a chilled compartment volume identical to the test unit and manufactured on or after January 1, 2010, and before March 27, 2017, is 10.74 kWh/day. The unit that DOE tested performed at an MDEC of 14.19 kWh/day.

For covered equipment, including commercial refrigerators, DOE typically will use an initial sample size of four units and follow the sampling plan in appendix B of subpart C of 10 C.F.R. Part 429 (which calls for a sample size of at least four units). 10 C.F.R. § 429.113(e)(1)(ii). However, if fewer than four units of a basic model are available for testing when the manufacturer receives the Test Notice, then DOE will test the available units (or test the available units and any additional units that become available within thirty calendar days). *Id.*

In this instance, in response to a November 21, 2014 Test Notice (“Test Notice”), Bu Sung delivered three units of a model that is different than the basic model identified in the Test Notice. In Bu Sung’s view, at the time the units were shipped, the units furnished in response to the Test Notice were the same basic model identified in the Test Notice. However, the units provided in response to the Test Notice did not have essentially identical electrical, physical, and functional characteristics that affect energy consumption. The model initially tested by DOE and upon which DOE based issuance of the Test Notice was equipped with anti-condensate heaters and was set to initiate a defrost cycle every six hours, whereas the units provided in response to the Test Notice were not equipped with anti-condensate heaters and were set to initiate a defrost cycle every twelve hours.

DOE informed Bu Sung of the discrepancy. Bu Sung declined the option of providing an additional three units of the basic model described in the Test Notice for enforcement testing and requested that DOE move forward with its enforcement action based on the results of testing the single assessment unit. Thus, pursuant to Bu Sung’s request, DOE issues this Notice based on the results of testing of that single unit of the basic model as described above.

FINDINGS

Based on the facts stated above, DOE has determined that the basic model (including each individual model within the basic model) does not comply with the applicable energy conservation standard.

MANDATORY ACTIONS BY BU SUNG

In light of the above findings, Bu Sung 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 Bu Sung has distributed units of any model within the basic model; and
- (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 Bu Sung notified.

(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 the basic model in the United States in the past three years.¹

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 BU SUNG

In addition to the mandatory steps listed above that Bu Sung must complete, Bu Sung may elect to modify a basic model to bring it into compliance with the current 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 Bu Sung 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 of the modified basic model in commerce in the United States, Bu Sung 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 Bu Sung 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 Bu Sung 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, Bu Sung is prohibited from selling or otherwise distributing units in commerce in the United States.

CONSEQUENCES FOR FAILURE TO COMPLY WITH THIS NOTICE

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

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).

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