

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

In the Matter of:)

Ningbo Hicon International Industry)
Company, Ltd.)
(freezers))

Case Number: 2013-SE-1426

Issued: February 14, 2013

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 July 30, 2011, DOE completed testing of one compact chest freezer, [REDACTED] model number [REDACTED], manufactured in China by the Ningbo Hicon International Company, LTD. ("Ningbo Hicon") as Ningbo Hicon model number BD-200, in accordance with DOE test procedures (10 C.F.R. Part 430, Subpart B, Appendix B1). In September 2011, DOE completed testing of three additional units in accordance with DOE test procedures.

DOE's testing demonstrated that [REDACTED] model number [REDACTED] is not in compliance with federal law. Given the tested units' measured volumes, the maximum permissible rate of energy consumption was [REDACTED] kilowatt hours per year (kWh/yr).¹ Based on their performance during testing, the four units that DOE tested consumed energy at the rates of [REDACTED] kWh/yr, which correspond to an average of [REDACTED] percent over the federal limit.

FINDING

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 A, that [REDACTED] model number [REDACTED], manufactured and distributed in commerce by Ningbo Hicon as Ningbo Hicon model number BD-200, does not comply with the applicable federal energy conservation standards.

MANDATORY ACTIONS BY NINGBO HICON

In light of the above findings, Ningbo Hicon must take the following steps in accordance with 10 C.F.R. § 429.114(a):

¹ Under 10 C.F.R. § 430.32(a), the maximum energy use, in kWh/yr, of a compact chest freezer may not exceed 152 plus the product of 10.45 and the total adjusted volume of the particular freezer (10.45AV+152.0).

- (1) Immediately cease distribution in commerce in the United States of all units of basic model BD-200, under all brand names;
- (2) Provide immediate written notification of this noncompliance determination to all persons in the United States to whom Ningbo Hicon has distributed units of basic model BD-200;
- (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 Ningbo Hicon 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 BD-200 in the United States in the past three years, in addition to a summary page listing the total number of units Ningbo Hicon has distributed in commerce in the U.S. in the past three years.²

The responses required by paragraphs (3) and (4) must be dated, signed, and notarized.

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 NINGBO HICON

In addition to the mandatory steps listed above that Ningbo Hicon must complete, Ningbo Hicon may elect to modify basic model BD-200 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, Ningbo Hicon 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 Ningbo Hicon 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 Ningbo Hicon to resume the distribution of the modified basic model in the United States. Until DOE determines that the

² 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). Thus, the summary sheet must include all units that Ningbo Hicon has imported into the U.S., even if these units have not been sold, as well as any other units that otherwise meet the definition in 42 U.S.C. § 6291(16). The summary sheet may distinguish between sold and unsold units.

modified basic model complies with the applicable standard, no units of the basic model may be sold or otherwise distributed by Ningbo Hicon in the United States.

CONSEQUENCES FOR FAILURE TO COMPLY WITH THIS NOTICE

Should Ningbo Hicon fail to cease immediately the distribution in the United States of all units of basic model BD-200, this letter serves as notice that DOE will seek a judicial order within 30 calendar days to restrain further distribution. If, however, Ningbo Hicon provides DOE with a satisfactory statement within that 30-day period detailing the steps that Ningbo Hicon 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