

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

In the Matter of:)

Jofemar USA Inc)
(commercial refrigeration equipment))

Case Number: 2014-SE-52004

Issued: November 16, 2017

NOTICE OF NONCOMPLIANCE DETERMINATION

Refrigerated bottled and canned beverage vending machines (BVMs) are covered equipment subject to federal energy conservation standards as described in 42 U.S.C. § 6295 and 10 C.F.R. § 431.2. Manufacturers (including importers) and private labelers are prohibited from distributing covered equipment in the United States that does not comply with applicable federal energy conservation standards. See 10 C.F.R. § 429.102(a)(6) and 42 U.S.C. §§ 6316(a) and 6302(a)(5).

TESTING

In October 2013, the U.S. Department of Energy (“DOE”) tested one unit of Jofemar USA Inc. (“Jofemar”) basic model V.4, Vision Elevator/Cooling Unit E332USTS0443 (“the basic model”). On April 29, 2014, DOE issued a Test Notice pursuant to 10 C.F.R. § 429.110(b), requiring Jofemar to ship three units of the basic model to a designated test facility. In May and August 2014, DOE completed testing of these three additional units of the basic model.

DOE’s testing in accordance with the applicable DOE test procedure (10 C.F.R. § 431.294) demonstrated that the basic model is not in compliance with the applicable federal energy conservation standards. Given the tested units’ measured volumes, their respective maximum permissible rates of energy consumption (MDEC) are 3.96 kilowatt-hours per day (kWh/day)¹ under the Class A standard.² The four units tested achieved an MDEC (in kWh/day) of 7.711,

¹ Under 10 C.F.R. § 431.296, the maximum daily energy consumption, in kWh/day, for a Class A BVM when measured at the 75 °F ±2° and 45 ±5% RH condition, is 0.055 multiplied by the volume of the particular BVM plus 2.56 (0.055 * V + 2.56).

² Based on arguments raised in response to the assessment test, DOE also tested the model as a Class B BVM. (Under 10 C.F.R. § 431.296, the maximum daily energy consumption, in kWh/day, for a Class B BVM when measured at the 75 °F ±2° and 45 ±5% RH condition, is 0.073 multiplied by the volume of the particular BVM plus 3.16 (0.055 * V + 3.16), or 5.01 kWh/day for a BVM of this volume. A Class B vending machine means a refrigerated bottled or canned beverage vending machine that is not considered to be Class A and is not a combination vending machine. 10 C.F.R. §431.292. As noted, above, the four units tested achieved a mean MDEC of 7.85, which also exceeds the MDEC for a Class B BVM.

8.561, 6.687, and 8.448, for a mean MDEC of 7.85, which is almost twice the energy consumption permitted by the Class A BVM standard.

FINDINGS

Because the model consists of one refrigerated volume that is fully cooled; it is not a combination vending machine. Because 25 percent or more of the surface area on the front side of the model is transparent and the model is not a combination vending machine, DOE has determined that the basic model is a Class A BVM. *See* 10 C.F.R. 431.292.³

Based on the facts stated above, DOE has determined, after applying the calculations set forth in Appendix B to Subpart C of 10 C.F.R. Part 429, that the basic model does not comply with the applicable federal energy conservation standard.

MANDATORY ACTIONS BY JOFEMAR

In light of the above finding, Jofemar 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 Jofemar (or any affiliated or parent company) has distributed units of any model within the basic model;
- (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 Jofemar notified; and
- (4) Provide to DOE within 30 calendar days of the date of this Notice records sufficient to show the number of units of the basic models that Jofemar distributed in commerce in the United States, including all units imported into the United States, in the past five years.

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

³ DOE has determined that the basic model is not a combination vending machine, which is defined as a bottled or canned beverage vending machine containing two or more compartments separated by a solid partition, that may or may not share a product delivery chute, in which at least one compartment is designed to be refrigerated, as demonstrated by the presence of temperature controls, and at least one compartment is not. *See* 10 C.F.R. 431.292. A Combination A vending machine is defined as a combination vending machine where 25 percent or more of the surface area on the front side of the beverage vending machine is transparent. *Id.* DOE has also determined that the basic model is not a Class B vending machine, which is defined as a refrigerated bottled or canned beverage vending machine that is not considered to be Class A and is not a combination vending machine. *Id.*

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.

To ensure timely receipt, DOE strongly encourages you to submit your responses by e-mail, fax, or an express delivery service. DOE accepts scanned images of documents (such as PDFs).

Responses may be sent by any of the following methods:

By email to: lucy.lee@hq.doe.gov

By fax to: (202) 287-6395

By private carrier to: Lucy Lee
Trial Attorney (GC-32)
U.S. Department of Energy
1000 Independence Ave., SW
Washington, DC 20585

OPTIONAL ACTIONS

In addition to the mandatory steps listed above that Jofemar must complete, Jofemar may elect to modify the basic model to bring it into compliance with the 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 Jofemar 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, Jofemar 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 Jofemar 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 Jofemar 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 may be sold or otherwise distributed by Jofemar in the United States.

CONSEQUENCES FOR FAILURE TO COMPLY WITH THIS NOTICE

If Jofemar distributes the basic model in the United States, this letter serves as notice that DOE will seek a judicial order within 30 calendar days to restrain further distribution. If, however, Jofemar provides DOE with a satisfactory statement within that 30-day period detailing the steps that Jofemar 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.

_____/S/_____
Laura L. Barhydt
Assistant General Counsel
for Enforcement