

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

In the Matter of:)

Precision Trading Corp.,)
(freezers))

Case Number: 2013-SE-1410

Issued: April 10, 2013

NOTICE OF NONCOMPLIANCE DETERMINATION

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; 42 U.S.C. § 6302. Precision Trading Corp. (“Precision”) is a private labeler and owns the “Premium” trademark, which Precision uses to distribute refrigerators, freezers, and refrigerator-freezers in the United States.

TESTING

1. The U.S. Department of Energy (“DOE”) tested four privately labeled units of [REDACTED]¹ model number [REDACTED], manufactured in [REDACTED], that had been distributed in the United States by a third-party private labeler. The [REDACTED] is privately labeled and distributed in the United States by Precision as Precision model Premium PFR515M (“the Premium PFR515M”).²

DOE’s testing in accordance with DOE test procedures (10 C.F.R. Part 430, Subpart B, Appendix B1) demonstrated that [REDACTED] basic model [REDACTED] is not in compliance with the applicable federal energy conservation standard. Given the tested units’ measured volumes, the maximum permissible rate of energy consumption was [REDACTED] kilowatt-hours per year (kWh/yr).³ The four units that DOE tested consumed energy at the rates of [REDACTED] kWh/yr. Furthermore, in a Compromise Agreement executed April 10, 2013, Precision admitted that the Premium PFR515M does not comply with the applicable federal energy conservation standard.

¹ [REDACTED] for the purposes of this Notice means [REDACTED] or one or more of those [REDACTED] companies, all of which are subsidiaries or affiliates of [REDACTED].

² [REDACTED] informed DOE through compelled sales records that that it sold model [REDACTED] to Precision to be privately labeled and distributed in the United States as the Premium PFR515M.

³ 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).

2. DOE tested four privately labeled units of [REDACTED] model number [REDACTED],⁴ manufactured in [REDACTED] that had been distributed in the United States by a third-party private labeler. The [REDACTED] is privately labeled and distributed in the United States by Precision as Precision model Premium PFR695M (“the Premium PFR695M”).

DOE’s testing in accordance with DOE test procedures (10 C.F.R. Part 430, Subpart B, Appendix B1) demonstrated that [REDACTED] basic model [REDACTED] is not in compliance with the applicable federal energy conservation standard. Given the tested units’ measured volumes, the maximum permissible rate of energy consumption was [REDACTED] kilowatt-hours per year (kWh/yr). Based on their performance during testing, the four units that DOE tested consumed energy at the respective rates of [REDACTED] kWh/yr. Furthermore, in a Compromise Agreement executed April 10, 2013, Precision admitted that the Premium PFR695M does not comply with the applicable federal energy conservation standard.

3. In accordance with DOE test procedures (10 C.F.R. Part 430, Subpart B, Appendix B1), DOE tested four units of [REDACTED] basic model [REDACTED], manufactured in [REDACTED] and distributed in the United States by a third-party private labeler. The [REDACTED] is also privately labeled and distributed in the United States by Precision as Precision model Premium PFR1065 (“the Premium PFR1065”).⁵

Given the tested units’ measured volumes, the maximum permissible rate of energy consumption was [REDACTED] kilowatt-hours per year (kWh/yr). Based on their performance during testing, the four units that DOE tested consumed energy at the respective rates of [REDACTED]. Accordingly, none of the tested units met the energy conservation standard set forth in 10 C.F.R. § 430.32(a). Furthermore, in a Compromise Agreement executed April 10, 2013, Precision admitted that the Premium PFR1065 does not comply with the applicable federal energy conservation standard.

FINDINGS

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 the Premium PFR515M, the Premium PFR695M, and the Premium PFR1065 do not comply with the applicable federal energy conservation standard.

MANDATORY ACTIONS BY PRECISION

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

⁴ [REDACTED] informed DOE through compelled sales records that it sold model [REDACTED] to Precision to be privately labeled and distributed in the United States as the Premium PFR695M.

⁵ [REDACTED] informed DOE through compelled sales records that it sold model [REDACTED] to Precision to be privately labeled and distributed in the United States as the Premium PFR1065.

- (1) Immediately cease distribution in commerce in the United States of all units, regardless of label, within the Premium PFR515M, the Premium PFR695M, and the Premium PFR1065 basic models;
- (2) Provide immediate written notification of this noncompliance determination to all persons in the United States to whom Precision has distributed units, regardless of label, of the Premium PFR515M, the Premium PFR695M, and the Premium PFR1065 in the past three years; 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 Precision notified.

The response required by paragraph (3) 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 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 PRECISION

In addition to the mandatory steps listed above that Precision must complete, Precision may elect to modify the Premium PFR515M, the Premium PFR695M, and/or the Premium PFR1065 to bring any or all into compliance with the applicable standard. Any 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, Precision must provide to DOE test data demonstrating that any modified basic model complies with the applicable standard. All units must be tested in accordance with DOE regulations, and Precision shall bear the costs of all such testing that is conducted.

If, after this testing, DOE determines that any modified basic model complies with the applicable standard, DOE shall issue a Notice of Allowance to permit Precision to resume the distribution of that 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 Precision in the United States.

CONSEQUENCES FOR FAILURE TO COMPLY WITH THIS NOTICE

Should Precision fail to cease immediately the distribution in the United States of all units, regardless of label, of the Premium PFR515M, the Premium PFR695M, and the Premium PFR1065 basic models, this letter serves as notice that DOE will seek a judicial order within 30 calendar days to restrain further distribution. If, however, Precision provides DOE with a satisfactory statement within that 30-day period detailing the steps that Precision will take to ensure that units of the noncompliant basic models 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