

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

In the Matter of:)

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

Case Number: 2015-SE-42013

Issued: July 26, 2016

NOTICE OF NONCOMPLIANCE DETERMINATION

Commercial refrigerators, refrigerator-freezers, and freezers are covered equipment subject to federal energy conservation standards. 42 U.S.C. §§ 6311(1)(E) and 6313(c); 10 C.F.R. § 431.66. Manufacturers and private labelers are prohibited from distributing covered equipment in the United States that does not comply with applicable federal energy conservation standards. 42 U.S.C. 6302(a)(5) (referenced by 42 U.S.C. § 6316(a) to apply to covered equipment); 10 C.F.R. § 429.102(a)(6).

TESTING

On October 20, 2013, the U.S. Department of Energy (“DOE”) tested one unit of Victory Refrigeration (“Victory”) commercial refrigeration equipment basic model UF-48-SBS (“basic model UF-48-SBS”). Basic model UF-48-SBS is a self-contained commercial freezer with solid doors designed for holding temperature application (10 C.F.R. § 431.66(b)(1)), which includes Victory brand nameplate model UF-48-SBS. DOE’s testing in accordance with DOE test procedures (10 C.F.R. § 431.64) demonstrated that this unit¹ consumed more energy than permitted by the applicable energy conservation standard.

On March 30, 2015, DOE issued a Test Notice pursuant to 10 C.F.R. § 429.110(b), requiring Victory to provide three additional units of the basic model for testing. Victory’s parent company, Beverage Air, notified DOE that model UF-48-SBS was discontinued. Instead of providing three new units, Beverage Air instead opted to provide one used unit.²[VSI][KW2] Because fewer than four units were available, Beverage Air agreed DOE would base its findings

¹ The initial assessment unit DOE tested was purchased through normal commercial means (i.e., purchased through a distributor) by DOE.

² Victory advised DOE that the unit it planned to provide for testing was previously used. DOE informed Victory that the fact that the unit was used would not affect DOE’s testing or evaluation of the unit and that, DOE would base its compliance determination on the testing of the unit Victory provided combined with the unit DOE purchased. Victory provided this unit only after it had time to conduct an inspection prior to delivery to the testing location. This unit arrived to the test lab with noticeable wear.

of compliance of the basic model on the testing of a reduced sample size, pursuant to 10 C.F.R. § 429.110(e)(1)(iv) and 10 C.F.R. § 429.110(e)(1)(v). DOE completed testing of this second unit on May 16, 2015. DOE's testing of the second unit also demonstrated that the unit consumed more energy than permitted by the applicable energy conservation standard.

The maximum daily energy consumption ("MDEC") of basic model UF-48-SBS, given the initial assessment unit's chilled compartment volume, for units manufactured on or after January 1, 2010, and before March 27, 2017, is 6.43 kilowatt hours per day (kWh/day).³ Based on its performance during testing, this unit consumed energy at a rate of 6.9 kWh/day.⁴

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 B, as modified by 10 C.F.R. §§ 429.110(e)(1)(ii)(A) and 429.110(e)(1)(v), for cases where less than four units are available for testing, that basic model UF-48-SBS does not comply with the applicable federal energy conservation standard.

MANDATORY ACTIONS BY VICTORY

Beverage Air has represented to DOE that it has ceased distribution of basic model UF-48-SBS in commerce in the United States.

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

- (1) Do not distribute in commerce in the United States any units of basic model UF-48-SBS;
- (2) Provide immediate written notification of this noncompliance determination to all persons in the United States to whom Beverage Air, Victory Refrigeration, or any other affiliated company has distributed units of basic model UF-48-SBS;
- (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 notified; and
- (4) Provide to DOE within 30 calendar days of the date of this Notice all records, reports, and other documentation pertaining to the acquisition, ordering, storage, shipment, or sale of units of basic model UF-48-SBS in the United States on or after August 1, 2011, in addition to a summary page listing the total number of units Beverage

³ Under 10 C.F.R. § 431.66(b)(1), the maximum energy use, in kWh/day, of a self-contained commercial freezer with solid doors designed for holding temperature application may not exceed 1.38 plus the product of 0.40 and the chilled compartment volume of the freezer ($0.40V + 1.38$).

⁴ Based on its performance during testing, the second unit tested consumed energy at a rate of 9.58 kWh/day. Given the variance in the performance of the two tested units, DOE did not base its finding in this Notice on the testing of the second, Victory-provided unit. DOE notes, however, that the basic model would also fail to comply with the applicable standard if the test results for the second unit were included and DOE used the calculations in 10 C.F.R. Part 429, Subpart C, Appendix B, which apply to commercial refrigeration equipment.

Air, Victory, and any other affiliated company, distributed in commerce⁵ in the U.S. on or after August 1, 2011.

The response required by paragraph (4) must be dated and signed and must include a declaration that the contents of the response are true 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.

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: william.kent@hq.doe.gov

By fax to: (202) 586-5677

By private carrier to: William Kent
 Attorney-Advisor (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 Beverage Air must complete, Beverage Air may elect to modify basic model UF-48-SBS 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 Beverage Air 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, Beverage Air must provide to DOE test data demonstrating that the modified basic model complies with the applicable standard.⁶ All units must be tested in accordance with DOE regulations, and Beverage Air 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 Beverage Air to resume the

⁵ The terms “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 term “commerce” means trade, traffic, commerce, or transportation – (A) between a place in a State and any place outside thereof, or (B) which affects trade, traffic, commerce, or transportation described in (A). 42 U.S.C. § 6291(17).

⁶ DOE may require that this testing be performed at an independent, third-party testing facility.

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 Beverage Air in the United States.

CONSEQUENCES FOR FAILURE TO COMPLY WITH THIS NOTICE

If Beverage Air distributes basic model UF-48-SBS in the United States, this letter serves as notice that DOE may seek a judicial order within 30 calendar days to restrain further distribution. If, however, Beverage Air provides DOE with a satisfactory statement within that 30-day period detailing the steps that Beverage Air 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