

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

In the Matter of:

**Asbury Foodservice Equipment  
Company**  
(commercial refrigerators, freezers and  
refrigerator-freezers)

Case Number: 2016-SE-42014

Issued: January 28, 2016

**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 four units of commercial refrigeration equipment basic model number TUC-27F (“the basic model”), manufactured by Shandong Hangtai Electrical Appliance Co., Ltd. (“Shandong Hangtai”). 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. Basic model TUC-27F (Asbury Foodservice Equipment Company model MXCF27U/69K-052) is a self-contained commercial freezer with solid doors for holding temperature application. The maximum daily energy consumption (“MDEC”) for this product class for units with a chilled compartment volume identical to the average of the tested units and manufactured on or after January 1, 2010, and before March 27, 2017, is 3.75 kWh/day. The four units that DOE tested performed at an MDEC of 8.01, 9.70, 9.78, and 7.43 kWh/day, respectively.

**FINDINGS**

Shandong Hangtai has advised DOE that it distributes this basic model to Asbury Foodservice Equipment Co. (“Asbury”), which imports and distributes the model in the U.S. Based on the facts stated above, DOE has determined that the basic model (including the individual model(s) within the basic model imported by Asbury) does not comply with the applicable energy conservation standard.

### MANDATORY ACTIONS BY ASBURY

In light of the above findings, Asbury 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 Asbury 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 that Asbury 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 the basic model in the United States in the past five years.<sup>1</sup>

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 ASBURY

In addition to the mandatory steps listed above that Asbury must complete, Asbury 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 Asbury 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, Asbury 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, with at least one unit tested by an independent, third-party test facility, and Asbury shall bear the costs of all such testing.

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<sup>1</sup> 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).

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 Asbury 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, Asbury is prohibited from selling or otherwise distributing units in commerce in the United States.

CONSEQUENCES FOR FAILURE TO COMPLY WITH THIS NOTICE

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

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Laura L. Barhydt  
Assistant General Counsel  
for Enforcement