

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

In the Matter of:)
)
Imbera S.A. de C.V.) Case Number: 2020-SE-42006
(commercial refrigerators, freezers and)
refrigerator-freezers))
)

Issued: March 26, 2020

NOTICE OF NONCOMPLIANCE DETERMINATION

Commercial refrigerators, freezers and refrigerator-freezers are covered equipment subject to federal energy conservation standards. 10 C.F.R. §§ 431.2, 431.66. Manufacturers and private labelers are prohibited from distributing in commerce¹ covered equipment that does not comply with applicable federal energy conservation standards. 10 C.F.R. § 429.102(a)(6). Specifically, the maximum energy use, in kWh/day, of a self-contained vertical closed commercial refrigerator with transparent doors designed for holding temperature applications, manufactured on or after March 27, 2017, may not exceed 0.86 plus the product of 0.1 and the chilled compartment volume of the refrigerator (0.1V + 0.86). 10 C.F.R. § 431.66(e)(1).

TESTING

In August 2019, the U.S. Department of Energy (“DOE”) tested one unit of Imbera S.A. de C.V. (“Imbera”) commercial refrigeration equipment nameplate model number G326 (“the basic model”). DOE’s testing in accordance with DOE test procedures (10 C.F.R. § 431.64) demonstrated that the basic model is not in compliance with the applicable energy conservation standard at 10 C.F.R. § 431.66(e)(1). The basic model is a self-contained vertical closed commercial refrigerator with transparent doors designed for holding temperature applications, and utilizes refrigerant R134a. The maximum daily energy consumption of the basic model, given a chilled compartment volume of 25.89 ft³, for units manufactured on or after March 27, 2017, is 3.47 kilowatt hours per day (kWh/day). Based on its performance during testing, the tested unit consumed energy at a rate of 5.57 kWh/day.

On January 27, 2020, DOE issued a Test Notice pursuant to 10 C.F.R. § 429.110(b), requiring Imbera to ship three units of nameplate model G326 to a designated test facility. In lieu of providing the requested units, on March 25, 2020, Imbera provided DOE with a statement that it imported and distributed in commerce in the United States model G326 on or after March 27, 2017, and conceded that model G326 does not comply with the applicable energy conservation

¹ 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).

standard at 10 CFR 431.66(e)(1). Imbera also stated that model G326 is a self-contained vertical closed transparent commercial refrigerator, which utilizes refrigerant R134a and has a tested volume of 25.89 ft³.

FINDINGS

Based on the facts stated above, DOE finds² (and Imbera concedes) that the basic model does not comply with the applicable energy conservation standard at 10 C.F.R. § 431.66(e)(1).

NOTICE

Distribution in commerce of covered equipment that does not meet an applicable energy conservation standard is a violation subject to civil penalty, regardless of the issuance of this Notice. If Imbera continues to distribute the basic model, DOE may assess a higher civil penalty for units sold after the date of this Notice.

MANDATORY ACTIONS BY IMBERA

On March 11, 2020, Imbera provided records to DOE demonstrating the total number of units of the basic model that Imbera imported into the United States since March 27, 2017. 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 IMBERA

Imbera 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 part 429, any individual models within the basic model must be assigned new model numbers and Imbera 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, Imbera must provide to DOE test data demonstrating that the modified basic model complies with the applicable standards.³ All units must be tested in accordance with DOE regulations, and Imbera 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 standards, DOE shall issue a Notice of Allowance to permit Imbera to resume the distribution of the modified basic model in the United States.

² In making its finding, DOE applied 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)(7) and (e)(8).

³ DOE may require that an independent, third-party testing facility perform this testing.

CONSEQUENCES FOR FAILURE TO COMPLY WITH THIS NOTICE

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

Laura L. Barhydt
Assistant General Counsel
for Enforcement