

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

In the Matter of:

Fri-Jado Inc.

(commercial refrigerators, refrigerator-freezers, and freezers)

Case Numbers: 2020-SE-42013 and
2020-SE-42014

Issued: July 13, 2020

NOTICE OF NONCOMPLIANCE DETERMINATION

Commercial refrigerators, freezers and refrigerator-freezers (commercial refrigeration equipment) 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 in the United States that does not comply with applicable federal energy conservation standards. 10 C.F.R. § 429.102(a)(6). Specifically, self-contained service over counter commercial refrigerators designed for holding temperature applications, and manufactured² on or after January 1, 2012, and before March 27, 2017, must have a daily energy consumption (in kilowatt hours per day (kWh/day)) that does not exceed 1.0 plus the product of 0.6 and the total display area of the refrigerator. 10 C.F.R. § 431.66(b)(2). If manufactured on or after March 27, 2017, they must have a daily energy consumption that does not exceed 1 plus the product of 0.52 and the total display area of the refrigerator. 10 C.F.R. § 431.66(e)(1).

TESTING

In January 2020, the U.S. Department of Energy (“DOE”) tested one unit each of Fri-Jado Inc. (“Fri-Jado”) commercial refrigeration equipment nameplate model numbers MC-30 C FS and CD3 FS. DOE’s testing in accordance with DOE test procedures (10 C.F.R. § 431.64) demonstrated that the basic models including MC-30 C FS and CD3 FS are not in compliance with the applicable energy conservation standards at 10 C.F.R. § 431.66(b)(2) and (e)(1). MC-30 C FS and CD3 FS are self-contained, service over counter commercial refrigerators designed for holding temperature applications.

The maximum daily energy consumption of MC-30 C FS, given a total display area of 12.01 ft², is 8.21 kWh/day for units manufactured on or after January 1, 2012, and 7.25 kWh/day for units manufactured on or after March 27, 2017. Based on its performance during testing, the tested unit consumed energy at a rate of 17.92 kWh/day.

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).

² “Manufacture” means to manufacture, produce, assemble, or import. 42 U.S.C. § 6291(10).

The maximum daily energy consumption of CD3 FS, given a total display area of 8.71 ft², is 6.23 kWh/day for units manufactured on or after January 1, 2012, and 5.53 kWh/day for units manufactured on or after March 27, 2017. Based on its performance during testing, the tested unit consumed energy at a rate of 10.05 kWh/day.

On May 13, 2020, DOE issued a Test Notice pursuant to 10 C.F.R. § 429.110(b), requiring Fri-Jado to ship three units each of nameplate models MC-30 C FS and CD3 FS G326 to a designated test facility. In lieu of providing the requested units, on July 7, 2020, Fri-Jado provided DOE with a statement that it imported and distributed in commerce in the United States models CD3 FS and MC-30 C FS on or after January 1, 2012, and on or after March 27, 2017. Fri-Jado stated that CD3 FS and MC-30 C FS are self-contained, service over counter commercial refrigerators. Fri-Jado also admitted that CD3 FS and MC-30 C FS, including both curved and square designs (“the basic models”), do not comply with the applicable energy conservation standards at 10 C.F.R. § 431.66(b)(2) and (e)(1).

FINDINGS

Based on the facts stated above, DOE finds³ (and Fri-Jado concedes) that the basic models do not comply with the applicable energy conservation standards at 10 C.F.R. § 431.66(b)(2) and 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 Fri-Jado continues to distribute the basic models, DOE may assess a higher civil penalty for units sold after the date of this Notice.

MANDATORY ACTION BY FRI-JADO

On June 11, 2020, Fri-Jado provided information to DOE demonstrating the total number of units of the basic models that Fri-Jado imported into the United States since 2015. 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 FRI-JADO

In addition to the mandatory steps listed above that Fri-Jado must complete, Fri-Jado may elect to modify a basic model to bring it into compliance with the applicable standards. A modified

³ 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).

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 Fri-Jado 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, Fri-Jado must provide to DOE test data demonstrating that the modified basic model complies with the applicable standards.⁴ All units must be tested in accordance with DOE regulations, and Fri-Jado 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 Fri-Jado to resume the distribution of the modified basic model in the United States.

CONSEQUENCES FOR CONTINUING TO DISTRIBUTE THE BASIC MODEL

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

⁴ DOE may require that an independent, third-party testing facility perform this testing.