

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

In the Matter of:)
)
True Manufacturing Co., Inc.) Case Number: 2015-CE-42049
(commercial refrigeration equipment))
)
)

Issued: October 15, 2015

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).

On May 1, 2015, True Manufacturing Co., Inc. (“True”) submitted a report to the U.S. Department of Energy (“DOE”) in an attempt to certify the compliance of service over the counter, self-contained, medium temperature commercial refrigerator basic models TCGG-72 and TCGG-72-S. True stated that these models each had a total display area of 26.71 square feet (ft²) and a calculated daily energy consumption of 19.55 kilowatt hours per day (kWh/day).

On September 25, 2015, DOE requested that True provide test data underlying their certification of basic models TCGG-72 and TCGG-72-S. In response, True provided DOE with two sets of test data from testing on August 19, 2004, and January 2, 2015. True provided the same sets of test data for both basic models and stated that the basic models were identical except for the stainless steel finish on basic model TCGG-72-S. Based on the test data submitted by True, the two units of basic model TCGG-72 consumed energy at the rates of 18.38 and 21.75 kWh/day.

Given the basic models’ total display area of 26.71 ft²,¹ their maximum permissible rate of energy consumption was 17.02 kWh/day.²

¹ This calculation of total display area was reported on True’s certification report #63884 and was also subsequently confirmed as accurate by True via phone.

² Under 10 C.F.R. § 431.66(b)(2), the maximum energy use, in kWh/day, of service over the counter, self-contained, medium temperature commercial refrigerators may not exceed 1.0 plus the product of 0.6 and the total display area of the refrigerator (0.6 x TDA + 1.0).

On various emails and phone calls in September and October 2015, True conceded to DOE that their certification of compliance for basic models TCGG-72 and TCGG-72-S was incorrect and that the models fail to meet applicable energy conservation standard.

FINDINGS

Based on the facts stated above, DOE has determined that service over the counter, self-contained, medium temperature commercial refrigerator basic models TCGG-72 and TCGG-72-S, including each individual model within the basic models, do not comply with the applicable energy conservation standard.

MANDATORY ACTIONS BY TRUE

In light of the above findings, True 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 basic models TCGG-72 and TCGG-72-S, including each individual model within the basic models;
- (2) Provide immediate written notification of this noncompliance determination to all persons in the United States to whom True (or any affiliated or parent company), has distributed units of any model within the basic models TCGG-72 and TCGG-72-S since January 1, 2012;
- (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 True 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 basic models TCGG-72 and TCGG-72-S in the United States since January 1, 2012.³

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.

³ 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).

OPTIONAL ACTIONS BY TRUE

In addition to the mandatory steps listed above that True must complete, True 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 True 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, True must provide to DOE test data demonstrating that the modified basic model complies with the applicable standard.⁴ All units must be tested in accordance with DOE regulations, and True shall bear the costs of all such testing.

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 True to distribute the modified basic model in the United States. Until DOE determines that the modified basic model complies with the applicable standard, True is prohibited from selling or otherwise distributing units in commerce in the United States.

CONSEQUENCES FOR FAILURE TO COMPLY WITH THIS NOTICE

Should True fail to cease immediately the distribution in the United States of all units of models within the basic models TCGG-72 and TCGG-72-S, this letter serves as notice that DOE may seek a judicial order within 30 calendar days to restrain further distribution. If, however, True provides DOE with a satisfactory statement within that 30-day period detailing the steps that True 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.

_____/S/_____
Laura L. Barhydt
Assistant General Counsel
for Enforcement

⁴ DOE may require that this testing be performed at an independent, third-party testing facility.