

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

In the Matter of:

Simkar Corporation
(metal halide lamp fixtures)

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Case Number: 2012-SE-5408

NOTICE OF PROPOSED CIVIL PENALTY

Date issued: November 21, 2012

Number of alleged violations: **326**
Maximum possible assessment: **\$65,200**
Proposed civil penalty: **\$65,200**

The U.S. Department of Energy (“DOE”) Office of the General Counsel, Office of Enforcement, alleges that Simkar Corporation (“Simkar”) has violated certain provisions of the Energy Policy and Conservation Act, 42 U.S.C. § 6291 *et seq.* (“the Act”), and 10 C.F.R. Parts 429, 430, and 431.

Specifically, DOE alleges:

1. A metal halide lamp fixture is a “covered product” as defined in 42 U.S.C. § 6292(a)(19) and 10 C.F.R. § 430.2;
2. Effective January 1, 2009, each metal halide lamp fixture with a pulse-start metal halide ballast must contain a pulse-start metal halide ballast with a minimum ballast efficiency of 88%. 10 C.F.R. § 431.326(a)(1);
3. Effective January 1, 2009, each metal halide lamp fixture with a magnetic probe-start metal halide ballast must contain a magnetic probe-start metal halide ballast with a minimum ballast efficiency of 94%. 10 C.F.R. § 431.326(a)(2);
4. Simkar manufactures or has manufactured¹ a variety of metal halide lamp fixtures with magnetic probe-start ballasts, which it has distributed in commerce in the U.S., including the basic models it distributes under the following model numbers: CFM0425-M, CFM0440-M, FBD4440-M, FBD4440-M5, FCM8440-M, FFM8425-M, FFS8417-M, GVV3417-M, JM0417M, JM0440M, WFM0417-M, WSL0425-M, WSL0440-M5,

¹ “Manufacture” means to manufacture, produce, assemble or import. 42 U.S.C. § 6291(16).

WSM9417-M, YP0425M, YP02405, YP0240MQ, YP0440M (the “Simkar Probe-start Basic Models”);

5. Simkar manufactures or has manufactured² a variety of metal halide lamp fixtures with pulse-start ballasts, which it has distributed in commerce in the U.S., including the basic models it distributes under the following model numbers: FCM8820-M-BK, FFM8825-1P, JM0820M, JM0820MW, JM0920M, JM28201, JM28204, JM08325-GQ, JM28325, WPL0820-1 and WSL0820-1B (the “Simkar Pulse-start Basic Models”);
6. The Simkar Probe-start Basic Models and the Simkar Pulse-start Basic Models (collectively, the “Simkar Basic Models”) are not in conformity with the applicable energy conservation standards. As indicated in the table below, the ballast efficiency of each of the Simkar Probe-start Basic Models is less than the required 94%, and the ballast efficiency of each of the Simkar Pulse-start Basic Models is less than the required 88%.

Basic Model Number	Number of Units	Start Type	Ballast Efficiency
CFM0425-M	5	magnetic probe	84%
CFM0440-M	12	magnetic probe	88%
FBD4440-M	15	magnetic probe	88%
FBD4440-M5	11	magnetic probe	87%
FCM8440-M	12	magnetic probe	88%
FFM8425-M	1	magnetic probe	86%
FFS8417-M	1	magnetic probe	83%
GVV3417-M	32	magnetic probe	83%
JM0417M	15	magnetic probe	83%
JM0440M	12	magnetic probe	88%
WFM0417-M	3	magnetic probe	83%
WSL0425-M	1	magnetic probe	84%
WSL0440-M5	9	magnetic probe	87%
WSM9417-M	12	magnetic probe	83%
YP0425M	1	magnetic probe	84%
YP02405	30	magnetic probe	88%
YP0240MQ	3	magnetic probe	88%
YP0440M	66	magnetic probe	88%
FCM8820-M-BK	4	pulse	86%
FFM8825-1P	1	pulse	86%
JM0820M	21	pulse	86%
JM0820MW	37	pulse	86%
JM0920M	6	pulse	86%
JM28201	4	pulse	86%
JM28204	1	pulse	86%
JM08325-GQ	3	pulse	87%
JM28325	1	pulse	87%

² “Manufacture” means to manufacture, produce, assemble or import. 42 U.S.C. § 6291(16).

WPL0820-1	5	pulse	86%
WSL0820-1B	2	pulse	86%

; and

7. Since January 1, 2010, Simkar distributed in commerce in the United States 326 units of the Simkar Basic Models that did not meet the applicable energy conservation standards.

The following information is provided in question and answer format to help explain Simkar's legal obligations and options.

What do I do now?

DOE is offering a settlement of \$31,890 if you submit the signed Compromise Agreement and pay the fine within thirty (30) days of the date of an Adopting Order adopting the Compromise Agreement.

If you do not choose to settle the case, DOE may seek the maximum penalty authorized by law (\$65,200). You have other options as described below.

What are my other options?

If you do *not* agree to DOE's settlement offer, then you must select Option 1 or Option 2 below within thirty (30) calendar days of the date of this Notice.

Option 1: You may elect to have DOE issue an order assessing a civil penalty. Failure to pay the assessed penalty within sixty (60) calendar days of the order assessing such penalty will result in referral of the case to a U.S. District Court for an order affirming the assessment of the civil penalty. The District Court has the authority to review the law and the facts *de novo*.

Option 2: You may elect to have DOE refer this matter to an Administrative Law Judge ("ALJ") for an agency hearing on the record. Upon a finding of violation by the ALJ, DOE will issue an order assessing a civil penalty. This order may be appealed to the appropriate U.S. Court of Appeals.

When must I respond?

You must submit the signed Compromise Agreement within thirty (30) calendar days of the date of this Notice to pay the lowest penalty. If you do not wish to settle AND you wish to choose Option 1 as described above, you must notify DOE of your selection of Option 1 within thirty (30) calendar days of the date of this Notice. Otherwise, if you do not settle the case, DOE will refer the case to an ALJ as described in Option 2.

How should I submit my response?

To assure timely receipt, DOE strongly encourages you to submit your response by e-mail, fax, or an express delivery service. DOE accepts scanned images of signed documents (such as PDFs). Responses may be sent by any of the following methods:

By email to: christina.studt@hq.doe.gov

By fax to: (202) 586-3274

By private carrier to: Christina Studt
U.S. Department of Energy
Office of the General Counsel (GC-32)
1000 Independence Ave., SW
Washington, DC 20585

What happens if I fail to respond?

If you fail to respond within thirty (30) calendar days of the date of this Notice, or by the time of any extension granted by DOE, DOE will refer the case to an ALJ for a full administrative hearing (Option 2, above).

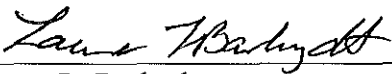
What should I include in my response?

- 1) If you wish to accept DOE's settlement offer, you should submit the signed Compromise Agreement. If you do not wish to accept DOE's settlement offer, you should specify if you wish to elect Option 1; otherwise, DOE will proceed with Option 2, as described above.
- 2) Provide your Taxpayer Identification Number (TIN). The Debt Collection Improvement Act ("DCIA") requires all federal agencies to obtain the TIN in any case that may give rise to a debt to the government.

How did DOE calculate the maximum possible assessment?

Federal law sets a maximum civil penalty for each unit of a covered product that does not meet an applicable energy or water conservation standard that is distributed in commerce in the U.S. The maximum penalty is \$200 per unit. 10 C.F.R. § 429.120. DOE has calculated a penalty of \$200 per unit for 326 units distributed in commerce beginning in 2010. DOE is not pursuing potential violations in 2009 at this time. If the case goes to hearing, this number would be adjusted to include violations in 2009 and any additional information obtained.

Issued by:



Laura L. Barhydt
Assistant General Counsel for
Enforcement