

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

In the Matter of:

Rheem Manufacturing Co.
(commercial package air conditioners and heat
pumps)

Case Number: 2018-SE-43026

NOTICE OF PROPOSED CIVIL PENALTY

Date issued: October 24, 2019

Number of alleged violations: 3,768

Maximum possible assessment: \$1,733,280

Proposed civil penalty: \$1,733,280

The U.S. Department of Energy (“DOE”) Office of the General Counsel, Office of the Assistant General Counsel for Enforcement, alleges that Rheem Manufacturing Co. (“Rheem”) 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 and 431.

Legal Requirements

Commercial package air conditioners and heat pumps are covered equipment subject to federal energy conservation standards set forth in 10 C.F.R. § 431.97. See 42 U.S.C. §§ 6311(1)(B)-(D), 6313(a).

Small commercial package air conditioners (air cooled; all other types of heating) manufactured¹ on or after January 1, 2010, and before January 1, 2018, must have minimum energy efficiency ratio (“EER”) of 11.0. 10 C.F.R. § 431.97(b).

Distribution in commerce² by a manufacturer or private labeler of any new covered equipment that is not in compliance with an applicable energy conservation standard constitutes a prohibited act punishable by civil penalty. 10 C.F.R. §§ 429.102(a)(6), 429.120. Each unit of the covered

¹ “Manufacture” means to manufacture, produce, assemble, or import. 42 U.S.C. § 6291(10).

² “Distribute in Commerce” or “Distribution in Commerce” means 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).

equipment distributed in the United States constitutes a separate violation, and each such violation currently is subject to a maximum penalty of \$460. 42 U.S.C. § 6303; 10 C.F.R. § 429.120.

Allegations

DOE alleges:

1. Rheem has manufactured and distributed in commerce in the United States commercial package air conditioner basic model RKKL-B090D (the “subject model”).
2. The subject model is a Small commercial package air conditioner (air cooled; all other types of heating) manufactured on or after January 1, 2010, and before January 1, 2018.
3. Rheem has distributed in commerce in the United States at least 3,768 units of the subject model.
4. DOE’s testing of four units of the subject model, conducted in accordance with the DOE test procedure for small commercial package air-conditioning and heating equipment (10 C.F.R. § 431.96(b)), yielded tested EERs of 10.30, 10.57, 10.42, and 10.33, respectively.
5. As DOE found in a Notice of Noncompliance Determination issued on May 16, 2019, when evaluated in accordance with 10 C.F.R. § 429.110(e) and 10 C.F.R. Part 429, Subpart C, Appendix B, the subject model does not comply with the minimum permissible energy efficiency ratio set forth at 10 C.F.R. § 431.97(b).

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

What do I do now?

DOE is offering a settlement if you submit the signed Compromise Agreement within thirty (30) calendar days of the date of this Notice. As part of that settlement, you must fulfill all obligations of the Compromise Agreement, including payment of the fine within thirty (30) calendar days after DOE issues an order adopting the Agreement (“Adopting Order”). If you do not choose to settle the case, DOE may seek as much as the maximum penalty (\$1,733,280) authorized by law. 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 notify DOE whether you 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?

If you do not wish to settle AND you wish to choose Option 1 as described above, you must notify DOE in writing within thirty (30) calendar days of the date you received this notice of your selection of Option 1. Otherwise, if you do not settle the case, DOE will refer to 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: david.case@hq.doe.gov

By fax to: (202) 287-6998

By mail to: David Case
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 after receiving 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, submit the signed compromise agreement. If you do not wish to accept DOE's settlement offer, notify DOE in writing 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 requires all Federal agencies to obtain the TIN in any case which 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 or equipment that does not meet an applicable energy conservation standard that is distributed in commerce in the U.S. 10 C.F.R. § 429.102(a)(6). In the maximum penalty calculation in this notice, DOE has calculated a maximum penalty of \$460 per unit for 3,768 units distributed in commerce in the U.S. in the last five years. This number may be adjusted to include any additional information obtained and any increase in the maximum penalty per violation. The maximum penalty increases each year and is determined based on the date of any final order assessing a penalty.

If you have any questions, please contact David Case by email at david.case@hq.doe.gov or by phone at (202) 287-6998.

Issued by:

/S/

Laura L. Barhydt
Assistant General Counsel for
Enforcement