

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

In the Matter of:	)	
	)	
<b>Powers Equipment Company, Inc.</b>	)	Case Number: 2020-CE-42018
(commercial refrigerators, freezers and	)	
refrigerator-freezers)	)	
	)	

**NOTICE OF PROPOSED CIVIL PENALTY**

Date issued:	August 26, 2021
Number of alleged violations:	1,460 (4 basic models; 365 days)
Maximum possible assessment:	\$692,040
Proposed civil penalty:	\$173,010

The U.S. Department of Energy (“DOE”) Office of the General Counsel, Office of Enforcement, alleges that Powers Equipment Company, Inc. (“Powers Equipment”) 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. Part 429.

**Legal Requirements**

A manufacturer must submit a certification report to DOE for each basic model of a covered product or covered equipment prior to distributing that basic model in commerce in the U.S. 10 C.F.R. § 429.12. Failure to submit a certification report for each basic model of a covered product and/or covered equipment as required by 10 C.F.R. Part 429 is a prohibited act pursuant to 10 C.F.R. § 429.102(a)(1). Knowingly committing a prohibited act is subject to civil penalty as described in 10 C.F.R. § 429.120.

**Allegations**

DOE alleges:

1. Powers Equipment has manufactured<sup>1</sup> commercial refrigerators, freezers, and refrigerator-freezers (commercial refrigeration equipment), including models: BS52GDHC, BS77GDHC, BS77SDHC, and BS70SDHC.

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

2. Powers Equipment has distributed<sup>2</sup> for at least 365 days, and continues to distribute, models BS52GDHC, BS77GDHC, BS77SDHC, and BS70SDHC in commerce in the U.S.
3. Commercial refrigeration equipment (including models BS52GDHC, BS77GDHC, BS77SDHC, and BS70SDHC) is “covered equipment.” *See* 42 U.S.C. § 6311; 10 C.F.R. § 431.2.
4. Powers Equipment knowingly failed to submit a certification report and compliance statement for models BS52GDHC, BS77GDHC, BS77SDHC, and BS70SDHC before distributing these models in commerce in the U.S., as required by 10 C.F.R. §§ 429.12 and 429.42.

**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”) and within sixty (60) calendar days of the date of the Adopting Order, properly certify all models that you manufacture and distribute in commerce in the U.S. If you do not submit the required certification documents within sixty (60) calendar days of the date of the Adopting Order, you will be subject to the maximum penalty of \$474 per day per basic model for every day you do not certify each basic model.

If you do not choose to settle the case, DOE may seek as much as the maximum penalty (\$692,040) 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.

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<sup>2</sup> “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).

*When must I respond?*

You must submit a signed compromise agreement within thirty (30) calendar days of the date of this notice to pay the lowest fine. 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?*

DOE accepts scanned images of signed documents (such as PDFs). Responses may be sent by email to [smitha.vemuri@hq.doe.gov](mailto:smitha.vemuri@hq.doe.gov).

*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, specify 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 day you fail to submit to DOE the required information for a covered product. 10 C.F.R. § 429.102(a)(1); 10 C.F.R. § 429.120. By regulation, you must submit a certification report for each basic model. Therefore, your maximum penalty is calculated based on each day you distributed each basic model in commerce in the U.S. without having submitted a valid certification report. In the maximum penalty calculation in this notice, DOE assumes that each basic model has been in distribution in the United States for at least 365 days. The maximum penalty is \$474 per basic model per day. 10 C.F.R. § 429.120. If the case goes to hearing, this number would be adjusted to include any additional information obtained and any increase in the maximum penalty per violation.

If you have any questions, please contact Smitha Vemuri by email at [smitha.vemuri@hq.doe.gov](mailto:smitha.vemuri@hq.doe.gov) or by phone at (202) 586-3421.

Issued by:

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/S/

Stephen C. Skubel  
Acting Assistant General  
Counsel for Enforcement