

In the Matter of:

Case Number: 2015-SE-42030

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).

Allegations

DOE alleges:

1. Master-Bilt has manufactured¹ and distributed in commerce in the United States commercial ice-cream freezer model GT-60 (the “subject model”).
2. Master-Bilt has distributed in commerce in the United States at least 189 units of the subject model.
3. The subject model has a self-contained refrigeration system.
4. The subject model allows access through a hinged or sliding door and a door angle greater than or equal to 45 degrees (i.e., is “horizontal”).
5. The subject model has glass doors (i.e., is “closed transparent”).
6. The subject model operates at or below -5 °F (± 2 °F) (-21 °C ± 1.1 °C).
7. The subject model was marketed and sold as a self-contained horizontal closed transparent commercial ice-cream freezer, as evidenced by Master-Bilt’s website, labeling, and distribution.
 - a. Master-Bilt listed the subject model under the heading of “Ice-Cream and Gelato Cabinets” on Master-Bilt’s website.
 - b. DOE purchased one unit of the subject model through normal, commercial means. The unit of the subject model that DOE received was marked with a label that stated “THIS EQUIPMENT IS INTENDED FOR THE STORAGE AND DISPLAY OF PACKAGED ICE CREAM PRODUCTS ONLY.”
 - c. The units of the subject model provided directly to DOE by Master-Bilt in response to the Test Notice issued on June 19, 2015, were also marked with labels that stated, “THIS EQUIPMENT IS INTENDED FOR THE STORAGE AND DISPLAY OF PACKAGED ICE CREAM PRODUCTS ONLY.”²
 - d. In a June 19, 2015 email to DOE, Master-Bilt stated to DOE that the subject model is both a frozen food and ice cream case.
8. Accordingly, the subject model is properly classified as a self-contained horizontal closed transparent commercial ice-cream freezer.
9. The mean tested total display area (TDA) of the four units of the subject model tested is 8.56 ft².
10. Given the tested units’ mean TDA, the maximum permissible rate of energy consumption for the subject model is 5.22 kilowatt hours per day (kWh/day).
11. DOE’s testing of four units of the subject model, conducted in accordance with the DOE test procedure for commercial refrigerators, freezers, and refrigerator-freezers (10 C.F.R.

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

² In accordance with 10 CFR § 429.110(d)(1), the test units were required not to be modified or adjusted in any manner unless (1) such preparation, modification, or adjustment was allowed by the applicable DOE test procedure and (2) Master-Bilt provided advance written notice to DOE of any such preparation, modification, or adjustment. DOE did not direct Master-Bilt to mark the test units with the “...PACKAGED ICE CREAM PRODUCTS ONLY” label.

§ 431.64), yielded tested daily energy consumptions of 20.19, 19.31, 20.07, and 19.47 kWh/day. 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 maximum permissible rate of energy consumption set forth at 10 C.F.R. § 431.66(b)(1).

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

What do I do now?

DOE is offering to settle this enforcement action if you submit the signed Compromise Agreement within thirty (30) calendar days of the date of this Notice and then fulfill all obligations of the Compromise Agreement.

If you do not choose to settle the case, DOE may seek the maximum penalty authorized by law (currently \$81,837). 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). You may respond by any of the following methods:

By email to: ronald.colwell@hq.doe.gov

By fax to: (202) 586-3274

By private carrier to: Ronald J. Colwell
 Honors Attorney (GC-32)

U.S. Department of Energy
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. 10 C.F.R. § 429.102(a)(6). In the maximum penalty calculation in this notice, DOE has calculated a maximum penalty of \$433 per unit for 189 units distributed in commerce in the U.S. in the last five years. This number may be adjusted based on any additional information obtained if the case goes to hearing.

If you have any questions, please contact R.J. Colwell by email at ronald.colwell@hq.doe.gov.

Issued by:

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