

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

In the Matter of: )  
)  
)  
**Fagor Commercial, Inc.** ) Case Number: 2015-SE-42034  
(commercial refrigeration equipment) )  
)  
)

**NOTICE OF PROPOSED CIVIL PENALTY**

Date issued: August 31, 2016  
Number of alleged violations: 200  
Maximum possible assessment: **\$86,600**  
Proposed civil penalty: **\$86,600**

The U.S. Department of Energy (“DOE”) Office of the General Counsel, Office of Enforcement, alleges Fagor Commercial, Inc. (“Fagor”) 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 freezers are covered equipment subject to energy conservation standards set forth in 10 C.F.R. § 431.66(b). *See* 42 U.S.C. § 6313(c); 42 U.S.C. § 6311(1)(E).

Effective January 1, 2010, commercial freezers with solid doors with a self-contained condensing unit designed for holding temperature applications must have a daily energy consumption (in kilowatt hours per day) that does not exceed 0.40 times the adjusted volume plus 1.38. 10 C.F.R. § 431.66(b)(1).

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. Fagor has manufactured<sup>1</sup> and distributed in commerce in the United States commercial freezer nameplate models FUF-48 and FWF-48 (the “subject models”).
2. The subject models are commercial freezers with solid doors and a self-contained condensing unit, and are designed for holding temperature applications.
3. The subject models are the same basic model as they have the same primary energy source, and have essentially identical electrical, physical, and functional characteristics that affect energy consumption and energy efficiency; the only difference between the subject models is that nameplate model FUF-48 is designed to fit underneath a counter while nameplate model FWF-48 is designed to serve as a worktop.
4. Fagor has distributed in commerce in the United States at least 200 units of the subject models.
5. DOE’s testing of four units of FWF-48, conducted in accordance with the DOE test procedure for commercial refrigerators, freezers, and refrigerator-freezers (10 C.F.R. § 431.64), yielded tested daily energy consumptions of 8.38, 8.59, 8.19, and 8.39 kWh/day.
6. When evaluated in accordance with 10 C.F.R. § 429.110(e) and 10 C.F.R. Part 429, Subpart C, Appendix B, the basic model that includes individual model FWF-48 does not comply with the maximum permissible rate of energy consumption<sup>2</sup> set forth at 10 C.F.R. § 431.66(b)(1).

**The following information is provided in question and answer format to help explain Fagor’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 \$86,600). 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.

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<sup>1</sup> “Manufacture” means to manufacture, produce, assemble or import. 42 U.S.C. §§ 6311(7), 6291(10).

<sup>2</sup> Given the tested units’ mean chilled compartment volume, their maximum permissible rate of energy consumption is 5.18 kilowatt hours per day (kWh/day).

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 200 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](mailto:ronald.colwell@hq.doe.gov).

Issued by:

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Laura L. Barhydt  
Assistant General Counsel for  
Enforcement