

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

In the Matter of:)
)
Beverage-Air Corporation) Case Number: 2016-SE-42004
(commercial refrigeration equipment))
)

NOTICE OF PROPOSED CIVIL PENALTY

Date issued: October 14, 2016
Number of alleged violations: 48
Maximum possible assessment: **\$ 20,784**
Proposed civil penalty: **\$ 20,784**

The U.S. Department of Energy (“DOE”) Office of the General Counsel, Office of Enforcement, alleges that Beverage-Air Corporation (“Beverage-Air”) 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 refrigerators, freezers and refrigerator-freezers are covered equipment subject to energy conservation standards set forth in 10 C.F.R. § 431.66. *See* 42 U.S.C. § 6313(c); 42 U.S.C. § 6311(1)(E).

Commercial refrigerator-freezer means a unit of commercial refrigeration equipment consisting of two or more refrigerated compartments where at least one refrigerated compartment is capable of operating at or above 32 °F (±2 °F) and at least one refrigerated compartment is capable of operating below 32 °F (±2 °F). 10 C.F.R. § 431.62.

Effective January 1, 2010, commercial refrigerator-freezers with solid doors must have a daily energy consumption (in kilowatt hours per day) that does not exceed the greater of: (1) 0.27 times the adjusted volume minus 0.71; or (2) 0.70. 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. Beverage-Air has manufactured¹ and distributed in commerce in the United States commercial refrigerator-freezer models WTRF52A***** and UCRF52A***** (the “subject models”).
2. 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.
3. As certified by Beverage-Air, the subject models are grouped under basic model WTRF52A (the “basic model”).
4. The basic model is a commercial refrigerator-freezer with solid doors with a self-contained condensing unit designed for holding temperature application.
5. The basic model has at least one refrigerated compartment capable of operating at or above 32 °F (± 2 °F) and at least one refrigerated compartment capable of operating below 32 °F (± 2 °F).
6. The basic model has two refrigerated compartments that belong to the same equipment family; each is connected to a self-contained condensing unit, allows access through a hinged or sliding door and a door angle less than 45 degrees (i.e., is “vertical”), and has solid doors.
7. Beverage-Air has distributed in commerce in the United States at least 48 units of the basic model.
8. As DOE found in a Notice of Noncompliance Determination issued on April 8, 2016, the basic model, including all individual models contained within the basic 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 your legal obligations and options.

What do I do now?

DOE is offering to settle this enforcement action by execution of the attached Compromise Agreement within thirty (30) calendar days of the date of this Notice and then fulfill all obligations of the compromise agreement, which includes paying the fine within thirty (30) calendar days of the date of an order adopting the Compromise Agreement.

You have other options as described below.

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

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 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 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: smitha.vemuri@hq.doe.gov

By fax to: (202) 586-3274

By mail to: Smitha Vemuri
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, 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 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 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 48 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 Smitha Vemuri by email at smitha.vemuri@hq.doe.gov or by phone at (202) 586-3421.

Issued by:

____/S/_____

Laura L. Barhydt
Assistant General Counsel for
Enforcement