



**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) )  
 )

**COMPROMISE AGREEMENT**

The U.S. Department of Energy (“DOE”) Office of the General Counsel initiated this action against Beverage-Air Corporation (“Respondent”) pursuant to 10 C.F.R. § 429.122 by Notice of Proposed Civil Penalty alleging that Respondent had distributed in commerce in the United States commercial refrigeration equipment that are not in compliance with an applicable energy conservation standard. Respondent, on behalf of itself and any parent, subsidiary, division or other related entity, and DOE, by their authorized representatives, hereby enter into this Compromise Agreement for the purpose of settling this enforcement action.

**I. DEFINITIONS**

For the purposes of this Compromise Agreement, the following definitions shall apply:

- (a) “Act” means the Energy Policy and Conservation Act of 1975, as amended, 42 U.S.C. § 6291 *et seq.*
- (b) “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;
- (c) “DOE” means the U.S. Department of Energy.
- (d) “DOE Rules” means DOE’s energy conservation regulations found in Title 10, Parts 429, 430 and 431 of the Code of Federal Regulations.
- (e) “Manufacture” means to manufacture, produce, assemble, or import.
- (f) “Notice” means the Notice of Proposed Civil Penalty issued by DOE to Respondent on October 14, 2016, and captioned as case number 2016-SE-42004.
- (g) “Parties” means DOE and Respondent.
- (h) “Respondent” means Beverage-Air Corporation, including Victory Refrigeration, and any parent, subsidiary, division or other related entity.

The Agreement further incorporates by reference all of the definitions found within 42 U.S.C. §§ 6291 and 6311 and 10 C.F.R. § 431.2.

## II. RECITALS

WHEREAS, DOE, pursuant to the Act, is responsible for promulgating and enforcing the energy conservation requirements set forth in DOE Rules; and

WHEREAS, DOE has promulgated energy conservation standards for commercial refrigerators, freezers, and refrigerator-freezers at 10 C.F.R. § 431.66; and

WHEREAS, DOE, on April 8, 2016, issued a Notice of Noncompliance Determination with respect to commercial refrigerator-freezer basic model WTRF52A (the “basic model”) (including individual models WTRF52A\*\*\*\*\* and UCRF52A\*\*\*\*\*), and any other individual models contained in the basic model), manufactured and distributed in commerce by Respondent; and

WHEREAS, commercial refrigerator-freezers are “covered equipment” as defined in 42 U.S.C. § 6311 and 10 C.F.R. § 431.2; and

WHEREAS, DOE, on October 14, 2016, initiated an action to assess a civil penalty for Respondent’s distribution in commerce in the United States of the basic model; and

WHEREAS, Respondent admits:

1. Respondent manufactured the basic model;
2. Respondent has distributed in commerce in the United States at least 48 units of the basic model;
3. The basic model is a commercial refrigerator-freezer subject to the conservation standards set forth at 10 C.F.R. § 431.66(b)(1);
4. The basic model does not meet the applicable energy conservation standard as set forth in 10 C.F.R. § 431.66(b)(1); and

WHEREAS, DOE, pursuant to 42 U.S.C. §§ 6316 and 10 C.F.R. Part 429, Subpart C, is authorized to assess civil monetary penalties against any manufacturer that knowingly distributes in commerce any new covered equipment that is not in conformity with an applicable energy or water conservation standard; and

NOW, THEREFORE, in consideration of the foregoing and the mutual agreements set forth below, the sufficiency and adequacy of which are hereby acknowledged, the Parties agree as follows:

## III. TERMS OF THE AGREEMENT

1. **Adopting Order.** The parties agree that the provisions of the Compromise Agreement shall be subject to final approval by the General Counsel by incorporation of such provisions by reference in the Adopting Order without change, addition, modification, or deletion.
2. **Obligations of Respondent.**
  - a. Respondent agrees to pay the sum of \$9,600 (nine thousand, six hundred dollars) as full satisfaction of the civil penalty proposed in the Notice, within thirty (30) days of the issuance of an Adopting Order.

- b. Respondent agrees to abide by the terms of the Notice of Noncompliance Determination, issued on April 8, 2016, captioned under case number 2016-SE-42004.
3. **Obligations of DOE.**
  - a. In express reliance on the covenants and representations in this Compromise Agreement and to avoid further expenditure of public resources, DOE agrees to accept Respondent's performance pursuant to Paragraph III.2.a above in full satisfaction of the penalty authorized by the Act.
  - b. DOE agrees promptly to issue an Adopting Order adopting this Compromise Agreement.
  - c. DOE agrees to terminate this enforcement action with prejudice upon Respondent's completion of its obligations in accordance with Paragraph III.2, above.
4. **Jurisdiction.** This Compromise Agreement is entered pursuant to DOE's authority to interpret and enforce its rules for energy efficiency and to enter into its own agreements interpreting and applying those rules. The Parties agree that DOE has jurisdiction over Respondent and primary jurisdiction over the matters contained in this Compromise Agreement and has the authority to enter into this Compromise Agreement.
5. **Effective Date.** The Parties agree that this Compromise Agreement shall become effective on the date on which the General Counsel issues the Adopting Order. Upon release, the Adopting Order and this Compromise Agreement shall have the same force and effect as any other Order of the General Counsel. Any violation of the Adopting Order or of the terms of this Compromise Agreement shall constitute a separate violation of an agency Order, entitling DOE to exercise any rights and remedies attendant to the enforcement of an Agency Order.
6. **Waivers.** Respondent agrees not to seek judicial review or otherwise contest or challenge the validity of the terms and penalties set out in this Compromise Agreement or the Notice associated with this case, including any right to judicial review that may be available to the Respondent. If either Party (or the United States on behalf of DOE) brings a judicial action to enforce the terms of this Compromise Agreement, neither Respondent nor DOE shall contest the validity of the Compromise Agreement, and Respondent waives any statutory right to a trial *de novo*. Respondent hereby agrees to waive any claims it may otherwise have under the Equal Access to Justice Act, 5 U.S.C. § 504, relating to the matters addressed in this Compromise Agreement.
7. **Final Settlement.** The Parties agree and acknowledge that this Compromise Agreement shall constitute a final settlement between the Parties. This Compromise Agreement resolves only the violations alleged in the Notice.
8. **Merger.** This Compromise Agreement constitutes the entire agreement between the Parties and supersedes all previous understandings and agreements between the Parties, whether oral or written.
9. **Modifications.** This Compromise Agreement cannot be modified without the advance written consent of both Parties.

10. **Severability.** If any provision of this agreement is held to be invalid, illegal, void, or unenforceable, then that provision is to be construed by modifying it to the minimum extent necessary to make it enforceable.
11. **Authorized Representative.** Each party represents and warrants to the other that it has full power and authority to enter into this Compromise Agreement.
12. **Counterparts.** This Compromise Agreement may be signed in any number of counterparts (including by facsimile or electronic mail), each of which, when executed and delivered, shall be an original, and all of which counterparts together shall constitute one and the same fully executed instrument.

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Laura L. Barhydt  
Assistant General Counsel for  
Enforcement  
U.S. Department of Energy

\_\_\_\_11/16/2016\_\_\_\_\_  
\_\_\_\_\_

Date

\_\_\_\_\_/S/\_\_\_\_\_  
\_\_\_\_\_

(Signature)  
Typed Name: \_John Tinney\_\_\_\_\_  
Title: \_Refrigeration Engineer\_\_\_\_\_  
Company Name: \_Beverage-Air\_\_\_\_\_

\_\_\_\_11-11-2016\_\_\_\_\_  
\_\_\_\_\_

Date