

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

In the Matter of:

**Asbury Foodservice Equipment
Company**
(Respondent)

Case Number: 2016-SE-42014

ORDER

By the General Counsel, U.S. Department of Energy:

1. In this Order, I adopt the attached Compromise Agreement entered into between the U.S. Department of Energy (“DOE”) and Asbury Foodservice Equipment Company (“Respondent”). The Compromise Agreement resolves the case initiated to pursue a civil penalty for distribution in commerce of units of a basic model of covered equipment that failed to meet the energy conservation requirements as described at 10 C.F.R. § 431.66.

2. DOE and Respondent have negotiated the terms of the Compromise Agreement that resolve this matter. A copy of the Compromise Agreement is attached hereto and incorporated by reference.

3. After reviewing the terms of the Compromise Agreement and evaluating the facts before me, I find that the public interest would be served by adopting the Compromise Agreement, which completes the adjudication of the case.

4. Based on the information in the case file and Respondent’s admission of violation in the Compromise Agreement, I find that Respondent committed Prohibited Acts as described at 10 C.F.R. § 429.102(a)(6). *See* 42 U.S.C. § 6316.

5. Accordingly, pursuant to 10 C.F.R. § 429.120 and 42 U.S.C. § 6316, **I HEREBY ORDER** that the Compromise Agreement attached to this Order is adopted.

/S/

Steven P. Croley
General Counsel

7/15/16

Date

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

In the Matter of:

**Asbury Foodservice Equipment
Company**
(commercial freezers)

Case Number: 2016-SE-42014

COMPROMISE AGREEMENT

The U.S. Department of Energy (“DOE”) Office of the General Counsel, Office of Enforcement, initiated this action against Asbury Foodservice Equipment Company (“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 freezers 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 June 23, 2016, and captioned as case number 2016-SE-42014.
- (g) “Parties” means DOE and Respondent.
- (h) “Respondent” means Asbury Foodservice Equipment Company and/or 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. Parts 429 and 431.

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 January 28, 2016, issued a Notice of Noncompliance Determination with respect to commercial freezer model MXCF27U/69K-052 (the “subject model”), manufactured and distributed in commerce by Respondent; and

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

WHEREAS, DOE, on June 23, 2016, initiated an action to assess a civil penalty for Respondent’s distribution in commerce in the United States of the subject model; and

WHEREAS, Respondent admits:

1. Respondent manufactured (imported) and distributed the subject model in commerce in the United States;
2. Respondent has manufactured and distributed in commerce in the United States at least 270 units of the subject model;
3. The subject model is a commercial freezer subject to the energy conservation standards set forth at 10 C.F.R. § 431.66;
4. The subject model does not meet the applicable energy conservation standard as set forth in 10 C.F.R. § 431.66; 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

WHEREAS, the original equipment manufacturer, Shandong Hongtai Electrical Appliance Co., Ltd., has paid a civil monetary penalty for the manufacture and distribution in commerce of the 270 units of the subject model at issue;

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.** Respondent agrees to abide by the terms of the Notice of Noncompliance Determination, issued on January 28, 2016, captioned under case number 2016-SE-42014.
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 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.

/S/

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

7/14/2016

Date

/S/

(Signature)
Typed Name: Teresa Asbury
Title: Vice President
Company Name: The Legacy Companies

7/12/2016

Date