

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

In the Matter of: )  
)  
**Jofemar USA Inc.** ) Case Number: 2014-SE-52004  
(refrigerated bottled or canned beverage )  
vending machines) )  
)

**NOTICE OF PROPOSED CIVIL PENALTY**

Date issued: November 9, 2018  
Number of alleged violations: 43  
Maximum possible assessment: \$ 19,307  
Proposed civil penalty: \$ 19,307

The U.S. Department of Energy (“DOE”) Office of the General Counsel, Office of Enforcement, alleges that Jofemar USA Inc. (“Jofemar”) 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. Part 429 and 431.

**Legal Requirements**

Refrigerated bottled or canned beverage vending machines (BVM) are a covered product subject to federal energy conservation standards set forth in 10 C.F.R. § 431.296. See 42 U.S.C. § 6295.

The maximum daily energy consumption, in kilowatt-hours per day (kWh/day), for a Class A BVM when measured at the 75 °F ±2° and 45 ±5% RH condition, is 0.055 multiplied by the volume of the particular BVM plus 2.56 (0.055 \* V + 2.56). See 10 C.F.R. § 431.296.

Distribution in commerce<sup>1</sup> by a manufacturer or private labeler of any new covered product that is not in compliance with an applicable energy conservation standard constitutes a prohibited act punishable by civil penalty. 10 C.F.R. §§ 429.102(a)(6), 429.120. Each unit of the covered product distributed in the United States constitutes a separate violation, and each such violation currently is subject to a maximum penalty of \$449 (four hundred and forty-nine dollars). 42 U.S.C. § 6303; 10 C.F.R. § 429.120.

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<sup>1</sup> “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. 42 U.S.C. § 6291(16).

## **Allegations**

DOE alleges:

1. Jofemar has manufactured and distributed in commerce in the United States Class A BVM basic model V.4, Vision Elevator/Cooling Unit E332USTS0443 (the “subject model”).
2. The subject model is not a combination vending machine because it consists of one refrigerated volume that is fully cooled. Because 25 percent or more of the surface area on the front side of the model is transparent and the model is not a combination vending machine, the subject model is a Class A BVM.
3. Jofemar has distributed in commerce in the United States at least 43 units of the subject model.
4. DOE’s testing of four units of the subject model, conducted in accordance with the DOE test procedure for BVMs (10 C.F.R. § 431.294), yielded rates of energy consumption, in kWh/day, of 7.711, 8.561, 6.687, and 8.448.
5. The four tested units of the subject model have a mean rate of energy consumption of 7.85 kWh/day.
6. Given the tested units’ measured volumes, their respective maximum permissible rate of energy consumption is 3.96 kWh/day.
7. As DOE found in a Notice of Noncompliance Determination issued on November 16, 2017, 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. § 431.296(a).

**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 a settlement if you submit the signed Compromise Agreement within thirty (30) calendar days of the date of this Notice. As part of that settlement, you must fulfill all obligations of the Compromise Agreement, including payment of the fine within thirty (30) calendar days after DOE issues an order adopting the Agreement (“Adopting Order”). If you do not choose to settle the case, DOE may seek as much as the maximum penalty (\$19,307) authorized by law. 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 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: lucy.lee@hq.doe.gov

By fax to: (202) 287-6395

By mail to: Lucy Lee  
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 \$449 per unit for 43 units distributed in

commerce in the U.S. If the case goes to hearing, this number would be adjusted to include any additional information obtained and any increase in the maximum penalty per violation.

If you have any questions, please contact Lucy Lee by email at [lucy.lee@hq.doe.gov](mailto:lucy.lee@hq.doe.gov) or by phone at (202) 287-6395.

Issued by:

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Laura L. Barhydt  
Assistant General Counsel for  
Enforcement