

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

In the Matter of:)
)
Jofemar USA Inc.,) Case Number: 2014-SE-52004
Respondent)

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 Jofemar USA Inc. (“Respondent”). The Compromise Agreement resolves the case initiated to pursue a civil penalty for distributing in commerce in the United States refrigerated bottled or canned beverage vending machines that failed to meet the applicable energy conservation standard at 10 C.F.R. § 431.296.
2. DOE and Respondent have negotiated the terms of the Compromise Agreement that resolves 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.
4. Based on the information in the case file and Respondent’s admission of facts establishing violations, I find that Respondent committed Prohibited Acts by distributing in commerce refrigerated bottled or canned beverage vending machines that were not in conformity with the applicable energy conservation standard. *See* 10 C.F.R. §§ 429.102(a)(6), 431.296 and 42 U.S.C. § 6302(a)(5).
5. Accordingly, pursuant to 10 C.F.R. § 429.120 and 42 U.S.C. § 6303, I **HEREBY ASSESS** a civil penalty of \$15,000 **AND ORDER** that the Compromise Agreement attached to this Order is adopted.

_____/S/_____
Theodore J. Garrish
Acting General Counsel

____Nov. 29, 2018_____
Date

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

In the Matter of:)	
)	
Jofemar USA Inc.,)	Case Number: 2014-SE-52004
Respondent)	
)	

COMPROMISE AGREEMENT

The U.S. Department of Energy (“DOE”) Office of the General Counsel, Office of the Assistant General Counsel for Enforcement, initiated this action against Jofemar USA Inc. (“Respondent”) pursuant to 10 C.F.R. § 429.122 by Notice of Proposed Civil Penalty alleging that Respondent had manufactured and distributed in commerce refrigerated bottled or canned beverage vending machines that are not in compliance with the 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 specific enforcement action.

I. DEFINITIONS

For the purposes of this Compromise Agreement, the following definitions 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 DOE issued to Respondent on November 9, 2018, and captioned as case number 2014-SE-52004.
- (g) “Parties” means DOE and Respondent.
- (h) “Respondent” means Jofemar USA Inc., and any parent, subsidiary, division or other related entity.

The Agreement further incorporates by reference all of the definitions set forth in 42 U.S.C. §§ 6291 and 10 C.F.R. Parts 429, 430, and 431.

II. RECITALS

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

WHEREAS, DOE has promulgated energy conservation standards for refrigerated bottled and canned beverage vending machines at 10 C.F.R. § 431.296; and

WHEREAS, on November 16, 2017, DOE issued a Notice of Noncompliance Determination finding that the refrigerated bottled and canned beverage vending machines, basic model V.4, Vision Elevator/Cooling Unit E332USTS0443 (“the subject model”), manufactured by Respondent, does not comply with the applicable energy conservation standard; and

WHEREAS, the subject model is a refrigerated bottled or canned beverage vending machine, which is a “covered product”; and

WHEREAS, the energy conservation standards set forth in 10 C.F.R. § 431.296 apply to all units of the subject model manufactured by Respondent on or after August 31, 2012; and

WHEREAS, on November 9, 2018, DOE 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 the subject model;
2. Respondent has distributed in commerce in the United States at least 43 units of the subject model;
3. The subject model is a refrigerated bottled or canned beverage vending machine subject to the Class A energy conservation standard set forth in 10 C.F.R. § 431.296(a); and
4. The subject model does not comply with that energy conservation standard; and

WHEREAS, DOE, pursuant to 42 U.S.C. § 6303 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 product that is not in conformity with an applicable energy conservation standard;

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 this Compromise Agreement are 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. If Respondent executes this Compromise Agreement and returns it to DOE within thirty (30) calendar days after the date of the Notice, Respondent agrees to pay the sum of \$15,000, as full satisfaction of the civil penalty proposed in the Notice as follows: \$2,500 within 30 days of the date of the Adopting Order, \$5,000 within three

(3) months of the date of the Adopting Order, and the remaining sum of \$7,500 within six (6) months of the date of the Adopting Order.

- b. Respondent agrees to abide by the terms of the Notice of Noncompliance Determination, issued on November 16, 2017, captioned under case number 2014-SE-52004.

3. **Obligations of DOE.**

- a. In express reliance on the covenants and representations in this Compromise Agreement, in consideration of additional financial information provided by Respondent, and to avoid further expenditure of public resources, DOE agrees to accept Respondent's payment pursuant to paragraph III.2.a in full satisfaction of the civil penalty authorized by the Act.
- b. DOE agrees to issue promptly an Adopting Order adopting this 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. If Respondent fails to complete its Obligations in accordance with paragraph III.2, above, DOE may notify Respondent that the Agreement is null and void and may seek the maximum penalty in accordance with 10 C.F.R. § 429.120.

4. **Jurisdiction.** This Compromise Agreement is entered pursuant to DOE's authority to interpret and enforce its regulations and to enter into its own agreements interpreting and applying those regulations. 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 will become effective on the date on which the General Counsel issues the Adopting Order. As of that date, the Adopting Order and this Compromise Agreement 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 constitutes a separate violation of an Agency Order, entitling DOE to exercise any rights and remedies attendant to the enforcement of an Agency Order.

6. **Payment Instructions and Late Payments.** Respondent agrees to make all payments in a timely manner and in a method set forth in the attached "Payment Instructions." Respondent acknowledges and agrees to comply with the "Late Payment" provisions provided therein.

7. **Limitations.** Nothing in this agreement binds any other agency of the United States government beyond DOE.

8. **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.

9. **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.
10. **Merger.** This Compromise Agreement constitutes the entire agreement between the Parties and supersedes all previous understandings and agreements between the Parties with respect to this matter, whether oral or written.
11. **Modifications.** This Compromise Agreement cannot be modified without the written consent of both Parties.
12. **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; or if such modification is not possible, then the rest of this agreement remains enforceable to the maximum extent allowed by law.
13. **Authorized Representative.** Each party represents and warrants to the other that it has full power and authority to enter into this Compromise Agreement.
14. **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

 Nov. 26, 2018
 Date

_____/S/_____
 (Signature)
 Typed Name: __Jose F Iribarren_____
 Title: _____Vice President/CEO_____
 Company Name: _____Jofemar USA_____

 11/21/2018
 Date