

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

In the Matter of:)
)
Atosa Catering Equipment Inc.)
(commercial refrigerators, freezers and)
refrigerator-freezers))
)

Case Number: 2018-CE-42035

NOTICE OF PROPOSED CIVIL PENALTY

Date issued: September 28, 2018
Number of alleged violations: 450 (3 basic models; 150 days)
Maximum possible assessment: **\$202,050**
Proposed civil penalty: **\$50,400**

The U.S. Department of Energy (“DOE”) Office of the General Counsel, Office of Enforcement, alleges that Atosa Catering Equipment Inc. (“Atosa”) 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, Subpart B.

Legal Requirements

A manufacturer must submit a certification report to DOE for each basic model of a covered product or covered equipment prior to distributing that basic model in commerce in the U.S., and annually thereafter. 10 C.F.R. § 429.12. Failure to submit a certification report for each basic model of a covered product and/or covered equipment as required by 10 C.F.R. Part 429 is a prohibited act pursuant to 10 C.F.R. § 429.102(a)(1) and subject to civil penalty as described in 10 C.F.R. § 429.120.

Allegations

DOE alleges:

1. Atosa has manufactured¹ and distributed in commerce and continues to distribute in commerce commercial refrigerators, refrigerator-freezers, and freezers (commercial refrigeration equipment), including Atosa brand basic models MBF8507GR, MBF8001GR, and MBF8503GR.
2. Atosa has distributed for at least 150 days, and continues to distribute, Atosa brand basic models MBF8507GR, MBF8001GR, and MBF8503GR in commerce in the U.S.

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

3. Commercial refrigeration equipment, including Atosa brand basic models MBF8507GR, MBF8001GR, and MBF8503GR, are “covered equipment.” *See* 42 U.S.C. § 6311; 10 C.F.R. § 431.2.
4. On August 13, 2015, Atosa agreed to pay \$8,000 after failing to submit certification reports for commercial refrigeration equipment. As part of that agreement, Atosa also agreed to certify all basic models of all covered products that it distributed in the U.S.
5. Atosa has not submitted a certification report for Atosa brand basic models MBF8507GR, MBF8001GR, and MBF8503GR since April 28, 2017.
6. Atosa knowingly failed to submit a certification report and compliance statement for Atosa brand basic models MBF8507GR, MBF8001GR, and MBF8503GR prior to August 1, 2018, as required by C.F.R. §§ 429.12 and 429.42 while continuing to distribute these models in commerce in the U.S.

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) 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”) and within sixty (60) calendar days of the date of the Adopting Order properly certify all models that you manufacture and distribute in commerce in the U.S. If you do not submit the required certification documents within sixty (60) calendar days of the date of the Adopting Order, you will be subject to the maximum penalty of \$449 per day per basic model for every day you do not certify each basic model.

If you do not choose to settle the case, DOE may seek the maximum penalty (**\$202,050**) 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 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 that 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 day you fail to submit to DOE the required information for a covered product. By regulation, you must submit a certification report for each basic model. Therefore, your maximum penalty is calculated based on each day you distributed each basic model in commerce in the U.S. without having submitted a valid certification report. In the maximum penalty calculation in this notice, DOE assumes that each basic model has been in distribution in the United States for at least 150 days. The maximum penalty is \$449 per basic model per day. 10 C.F.R. § 429.120. 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 Smitha Vemuri by email at smitha.vemuri@hq.doe.gov or phone at (202) 586-3421.

Issued by:

/S/

Laura L. Barhydt
Assistant General Counsel for
Enforcement