

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

In the Matter of:

**CNA International, Inc.,
d/b/a MC Appliance Corp.
(freezers)**

Case Number: 2013-SE-1430

NOTICE OF PROPOSED CIVIL PENALTY

Date issued: September 24, 2013

Number of alleged violations: **40,600**

Maximum possible assessment: **\$8,120,000**

Proposed civil penalty: **\$8,120,000**

The U.S. Department of Energy ("DOE") Office of the General Counsel, Office of Enforcement, alleges that CNA International, Inc., d/b/a MC Appliance Corp. ("CNA") 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. Parts 429 and 430.

Specifically, DOE alleges:

1. CNA has imported and distributed in commerce in the United States freezer basic model [REDACTED] ("the basic model"), manufactured by [REDACTED] and distributed by CNA under the brand name "Magic Chef" with the model number HMCF7W.
2. Since February 14, 2010, CNA has distributed in commerce in the United States 40,600 units of the basic model.
3. The basic model is a "covered product" as defined in 10 C.F.R. § 430.2.
4. DOE's testing of four privately labeled units of the basic model, conducted in accordance with DOE test procedures (*see* 10 C.F.R. Part 430, Subpart B, Appendix B1), and DOE's calculations in accordance with 10 C.F.R. Part 429, Subpart C, Appendix A, demonstrated that the basic model does not meet the federal energy conservation standards set forth at 10 C.F.R. § 430.32(a).

5. Given the tested units' measured volumes, the maximum permissible rate of energy consumption was [REDACTED] kilowatt hours per year (kWh/yr).¹ Based on their performance during testing, the four units that DOE tested consumed energy at the rates of [REDACTED], which corresponds to an average of [REDACTED] percent over the federal limit.

The following information is provided in question and answer format to help explain CNA's legal obligations and options.

What do I do now?

DOE is offering to settle this matter without a civil penalty if you sign and submit the attached Compromise Agreement within thirty (30) calendar days. For the precise terms of DOE's settlement offer, please see the attached Compromise Agreement.

If you do not choose to settle the case, DOE may seek the maximum penalty 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 the signed Compromise Agreement within thirty (30) calendar days of the date of this Notice to avoid paying a fine. If you do not wish to settle AND you wish to choose Option 1 as described above, you must notify DOE of your selection of Option 1 within thirty (30) calendar days of the date of this Notice. 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:

¹ Under 10 C.F.R. § 430.32(a), the maximum energy use, in kWh/yr, of a compact chest freezer may not exceed 152 plus the product of 10.45 and the total adjusted volume of the particular freezer (10.45 AV+152.0).

By email to: abigail.chingos@hq.doe.gov
By fax to: (202) 586-3274
By private carrier to: Abigail Chingos
Trial Attorney (GC-32)
U.S. Department of Energy
1000 Independence Ave., SW
Washington, DC 20585

What happens if I fail to respond?

If you fail to respond within thirty (30) calendar days of the date of 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 ("DCIA") 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 unit of a covered product that does not meet an applicable energy or water conservation standard that is distributed in commerce in the U.S. The maximum penalty is \$200 per unit. 10 C.F.R. § 429.120. DOE has calculated a maximum penalty of \$200 per unit for 40,600 units distributed in commerce in the United States beginning in February 2010. DOE is not pursuing potential violations prior to February 14, 2010, at this time. If the case goes to hearing, this number would be adjusted to account for violations before February 2010 and any additional information obtained.

If you have any questions, please contact Abigail Burger Chingos via phone at (202) 586-5060 or email at abigail.chingos@hq.doe.gov.

Issued by:

/s/

Laura L. Barhydt
Assistant General Counsel for
Enforcement