

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

In the Matter of:)	
)	
Bu Sung America Corporation)	Case Number: 2015-SE-42001
(dba Everest Refrigeration))	
(commercial refrigerators, freezers and)	
refrigerator-freezers))	

NOTICE OF PROPOSED CIVIL PENALTY

Date issued: June 3, 2015

Number of alleged violations: **64**

Maximum possible assessment: **\$12,800**

Proposed civil penalty: **\$12,800**

The Office of the General Counsel of the U.S. Department of Energy (“DOE”) alleges that Bu Sung America Corporation (dba Everest Refrigeration) (“Bu Sung”) 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.

Specifically, DOE alleges:

1. Bu Sung has manufactured and distributed in commerce in the United States commercial refrigeration equipment model ESGR3 (the “subject model”).
2. The subject model is “covered equipment” as defined in 42 U.S.C. § 6311(1)(E) and 10 C.F.R. § 431.2.
3. Bu Sung has distributed in commerce in the United States at least 64 units of the subject model.
4. DOE’s testing of one unit of the subject model, conducted in accordance with the DOE test procedure for commercial refrigerators, freezers, and refrigerator-freezers (10 C.F.R. § 431.64), yielded a tested daily energy consumption of 14.191 kWh/day.
5. 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 minimum federal standard MDEC of 10.74 kWh/day set forth at 10 C.F.R. § 431.66(b)(1).

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 to settle this enforcement action by execution of the attached Compromise Agreement. To accept this settlement offer, you must submit the signed 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 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: david.case@hq.doe.gov

By fax to: (202) 586-3274

By mail to: David Case
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 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 \$200 per unit for 64 units distributed in commerce in the U.S. in the last five years. This number may be adjusted based on any additional information obtained if the case goes to hearing.

Issued by:

/S/

Laura L. Barhydt
Assistant General Counsel for
Enforcement