

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

In the Matter of:)
)
Victory Refrigeration) Case Number: 2015-SE-42033
(commercial refrigerators, freezers and)
refrigerator-freezers))

NOTICE OF PROPOSED CIVIL PENALTY

Date issued: September 25, 2015

Number of alleged violations: 8
Maximum possible assessment: \$ 1,600
Proposed civil penalty: \$ 1,600

The U.S. Department of Energy (“DOE”) Office of the General Counsel, Office of Enforcement, alleges that Victory Refrigeration (“Victory”) 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 431.

Legal Requirements

Commercial refrigerator-freezers are covered equipment subject to energy conservation standards set forth in 10 C.F.R. § 431.66(b). *See* 42 U.S.C. § 6313(c); 42 U.S.C. § 6311(1)(E);

Effective January 1, 2010, commercial refrigerator-freezers with solid doors with self-contained condensing units designed for holding temperature applications must have a daily energy consumption (in kilowatt hours per day) that does not exceed the greater of: (1) 0.27 times the adjusted volume minus 0.71; or (2) 0.70. 10 C.F.R. § 431.66(b)(1).

Manufacturers and private labelers are prohibited from distributing covered products in the United States that do not comply with applicable federal energy conservation standards. 10 C.F.R. § 429.102(a)(6); 42 U.S.C. § 6316(a).

Allegations

DOE alleges:

1. Victory has manufactured and distributed in commerce in the United States commercial refrigerator-freezer model RFS-1D-S1-EW-PT-HD (the “subject model”).
2. The subject model is a commercial refrigerator-freezer with solid doors with a self-contained condensing unit designed for holding temperature applications.
3. Victory has distributed in commerce in the United States at least 8 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 tested daily energy consumption of 11.49 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 unit of the subject model did not comply with the maximum permissible rate of energy consumption set forth at 10 C.F.R. § 431.66(b)(1).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 within thirty (30) calendar days of the date of this Notice and then fulfill all obligations of the compromise agreement, which includes paying the fine within thirty (30) calendar days of the date of an order adopting the Compromise Agreement.

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.

¹ As detailed in the Notice of Noncompliance Determination issued on August 18, 2015, Victory conceded that the subject model does not comply with the applicable energy conservation standard.

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: 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 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 \$200 per unit for 8 units distributed in commerce in the U.S. DOE is not pursuing potential violations prior to August 1, 2010, at this time.

If you have any questions, please contact Smitha Vemuri by email at smitha.vemuri@hq.doe.gov or by phone at (202) 586-3421.

Issued by:

_____/S/_____

Laura L. Barhydt
Assistant General Counsel for
Enforcement