

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

In the Matter of:)
)
Silver King Refrigeration, Inc.) Case Number: 2015-SE-42070
(commercial refrigerators, freezers and)
refrigerator-freezers))

NOTICE OF PROPOSED CIVIL PENALTY

Date issued: January 3, 2018
Number of alleged violations: 86
Maximum possible assessment: **\$ 37,840**
Proposed civil penalty: **\$ 37,840**

The U.S. Department of Energy (“DOE”) Office of the General Counsel, Office of Enforcement, alleges that Silver King Refrigeration, Inc. (“Silver King”) 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 freezers are covered equipment subject to energy conservation standards set forth in 10 C.F.R. § 431.66. *See* 42 U.S.C. § 6313(c); 42 U.S.C. § 6311(1)(E).

Self-contained commercial freezers with solid doors designed for holding temperature applications, that are manufactured¹ on or after January 1, 2010 and before March 27, 2017, must have a daily energy consumption (in kilowatt hours per day) that do not exceed 1.38 plus the product of 0.40 and the chilled compartment volume of the freezer (0.40V + 1.38). 10 C.F.R. § 431.66(b)(1).

Manufacturers and private labelers are prohibited from distributing in commerce² covered equipment 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).

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

² “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. 42 U.S.C. § 6291(16).

Distribution in commerce by a manufacturer or private labeler of any new covered equipment that is not in compliance with an applicable energy conservation standard constitutes a prohibited act punishable by civil penalty pursuant to 10 C.F.R. § 429.120. Each unit of the covered equipment distributed in the United States constitutes a separate violation, and each such violation currently is subject to a maximum penalty of \$440 (four hundred and forty dollars). 42 U.S.C. § 6303; 10 C.F.R. § 429.120.

Allegations

DOE alleges:

1. Silver King has manufactured and distributed in commerce in the United States commercial freezer basic model SKF27AD/C10 (the “subject model”).
2. The subject model is a self-contained commercial freezer with solid doors designed for holding temperature applications manufactured on or after January 1, 2010 and before March 27, 2017.
3. Silver King has distributed in commerce in the United States at least 86 units of the subject model.
4. As DOE found in a Notice of Noncompliance Determination issued on November 9, 2017, the subject model does not comply with the maximum permissible rate of energy consumption 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 a settlement if you submit the signed Compromise Agreement within thirty (30) calendar 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”).

If you do not choose to settle the case, DOE may seek as much as the maximum penalty (\$37,840) 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: 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 \$440 per unit for 86 units distributed in commerce in the U.S. 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 by phone at (202) 586-3421.

Issued by:

/S/_____

Laura L. Barhydt
Assistant General Counsel for
Enforcement