

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

In the Matter of:)	
)	Case Numbers: 2010-SE-0110
Midea America Corp., Hefei Hualing)	2012-SE-1402
Co., Ltd., and China Refrigeration)	2012-SE-1404
Industry Co., Ltd.)	
(refrigerators/refrigerator-freezers/freezers))	
)	

NOTICE OF PROPOSED CIVIL PENALTY

Date issued: November 20, 2012

Number of alleged violations: **283,806**

Maximum possible assessment: **\$56,761,200**

Proposed civil penalty: **\$56,761,200**

The U.S. Department of Energy (“DOE”) Office of the General Counsel, Office of Enforcement, alleges that Midea America Corp., Hefei Hualing Co., Ltd., and China Refrigeration Industry Co., Ltd. (“Midea” or “Respondent”¹) 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. Respondent manufactured units of basic models HD-146F, HS-390C, UL-WD145-D, and UL-WD195-D in China;²
2. These four basic models are “covered product[s]” as defined in 42 U.S.C. § 6292(a)(1) and 10 C.F.R. § 430.2;
3. Since January 1, 2010, Respondent has distributed in commerce in the United States at least the following numbers of units of these basic models:

¹ “Midea” or “Respondent” means the parties in the caption of this Notice—Midea America Corp., Hefei Hualing Co., Ltd., and China Refrigeration Industry Co., Ltd.—or one or more of those three companies, all of which are subsidiaries or affiliates of GD Midea Holding Co., Ltd.

² On November 13, 2012, Midea confirmed via email that 5NTX4A and 5NTX5A are different basic models than basic models UL-WD145-D and UL-WD195-D. Therefore, models 5NTX4A and 5NTX5A are not within the scope of this Notice of Proposed Civil Penalty.

- a. 953 units of basic model HD-146F (refrigerator-freezers),
 - b. 8570 units of basic model HS-390C (chest freezers),
 - c. 191,230 units of basic model UL-WD145-D (chest freezers), and
 - d. 83,053 units of basic model UL-WD195-D (chest freezers); and
4. These four basic models do not meet the applicable federal energy conservation standards, set forth at 10 C.F.R. § 430.32(a).

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

What do I do now?

DOE is offering a settlement of **\$4,562,838** if you submit the signed Compromise Agreement by November 21, 2012.

If you do not choose to settle the case, DOE may seek the **maximum penalty** (\$56,761,200) 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, you must select Option 1 or Option 2, below, within thirty (30) calendar days.

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 by November 21, 2012, to pay the settlement amount of **\$4,562,838**. 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. DOE accepts scanned images of signed documents (such as PDFs). Responses may be sent by any of the following methods:

By email to: abigail.chingos@hq.doe.gov

By fax to: (202) 586-3274

By FedEx to: Abigail Burger Chingos
Trial Attorney
Office of Enforcement (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?

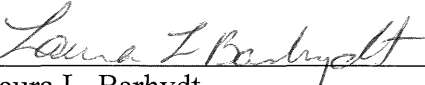
- 1) If you wish to accept DOE's settlement offer, you should submit the signed Compromise Agreement. If you do not wish to accept DOE's settlement offer, you should specify if you wish to elect Option 1; otherwise, DOE will proceed with Option 2, as described above.
- 2) Provide your Taxpayer Identification 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. In the maximum penalty calculation in this Notice, DOE is alleging, based on sales data Midea has submitted, that Midea has distributed in commerce in the U.S. a combined total of 283,806 units of the four basic models that are the subject of this Notice since January 1, 2010. The maximum possible assessment currently does not include penalties for units distributed in commerce prior to January 1, 2010.

If this case goes to hearing, DOE may seek penalties for violations dating back five (5) years, and the maximum penalty could be further adjusted based on any additional information obtained. The maximum penalty is \$200 per violation. 10 C.F.R. § 429.120; *see also* 74 Fed. Reg. 66,029, 66,032 (Dec. 14, 2009) (increasing maximum penalty to \$200 per violation effective Jan. 13, 2010).³

Issued by:



Laura L. Barhydt
Assistant General Counsel
for Enforcement

³ For the purpose of calculating penalties, this Notice assumes that all units distributed in 2010 were distributed on or after January 13, 2010, and are thus subject to the \$200 per day maximum penalty.