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

In the Matter of:	)	
	)	
Midea America Corp., Hefei Hualing	)	Case Numbers: 2010-SE-0110
Co., Ltd., and China Refrigeration	)	2012-SE-1402
Industry Co., Ltd.,	)	2012-SE-1404
Respondent	)	2013-SE-1401
	)	

ORDER

By the General Counsel, U.S. Department of Energy:

1. In this Order, I adopt the attached Compromise Agreement entered into between the U.S. Department of Energy ("DOE") and Midea America Corp., Hefei Hualing Co., Ltd., and China Refrigeration Industry Co., Ltd. ("Respondent"[1]). The Compromise Agreement resolves case numbers 2010-SE-0110, 2012-SE-1402, and 2012-SE-1404, which DOE's Office of the General Counsel, Office of Enforcement, initiated after DOE testing revealed that four basic models of refrigerator-freezers and freezers (HD-146F, HS-390C, UL-WD145-D, and UL-WD195-D) may not meet the applicable energy conservation standards. The Compromise Agreement also resolves case number 2013-SE-1401, which DOE initiated to investigate related violations of DOE regulations.

2. DOE and Respondent have negotiated the terms of the Compromise Agreement that resolves this matter. A copy of the Compromise Agreement is attached hereto and incorporated by reference.

3. After reviewing the terms of the Compromise Agreement and evaluating the facts before me, I find that the public interest would be served by adopting the Compromise Agreement.

4. Based on the information in the case file and Respondent's admission of facts establishing violations, I find that Respondent committed Prohibited Acts by failing to comply with 10 C.F.R. § 429.102(a)(6). *See* 42 U.S.C. § 6302.

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[1] "Respondent" means the parties in the caption of this Order—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.

5. Accordingly, pursuant to 10 C.F.R. § 429.120 and 42 U.S.C. § 6303, I **HEREBY ASSESS** a civil penalty of $4,562,838, to be paid, with interest,[2] as set forth in the Compromise Agreement, **AND ORDER** that the Compromise Agreement attached to this Order is adopted.

Gregory H. Woods
General Counsel

November 26, 2012
Date

[2] Respondent will pay a total of $4,579,949 ($4,562,838 plus one percent interest) in four payments according to the following schedule: Payment 1 – $1,140,710 by December 26, 2012; Payment 2 – $1,143,562 by February 26, 2013; Payment 3 – $1,146,413 by May 28, 2013; and Payment 4 – $1,149,264 by August 26, 2013.

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U.S. DEPARTMENT OF ENERGY
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In the Matter of:	)	Case Numbers: 2010-SE-0110
	)	2012-SE-1402
Midea America Corp., Hefei Hualing	)	2012-SE-1404
Co., Ltd., and China Refrigeration	)	2013-SE-1401
Industry Co., Ltd.	)	
(refrigerators/refrigerator-freezers/freezers)	)	
	)	
	)	

COMPROMISE AGREEMENT

The U.S. Department of Energy ("DOE") Office of the General Counsel initiated case numbers 2010-SE-0110, 2012-SE-1402, and 2012-SE-1404 after DOE testing revealed that four basic models of refrigerator-freezers and freezers (HD-146F, HS-390C, UL-WD145-D, and UL-WD195-D) may not meet the applicable energy conservation standards. *See* 10 C.F.R. § 430.32(a). DOE initiated case number 2013-SE-1401 to investigate related violations of DOE regulations. Respondent and DOE, by their authorized representatives, hereby enter into this Compromise Agreement for the purpose of settling these specific enforcement actions.

I. DEFINITIONS

For the purposes of this Compromise Agreement, the following definitions shall apply:

a. "Act" means the Energy Policy and Conservation Act of 1975, as amended, 42 U.S.C. § 6291 *et seq.*

b. "Adopting Order" means an Order of the General Counsel adopting the terms of this Compromise Agreement without change, addition, deletion, or modification.

c. "Amended Notice of Noncompliance Determination" means the Notice that DOE will issue, concurrent with an Adopting Order, finding that Basic Model HS-390C and Basic Model HD-146F fail to meet the relevant energy conservation standards, set forth at 10 C.F.R. § 430.32(a).

d. "Basic Models" means all four of the following basic models: Basic Model HD-146F, Basic Model HS-390C, Basic Model UL-WD195-D, and Basic Model UL-WD145-D.

e. "Basic Model HD-146F" means all units of all refrigerator-freezer models manufactured by Respondent that have the same primary energy source as Respondent's refrigerator-freezer model HD-146F and have essentially identical electrical, physical, and functional characteristics that affect energy consumption as Respondent's refrigerator-freezer model HD-146F. This includes, but is not limited to, all units of

f. "Basic Model HS-390C" means all units of all freezer models manufactured by Respondent that have the same primary energy source as Respondent's freezer model HS-390C and have essentially identical electrical, physical, and functional characteristics that affect energy consumption as Respondent's freezer model HS-390C. This includes, but is not limited to, all units of

g. "Basic Model UL-WD145-D" means all units of all freezer models manufactured by Respondent that have the same primary energy source as Respondent's freezer model UL-WD145-D and have essentially identical electrical, physical, and functional characteristics that affect energy consumption as Respondent's freezer model UL-WD145-D. This includes, but is not limited to, all units of Kenmore-brand model 19502,

h. "Basic Model UL-WD195-D" means all units of all freezer models manufactured by Respondent that have the same primary energy source as Respondent's freezer model UL-WD195-D and have essentially identical electrical, physical, and functional characteristics that affect energy consumption as Respondent's freezer model UL-WD195-D. This includes, but is not limited to, all units of Kenmore-brand model 19702,

i. "DOE" means the U.S. Department of Energy.

j. "DOE Rules" means DOE's energy conservation regulations found in Title 10, Parts 429 and 430 of the Code of Federal Regulations.

k. "Manufacture" means to manufacture, produce, assemble, or import.

l. "Notice" means the Notice of Proposed Civil Penalty issued by DOE to Respondent on November 20, 2012, and captioned as relating to case numbers 2010-SE-0110, 2012-SE-1402, and 2012-SE-1404.

m. "Parties" means DOE and Respondent.

n. "Person" includes (1) any individual, (2) any corporation, company, association, firm, partnership, society, trust, joint venture, or joint stock company, and (3) the government and any agency of the United States or any State or political subdivision thereof.

o. "Respondent" means the parties in the caption of this Compromise Agreement—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.

The Agreement further incorporates by reference all of the definitions found within 42 U.S.C. § 6291.

II. RECITALS

WHEREAS, DOE, pursuant to 42 U.S.C. § 6291 *et seq.*, is responsible for the promulgation and enforcement of the energy conservation requirements set forth in DOE Rules; and

WHEREAS, DOE has promulgated energy conservation standards for refrigerator-freezers and freezers at 10 C.F.R. § 430.32(a); and

WHEREAS, DOE, pursuant to 42 U.S.C. §§ 6295, 6302, and 6303 and 10 C.F.R. Part 429, Subpart C, is authorized to assess civil penalties against any manufacturer that distributes in commerce any new covered product that is not in conformity with an applicable energy conservation standard; and

WHEREAS, all units within the Basic Models are "covered product[s]" as defined in 42 U.S.C. § 6292(a)(1) and 10 C.F.R. § 430.2; and

WHEREAS, Wang Jianguo (also known as "Eric Wang"), President of Hefei Hualing Co., Ltd., and China Refrigeration Industry Co., Ltd., is legally authorized to bind Hefei Hualing Co., Ltd., and China Refrigeration Industry Co., Ltd.; and

WHEREAS, Xiao Wei (also known as "Isaac Xiao"), President of Midea America Corp., is legally authorized to bind Midea America Corp.; and

WHEREAS, Wang Jianguo and Xiao Wei represent that they are the appropriate individuals to sign this Compromise Agreement and resolve case numbers 2010-SE-0110, 2012-SE-1402, 2012-SE-1404, and 2013-SE-1401 on behalf of Midea America Corp., Hefei Hualing Co., Ltd., and China Refrigeration Industry Co., Ltd.; and

WHEREAS, Respondent admits:

1. Respondent manufactured the Basic Models;
2. Since January 1, 2010, Respondent has distributed in commerce in the United States at least the following numbers of units of the Basic Models:
    a. 953 units of Basic Model HD-146F,
    b. 8570 units of Basic Model HS-390C,
    c. 191,230 units of Basic Model UL-WD145-D, and
    d. 83,053 units of Basic Model UL-WD195-D;
3. Basic Model HD-146F does not meet the applicable federal energy conservation standard, set forth at 10 C.F.R. § 430.32(a), with the units tested by DOE consuming an average of approximately eight percent (8%) more than the relevant standard;
4. Basic Model HS-390C does not meet the applicable federal energy conservation standard, set forth at 10 C.F.R. § 430.32(a), with the units tested by DOE consuming an average of approximately eight percent (8%) more than the relevant standard;

5. Basic Model UL-WD195-D does not meet the applicable federal energy conservation standard, set forth at 10 C.F.R. § 430.32(a), with the units tested by DOE consuming an average of approximately fifty-five percent (55%) more than the relevant standard; and

6. Basic Model UL-WD145-D does not meet the applicable federal energy conservation standard, set forth at 10 C.F.R. § 430.32(a), with the units tested by DOE consuming an average of approximately twenty-eight percent (28%) more than the relevant standard; and

WHEREAS, Respondent has cooperated fully with DOE in connection with this investigation; and

WHEREAS, Respondent recalled over 40,000 units after distribution in commerce; and

WHEREAS, DOE, as the agency charged with developing and administering a balanced and coordinated national energy policy, concludes that this Compromise Agreement properly balances the policies recognized in the Energy Policy and Conservation Act and is the appropriate way to resolve this matter;

NOW, THEREFORE, in consideration of the foregoing and the mutual agreements set forth below, the sufficiency and adequacy of which are hereby acknowledged, the Parties agree as follows:

III. TERMS OF THE AGREEMENT

1. **Adopting Order.** The Parties agree that the provisions of this Compromise Agreement shall be subject to final approval by the General Counsel by incorporation of such provisions by reference in the Adopting Order without change, addition, modification, or deletion.

2. **Obligations of Respondent.**

   a. Respondent agrees to pay the sum of $4,562,838, plus one percent (1%) interest as described below, over the course of nine (9) months as full satisfaction of the civil penalty proposed in the Notice. Specifically, Respondent agrees to pay a total of $4,579,949 in four payments according to the following schedule: Payment 1 – $1,140,710 within thirty (30) calendar days of the issuance of the Adopting Order; Payment 2 – $1,143,562 within three (3) months of the issuance of the Adopting Order; Payment 3 – $1,146,413 within six (6) months of the issuance of the Adopting Order; and Payment 4 – $1,149,264 within nine (9) months of the issuance of the Adopting Order.

   b. Respondent agrees to abide by the terms of (i) the Notice of Noncompliance Determination, issued on July 18, 2012, for case number 2012-SE-1404 and (ii) the Amended Notice of Noncompliance Determination.

   c. Upon the issuance of the Adopting Order, Respondent will never again import, or otherwise distribute in commerce in the United States, any units of any one or more of these Basic Models under any model number(s).

d. Respondent will ensure that any individual model number used to designate any refrigerator, refrigerator-freezer, or freezer that it imports, or otherwise distributes in commerce in the U.S., will be sufficiently distinct from the model numbers used to designate the individual models within the Basic Models to avoid confusion in the marketplace.

e. Respondent will not import, or otherwise distribute in commerce in the United States, a modified or retrofitted version of any of the Basic Models under any model number(s) without DOE's express permission in the form of a Notice of Allowance. Prior to DOE considering whether to issue a Notice of Allowance, Respondent must submit test data and design modification information to DOE demonstrating that the modified basic model's energy consumption characteristics are different from those of the relevant Basic Model.

f. Within forty (40) calendar days following the issuance of an Adopting Order, Respondent will submit a sworn affidavit listing all units of each of the Basic Models in Respondent's possession or control within the United States as of the date of the Adopting Order. This affidavit must list the units by basic model number, brand name, private labeler model number, and serial number.

g. Within one hundred twenty (120) calendar days following the issuance of an Adopting Order, Respondent will either export or destroy all units of each of the Basic Models that were in Respondent's possession or control within the United States as of the date of the Adopting Order.

h. Within one hundred eighty (180) calendar days following the issuance of an Adopting Order, Respondent will submit to DOE a sworn affidavit attesting to the exportation of the units of each of the Basic Models, identified by basic model number, brand name, private labeler model number, and serial number, that have been exported. Respondent will also provide to DOE a list of the units exported and Bills of Lading demonstrating the units were exported.

i. If Respondent chooses to destroy any of the units required to be destroyed or exported, then within one hundred eighty (180) calendar days following the issuance of an Adopting Order, Respondent will submit to DOE a sworn affidavit attesting to the destruction of the units of each of the Basic Models, identified by basic model number, brand name, private labeler model number, and serial number, that have been destroyed.

3. **Obligations of DOE.**

a. In express reliance on the covenants and representations in this Compromise Agreement and to avoid further expenditure of public resources, DOE agrees to accept Respondent's payments pursuant to paragraph III.2.a in full satisfaction of the penalty authorized by the Act.

b. DOE agrees to issue an Amended Notice of Noncompliance Determination for Basic Model HS-390C and Basic Model HD-146F.

c. DOE agrees promptly to issue an Adopting Order adopting this Agreement.

d. DOE agrees to terminate the enforcement actions captioned as case numbers 2010-SE-0110, 2012-SE-1402, 2012-SE-1404, and 2013-SE-1401 with prejudice upon Respondent's completion of its Obligations in accordance with section III.2, above.

4. **Failure to Comply.**

a. If DOE believes that Respondent has failed to comply with any of its obligations under this Compromise Agreement, DOE will provide written notice to Respondent. DOE will allow Respondent thirty (30) calendar days from the date of the written notice to submit any relevant materials to DOE and to discuss, by telephone or in person at DOE's Washington, DC headquarters, any relevant issues with DOE. If, after reviewing all submitted materials and participating in all discussions, DOE is not satisfied that Respondent has fulfilled its obligations under this Compromise Agreement, DOE will issue a notification of DOE's determination. Any such notification will (a) explain the basis for DOE's determination and (b) indicate the amount that Respondent will pay to the U.S. Treasury, determined pursuant to section III.5 of this Compromise Agreement dependent upon the nature of any such breach of the agreement. DOE may issue multiple notifications if Respondent fails to comply with more than one provision of the Compromise Agreement and/or fails to comply with one provision on multiple occasions.

b. If Respondent seeks any further review of a determination made by DOE pursuant to this section III.4, Respondent must appeal to DOE's Office of Hearing and Appeals.

5. **Penalties for Failure to Comply.**

a. If DOE determines that Respondent has failed to comply with the requirements of either (i) the Notice of Noncompliance Determination, issued on July 18, 2012, for case number 2012-SE-1404, or (ii) the Amended Notice of Noncompliance Determination, Respondent agrees to pay $50,000.

b. If DOE determines that Respondent has imported, or otherwise distributed in commerce in the U.S., any units of any of the Basic Models after the date of the Adopting Order, as prohibited under paragraph III.2.c of the Compromise Agreement, Respondent agrees to pay an additional $4,562,838 and an additional $200 per unit that DOE determines Respondent has distributed in commerce in the U.S. after the date of the Adopting Order.

c. If DOE determines that Respondent has not complied with the requirement, under paragraph III.2.d of the Compromise Agreement, to select future individual model numbers so as to avoid confusion in the marketplace, Respondent agrees to pay $1000 for each individual model number that DOE determines may cause confusion in the marketplace.

d. If DOE determines that Respondent has, contrary to the requirements of paragraph III.2.e of the Compromise Agreement, imported, or otherwise distributed in commerce in the U.S., units of a basic model that DOE determines is a modified or retrofitted version of any of the Basic Models

(under any model number(s)) without DOE's express permission in the form of a Notice of Allowance, Respondent agrees to pay $200 for each unit imported, or otherwise distributed in commerce in the U.S., after the date of the Adopting Order.

e. If DOE determines that Respondent has, contrary to the requirements of paragraph III.2.f of the Compromise Agreement, failed to provide the required affidavit listing all units of each of the Basic Models in Respondent's possession or control within the U.S. as of the date of the Adopting Order, Respondent agrees to pay $50,000.

f. If DOE determines that Respondent has not exported or destroyed the relevant units of each of the Basic Models by the date required under paragraph III.2.g of the Compromise Agreement, Respondent agrees to pay $200 per unit for every unit that Respondent has not exported or destroyed. After any and every subsequent 30-calendar-day period during which Respondent does not export or destroy the relevant units of each of the Basic Models, Respondent agrees to pay an additional $200 per unit for every unit that Respondent has not exported or destroyed.

g. If DOE determines that Respondent has not submitted an affidavit and, if required, a list and Bills of Lading documenting the destruction and/or exportation of all units required to be exported and/or destroyed by the date required under paragraphs III.2.h and III.2.i of the Compromise Agreement, Respondent agrees to pay $200 per unit for every unit for which Respondent has not submitted complete documentation. After any and every subsequent 60-calendar-day period during which Respondent has not yet submitted all required documentation regarding exported and/or destroyed units, Respondent agrees to pay an additional $200 per unit for every unit for which Respondent has not submitted complete documentation.

6. **Jurisdiction.** This Compromise Agreement is entered pursuant to DOE's authority to interpret and enforce its rules for energy efficiency and to enter into its own agreements interpreting and applying those rules. The Parties agree that DOE has jurisdiction over Respondent and primary jurisdiction over the matters contained in this Compromise Agreement and has the authority to enter into this Compromise Agreement.

7. **Effective Date.** The Parties agree that this Compromise Agreement shall become effective on the date on which the General Counsel issues the Adopting Order. As of that date, the Adopting Order and this Compromise Agreement shall have the same force and effect as any other Order of the General Counsel.

8. **Limitations.** Nothing in this agreement binds any other agency of the United States government beyond DOE.

9. **Waivers.** Respondent agrees not to seek judicial review or otherwise contest or challenge the validity of the terms and penalties set out in this Compromise Agreement. Respondent reserves the right to seek review of a determination DOE issues pursuant to section III.4 of this Compromise Agreement before the DOE Office

of Hearing and Appeals. Respondent agrees that the decision of the DOE Office of Hearing and Appeals shall be final and binding and agrees not otherwise to seek review of a determination DOE issues pursuant to section III.4 this Compromise Agreement. If either Party (or the United States on behalf of DOE) brings a judicial action to enforce the terms of this Compromise Agreement, neither Respondent nor DOE shall contest the validity of the Compromise Agreement, and Respondent waives any statutory right to a trial *de novo*. Respondent hereby agrees to waive any claims it may otherwise have under the Equal Access to Justice Act, 5 U.S.C. § 504, relating to the matters addressed in this Compromise Agreement.

10. **Final Settlement.** The Parties agree and acknowledge that this Compromise Agreement shall constitute a final settlement between the Parties. This Compromise Agreement resolves only issues addressed in the Compromise Agreement.

11. **Merger.** This Compromise Agreement constitutes the entire agreement between the Parties and supersedes all previous understandings and agreements between the Parties, whether oral or written.

12. **Modifications.** This Compromise Agreement cannot be modified without the advance written consent of both Parties.

13. **Severability.** If any provision of this agreement is held to be invalid, illegal, void, or unenforceable, then that provision is to be construed by modifying it to the minimum extent necessary to make it enforceable.

14. **Authorized Representative.** Each party represents and warrants to the other that it has full power and authority to enter into this Compromise Agreement.

15. **Joint and Several Liability.** Midea America Corp., Hefei Hualing Co., Ltd., and China Refrigeration Industry Co., Ltd., shall be jointly and severally liable for (a) the civil penalty agreed upon under paragraph III.2.a of this agreement and (b) any and all penalties assessed in accordance with sections III.4 and III.5 of this agreement.

16. **Counterparts.** This Compromise Agreement may be signed in any number of counterparts (including by facsimile or electronic mail), each of which, when executed and delivered, shall be an original, and all of which counterparts together shall constitute one and the same fully executed instrument.

Timothy G. Lynch
Deputy General Counsel for
Litigation and Enforcement
U.S. Department of Energy

23 November 2012
Date

(Signature)
Xiao Wei
President, Midea America Corp.

Signing on behalf of Midea America Corp.

11/20/2012
Date

(Signature)
Wang Jianguo
President, Hefei Hualing Co., Ltd., and
China Refrigeration Industry Co., Ltd.

Signing on behalf of Hefei Hualing Co.,
Ltd., and China Refrigeration Industry
Co., Ltd.

11/20/2012
Date