

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

In the Matter of:

**Midea America Corporation**  
(Freezers)

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Case Number: 2010-SE-0110

Issued: October 5, 2011

**NOTICE OF NONCOMPLIANCE DETERMINATION**

Manufacturers and private labelers are prohibited from distributing covered products that do not comply with applicable Federal energy conservation standards. 10 C.F.R. § 429.102; 42 U.S.C. § 6302.

On October 5, 2010, DOE completed testing of a Midea America Corporation (“Midea”) chest freezer, model number HS-390C (“HS-390C”), privately labeled by the Summit Appliance Division of Felix Storch, Inc. (“Storch”) as Summit model CF11ES, in accordance with DOE test procedures (10 C.F.R. Part 430, Subpart B, Appendix A). On May 5, 2011, DOE completed testing of three additional units of HS-390C, in accordance with the same procedures.

DOE’s testing demonstrated that Midea chest freezer model number HS-390C is not in compliance with Federal law. Given its volume, HS-390C may not consume more than 317 kilowatt hours per year (kWh/yr).<sup>1</sup> Based on their performance during testing, the four units that DOE tested consumed energy at the rates of 356, 353, 330, and 334 kWh/yr.

**FINDINGS**

Based on the facts stated above, DOE has determined that basic model HS-390C does not comply with the applicable Federal energy conservation standards.

**MANDATORY ACTIONS BY MIDEA**

In light of the above findings, Midea must take the following steps in accordance with 10 C.F.R. § 429.114(a):

- (1) Immediately cease distribution in commerce in the United States of all units of basic model HS-390C;

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<sup>1</sup> Under 10 C.F.R. § 430.32(a), the maximum energy use, in kWh/yr, of a chest freezer may not exceed 143.7 plus the product of 9.88 and the total adjusted volume of the particular freezer (9.88AV+143.7).

(2) Provide immediate written notification of this noncompliance determination to all persons in the United States to whom Midea has distributed units of basic model HS-390C in the past three years;

(3) Provide to DOE within 15 calendar days of the date of this Notice a copy of the written notification required by paragraph (2) and a list of the parties Midea notified; and

(4) Provide to DOE within 30 calendar days of the date of this Notice any and all records, reports, and other documentation pertaining to the acquisition, ordering, storage, shipment, or sale of units of basic model HS-390C in the United States in the past three years.

The responses required by paragraphs (3) and (4) must be dated, signed, and notarized, and must include a declaration under penalty of perjury that the contents of the responses are true. Specifically, the person signing the response must attest the following: "I declare under penalty of perjury that the statements contained in this response are true, correct, and complete."

If you claim that any of the information sought by this Notice constitutes confidential commercial material within the meaning of 5 U.S.C. § 552(b)(4), or is protected from disclosure pursuant to 18 U.S.C. § 1905, you must (1) provide one complete and full copy and one copy with the confidential information deleted and (2) submit supporting information together with the materials that are the subject of the confidentiality request. *See* 10 CFR § 429.7. Failure to adhere to these procedures will result in a rejection of your request for confidential treatment.

#### OPTIONAL ACTIONS BY MIDEA


In addition to the mandatory steps listed above that Midea must complete, Midea may elect to modify basic model HS-390C to bring it into compliance with the applicable standard. The modified basic model shall be treated as a new basic model under the regulations and must be certified in accordance with the provisions of 10 C.F.R. Part 429. Prior to distribution in commerce in the United States, Midea must provide to DOE test data demonstrating that the modified basic model complies with the applicable standard. All units must be tested in accordance with DOE regulations, and Midea shall bear the costs of all such testing that is conducted.

If, after this testing, DOE determines that the modified basic model complies with the applicable standard, DOE shall issue a notice of allowance to permit Midea to resume the distribution of the modified basic model in the United States. Until DOE determines that the modified basic model complies with the applicable standard, no units of the basic model may be sold or otherwise distributed by Midea in the United States.

CONSEQUENCES FOR FAILURE TO COMPLY WITH THIS NOTICE

Should Midea fail to cease immediately the distribution in the United States of all units of basic model HS-390C, this letter serves as notice that DOE will seek a judicial order within 30 calendar days to restrain further distribution. If, however, Midea provides DOE with a satisfactory statement within that 30-day period detailing the steps that Midea will take to ensure that units of the noncompliant basic model will no longer be distributed in commerce in the United States, DOE may elect to defer seeking such an order until a more appropriate time, if needed.

The distribution of any units of a noncompliant basic model, including during any manufacturer-initiated testing as described above, may result in DOE seeking all appropriate legal remedies available under Federal law, including injunctive relief and civil penalties with respect to each unit of the basic model distributed in violation of Federal law.



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Timothy G. Lynch  
Deputy General Counsel for  
Litigation and Enforcement