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

In the Matter of:	)	
	)	
CNA International, Inc.,	)	Case Number: 2013-SE-1430
d/b/a MC Appliance Corp.	)	
(freezers)	)	
	)	

COMPROMISE AGREEMENT

The U.S. Department of Energy ("DOE") Office of the General Counsel, Office of Enforcement, initiated this action against CNA International, Inc., d/b/a MC Appliance Corp. ("CNA" or "Respondent") pursuant to 10 C.F.R. § 429.122 by Notice of Proposed Civil Penalty. DOE alleged that [redacted] freezer basic model [redacted], which Respondent imported and distributed in commerce in the United States as Magic Chef-brand model HMCF7W, failed to meet the applicable standard for maximum energy use. *See* 10 C.F.R. § 430.32(a). Respondent, on behalf of itself and any parent, subsidiary, division or other related entity, and DOE, by their authorized representatives, hereby enter into this Compromise Agreement for the purpose of settling this specific civil penalty action.

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) "Basic model" means, regardless of private label or brand, all units of all freezer models manufactured by [redacted] (as defined below) that have the same primary energy source and have essentially identical electrical, physical, and functional characteristics that affect energy consumption as [redacted] basic model [redacted], including Magic Chef-brand model HMCF7W;

(c) "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;

(d) "DOE" means the U.S. Department of Energy.

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

(f) [redacted] means [redacted]

(g) "Manufacture" means to manufacture, produce, assemble, or import.

(h) "Notice" means the Notice of Proposed Civil Penalty issued by DOE to Respondent on September 24, 2013, and captioned as case number 2013-SE-1430.

(i) "Parties" means DOE and Respondent.

(j) "Respondent" means CNA International, Inc., d/b/a MC Appliance Corp., and any parent, subsidiary, division or other related entity.

The Agreement further incorporates by reference all of the definitions found within 42 U.S.C. § 6291 and 10 C.F.R. § 430.2.

II. RECITALS

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

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

WHEREAS, DOE, on July 1, 2013, issued a Notice of Noncompliance Determination finding that the basic model was not in conformity with the applicable energy conservation standard; and

WHEREAS, the basic model is a "covered product" as defined in 10 C.F.R. § 430.2; and

WHEREAS, DOE, on September 24, 2013, initiated an action to assess a civil penalty for distributing the noncompliant basic model in commerce in the United States; and

WHEREAS, Respondent admits:

1. CNA has imported and distributed in commerce in the United States units of the basic model bearing the model number "HMCF7W";
2. Since February 14, 2010, CNA has distributed in commerce in the United States 40,600 units of the basic model;
3. The basic model is subject to the energy conservation standards set forth at 10 C.F.R. § 430.32(a); and
4. Testing of the basic model demonstrates that it does not meet the federal energy conservation standards set forth at 10 C.F.R. § 430.32(a); and

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

WHEREAS, DOE, pursuant to 42 U.S.C. §§ 6296, 6302, and 6303, and 10 C.F.R. Part 429, Subpart C, is authorized to assess civil monetary penalties against any manufacturer that distributes in commerce any new covered product that is not in conformity with an applicable energy or water conservation standard; 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. **Obligations of Respondent.**

   a. Respondent agrees to abide by the terms of the Notice of Noncompliance Determination for case number 2013-SE-1430.

   b. As of the effective date of this Compromise Agreement, Respondent will not import, or otherwise distribute in commerce in the United States, any units of the basic model under any model number(s), including Magic Chef model HMCF7W.

   c. Respondent will ensure that any model number on any individual freezer that it imports, or otherwise distributes in commerce in the U.S., will be sufficiently distinct from the model number(s) used to designate the individual units within the basic model to avoid confusion in the marketplace.

   d. Respondent will not import, or otherwise distribute in commerce in the United States, a modified or retrofitted version of the basic model 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 basic model.

   e. Within sixty (60) calendar days following the effective date of this Compromise Agreement, Respondent will either export or destroy all units, regardless of label, of the basic model that were in Respondent's possession or control within the United States as of the effective date of this Compromise Agreement.

   f. If Respondent is required, pursuant to paragraph III.1.e, to export or destroy any units of the basic model and if Respondent chooses to export any such units, then within ninety (90) calendar days following the effective date of this Compromise Agreement, Respondent will submit to DOE a sworn affidavit attesting to the exportation of the units of the basic model, identified by 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 that the units were exported.

   g. If Respondent is required, pursuant to paragraph III.1.e, to export or destroy any units of the basic model, and if Respondent chooses to destroy any such units, then within ninety (90) calendar days following the effective date of this Compromise Agreement, Respondent will submit to DOE a sworn affidavit attesting to the destruction of the units of the basic model, identified by brand name, private labeler model number, and serial number.

2. **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 performance pursuant to section III.1 in lieu of taking additional enforcement action against Respondent related to the potential noncompliance of the basic model, including assessing any possible financial penalties available pursuant to 10 C.F.R. § 429.120.

   b. DOE agrees to terminate this enforcement action with prejudice upon Respondent's completion of its Obligations in accordance with section III.1, above.

3. **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 as a civil penalty for Respondent's prior distribution of units of the noncompliant basic model. DOE will determine the amount owed pursuant to section III.4 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.3, Respondent must appeal to DOE's Office of Hearings and Appeals.

4. **Penalties for Failure to Comply.**

   a. If DOE determines that Respondent has failed to comply with the requirements of the Notice of Noncompliance Determination for case number 2013-SE-1430, Respondent agrees to pay $325,000.

   b. If DOE determines that Respondent has imported, or otherwise distributed in commerce in the U.S., any units, regardless of label, of the basic model after the effective date of this Compromise Agreement, as prohibited under paragraph III.1.b of this Compromise Agreement, Respondent agrees to pay a base sum of $25,000, plus an additional $200 per unit that DOE determines Respondent has distributed in commerce in the U.S. after the effective date of this Compromise Agreement.

   c. If DOE determines that Respondent has not complied with the requirement, under paragraph III.1.c 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.1.d 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 the basic model (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 effective date of this Compromise Agreement.

e. If DOE determines that Respondent has not exported or destroyed the relevant units, regardless of label, of the basic model by the date required under paragraph III.1.e 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 the basic model, Respondent agrees to pay an additional $200 per unit for every unit that Respondent has not exported or destroyed.

f. If DOE determines that Respondent has not submitted documentation required under paragraphs III.1.f and/or III.1.g of the Compromise Agreement by the required dates, 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.

5. Jurisdiction. This Compromise Agreement is entered pursuant to DOE's authority to interpret and enforce its rules for energy conservation 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.

6. Effective Date. The Parties agree that this Compromise Agreement shall become effective on the date on which DOE signs this Compromise Agreement.

7. Payment Instructions and Late Payments. The Parties agree that all payments shall be made in a timely manner and in a method set forth in the attached "Payment Instructions." Respondent acknowledges and agrees to comply with the "Late Payment" provisions provided therein.

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 or the Notice associated with this case. Respondent reserves the right to seek review of a determination DOE issues pursuant to section III.3 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.3 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. 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.

/s/ [redacted]

Laura L. Barhydt
Assistant General Counsel for
Enforcement
U.S. Department of Energy

9/25/13
Date

/s/ [redacted]

(Signature)
Typed Name: STEVE CHO
Title: VICE PRESIDENT
Company Name: CNA INTERNATIONAL INC

9/25/13
Date