



## MANDATORY ACTIONS BY MAXX COLD FOOD SERVICE

In light of the above findings, Maxx Cold Food Service 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 MIM450;
- (2) Provide immediate written notification of this noncompliance determination to all persons in the United States to whom Maxx Cold Food Service has distributed units of basic model MIM450 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 Maxx Cold Food Service 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 MIM450 in the United States in the past three years, in addition to a summary page listing the total number of units Maxx Cold Food Service has distributed in commerce in the U.S. in the past three years.<sup>2</sup>

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 C.F.R. § 429.7. Failure to adhere to these procedures will result in a rejection of your request for confidential treatment.

## OPTIONAL ACTIONS BY MAXX COLD FOOD SERVICE

In addition to the mandatory steps listed above that Maxx Cold Food Service must complete, Maxx Cold Food Service may elect to modify basic model MIM450 to bring it into compliance with the applicable standard. The modified basic model shall be treated as a new basic model under the regulations. Prior to distribution in commerce in the United States, Maxx Cold Food Service must provide to DOE test data demonstrating that the modified basic model complies

---

<sup>2</sup> Please note that "[t]he terms 'to distribute in commerce' and 'distribution in commerce' mean 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). Thus, the summary sheet must include all units that Maxx Cold Food Service has imported into the U.S., even if these units have not been sold, as well as any other units that otherwise meet the definition in 42 U.S.C. § 6291(16). The summary sheet may distinguish between sold and unsold units.

with the applicable standard. All units must be tested in accordance with DOE regulations, and Maxx Cold Food Service 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 Maxx Cold Food Service to resume 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 Maxx Cold Food Service in the United States.

CONSEQUENCES FOR FAILURE TO COMPLY WITH THIS NOTICE

Should Maxx Cold Food Service fail to cease immediately the distribution in the United States of all units of basic model MIM450, this letter serves as notice that DOE will seek a judicial order within 30 calendar days to restrain further distribution. If, however, Maxx Cold Food Service provides DOE with a satisfactory statement within that 30-day period detailing the steps that Maxx Cold Food Service 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 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.

/s/

\_\_\_\_\_  
Laura L. Barhydt  
Assistant General Counsel  
for Enforcement

**Certificate of Service**

This is to certify that on December 11, 2012, the undersigned served the designated copy on the party listed below in the manner indicated.

Peter A. Quinter  
GrayRobinson, P.A.  
1221 Brickell Avenue, Suite 1600  
Miami, Florida 33131

Certified mail

Peter.Quinter@gray-robinson.com

E-mail

/S/

David W. Case