

MANDATORY ACTIONS BY VICTORY

In light of the above findings, Victory 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 the basic model;
- (2) Provide immediate written notification of this noncompliance determination to all persons in the United States to whom Victory (or Beverage-Air or any parent company), has distributed units of any model within the basic model;
- (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 that Victory 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 the basic model in the United States in the past five years.²

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 VICTORY

In addition to the mandatory steps listed above that Victory must complete, Victory may elect to modify a basic model to bring it into compliance with the current applicable standard. A 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. In addition to satisfying all requirements of this part, any models within the basic model must be assigned new model numbers and Victory must also maintain, and provide upon request to DOE, records that demonstrate that modifications have been made to all units of the new basic model prior to distribution in commerce. Prior to distribution of the modified basic model in commerce in the United States, Victory must provide to DOE test data demonstrating that the modified basic model complies with the applicable standard.³ All units must be tested in accordance with DOE regulations, and Victory shall bear the costs of all such testing.

² 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).

³ DOE may require that this testing be performed at an independent, third-party testing facility.

If, after this testing, DOE determines that the modified basic model complies with the applicable standard, DOE will issue a Notice of Allowance to permit Victory to distribute the modified basic model in the United States. Until DOE determines that the modified basic model complies with the applicable standard, Victory is prohibited from selling or otherwise distributing units in commerce in the United States.

For units previously distributed in commerce, if Victory plans to provide consumers with new components with the representation that the components will bring the model into compliance with applicable standards, prior to distribution of these components, Victory must provide DOE test data demonstrating that the modification results in the model's compliance with the applicable standard. All units must be tested in accordance with DOE regulations, and Victory shall bear the costs of all such testing.

CONSEQUENCES FOR FAILURE TO COMPLY WITH THIS NOTICE

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