

MANDATORY ACTIONS BY MEMOWELL

Memowell 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 that includes individual model SH1014;
- (2) Provide immediate written notification of this noncompliance determination to all persons in the United States to whom Memowell has distributed units of the basic model that includes individual model individual model SH1014 on or after February 1, 2010;
- (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 Memowell 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 that includes individual model SH1014 in the United States on or after February 1, 2010, in addition to a summary page listing the total number per year of units Memowell distributed in commerce in the United States on or after February 1, 2010.²

Memowell must date, sign, and notarize the responses required by paragraphs (3) and (4).

If Memowell claims 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, Memowell 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 Memowell's request for confidential treatment.

OPTIONAL ACTIONS BY MEMOWELL

In addition to the mandatory steps listed above that Memowell must complete, Memowell may elect to modify the basic model that includes individual model SH1014 to bring it into compliance with the 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. Prior to distribution in commerce in the United States, Memowell must provide to DOE test data demonstrating that the modified basic model complies with the applicable

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). Thus, the summary page must include all units that Memowell has imported into the United States, as well as any other units that otherwise meet the definition in 42 U.S.C. § 6291(16).

standard. All units must be tested in accordance with DOE regulations, and Memowell must 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 will issue a notice of allowance to permit Memowell to resume the distribution of the modified basic model in the United States. Until DOE determines that the modified model complies with the applicable standard, Memowell is prohibited from selling or otherwise distributing units of the basic model that includes individual model SH1014 in commerce in the United States.

CONSEQUENCES FOR FAILURE TO COMPLY WITH THIS NOTICE

If Memowell fails to cease immediately the distribution in the United States of all units of the basic model that includes individual model SH1014, this letter serves as notice that DOE will seek a judicial order within 30 calendar days to restrain further distribution. If, however, Memowell provides DOE with a satisfactory statement within that 30-day period detailing the steps that Memowell will take to ensure that units of the noncompliant 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.

_____/S/_____
Laura L. Barhydt
Assistant General Counsel
for Enforcement