

(1) Immediately cease distribution in commerce in the United States of units of the basic model manufactured on or after April 16, 2015;

(2) Provide immediate written notification of this noncompliance determination to all persons in the United States to whom A.O. Smith has distributed units of the basic model manufactured on or after April 16, 2015;

(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 A.O. Smith notified; and

(4) Provide to DOE within 30 calendar days of the date of this Notice records sufficient to show the number of units of the basic model manufactured on or after April 16, 2015, that A.O. Smith distributed in commerce in the United States, including all units imported into the United States.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 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 A.O. SMITH

In addition to ceasing distribution in commerce in the United States of the basic model, A.O. Smith may elect to modify the 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 A.O. Smith must also maintain, and provide upon request to DOE, records that demonstrate that necessary modifications have been made to all units prior to distribution in commerce. Prior to distribution of the modified basic model in commerce in the United States, A.O. Smith 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, with at least one unit tested by an independent, third-party test facility, and A.O. Smith shall bear the costs of all such testing.

If, after this testing, DOE determines that the modified basic model complies with the current applicable standard, DOE will issue a Notice of Allowance to permit A.O. Smith to resume the distribution of the modified basic model in the United States. Until DOE determines that the

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). Accordingly, units manufactured and held in inventory must be reported.

modified basic model complies with the applicable standard, A.O. Smith is prohibited from selling or otherwise distributing units in commerce in the United States.

CONSEQUENCES FOR FAILURE TO COMPLY WITH THIS NOTICE

Should A.O. Smith 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, A.O. Smith provides DOE with a satisfactory statement within that 30-day period detailing the steps that A.O. Smith 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