# BEFORE THE U.S. DEPARTMENT OF ENERGY Washington, DC 20585

In the Matter of:	)	Case Number: 2012-SE-4506
Maxx Cold Food Service (automatic commercial ice makers)	)	
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Issued: December 11, 2012

#### NOTICE OF NONCOMPLIANCE DETERMINATION

Manufacturers and private labelers are prohibited from distributing covered equipment that does not comply with applicable federal energy conservation standards. 10 C.F.R. § 429.102; 42 U.S.C. § 6316.

On July 13, 2012, DOE completed testing of one automatic commercial ice maker, Maxx Cold Food Service ("Maxx") model number MIM450, in accordance with DOE test procedures (10 C.F.R. § 431.134). On July 25, 2012, DOE issued a Test Notice pursuant to 10 C.F.R. § 429.110(b), requiring Maxx to ship three units of model MIM450 to a designated test lab. In November 2012, DOE completed testing of these three additional units of model MIM450, in accordance with DOE test procedures.

DOE's testing demonstrated that Maxx automatic commercial ice maker model MIM450 is not in compliance with an applicable energy conservation standard. Based on this model's represented harvest rate of 450 pounds of ice per twenty-four hours, the maximum permissible rate of energy consumption is 6.395 kilowatt-hour per 100 pounds of ice (kWh/100 lbs). Based on the units' performance during testing, the energy consumption of the four tested units is 6.71475 kWh/100 lbs, approximately five percent over the federal limit.

#### **FINDING**

Based on the facts stated above, DOE has determined, after applying the calculations set forth in 10 C.F.R. Part 429, Subpart C, Appendix B, that Maxx Cold Food Service automatic commercial ice maker basic model MIM450 does not comply with the applicable federal energy conservation standard.

<sup>&</sup>lt;sup>1</sup> Under 10 C.F.R. § 431.136, the maximum energy use, in kWh/100 lbs, of an automatic commercial ice maker with an ice making head with a harvest rate (H) of at least 450 pounds per 24 hours, may not exceed 6.89 minus the product of 0.0011 and the represented harvest rate of the ice maker (6.89-0.0011H).

# 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>&</sup>lt;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

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E-mail

/S/

David W! Case