

**BEFORE THE
U.S. DEPARTMENT OF ENERGY
Washington, D.C. 20585**

In the Matter of:

Anthony, Inc.

(doors for walk-in coolers and freezers)

Case Number: 2019-SE-53002

Issued: January 25, 2019

NOTICE OF NONCOMPLIANCE DETERMINATION

Components of walk-in coolers and freezers (“WICF”), including doors,¹ are covered equipment subject to federal energy conservation standards. 42 U.S.C. §§ 6311(1)(G), 6313(f), and 10 C.F.R. § 431.306. Manufacturers and private labelers are prohibited from distributing covered equipment in the United States that do not comply with applicable federal energy conservation standards. 10 C.F.R. § 429.102(a)(6); 42 U.S.C. § 6316(a).

ANTHONY VOLUNTARY REPORT OF NON-COMPLIANCE

On December 20, 2018, Anthony, Inc. (“Anthony”) provided the U.S. Department of Energy (“DOE”) a Voluntary Report of Non-Compliance With Energy Conservation Standards Applicable to Display Doors for Walk-In Coolers and Freezers, including Attachments A and B (“Report”). The Report informed DOE that the company manufactured and distributed in commerce approximately 168,570 WICF display doors² since 2009 that failed to satisfy DOE conservation standards at 10 C.F.R. § 431.306.³ Anthony informed DOE that these non-compliant doors belong to various medium temperature and low temperature WICF display door basic models, which it identified as follows:

¹ Door is defined at 10 C.F.R. § 431.302 as an assembly installed in an opening on an interior or exterior wall that is used to allow access or close off the opening and that is movable in a sliding, pivoting, hinged, or revolving manner of movement. For walk-in coolers and walk-in freezers, a door includes the door panel, glass, framing materials, door plug, mullion, and any other elements that form the door or part of its connection to the wall.

² Display Door is defined at 10 C.F.R. § 431.302 as door that: (1) Is designed for product display; or (2) Has 75 percent or more of its surface area composed of glass or another transparent material.

³ Anthony also preliminarily reported that approximately 91,000 of those doors were distributed in commerce in the past five years.

Medium Temperature Basic Models

101B	2100	213X
210Z	210X	213Z
401E	COLB	403B
ELM1	COOL	403E
ELM2/EM1P	FRZB	EL13
ELMC	MLIN	ELC3
ELMD	SWNG	MLIP
VSTB	VSTA	SWIP
VSTC	110B	BCDH
VSTE	150B	KODK
VSTV	3300	
VSTW	103B	

Low Temperature Basic Models

101B	ELMC	COOL
210Z	ELMD	FRZB
401E	2100	MLIN
ELM1	210X	SWNG
ELM2/EM1P	COLB	KODK

Per the Report, the medium temperature basic models and low temperature basic models listed above (collectively referred to as “the basic models”) had various, and many times overlapping, compliance issues. The noncompliance issues include Anthony’s distribution of: display doors without anti-sweat heat controllers, where those devices are needed for the doors to meet the applicable heat power draw standards; display doors that do not meet the conservation performance standards, even if sold with anti-sweat heat controllers; display doors that do not meet applicable glass design standards; and display doors without labels.

DOE conservation standards for display doors for WICFs are subject to design standards adopted by Congress in Section 312 of the Energy Independence and Security Act of 2007 (EISA). 42 U.S.C. § 6313(f); 10 C.F.R. 431.306(b)(3) and(4). In order to meet the statutorily specified heat power draw requirements, a door model may require the use of an antisweat heat controller. Anthony stated that, despite being aware of the requirement, it sold numerous doors without antisweat heat controllers, where those devices are needed to meet the applicable heat power draw requirements because many of their customers did not want to receive controllers from Anthony and wanted to use their own controllers instead. Per the Report, Anthony’s failure to provide the antisweat door heater controllers resulted in the sale of 141,826 noncompliant WICF doors since 2009.

Anthony also reported that it distributed in commerce at least 44,774 WICF display doors that do not meet the applicable energy conservation performance standards at 10 C.F.R. § 431.306(d), regardless of the use of an anti-sweat heat controller. The Report indicates that, when Anthony calculated the daily energy consumption of their display doors, they only considered the direct energy consumption of the door and door rail, leaving out the energy consumption of the frame, the energy consumption due to conduction, and the indirect energy consumption. Anthony

admitted that the company did not test the basic models in accordance with the DOE test procedure at 10 C.F.R. § 431.304; the company instead used its own testing method to calculate the daily energy consumption of its display doors. None of the 44,774 units that Anthony manufactured between June 5, 2017, and November 2, 2018, were tested in accordance with DOE's applicable test procedure. Anthony reported that, when it did begin physical testing and energy consumption calculations in accordance with DOE regulations, the noncompliance of these 44,774 units became apparent.⁴

Anthony also reported that it failed to meet an applicable design standard for the glass used in at some of its WICF cooler display doors. Specifically, for transparent WICF cooler doors, the standards at 10 C.F.R. 431.306(b) require either the use of double pane glass with heat reflective treated glass and gas fill, or triple pane glass and heat reflective glass or gas fill. In 2009, Anthony introduced the Vista B (Model VSTB). The Vista B was made of double-paned, heat-reflective glass, but it contained a film instead of a gas fill. Anthony sold 7,034 of its Vista B design. In 2015, Anthony introduced the Vista Elite (Model VSTW). The Vista Elite is made of double-paned, heat-reflective glass with a vacuum between the two panes rather than gas fill. Anthony sold 490 noncompliant units of its Vista Elite design that it certified for WICF application.

The Report also states that Anthony did not apply the WICF labeling requirements at 10 C.F.R. § 431.305 that took effect in June 2017 to any of the products that it certified on DOE's Compliance Certification Management System ("CCMS") as WICF display doors. In the Report, Anthony admits it did not label any of their WICF doors.

In addition to the distribution in commerce of the WICF doors noted above, Anthony also reported that it failed to certify to DOE a large number of WICF door models. Moreover, as noted above, Anthony reported that it does not have any test data for any of its basic models that would support those certifications that it did provide. For those doors that Anthony did certify prior to its internal investigation that led to this disclosure, the company stated that it erroneously certified products in the CCMS system, most notably certifying on the basis of base models (as often referred to in Underwriter Laboratory (UL) terminology), rather than certifying on the basis of a basic model⁵ as required by DOE regulations. This resulted in the grouping of models that, although similar in general design, had significant differences in energy consumption. Therefore, Anthony only certified on CCMS several dozen base models, which did not account for the hundreds of distinct basic models it was manufacturing and selling to its customers. Moreover, Anthony also reported that it failed to update its certifications annually and before it introduced new products into the market.

⁴ In the Report, Anthony provided DOE with energy consumption estimates for a sample of its models, which further described how far from the daily energy consumption standard the models performed.

⁵ Basic Model is defined at 10 C.F.R. § 431.302 as all components of a given type of walk-in cooler or walk-in freezer (or class thereof) manufactured by one manufacturer, having the same primary energy source, and which have essentially identical electrical, physical, and functional (or hydraulic) characteristics that affect energy consumption or energy efficiency, water consumption, or water efficiency; and with respect to panels, which do not have any differing features or characteristics that affect U-factor.

FINDINGS

Based on the facts stated above, DOE finds (and Anthony admits) that:

- (1) The basic models do not comply with the applicable energy conservation standards at 10 C.F.R. § 431.306;
- (2) Anthony failed to properly test and certify a variety of WICF door basic models, in accordance with 10 C.F.R. §§ 429.11, 429.12(c)(2), 429.53, and 10 C.F.R. Part 431, Subpart R; and
- (3) Anthony failed to label in accordance with 10 C.F.R. § 431.305 the products that it certified on DOE's Compliance Certification Management System ("CCMS") as WICF display doors.

NOTICE

Distribution in commerce of a product that does not meet the energy conservation standards or is not labelled in accordance with applicable labelling requirements is a violation subject to civil penalty. If Anthony continues to distribute the basic models, DOE may assess a higher civil penalty for units sold after the date of this Notice.

MANDATORY ACTIONS BY ANTHONY

On December 20, 2018, and January 11, 2019, Anthony provided records to DOE demonstrating the total number of units of the basic models that Anthony distributed in commerce in the United States since 2014. Anthony must provide upon DOE request specific monthly numbers for the units of the basic models that were distributed in commerce. 10 C.F.R. § 429.114(a).

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 ANTHONY

In addition to the mandatory steps listed above that Anthony must complete, Anthony 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 Anthony 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, Anthony must provide to DOE test data demonstrating that the modified basic

model complies with the applicable standard.⁶ All units must be tested in accordance with DOE regulations, and Anthony shall bear the costs of all such testing.

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 Anthony to resume the distribution of the modified basic model in the United States.

CONSEQUENCES FOR FAILURE TO COMPLY WITH THIS NOTICE

Should Anthony 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, Anthony provides DOE with a satisfactory statement within that 30-day period detailing the steps that Anthony 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

⁶ DOE may require that this testing be performed at an independent, third-party testing facility.