

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

In the Matter of:)
)
Leer Inc.) Case Number: 2016-SE-53003
(panels for walk-in coolers and freezers))
)
)

Issued: January 17, 2017

NOTICE OF NONCOMPLIANCE DETERMINATION

Components of walk-in coolers and freezers (“WICF”), including panels,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).

TESTING

In June 2015, the U.S. Department of Energy (“DOE”) tested one unit of Leer, Inc. (“Leer”) Carroll Coolers brand 3-1/2” walk-in cooler panel. On March 29, 2016, DOE issued a Test Notice pursuant to 10 C.F.R. § 429.110(b), requiring Leer to ship three units of the 3-1/2” walk-in cooler panel to a designated test facility. In June and July 2016, DOE completed testing of these three additional units of the model, in accordance with DOE test procedures.

DOE’s testing in accordance with DOE test procedures (10 C.F.R. § 431.304) demonstrates that the 3-1/2” walk-in cooler panel is not in compliance with the applicable energy conservation standard. The 3-1/2” walk-in cooler panel has a minimum permissible energy conservation standard of R-25.² Based on their performance during testing, the four units that DOE tested had thermal resistance values of 23.25, 22.50, 22.77, and 22.94.

¹ Panel is defined at 10 C.F.R. § 431.302 as a construction component that is not a door and is used to construct the envelope of the walk-in, i.e., elements that separate the interior refrigerated environment of the walk-in from the exterior.

² Under 10 C.F.R. § 431.306(a)(3), each walk-in cooler manufactured on or after January 1, 2009, shall contain wall, ceiling, and door insulation of at least R-25.

BASIC MODEL AND CERTIFICATION OF COMPLIANCE

In July 2015, Leer submitted a certification of compliance to DOE for the relevant basic model in CCMS # 68133. In CCMS # 68133, Leer's certification of compliance stated that basic model C/3.5 ("the basic model") contains individual model 3 1/2".

The certification of compliance provided that basic model C/3.5 is a wall or ceiling panel for walk-in coolers, and has a thermal resistance value of 25.57.

FINDINGS

Based on the facts stated above, DOE has determined that basic model C/3.5, including each individual model within the basic model,³ does not comply with the applicable energy efficiency standard, regardless of brand.

MANDATORY ACTIONS BY LEER

In light of the above findings, Leer 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 Leer (or any affiliated or 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 Leer 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.⁴

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

³ The finding of noncompliance is not restricted to Carroll Coolers brand name individual model 3 1/2". As stated in the Findings section of this Notice of Noncompliance Determination, this individual model and any others that fall within the basic model, including but not limited to Carroll Coolers brand name individual model 3 1/2, are determined to be noncompliant.

⁴ 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.

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 LEER

In addition to the mandatory steps listed above that Leer must complete, Leer may elect to modify the basic model to bring it into compliance with the applicable standard. The 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, Leer must provide to DOE test data demonstrating that the modified basic model complies with the applicable standard.⁵ All units must be tested in accordance with DOE regulations, and Leer 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 Leer to resume the distribution of the modified basic model in the United States. Until DOE determines that the modified basic model complies with the applicable standard, Leer is prohibited from selling or otherwise distributing units in commerce in the United States.

CONSEQUENCES FOR FAILURE TO COMPLY WITH THIS NOTICE

Should Leer 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 may seek a judicial order within 30 calendar days to restrain further distribution. If, however, Leer provides DOE with a satisfactory statement within that 30-day period detailing the steps that Leer 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

⁵ DOE may require that this testing be performed at an independent, third-party testing facility.