

**United States Department of Energy  
Office of Hearings and Appeals**

In the Matter of )  
BSH Home Appliances Corporation )  
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Filing Date: November 22, 2011 ) Case No.: EXC-11-0001  
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Issued: January 4, 2012

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**Decision and Order**  
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BSH Home Appliances Corporation filed an Application for Exception from a provision in the Department of Energy (DOE) Energy Conservation Program for Consumer Products: Energy Conservation Standards for Refrigerators, Refrigerator-Freezers and Freezers (the Refrigerator/Freezer Efficiency Standards). 10 C.F.R. Part 430. BSH states that it intends to manufacture and market an automatic defrost upright freezer with through-the-door ice service and would suffer a gross inequity if that product were required to adhere to the applicable standard. As set forth in this Decision and Order, we have determined that BSH's application should be granted.

I. Background

A. Refrigerator/Freezer Efficiency Standards

Pursuant to Part B of Title III of the Energy Policy and Conservation Act, as amended, 42 U.S.C. §§ 6291-6309 (EPCA), DOE promulgated the Refrigerator/Freezer Efficiency Standards on April 28, 1997. 62 Fed. Reg. 23,102. The standards became effective July 1, 2001. 10 C.F.R. § 430.32(a). Under the EPCA, manufacturers may not introduce into commerce any covered product that is not in compliance with those standards. 42 U.S.C. § 6302(a)(5). The standards are intended to reduce energy use and thereby reduce consumer costs as well as emissions of air pollutants associated with electricity production.<sup>1</sup>

<sup>1</sup>For each of eighteen classes of refrigerator/freezer products, the standards establish energy efficiency equations which limit energy usage. These equations are expressed in kilowatt-hours per year (kWh/yr).

## B. Application for Exception

BSH manufactures home appliances including refrigerators, refrigerator-freezers, and freezers. BSH plans to manufacture and market an automatic defrost upright freezer with through-the-door ice service. BSH states that its product falls within the Class 9 standard, which applies to automatic defrost upright freezers. The firm further states, however, that the Class 9 standard does not account for the energy loss inherent in through-the-door ice service. For that reason, BSH states, it will be unable to market this product and suffer an undue hardship and inequity in the absence of exception relief. As precedent for the grant of relief, BSH cites decisions granting relief where the applicable standard did not account for through-the-door ice service. *See, e.g., BSH Home Appliances Corp.*, OHA Case No. TEE-0070 (2010) & *Maytag Corp.*, OHA Case No. TEE-0022 (June 24, 2005) (automatic defrost refrigerator-freezers with bottom-mounted freezer and through-the-door ice service).<sup>2</sup>

BSH served its application on interested parties, notifying them of the right to submit comments. We received one comment, which was filed by Whirlpool Corporation (Whirlpool). Whirlpool argues that BSH should be granted a test procedure waiver, rather than an exception. Whirlpool's comment does not appear to be timely filed,<sup>3</sup> but we are exercising our discretion to consider the comment because doing so will promote an understanding of the nature of an exception.

## C. Standard for Exception Relief

Manufacturers may apply for exception relief with respect to the Part 430 regulations. Indeed, the preamble to the regulations discusses the basis for such exceptions:

Section 504 of the [DOE] Organization Act authorizes DOE to make adjustments of any rule or order issued under the [EPCA], consistent with the other purposes of the Act, if necessary to prevent special hardship, inequity, or unfair distribution of burdens. 42 U.S.C. § 7194(a).

... In exercising its authority under section 504, DOE may grant an exception from an efficiency standard for a limited time, and may place other conditions on the grant of an exception.

DOE will require an application for exception to provide specific facts and information relevant to the claim that compliance would cause special hardship, inequity or the unfair distribution of burdens.

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<sup>2</sup>OHA decisions issued after November 19, 1996, may be accessed at <http://www.oha.doe.gov/eecases.asp>.

<sup>3</sup>BSH mailed a copy of the Application to Whirlpool on November 21, 2011, and Whirlpool filed a comment with the Office of Energy Efficiency and Renewable Resources on December 21, 2011 (revised December 22, 2011), which was forwarded to us. Whirlpool's comment recognizes that it might not be timely, and it appears unlikely to have been filed within ten days of service of the BSH notice. See 10 C.F.R. 1003.23(c).

62 Fed. Reg. at 23,108-09. Accordingly, the applicant has the burden of establishing the basis for exception relief.

## II. Analysis

We have carefully reviewed BSH's Application for Exception and Whirlpool's comment. As explained below, we have determined that exception relief should be granted.

As an initial matter, we address Whirlpool's argument in favor of a test waiver. Whirlpool suggests that the existing test procedure be "augmented" by an allowance for the energy usage of through-the-door ice service. This argument reflects a misunderstanding of a test procedure versus an energy efficiency standard. A test procedure measures a product's energy usage; if the procedure does not produce an accurate measure, a firm can request a waiver. The test procedure does not set the applicable efficiency standard and, therefore, a waiver from the test procedure will not affect the applicable standard. To obtain relief from an energy efficiency standard, a firm must file an Application for Exception with this Office. *See* 42 U.S.C. § 7194(a); 62 Fed. Reg. at 23,108-09. BSH seeks such relief and, therefore, has appropriately filed for exception relief.

Turning to a discussion of the BSH request for exception relief, we note that the product at issue is subject to the standard for automatic defrost upright freezers (Class 9). The freezer at issue cannot meet this standard because of the energy loss inherent in through-the-door ice service. Consequently, if exception relief were denied, BSH would effectively be precluded from marketing its product. That would be an unintended consequence of the standard. In establishing the standards, the DOE did not intend to stifle innovation and the development and introduction into the marketplace of new technology. Indeed, a grant of relief to BSH is consistent with OHA precedent.

In *Maytag*, we addressed automatic defrost refrigerator-freezers with bottom-mounted freezer and through-the-door ice service, where the applicable standard did not account for through-the-door ice service. As we stated in *Maytag*, "[t]he through-the-door ice service feature is clearly distinguished by the agency in establishing separate classes of product in other models, e.g. the 'top-mounted freezer' and 'side-mounted freezer' variations of automatic defrost refrigerator-freezers." *Maytag* at 5-6 (internal citation omitted). Accordingly, we determined that the application of a standard that did not account for through-the-door ice service would constitute a gross inequity, and we granted *Maytag*'s exception application. We subsequently granted relief to other manufacturers of automatic defrost refrigerators with bottom-mounted freezers and through-the-door ice service. *See also GE Appliances and Lighting*, OHA Case No. TEE-0074 (2011); *BSH Home Appliances Corp.*, OHA Case No. TEE-0070 (2010); *Samsung Electronics America*, OHA Case No. TEE-0047 (2007); *LG Electronics, Inc.*, OHA Case No. TEE-0025 (2005); *Maytag Corp.*, OHA Case No. TEE-0022 (2005). Accordingly, our precedent fully supports relief where a standard does not account for through-the-door ice service.

The grant of relief to BSH requires the establishment of an appropriate standard for the product at issue. Consistent with past decisions, we have adjusted the applicable standard to allow for the energy loss associated with the through-the-door ice service feature. The standards establish

a maximum energy consumption of  $12.43AV + 326.10$  for automatic defrost upright freezers (Class 9). The additional energy consumption of through-the-door ice service is  $0.36AV + 72.0$ ,<sup>4</sup> giving a standard of  $12.79AV + 398.1$ . Accordingly, we will grant BSH's application for exception relief, establishing an energy standard equation for maximum energy use (kWh/yr) for BSH's automatic defrost upright freezer with through-the-door ice service of  $12.79AV + 398.1$ . BSH must label its product in accordance with regulations of the Federal Trade Commission, 16 C.F.R. Part 305, and state the expected energy consumption based upon appropriate testing under DOE test protocol. *See* 10 C.F.R. § 430.23(b). The exception relief granted in this Decision will remain in effect until the DOE promulgates a rule for automatic defrost upright freezers with through-the-door ice service.

It Is Therefore Ordered That:

(1) The Application for Exception filed by BSH Home Appliances Corporation on November 22, 2011, be granted as set forth in paragraphs (2) and (3) below.

(2) Notwithstanding the requirements of 10 C.F.R. Part 430.32(a), the energy standard equation for maximum energy use (kWh/yr) is established as  $12.79AV + 398.1$  for the "automatic defrost upright freezer with through-the-door ice service," to be manufactured and marketed by BSH Home Appliances Corporation as described in this Decision. The exception relief will remain in effect until such time as the DOE promulgates an energy efficiency standard for that product.

(3) In marketing the freezer described in this Decision, BSH Home Appliances Corporation shall label its product in accordance with regulations of the Federal Trade Commission, 16 C.F.R. Part 305, and state the expected energy consumption based upon appropriate testing under DOE test protocol. *See* 10 C.F.R. § 430.23(b).

(4) Any person aggrieved by this grant of exception relief may file an appeal with the Office of Hearings and Appeals in accordance with 10 C.F.R. Part 1003, Subpart C.

Poli A. Marmolejos  
Director  
Office of Hearings and Appeals

Date: January 4, 2012

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<sup>4/</sup> The additional energy consumption ( $0.36AV + 72.0$ ) of the through-the door feature was calculated as follows:  $.40AV + 80.0$  (the adjustment for through-the-door service for automatic defrost refrigerator-freezers with bottom-mount freezers) x  $.85$  (usage-adjustment factor for upright freezers) x  $90/85$  (adjustment for different test temperatures for freezers (0 F) and refrigerator-freezers (5 F)).