

March 1, 2011

DECISION AND ORDER
OF THE DEPARTMENT OF ENERGY

Application for Exception

Name of Petitioner: GE Appliances & Lighting

Date of Filing: February 4, 2011

Case Number: TEE-0074

This Decision and Order considers an Application for Exception filed by GE Appliances & Lighting (GE) seeking exception relief from the provision of 10 C.F.R. Part 430, Energy Conservation Program for Consumer Products: Energy Conservation Standards for Refrigerators, Refrigerator-Freezers and Freezers (Refrigerator Efficiency Standards). In its exception request, GE asserts that the firm would suffer a gross inequity if required to adhere to the Refrigerator Efficiency Standards codified at 10 C.F.R. § 430.32. If GE's Application for Exception were granted, GE would receive exception relief from the energy efficiency standard applicable to a new automatic defrost refrigerator-freezer, with bottom-mounted freezer and through-the-door ice service. GE proposes to manufacture and market this appliance. As set forth in this Decision and Order, we have concluded that GE's Application for Exception should be granted.

I. Background

A. Refrigerator Efficiency Standards

The Refrigerator Efficiency Standards, 10 C.F.R. Part 430, were published as a final rule by the Department of Energy (DOE) on April 28, 1997, 62 Fed. Reg. 23102, pursuant to Part B of Title III of the Energy Policy and Conservation Act, as amended, 42 U.S.C. §§ 6291-6309 (EPCA). The EPCA directed DOE to review and revise energy conservation standards for major appliances, including refrigerator-freezer products, promulgated by the agency in 1989, 54 Fed. Reg. 47916 (November 17, 1989). EPCA, § 325(b)(3)(B), 42 U.S.C. § 6295(b)(3)(B). Appliance manufacturers may not introduce into commerce any covered product that is not in compliance with the applicable energy efficiency standards established under the EPCA. 42 U.S.C. § 6302(a)(5). The Refrigerator Efficiency Standards were designed to reduce energy use in classes of refrigerator products by up to 30 percent below the prior standards, and thereby reduce consumer costs as well as emissions of air

pollutants associated with electricity production.^{1/} The Refrigerator Efficiency Standards became effective July 1, 2001.

B. Application for Exception

GE, an operating division of General Electric Co., is a leading manufacturer and marketer of refrigeration products, including refrigerator-freezers. GE has immediate plans to introduce automatic defrost refrigerator-freezers, with bottom-mounted freezer and through-the-door ice service.

In its Application for Exception, GE asserts that by requiring the firm to comply with existing efficiency standards GE would “suffer serious hardship, inequity and an unfair distribution of burdens should its [Application] not be granted, as its competitive position with other similar products would be impaired, and it will be unable to compete on a level playing field with other manufacturers in regard to these products.” GE Application at 4. GE also asserts that the automatic defrost refrigerator-freezers, with bottom-mounted freezer and through-the-door ice service is specifically covered by DOE’s September 27, 2010 Notice of Proposed Rulemaking for Refrigerators, Refrigerator-Freezers, and Freezers (Proposed Rule),^{2/} which should be issued in final in the near term. *Id.* at 2. Further, GE argues that the product class of the automatic defrost refrigerator-freezers, with bottom-mounted freezer and through-the-door ice service is not new to the industry. *Id.* In similar requests for exception relief for similar products from Maytag, LG, and Samsung, OHA acknowledged that the “product’s design possessed inherent characteristics that would not allow its energy consumption to be suitably defined by the requirements for bottom-mount freezers without through-the-door ice service.” *Id.* at 3. Finally, GE argues that the formula used in granting the previous exception relief applications from other manufacturers, as well as the Proposed Rule, should be used in this Application as well. *Id.*

In support of its claim, GE cites our decisions in three similar cases. *Samsung Electronics America*, Case No. TEE-0047, (2007); *LG Electronics, Inc.*, Case No. TEE-0025 (2005); *Maytag*

^{1/}For each of eighteen classes of refrigerator products, the Refrigerator Efficiency Standards established energy efficiency equations which limit energy usage. These equations are expressed in kilowatt-hours per year (kWh/yr). For example, the consumption equation for the product Class 4, “Refrigerator-Freezers – automatic defrost with side-mounted freezer without through-the-door ice service,” is a maximum of “4.91AV+507.5,” where AV is the “total adjusted volume” of the particular unit expressed in cubic feet.

^{2/}Energy Conservation Program: Energy Conservation Standards for Residential Refrigerators, Refrigerator-Freezers, and Freezers; Proposed Rule, 75 Fed. Reg. 59470 (proposed September 27, 2010) (to be codified at 10 C.F.R. Part 430.32).

Corp., TEE-0022 (2005).^{3/} In these three cases, the applicants also filed for exception relief from the Refrigerator Efficiency Standards for automatic defrost refrigerator-freezers, with bottom-mounted freezer and through-the-door ice service. GE requests that we grant it the same exception relief as we granted to Maytag, LG, and Samsung for its comparable product. GE Application at 4. This Office received no comments in response to GE's Application.

C. Standard for Exception Relief

In promulgating the final rule of the Part 430 regulations, DOE stated as follows with regard to Applications for Exception relief:

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 an unfair distribution of burdens.

62 Fed. Reg. at 23108-09. Prior decisions of this Office and the Federal courts clearly place the burden upon the applicant to establish the basis for its claim for exception relief from DOE regulatory provisions. *See, e.g., Exxon Corp. v. Dep't of Energy*, 802 F.2d 1400, 1407-08 (Temp. Emer. Ct. App. 1986) ("great deference" accorded to agency in applying standards for exception relief); *City of Long Beach v. Dep't of Energy*, 754 F.2d 379, 386 (Temp. Emer. Ct. App. 1985); *Diversified Refrigeration, Inc.*, Case No. VEE-0079 (2001); *Amana Appliances*, Case No. VEE-0054 (1999); *Whirlpool Corp.*, 14 DOE ¶ 81,023 (1986); *White Consolidated, Inc.*, 13 DOE ¶ 81,045 (1985).

II. Analysis

We have carefully reviewed GE's Application for Exception and determined that exception relief should be approved. As with the product in *Maytag*, *LG*, and *Samsung*, we find that GE's model - automatic defrost refrigerator-freezers, with bottom-mounted freezer and

^{3/}OHA decisions issued after November 19, 1996, may be accessed at <http://www.oha.doe.gov/eecases.asp>.

through-the-door ice service – will be unable to meet the Class 5 energy efficiency standard established for “Refrigerator-Freezers – automatic defrost with bottom-mounted freezer without through-the-door ice service” due to the energy loss inherent in adding the through-the-door ice service feature. Consequently, if exception relief were denied, GE would be effectively precluded from marketing its product by the generally applicable energy efficiency standard, an unintended consequence of the existing regulations. In establishing the Refrigerator Efficiency Standards, the DOE did not intend to stifle innovation and the development and introduction into the marketplace of new technology. Also, as GE stated in its Application, the firm would lose a significant portion of its return on its investment in designing this product and would “remove GE’s ability to compete on a level playing field with other manufacturers for the same product configuration.” GE Application at 4. Furthermore, if exception relief were denied, consumers would unfairly be deprived of the opportunity to choose among many different brands for the desired model.

The present case is indistinguishable from the *Maytag* decision. In that case and in the *LG* and *Samsung* cases, we determined that the DOE would have established a separate product class for automatic defrost refrigerator-freezers, with bottom-mounted freezer and through-the-door ice service, had those products existed in the marketplace at the time of the promulgation of the Refrigerator Efficiency Standards. “The 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). The facts surrounding GE’s Application for Exception are virtually identical to those in *Maytag*, *LG*, and *Samsung*. Further, the Proposed Rule recognizes that automatic defrost refrigerator-freezers, with bottom-mounted freezer and through-the-door ice service is a separate product class. Therefore, we have determined that GE is entitled to the same exception relief we granted in those decision.

Accordingly, GE will be granted exception relief establishing the energy standard equation for maximum energy use (kWh/yr) for GE’s automatic defrost refrigerator-freezers, with bottom-mounted freezer and through-the-door ice service, of $5.0AV+539.0$.^{4/} GE must label

^{4/}The Refrigerator Efficiency Standards establish a maximum energy consumption of $9.80AV+276.0$ for automatic defrost refrigerator-freezers “with top-mounted freezer without through-the-door ice service” (Class 3) and a maximum energy consumption of $10.20AV+356.0$ for automatic defrost refrigerator-freezers “with top-mounted freezer with through-the-door ice service” (Class 6). Thus, the additional energy consumption allowed to account for through-the-door ice service is $0.40AV+80.0$ ($10.20AV+356.0$ minus $9.80AV+276.0$). On this basis, we have determined that an appropriate standard for maximum energy use for automatic defrost refrigerator freezers with bottom-mounted freezers with through-the-door ice service can be
(continued...)

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 the final version of the Proposed Rule regarding the automatic defrost refrigerator-freezers, with bottom-mounted freezer and through-the-door ice service.

It Is Therefore Ordered That:

(1) The Application for Exception filed by GE Appliances and Lighting on February 4, 2011, is hereby 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 $5.0AV+539.0$ for the “automatic defrost refrigerator freezer, with bottom-mounted freezer with through-the-door ice service,” produced and marketed by GE Appliances and Lighting as described in this Decision. The exception relief granted in this Decision will remain in effect until such time as the DOE promulgates an energy efficiency standard for “Refrigerator-Freezers – automatic defrost with bottom-mounted freezer with through-the-door ice service.”

(3) In marketing the refrigerator-freezer described in this Decision, GE Appliances and Lighting 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 the approval of exception relief in this Decision and Order 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: March 1, 2011

^{4/}(...continued)
established by adding this increment ($0.40AV+80.0$) to the energy efficiency equation, $4.60AV+459.0$, established for “Refrigerator-Freezers – automatic defrost with bottom-mounted freezer without through-the-door ice service” (Class 5). The combination of these values yields an energy consumption standard of $5.0AV+539.0$.