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**[6450-01-P]**

**DEPARTMENT OF ENERGY**

**[Case Number 2017-007; EERE-2017-BT-WAV-0041]**

**Energy Conservation Program: Decision and Order Granting a Waiver to AHT Cooling Systems GmbH and AHT Cooling Systems USA Inc. from the Department of Energy Commercial Refrigerator, Freezer, and Refrigerator-Freezer Test Procedure**

**AGENCY:** Office of Energy Efficiency and Renewable Energy, Department of Energy.

**ACTION:** Notice of decision and order.

**SUMMARY:** The U.S. Department of Energy (“DOE”) gives notice of a Decision and Order (Case Number 2017-007) that grants AHT Cooling Systems GmbH and AHT Cooling Systems USA Inc. (“AHT”) a waiver from specified portions of the DOE test procedure for determining the energy consumption of specified commercial refrigerators, freezers, and refrigerator-freezers (collectively “commercial refrigeration equipment”) basic models. Under the Decision and Order, AHT is required to test and rate the specified basic models of its commercial refrigeration equipment in accordance with the alternate test procedure specified in the Decision and Order.

**DATES:** The Decision and Order is effective on **[INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**. The Decision and Order will terminate upon the compliance date of any future amendment to the test procedure for commercial refrigeration equipment located at 10 CFR part 431, subpart C, appendix B that addresses the issues presented in this waiver. At such time, AHT must use the relevant test procedure for this equipment for any testing to demonstrate compliance with standards, and any other representations of energy use.

**FOR FURTHER INFORMATION CONTACT:**

Ms. Lucy deButts, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE-5B, 1000 Independence Avenue, SW., Washington, DC, 20585-0121. Telephone: (202) 287-1604. E-mail: *AS\_Waiver\_Requests@ee.doe.gov*.

Mr. Pete Cochran, U.S. Department of Energy, Office of the General Counsel, Mail Stop GC-33, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585-0103. Telephone: (202) 586-9496. Email: *peter.cochran@hq.doe.gov*.

#### **SUPPLEMENTARY INFORMATION:**

In accordance with Title 10 of the Code of Federal Regulations (10 CFR 431.401(f)(2)), DOE gives notice of the issuance of its Decision and Order as set forth below. The Decision and Order grants AHT a waiver from the applicable test procedure in 10 CFR part 431, subpart C, appendix B (“Appendix B”) for specified basic models of commercial refrigeration equipment, provided that AHT tests and rates such equipment using the alternate test procedure specified in the Decision and Order. AHT’s representations concerning the energy consumption of the specified basic models must be based on testing according to the provisions and restrictions in the alternate test procedure set forth in the Decision and Order, and the representations must fairly disclose the test results. Distributors, retailers, and private labelers are held to the same requirements when making representations regarding the energy consumption of this equipment. (42 U.S.C. 6314(d))

Consistent with 10 CFR 431.401(j), not later than **[INSERT DATE 60 DAYS AFTER THE DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**, any manufacturer

currently distributing in commerce in the United States equipment employing a technology or characteristic that results in the same need for a waiver from the applicable test procedure must submit a petition for waiver. Manufacturers not currently distributing such equipment in commerce in the United States must petition for and be granted a waiver prior to the distribution in commerce of that equipment in the United States. Manufacturers may also submit a request for interim waiver pursuant to the requirements of 10 CFR 431.401.

Signed in Washington, DC, on October 16, 2018.

A handwritten signature in dark ink, appearing to read 'KBH', is written over a horizontal line.

Kathleen B. Hogan, Ph.D.  
Deputy Assistant Secretary for Energy Efficiency  
Energy Efficiency and Renewable Energy

**Case # 2017-007**  
**Decision and Order**

**I. Background and Authority**

The Energy Policy and Conservation Act of 1975 (“EPCA”),<sup>1</sup> Public Law 94-163 (42 U.S.C. 6291–6317, as codified), among other things, authorizes the U.S. Department of Energy (“DOE”) to regulate the energy efficiency of a number of consumer products and industrial equipment. Title III, Part C<sup>2</sup> of EPCA established the Energy Conservation Program for Certain Industrial Equipment, which sets forth a variety of provisions designed to improve energy efficiency for certain types of industrial equipment. This equipment includes commercial refrigerators, freezers, and refrigerator-freezers (collectively “commercial refrigeration equipment”), the focus of this document. (42 U.S.C. 6311(1)(E)) EPCA also requires the Secretary of Energy to prescribe test procedures that are reasonably designed to produce results that measure energy efficiency, energy use, or estimated operating costs during a representative average-use cycle, and that are not unduly burdensome to conduct. (42 U.S.C. 6314(a)(2)) The test procedure for commercial refrigeration equipment is contained in 10 CFR part 431, subpart C, appendix B.

DOE’s regulations set forth at 10 CFR 431.401 contain provisions that allow an interested person to seek a waiver from the test procedure requirements for a particular basic

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<sup>1</sup> All references to EPCA in this document refer to the statute as amended through the EPS Improvement Act of 2017, Public Law 115-115 (January 12, 2018).

<sup>2</sup> For editorial reasons, upon codification in the U.S. Code, Part C was redesignated as Part A-1.

model when the petitioner's basic model for which the petition for waiver was submitted contains one or more design characteristics that either (1) prevent testing according to the prescribed test procedure, or (2) cause the prescribed test procedures to evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inaccurate comparative data. 10 CFR 431.401(a)(1). A petitioner must include in its petition any alternate test procedures known to the petitioner to evaluate the basic model in a manner representative of its energy consumption characteristics. 10 CFR 431.401(b)(1)(iii).

DOE may grant a waiver subject to conditions, including adherence to alternate test procedures. 10 CFR 431.401(f)(2). As soon as practicable after the granting of any waiver, DOE will publish in the Federal Register a notice of proposed rulemaking to amend its regulations so as to eliminate any need for the continuation of such waiver. 10 CFR 431.401(l). As soon thereafter as practicable, DOE will publish in the Federal Register a final rule. *Id.*

The waiver process also provides that DOE may grant an interim waiver if it appears likely that the petition for waiver will be granted and/or if DOE determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the underlying petition for waiver. 10 CFR 431.401(e)(2). Within one year of issuance of an interim waiver, DOE will either: (i) publish in the Federal Register a determination on the petition for waiver; or (ii) publish in the Federal Register a new or amended test procedure that addresses the issues presented in the waiver. 10 CFR 431.401(h)(1). When DOE amends the test procedure to address the issues presented in a waiver, the waiver will automatically

terminate on the date on which use of that test procedure is required to demonstrate compliance.  
10 CFR 431.401(h)(2).

## **II. AHT's Petition for Waiver: Assertions and Determinations**

By letter dated May 16, 2017, AHT submitted a petition for waiver and an application for interim waiver for specified basic models of commercial refrigeration equipment that are required to be tested using the commercial refrigeration equipment test procedure at 10 CFR part 431, subpart C, appendix B.<sup>3</sup> AHT stated that the basic models listed in the petition do not have a defrost cycle when operated in freezer mode, and therefore cannot be tested under Appendix B, which references defrosts for the start of the test period and door-opening period.

On June 4, 2018, DOE published a notice that announced its receipt of the petition for waiver and granted AHT an interim waiver. 83 FR 25658. ("Notice of Petition for Waiver"). In the Notice of Petition for Waiver, DOE presented AHT's claim that its specified basic models cannot be tested according to Appendix B due to their lack of defrost when operated in freezer mode. AHT requested an alternate test procedure, which would test the specified commercial freezer basic models according to appendix B, but with the test period starting after the unit achieves steady state conditions and the door-opening period starting 3 hours after the start of the test period.

As explained in the Notice of Petition for Waiver, DOE evaluated the alternate test procedure requested by AHT, as well as the operating manual for the commercial freezer basic

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<sup>3</sup> AHT's petition for waiver and petition for interim waiver can be found in the regulatory docket at <https://www.regulations.gov/docket?D=EERE-2017-BT-WAV-0041>.

models. DOE's test procedure requires beginning the test period at the start of a defrost cycle and recording data for 24 hours, and initiating a door-opening period 3 hours after the start of a defrost cycle. As such, for the specified basic models, which do not defrost, there is no defined start to either the test period or the door-opening period under DOE's test procedure. Based on review of the application for an interim waiver, DOE determined that the alternate test procedure that AHT suggested appropriately reflects the energy consumption of and is appropriate for the commercial freezer basic models identified in AHT's petition for waiver.

In the Notice of Petition for Waiver, DOE also solicited comments from interested parties on all aspects of the petition and the specified alternate test procedure, which was consistent with AHT's requested alternate approach. DOE received no comments in response to the Notice of Petition for Waiver.

For the reasons explained here and in the Notice of Petition for Waiver, DOE understands that absent a waiver, the commercial freezer basic models identified by AHT in its petition contain a design characteristic—lack of a defrost cycle when operated in freezer mode—that prevents testing and rating such models on a basis representative of their true energy consumption characteristics. DOE has reviewed the recommended procedure suggested by AHT and concludes that it will allow for the accurate measurement of the energy use of the equipment, while alleviating the testing problems associated with AHT's implementation of DOE's applicable commercial refrigeration equipment test procedure for the specified basic models. Thus, DOE is requiring that AHT test and rate the commercial freezer basic models for which it



has requested a waiver according to the alternate test procedure specified in this Decision and Order, which is identical to the procedure provided in the interim waiver.

This Decision and Order is applicable only to the basic models listed within it and does not extend to any other basic models. DOE evaluates and grants waivers for only those basic models specifically set out in the petition, not future models that may be manufactured by the petitioner. AHT may request that the scope of this waiver be extended to include additional basic models that employ the same technology as those listed in this waiver. 10 CFR 431.401(g). AHT may also submit another petition for waiver from the test procedure for additional basic models that employ a different technology and meet the criteria for test procedure waivers. 10 CFR 431.401(a)(1).

DOE notes that it may modify or rescind the waiver at any time upon DOE's determination that the factual basis underlying the petition for waiver is incorrect, or upon a determination that the results from the alternate test procedure are unrepresentative of the basic models' true energy consumption characteristics. 10 CFR 431.401(k)(1). Likewise, AHT may request that DOE rescind or modify the waiver if the company discovers an error in the information provided to DOE as part of its petition, determines that the waiver is no longer needed, or for other appropriate reasons. 10 CFR 431.401(k)(2).

### **III. Order**

After careful consideration of all the material that was submitted by AHT in this matter, it is **ORDERED** that:

(1) AHT must, as of the date of publication of this Order in the *Federal Register*, test and rate the following AHT brand commercial freezer basic models (which do not have defrost cycle capability when operated in freezer mode) with the alternate test procedure as set forth in paragraph (2):

Brand Name	Basic Model
AHT	IBIZA 100 NAM F
AHT	IBIZA 145 NAM F
AHT	IBIZA 210 NAM F
AHT	MALTA 145 NAM F
AHT	MALTA 185 NAM F
AHT	MANHATTAN 175 NAM F
AHT	MANHATTAN 210 NAM F
AHT	MIAMI 145 NAM F
AHT	MIAMI 185 NAM F
AHT	MIAMI 210 NAM F
AHT	MIAMI 250 NAM F
AHT	PARIS 145 NAM F
AHT	PARIS 185 NAM F
AHT	PARIS 210 NAM F
AHT	PARIS 250 NAM F
AHT	SYDNEY 175 NAM F
AHT	SYDNEY 210 NAM F
AHT	SYDNEY 213 NAM F
AHT	SYDNEY 223 NAM F
AHT	SYDNEY 230 NAM F
AHT	SYDNEY 250 NAM F
AHT	SYDNEY XL175 NAM F
AHT	SYDNEY XL210 NAM F
AHT	SYDNEY XL250 NAM F

(2) The alternate test procedure for the AHT basic models listed in paragraph (1) of this Order is the test procedure for commercial refrigeration equipment prescribed by DOE at 10 CFR part

431, subpart C, appendix B, except that the test period shall be selected as detailed below. All other requirements of Appendix B and DOE's regulations remain applicable.

The test shall begin when steady state conditions occur (per ASHRAE Standard 72-2005, Section 3, definitions, which defines steady state as "the condition where the average temperature of all test simulators changes less than 0.2°C (0.4°F) from one 24-hour period or refrigeration cycle to the next" ASHRAE 72-2005, Section 3, definitions). Additionally, the door-opening requirements shall be as defined in ASHRAE 72-2005 Section 7.2, with the exception that the eight-hour period of door openings shall begin three hours after the start of the test. Ambient temperature, test simulator temperatures, and all other data shall be recorded at three-minute intervals beginning at the start of the test and throughout the 24-hour testing period.


(3) *Representations.* AHT may not make representations about the energy use of the basic models identified in paragraph (1) of this Order for compliance, marketing, or other purposes unless the basic model has been tested in accordance with the provisions set forth above and such representations fairly disclose the results of such testing in accordance with 10 CFR part 431, subpart C, appendix B and 10 CFR 429.42, as specified in this Order.

(4) This waiver shall remain in effect according to the provisions of 10 CFR 431.401.

(5) This waiver is issued on the condition that the statements, representations, and documentation provided by AHT are valid. If AHT makes any modifications to the controls or capabilities (e.g., adding automatic defrost to freezer mode) of these basic models, the waiver will no longer be valid and AHT will either be required to use the current Federal test method or submit a new application for a test procedure waiver. DOE may revoke or modify this waiver at any time if it determines the factual basis underlying the petition for waiver is incorrect, or the results from the alternate test procedure are unrepresentative of the basic models' true energy consumption characteristics. 10 CFR 431.401(k)(1). Likewise, AHT may request that DOE rescind or modify the waiver if AHT discovers an error in the information provided to DOE as part of its petition, determines that the waiver is no longer needed, or for other appropriate reasons. 10 CFR 431.401(k)(2).

(6) Granting of this waiver does not release AHT from the certification requirements set forth at 10 CFR part 429.

Signed in Washington, DC, on October 16, 2018.



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Kathleen B. Hogan, Ph.D.  
Deputy Assistant Secretary for Energy Efficiency  
Energy Efficiency and Renewable Energy