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[6450-01-P]

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

[Case No. 2017-011]

**Notice of Petition for Waiver of Big Ass Solutions (BAS) from the Department of Energy
Ceiling Fan Test Procedure, and Grating of Interim Waiver**

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

ACTION: Notice of petition for waiver, notice of grant of an interim waiver, and request for comments.

SUMMARY: This notice announces receipt of and publishes a petition for waiver from Big Ass Solutions (BAS) seeking an exemption from specified portions of the U.S. Department of Energy (DOE) test procedure for determining the efficiency of ceiling fans under appendix U (appendix U). BAS seeks to use an alternate test procedure to address issues involved in testing certain basic models identified in its petition. According to BAS, testing at low speed for the low-speed small-diameter ceiling fan basic models identified in the petition, may cause BAS undue hardship in meeting the stability requirements contained in appendix U. Consequently, BAS recommended relaxing the low speed stability criteria from DOE's requirement of 5 percent to 10 percent. This notice also grants BAS an interim waiver from the DOE's ceiling fan test procedure for its specified basic models, subject to use of the alternative test procedure as set

forth in this notice. DOE solicits comments, data, and information concerning BAS's petition and its suggested alternate test procedure.

DATES: DOE will accept comments, data, and information with respect to the BAS petition until **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**.

ADDRESSES: You may submit comments, identified by case number "2017-011", and Docket number "EERE-2017-BT-WAV-0049," by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *E-mail:* BASFan2017WAV0049@ee.doe.gov. Include the case number [Case No. 2017-011] in the subject line of the message. Submit electronic comments in WordPerfect, Microsoft Word, PDF, or ASCII file format, and avoid the use of special characters or any form of encryption.
- *Postal Mail:* Ms. Lucy deButts, U.S. Department of Energy, Building Technologies Office, Mailstop EE-5B, Petition for Waiver Case No. 2017-011, 1000 Independence Avenue, SW., Washington, DC 20585-0121. If possible, please submit all items on a compact disc (CD), in which case it is not necessary to include printed copies.
- *Hand Delivery/Courier:* Appliance and Equipment Standards Program, U.S. Department of Energy, Building Technologies Office, 950 L'Enfant Plaza, SW., Room 6055, Washington, DC, 20024. Please submit one signed original paper copy.

Docket: The docket, which includes *Federal Register* notices, comments, and other supporting documents/materials, is available for review at <http://www.regulations.gov>. All documents in the docket are listed in the <http://www.regulations.gov> index. However, some documents listed in the index, such as those containing information that is exempt from public disclosure, may not be publicly available.

The docket Web page can be found at <http://www.regulations.gov#!/docketDetail;D=EERE-2017-BT-WAV-0049>. The docket Web page will contain simple instruction on how to access all documents, including public comments, in the docket.

FOR FURTHER INFORMATION CONTACT: Ms. Lucy deButts, U.S. Department of Energy, Building Technologies Office, Mailstop EE-5B, 1000 Independence Avenue, SW., Washington, DC 20585-0121. E-mail: AS_Waiver_Request@ee.doe.gov.

Elizabeth Kohl, U.S. Department of Energy, Office of the General Counsel, Mail Stop GC-33, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585-0103. E-mail: Elizabeth.Kohl@hq.doe.gov. Telephone 202-586-7796.

SUPPLEMENTARY INFORMATION:

I. Background and Authority

Title III, Part B¹ of the Energy Policy and Conservation Act of 1975 (EPCA), Public Law 94-163 (42 U.S.C. 6291-6309, as codified) established the Energy Conservation Program for Consumer Products Other Than Automobiles, a program that includes ceiling fans that are the subject of this notice.² Part B includes definitions, test procedures, labeling provisions, energy conservation standards, and the authority to require information and reports from manufacturers. Further, Part B authorizes the Secretary of Energy to prescribe test procedures that are reasonably designed to produce results measuring energy efficiency, energy use, or estimated operating costs during a representative average use cycle or period of use, and that are not unduly burdensome to conduct. (42 U.S.C. 6293(b)(3)) The test procedure for ceiling fans is contained in 10 CFR part 430, subpart B, appendix U (referred to in this notice as “appendix U”).

DOE’s regulations set forth at 10 CFR 430.27 contain provisions that allow a person to seek a waiver from the test procedure requirements for a particular basic model of a type of covered product when: the basic model for which the petition for waiver was submitted contains one or more design characteristics that (1) prevent testing according to the prescribed test procedure, or (2) cause the prescribed test procedure 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 430.27(a)(1). A petitioner must include in its petition any

¹ For editorial reasons, upon codification in the U.S. Code, Part B was re-designated Part A.

² All references to EPCA in this document refer to the statute as amended through the Energy Efficiency Improvement Act of 2015 (EEIA), Public Law 114-11 (April 30, 2015).

alternate test procedures known to the petitioner to evaluate the basic model in a manner representative of its energy consumption characteristics. 10 CFR 430.27(b)(1)(iii).

DOE may grant a waiver subject to conditions, including adherence to alternate test procedures. 10 CFR 430.27(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. As soon thereafter as practicable, DOE will publish in the *Federal Register* a final rule. 10 CFR 430.27(l).

The waiver process also allows DOE to 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 petition for waiver. 10 CFR 430.27(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 430.27(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 430.27(h)(2).

II. Petition for Waiver of Test Procedure and Application for Interim Waiver

On June 14, 2017, BAS filed a petition for waiver and an application for interim waiver from the test procedure applicable to ceiling fans set forth in 10 CFR part 430, subpart B,

appendix U. According to BAS, testing at low speed for the basic models listed in the petition³, may cause BAS undue hardship in meeting the requirements of the stability requirements contained in appendix U. Consequently, in its petition, BAS offered two alternate test procedures for determining the stability criteria for testing low-speed small-diameter ceiling fans at low speed: (1) BAS's preferred method, which would require BAS to employ a stability criteria using airflow instead of air velocity measurements, and (2) BAS's alternate method, which would require relaxing the low speed stability criteria from DOE's requirement of 5 percent to 10 percent. BAS initially stated that this second method is not preferred because it could add significant variability to the calculated airflow on low speed. BAS also requests an interim waiver from the existing DOE test procedure.

However, by email dated December 6, 2017, BAS withdrew their preferred method for modifying the stability criteria from consideration. Instead, BAS requested that DOE consider their alternative method as their recommendation for the alternate test procedure.⁴

DOE understands that the basic models identified in BAS's petition cannot be tested under the DOE test procedure because at the lower operating speeds for these fans, air speed is so low that the acceptable variance under the stability criteria (often less than 2 feet per minute) falls below the required accuracies for air velocity sensors in section 3.2 of the DOE test procedure. DOE also understands that absent an interim waiver, BAS's products cannot be tested and rated according to the DOE test procedure, and BAS is unable to advertise performance data

³ The specific basic models for which the petition applies are ceiling fan basic models Isis F-IS2-0601S4 and Isis F-IS2-0601. These basic model names were provided by BAS in its June 2017 petition.

⁴ A copy of the email is available at regulations.gov, under docket number EERE-2017-BT-WAV-0049.

for these models. DOE has reviewed the alternate procedure suggested by BAS and concludes that relaxing the stability criteria for low speed will allow for the accurate measurement of efficiency of these products, while alleviating the testing problems associated with BAS's implementation of ceiling fan testing for the basic models specified in its petition. Further discussion on DOE's review of the alternate test procedure are provided in section IV of this notice. Consequently, DOE has determined that BAS's petition for waiver will likely be granted. Furthermore, DOE has determined that it is desirable for public policy reasons to grant BAS immediate relief pending a determination of the petition for waiver.

III. Summary of Grant of an Interim Waiver

DOE has reviewed the manufacturer specifications and test data provided by BAS and agrees that it demonstrates that the basic models specified in the petition cannot be tested under the DOE test procedure because, when testing the basic models at low speed, the air speed is so low that the acceptable variance under the stability criteria (often less than 2 feet per minute) falls below the required accuracies for air velocity sensors in section 3.2 of the DOE test procedure. DOE compared BAS's test data to DOE's own test data from previous rulemakings and observed that the air velocities at low speed for the new BAS basic models are much lower than the test data previously evaluated. DOE's understanding is that the primary purpose of low speed for the basic models included in BAS's petition is to mix air in the room. Achieving the desired mixing effect requires much lower airflow that creates highly variable airflow patterns in the room. These atypically variable airflow patterns make it hard for the ceiling fan to achieve the stability criteria required by the DOE test procedure.

For the reasons stated above, DOE is granting BAS's application for interim waiver from testing for its specified ceiling fan basic models. The substance of DOE's Interim Waiver Order is summarized.

BAS is required to use the alternate test procedure set forth in this notice to test and rate the ceiling fan basic models listed in the petition (Isis F-IS2-0601S4, Isis F-IS2-0601, Isis F-IS2-0401L8S4, Isis F-IS2-0401L8, Isis F-IS2-0401I06L8S4, Isis F-IS2-0401I06L8, Isis F-IS2-0501L8S4 and Isis F-IS2-0501L8). BAS is permitted to make representations about the ceiling fan efficiency of these basic models for compliance, marketing, or other purposes to the extent that such products have been tested in accordance with the provisions set forth in the alternate test procedure and such representations fairly disclose the results of such testing in accordance with 10 CFR 429.32.

DOE makes decisions on waivers and interim waivers for only those basic models specifically set out in the petition, not future models that may be manufactured by the petitioner. BAS may request that DOE extend the scope of a waiver or an interim waiver to include additional basic models employing the same technology as the basic model(s) set forth in the original petition consistent with 10 CFR 430.27(g). In addition, DOE notes that granting of an interim waiver or waiver does not release a petitioner from the certification requirements set forth at 10 CFR part 429. See also 10 CFR 430.27(a) and (i).

The interim waiver shall remain in effect consistent with the provisions of 10 CFR 430.27(h). Furthermore, this interim waiver is conditioned upon the presumed validity of

statements, representations, and documents provided by the petitioner. DOE may rescind or modify a waiver or interim waiver at any time upon a determination that the factual basis underlying the petition for waiver or interim waiver is incorrect, or upon a determination that the results from the alternate test procedure are unrepresentative of the basic model's true energy consumption characteristics. See 10 CFR 430.27(k)(1). Similarly, BAS may request that DOE rescind or modify a waiver or interim waiver if BAS discovers an error or determines that the waiver is no longer necessary or for other appropriate reasons. 10 CFR 430.27(k)(2).

IV. Alternate Test Procedure

Under EPCA, manufacturers may not make representations with respect to the energy use or efficiency of a covered product unless the basic model has been tested in accordance with the applicable DOE test procedure and the representation fairly discloses the results of such testing. (42 U.S.C. 6293(c)) Consistent representations are important for manufacturers to use in making representations about the energy efficiency of their products and to demonstrate compliance with applicable DOE energy conservation standards. Pursuant to the regulations applicable to waivers from applicable test procedures at 10 CFR 430.27, DOE will consider setting an alternate test procedure for BAS in a subsequent Decision and Order.

In its petition, BAS proposes that the basic models listed in the petition be tested according to the test procedure for ceiling fans prescribed by DOE at 10 CFR part 430, subpart B, appendix U, except that the stability criteria at low speed for low-speed small-diameter ceiling fans be modified to either of the recommended alternate test procedures as follows:

- 1) Replace the stability criteria to allow a percentage variation around airflow, instead of average air velocity, between two consecutive tests. Therefore, the suggested test procedure should instead state: “In a successive set of measurements, the lower recorded value for airflow multiplied by 1.03 is greater than or equal to the higher recorded value for airflow, or these airflow measurements vary less than 15 cfm” (preferred), OR
- 2) Relax the current low speed stability criteria tolerances such that the average air velocity measurements for each sensor varies by less than 10 percent, instead of 5 percent, compared to the average air velocity measured for the same sensor in a successive set of air velocity measurements (alternative).

However, by email dated December 6, 2017, BAS withdrew their preferred method for modifying the stability criteria. Instead, BAS requested that DOE consider their alternative method as their recommendation for the alternate test procedure.

DOE reviewed both alternate test procedures and preliminarily concluded that the BAS alternate test procedure of applying stability criteria to airflow instead of air velocity could allow a greater variation in airflow and efficiency results between multiple tests of the same fan. Under the current DOE test procedure, air velocity is measured at each sensor along the sensor arm, and airflow is calculated based on these measurements. The air velocity measurements indicate both the amount and location of air provided by the fan within the effective area (i.e., the air profile). DOE found that large variations in air profile often indicate test room instability (e.g., localized temperature gradients that effect airflow). Applying stability criteria to the air velocity measurements ensures that successive sets of measurements result in similar air profiles, which is

indicative of test room stability. On the other hand, DOE observed that stability criteria applied only to airflow could be met with large variations in air profile (i.e., at unstable test room conditions). This allows for airflow, and in turn fan efficiency, to vary significantly between multiple tests of the same fan because stable airflow can be achieved at varied test room conditions.

DOE also evaluated whether increased tolerances for the air velocity stability criteria for low speed tests could be used to reduce test burden without materially affecting the results of the test procedure. Specifically, DOE used test data from the previous rulemaking to compare the airflow and efficiency results using the current test procedure and the alternate test procedure. DOE found that increasing the stability criteria to 10 percent for low speed would allow more fans to meet the stability criteria and reduce the number of successive measurements needed to do so without materially changing the efficiency results of the test procedure. Under this approach, the section of the test procedure would read as follows:

3.3.2 Airflow and Power Consumption Testing Procedure

Measure the airflow (CFM) and power consumption (W) for HSSD ceiling fans until stable measurements are achieved, measuring at high speed only. Measure the airflow and power consumption for LSSD ceiling fans until stable measurements are achieved, measuring first at low speed and then at high speed. Airflow and power consumption measurements are considered stable for high speed if:

(1) The average air velocity for all axes for each sensor varies by less than 5% compared to the average air velocity measured for that same sensor in a successive set of air velocity measurements, and

(2) Average power consumption varies by less than 1% in a successive set of power consumption measurements.

Airflow and power consumption measurements are considered stable for low speed if:

(1) The average air velocity for all axes for each sensor varies by less than 10% compared to the average air velocity measured for that same sensor in a successive set of air velocity measurements, and

(2) Average power consumption varies by less than 1% in a successive set of power consumption measurements.

V. Summary and Request for Comments

Through this notice, DOE announces receipt of BAS's petition for waiver from the DOE test procedure for certain basic models of BAS ceiling fans, and grants BAS an interim waiver from the test procedure for the ceiling fan basic models listed in BAS's petition. DOE is publishing BAS's petition for waiver pursuant to 10 CFR 439.27(b)(1)(iv). BAS provided confidential performance information that is not included in this notice.

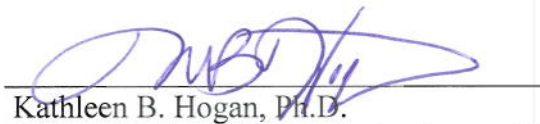
DOE solicits comments from interested parties on all aspects of the petition, including the alternate test procedures offered by the petitioner. DOE seeks comment on whether either of

BAS' alternative test procedures would more accurately or fully comply with the EPCA test procedure requirements that a test procedure measure the energy use or energy efficiency of ceiling fans during a representative use cycle or period of use, and not be unduly burdensome to conduct. DOE seeks comment on whether the alternate test procedure of applying stability criteria to airflow instead of air velocity a greater variation in airflow and efficiency results between multiple tests of the same fan. DOE also seeks comment on whether use of the test method specified in this interim waiver would result in variability in the calculated airflow, and if so, to what extent.

Pursuant to 10 CFR 430.27(d), any person submitting written comments to DOE must also send a copy of such comments to the petitioner. The contact information for the petitioner is Taylor Sawyer <tsawyer@bigasssolutions.com>, Big Ass Solutions, 2348 Innovation Drive, Lexington, KY 40511. All comment submissions to DOE must include the Case Number 2017-011 for this proceeding. Submit electronic comments in Microsoft Word, Portable Document Format (PDF), or text (American Standard Code for Information Interchange (ASCII)) file format and avoid the use of special characters or any form of encryption. Wherever possible, include the electronic signature of the author. DOE does not accept telefacsimiles (faxes).

Pursuant to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit two copies: one copy of the document including all the information believed to be confidential, and one copy of the document with the information believed to be confidential deleted. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

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Energy Efficiency and Renewable Energy