

September 13, 2004

**DECISION AND ORDER  
OFFICE OF HEARINGS AND APPEALS**

**Application for Exception**

Case Name: Electrolux Home Products, Inc.

Date of Filing: July 19, 2004

Case Number: TEE-0012

This Decision and Order considers an Application for Exception filed by Electrolux Home Products, Inc. (EHP) seeking exception relief from the provisions of 10 C.F.R. Part 430, pertaining to energy conservation standards for refrigerators, refrigerator-freezers and freezers (Refrigerator Efficiency Standards). In its exception request, EHP 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(a). If EHP's Application for Exception were granted, EHP would receive exception relief from the energy efficiency standard applicable to a new frost-free chest freezer EHP proposes to introduce into the marketplace. As set forth in this Decision and Order, we have concluded that EHP's Application for Exception should be granted.

**I. Background**

**A. Refrigerator Efficiency Standards**

The Refrigerator Efficiency Standards, 10 C.F.R. Part 430(a), were published as a final rule by Department of Energy (DOE) on April 28, 1997, 62 Fed. Reg. 23102, as mandated by Congress in Part B of Title III of the Energy Policy and Conservation Act, as amended, 42 U.S.C. §§ 6291-6309 (EPCA). In the EPCA, Congress directed that DOE 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 are prohibited from introducing 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.<sup>1/</sup> The Refrigerator Efficiency Standards became effective July 1, 2001.

B. Application for Exception

EHP<sup>2/</sup> is a manufacturer of chest and upright freezers, as well as refrigerators and refrigerator-freezers. EHP is the leading manufacturer of stand-alone freezers nationally, producing approximately 65% of freezers sold to domestic consumers. All EHP stand-alone freezers, as well as those it provides to other companies under private label agreements, are manufactured at the firm's facility in St. Cloud, Minnesota. In the spring and summer of 2003, EHP developed a frost-free chest freezer after conducting market research that indicated that % of consumers surveyed were favorable to an automatic defrost feature in a chest freezer. EHP's frost-free chest freezer is 15 cu. ft. in total volume, with a 13.8 cu. ft. food storage capacity.

EHP states in its Application for Exception, however, that it will be unable to market its frost-free chest freezer in the absence of exception relief. EHP asserts that since frost-free chest freezers were not in existence at the time the Refrigerator Efficiency Standards were promulgated, there was no energy efficiency standard established for this product within the eighteen classes of product established. Consequently, EHP's frost-free chest freezer must meet the energy efficiency standard established for "Chest Freezers and all other Freezers except Compact Freezers" (Class 10) in order to be introduced into commerce. EHP asserts that due to the energy loss attributable to the automatic defrost components, its frost-free chest freezer cannot meet the energy efficiency level established for Class 10 products,  $9.88AV+143.7$ , that the agency intended for manual defrost chest freezers.

EHP points out that, in promulgating the Refrigerator Efficiency Standards, the agency recognized that energy loss was inherent in an automatic defrost feature and

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<sup>1/</sup> For each of eighteen classes of refrigerator products, the Refrigerator Efficiency Standards establish 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.

<sup>2/</sup> EHP is a wholly-owned subsidiary of Electrolux North America, Inc. which produces many consumer products under various brand names, including: (1) refrigerators, freezers, ranges, dishwashers, washers, dryers and air conditioners for Frigidaire, , , , and ; (2) power tools and lawn care machinery for Poulan, WeedEater, Partner, , and Target; (3) floor care products for Eureka and Beam; and (4) other products for , and .

therefore established separate classes and respective energy efficiency levels for frost-free products that were available in the marketplace at that time.<sup>3/</sup> For instance, the Refrigerator Efficiency Standards establish an energy efficiency standard of 7.55AV+258.3 for “Upright Freezers with Manual Defrost” (Class 8) but an energy efficiency standard of 12.43AV+326.1 for “Upright Freezers with Automatic Defrost” (Class 9).<sup>4/</sup> EHP therefore asserts that: “Gross inequity would result if EHP would be barred from selling or distributing frost-free chest freezers on grounds that the freezers do not fit into a class that was created when the product was unknown. In enacting the EPCA, Congress never intended to foreclose innovation, but rather to ensure that appliances were more energy efficient.” EHP Application at 8.

EHP therefore seeks exception relief from the Class 10 standard of the Refrigerator Efficiency Standards established for “Chest Freezers and all other Freezers except Compact Freezers” for its frost-free chest freezer. More specifically, EHP requests “a determination that either: 1) chest freezers with an automatic defrost feature are, for energy efficiency purposes, in the same class as upright freezers with an automatic defrost feature; or, in the alternative, 2) chest freezers with an automatic defrost feature are exempt from meeting the current chest efficiency standard, conditioned on labels for these products reporting the expected energy use with a statement as follows: ‘This product is not currently classified by DOE.’” EHP Application at 4.

Several interested parties have filed comments on EHP’s exception application, all in support of the approval of exception relief. On July 21, 2004, W.C. Wood Company Limited, a competitor of EHP in the chest freezer market, filed comments in support of EHP’s proposal to exempt frost-free chest freezers from the current chest freezer energy efficiency standard with an appropriate label specifying actual energy use. Two retailers of home appliances, Sears, Roebuck and Company and Lowe’s Companies, Inc., filed respective comments on July 30, 2004, stating similar positions that regulatory and legislative policy favor making EHP’s innovative frost-free chest freezer available to domestic consumers through the approval of exception relief. Finally, on August 2, 2004, comments were filed by the Association of Home Appliance Manufacturers (AHAM), a trade association representing the manufacturers of

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<sup>3/</sup> During the proposed rulemaking leading to promulgation of the Refrigerator Efficiency Standards, DOE received Joint Comments from the refrigerator/freezer manufacturing industry indicating that “The category of household freezers includes three product classes defined as: chest freezers with manual defrost; vertical freezers with manual defrost; and vertical freezers with automatic defrost.” 60 Fed. Reg. 37388, 37406 (July 20, 1995).

<sup>4/</sup> The Refrigerator Efficiency Standards similarly establish a manual defrost/automatic defrost energy efficiency differential for several other classes of product, e.g., “Compact Upright Freezers with Manual Defrost” (Class 16), 9.78AV+250.8, and “Compact Upright Freezers with Automatic Defrost” (Class 17), 11.40AV+391.0.

household appliances. AHAM states in its comments that its members unanimously support the approval of exception relief that would temporarily exempt automatic defrost chest freezers from the current chest freezer efficiency standard, but require labels indicating energy use. AHAM further states that “[s]ince chest freezers are a product covered by DOE under the National Appliance Energy Conservation Act (NAEC), and since a product class does not currently exist specifically for automatic defrost (i.e. Frost Free) chest freezers, DOE should establish a new class, and corresponding minimum efficiency standard for auto defrost chest freezers.” AHAM Comments at 1.

### C. Standard for Exception Relief

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

Section 504 of the Department of Energy Organization Act authorizes DOE to make adjustments of any rule or order issued under the Energy Policy and Conservation Act, 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).

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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 as well as the 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., Diversified Refrigeration, Inc.*, 28 DOE ¶ 81,005 (2001); *Amana Appliances*, 27 DOE ¶ 81,006 (1999); *Whirlpool Corp.*, 14 DOE ¶ 81,023 (1986); *White Consolidated, Inc.*, 13 DOE ¶ 81,045 (1985); *Exxon Corp. v. Department 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. Department of Energy*, 754 F.2d 379, 386 (Temp. Emer. Ct. App. 1985).

## II. Analysis

We have carefully considered the Application for Exception filed by EHP and determined that exception relief should be approved. We find initially that EHP’s

frost-free chest freezer will be unable to meet the applicable Class 10 efficiency standard for “Chest Freezers and all other Freezers except Compact Freezers.”<sup>5/</sup> Preliminary test results submitted by EHP show that prototypes of its 13.8 cu. ft. frost-free chest freezer model yielded a mean energy consumption of \_\_\_\_\_ kilowatts hours per year (kWh/yr). See EHP Application, Supplement submitted August 5, 2004. However, under the Class 10 efficiency standard, EHP’s frost-free chest freezer would be limited to an energy consumption of 379.5 kWh/yr.<sup>6/</sup> Thus, EHP would effectively be precluded from marketing its frost-free chest freezer under the applicable energy efficiency standard.

We find that a gross inequity would result if EHP were compelled to adhere to the Class 10 efficiency standard for its frost-free chest freezer. That standard precludes EHP from marketing its new product, an unintended consequence of the existing regulatory scheme. The record of this matter persuades us that the agency would have promulgated a separate product class for “chest freezers with automatic defrost” with a higher allowable energy efficiency than the manual defrost chest freezer standard, if such products existed in the marketplace when the Refrigerator Efficiency Standards were promulgated. See note 3, *supra*. This conclusion is verified by examining the eighteen product classes that were established under the Refrigerator Efficiency Standards. For instance, separate product classes are established for: 1) Refrigerators-freezers with manual defrost (Class 1) and Refrigerator-freezers--automatic defrost (Classes 2 through 7); 2) Upright Freezers with Manual Defrost (Class 8) and Upright Freezers with Automatic Defrost (Class 9); and 3) Compact Upright Freezers with Manual Defrost (Class 16) and Compact Upright Freezers with Automatic Defrost (Class 17). See 10 C.F.R. § 430.32(a). In each instance, the agency established a higher minimum energy efficiency for the automatic defrost counterpart of the product, recognizing the higher energy consumption required by the automatic defrost feature. See note 4, *supra*. The agency certainly did not intend to foreclose innovation and the

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<sup>5/</sup> EHP states the DOE Energy Efficiency and Renewable Energy Office has confirmed during their discussions that the Class 10 chest freezer category covers all chest freezers regardless of defrost method, and EHP’s frost-free chest freezer would consequently be classified under that category. See EHP Application at 6.

<sup>6/</sup> The Refrigerator Efficiency Standards specify that the Class 10 energy standard equation of maximum energy use is  $9.88AV+143.7$ . 10 C.F.R. § 430.32(a). Appendix B1 of Part 430, Subpart B, defines AV (adjusted total volume) as  $VT \times CF$ , where VT equals total refrigerated volume in cubic feet and CF equals a correction factor of 1.73, dimensionless. Thus, with a refrigerated volume of 13.8, EHP’s automatic defrost chest freezer would be limited to an energy consumption of  $9.88(13.8 \times 1.73) + 143.7 = 379.57$  kWh/yr.

introduction of new products into the marketplace by not establishing efficiency standards for products unforeseeable at the time of its rulemaking.

We also find that other factors favor the granting of exception relief in this case. We have previously determined that the same factors considered by the agency in promulgating energy conservation standards are useful in evaluating claims for exception relief. *See Viking Range Corp.*, 28 DOE ¶ 81,002 at 82,506 (2000). These factors are specified in Section 325 of the EPCA and include economic impact on the manufacturers and consumers, net consumer savings, energy savings, impacts on product utility, impact on competition, need for energy conservation, and other relevant factors. EPCA § 325(o)(2)(B)(1), 42 U.S.C. § 6295(o)(2)(B)(1). In the present case, we find that the failure to provide exception relief will prevent EHP from bringing its frost-free chest freezer to the marketplace. Such an outcome would not only pose a disincentive to product innovation by manufacturers but frustrate the demand of consumers who have expressed a desire for chest freezers with a automatic defrost feature. We believe that encouraging such product innovation by approving exception relief in this case will not negatively impact but promote competition within the refrigerator/freezer industry. Finally, we believe that granting exception relief to EHP in this case will promote the energy conservation goals of the EPCA since, as set forth below, we shall establish an energy efficiency standard for EHP's frost-free chest freezer that is consistent with the existing Refrigerator Efficiency Standards.

As noted above, the Refrigerator Efficiency Standards provide an incremental increase in allowable energy consumption to account for the automatic defrost feature in various classes of products. Most closely analogous to the present case, the Refrigerator Efficiency Standards establish a maximum energy consumption of  $7.55AV+258.3$  for "Upright Freezers with Manual Defrost" (Class 8) and a maximum energy consumption of  $12.43AV+326.1$  for "Upright Freezers with Automatic Defrost" (Class 9). Thus, the additional energy consumption allowed to account for the automatic defrost feature is  $4.88AV+67.8$  ( $12.43AV+326.1$  minus  $7.55AV+258.3$ ). On this basis, we have determined that an appropriate standard for maximum energy use can be established for EHP's automatic defrost chest freezer by adding this increment ( $4.88AV+67.8$ ) to the energy efficiency equation established for Class 10, manual defrost chest freezers,  $9.88AV+143$ . The combination of these values yields an energy consumption standard of  $14.76AV+211.5$ .

Accordingly, EHP will be granted exception relief establishing the energy standard equation for maximum energy use (kWh/yr) for EHP's automatic defrost chest freezer as  $14.76AV+211.5$ . EHP will determine the expected energy consumption of its automatic defrost chest freezer under the DOE test procedure. *See* 10 C.F.R. § 430.23(b). In marketing its automatic defrost chest freezer, EHP must label its

product in accordance with regulations established by the Federal Trade Commission.<sup>7/</sup> The exception relief granted in this decision will remain in effect until such time as the DOE promulgates an energy efficiency standard for automatic defrost chest freezers, or modifies the existing standard applicable to manual defrost chest freezers (Class 10).

It Is Therefore Ordered That:

(1) The Application for Exception filed by Electrolux Home Products, Inc. on July 19, 2004, 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  $14.76AV+211.5$  for the automatic defrost chest freezer produced and marketed by Electrolux Home Products, Inc., as described in this decision. This exception relief will remain in effect until such time as the DOE promulgates an energy efficiency standard for automatic defrost chest freezers, or modifies the existing standard applicable to manual defrost chest freezers (Class 10).

(3) EHP will determine the expected energy consumption of its automatic defrost chest freezer under the DOE test procedure. See 10 C.F.R. § 430.23(b). In marketing its automatic defrost chest freezer, EHP must label its product in accordance with regulations established by the Federal Trade Commission 16 C.F.R. § 305.10(b).

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<sup>7/</sup> Labeling instructions are set forth in Federal Trade Commission regulations at 16 C.F.R. § 305.10, which states in pertinent part:

(b) When the estimated annual energy consumption or energy efficiency rating of a given model of a covered product falls outside the limits of the current range for that product, which could result from the introduction of a new or changed model, the manufacturer shall

- (1) Omit placement of such product on the scale, and
- (2) Add one of the two sentences below, as appropriate, in the space just below the scale, as follows:

The estimated annual energy consumption of this model was not available at the time the range was published.

The energy efficiency rating of this model was not available at the time the range was published.

(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.

George B. Breznay  
Director  
Office of Hearings and Appeals

Date: September 13, 2004