

August 11, 2005

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

Application for Exception

Case Name: Maytag Corporation

Date of Filing: June 24, 2005

Case Number: TEE-0022

This Decision and Order considers an Application for Exception filed by Maytag Corporation (Maytag) seeking exception relief from the provisions 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, Maytag 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 Maytag's Application for Exception were granted, Maytag 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. Maytag proposes to introduce this appliance into the marketplace. As set forth in this Decision and Order, we have concluded that Maytag'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 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

10 C.F.R. § 430.32.^{3/} In addition, the agency established a separate class of product (Class 5) for “Refrigerator-Freezers – automatic defrost with bottom-mounted freezer without through-the-door ice service.” *Id.* However, since through-the-door ice service was not offered with bottom-mounted freezers 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. At the same time, Maytag’s new product clearly fits within the regulatory definition of “electric refrigerator-freezer,” 10 C.F.R. § 430.2, and it will be unable to meet the Class 5 energy standard due to the energy loss inherent in adding the through-the-door ice service feature.^{4/}

Thus, Maytag argues in its exception application that:

To require Maytag’s new product to comply with any existing standard would be grossly inequitable in that this would require the product to comply with rules that do not properly apply to it and would compare it to products that are not comparable. Conversely, to exclude Maytag’s new product from the DOE standards program would cripple Maytag’s effort to market the product. . . . Denial of relief would not only pose a disincentive to product innovation by manufacturers but also frustrate the demand of consumers who have expressed a desire for a product of this type.

Maytag Application at 6.

In further support of its claim, Maytag cites our decision in an analogous case involving an Application for Exception from the Refrigerator Efficiency Standards filed by Electrolux Home Products (EHP). *Electrolux Home Products*, 29 DOE ¶ 81,001 (2004) (*Electrolux*), <http://www.oha.doe.gov/cases/ee/tee0012.pdf>. In that case, EHP requested exception relief from the Refrigerator Efficiency Standards for a new product, an automatic defrost chest freezer. The Refrigerator Efficiency Standards provide an energy efficiency standard for “Chest Freezers and all other Freezers except

^{3/} Similarly, the Refrigerator Efficiency Standards establish separate classes of automatic defrost refrigerator-freezer for “side-mounted freezer without through-the-door ice service” (Class 4) and “side-mounted freezer without through-the-door ice service” (Class 7). 10 C.F.R. § 430.32(a).

^{4/} Due to this inherent energy loss, for example, the Refrigerator Efficiency Standards establish a maximum energy use of $9.80AV + 276.0$ for Class 3 “Refrigerator-Freezers – automatic defrost with top-mounted freezer without through-the-door ice service,” but a higher maximum energy usage of $10.20AV + 356.0$ for Class 6 “Refrigerator-Freezers – automatic defrost with top-mounted freezer with through-the-door ice service.” 10 C.F.R. § 430.32(a).

Compact Freezers” (Class 10). Similar to the present case, however, the regulations do not establish an efficiency standard for automatic defrost chest freezers since chest freezers with the automatic defrost feature were not in existence at the time the Refrigerator Efficiency Standards were promulgated. We further found that it was technologically infeasible to apply the Class 10 efficiency standard to EHP’s new product due to the energy loss inherent in the automatic defrost feature. We therefore granted exception relief in *Electrolux*, as follows:

[T]he 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 $14.76AV+211.5$.

Electrolux, 29 DOE at 82,504. Similar to *Electrolux*, Maytag requests in its Application for Exception that we establish an energy efficiency standard for its new automatic defrost refrigerator-freezer with bottom-mounted freezer with through-the-door ice service, based upon the incremental increase in allowable energy consumption properly attributable to this feature. *See* Maytag Application at 7-8.

We have received only one interested party comment on Maytag’s Application for Exception, from the Association of Home Appliance Manufacturers (AHAM). AHAM is a nonprofit trade association representing the manufacturers of household appliances, and its members accounts for 95% of the refrigerators sold in the United States. In its comment, submitted on July 8, 2005, AHAM expresses its full support for Maytag’s exception request.

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).

...

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 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., 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 Maytag and determined that exception relief should be approved. We find initially that due to the energy loss inherent in adding through-the-door ice service, Maytag’s new automatic defrost refrigerator-freezer with bottom-mounted freezer 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.” Thus, in the absence of exception relief, Maytag would effectively be precluded from marketing its new product under the generally applicable energy efficiency standard.

We are further persuaded that the agency would have established a separate product class for “automatic defrost refrigerator-freezer, with bottom mounted freezer with through-the-door ice service” with a higher allowable energy efficiency than models without through-the-door ice service, if such products existed in the marketplace when the Refrigerator Efficiency Standards were promulgated. 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. *See* 10 C.F.R. § 430.32(a) (Classes 3, 4, 6 and 7). Indeed the agency stated in the final rulemaking adopting the Refrigerator Efficiency Standards that “to the extent that comments or research showed that a product included a utility or performance-related feature that inherently lowers energy efficiency, a separate class with a different efficiency standard was created for that product.” 62 Fed. Reg. 23,102, 23110 (April 28, 1997).

Thus, we find that the present case is virtually indistinguishable from the *Electrolux* decision in which we granted exception relief from the Refrigerator Efficiency Standards to EHP to market its newly developed automatic defrost chest freezer. In that case, we stated:

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 agency certainly did not intend to foreclose innovation and the 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 frost-free chest freezer that is consistent with the existing Refrigerator Efficiency Standards.

Electrolux, 29 DOE at 82,503. These considerations apply with equal force in the present case and, accordingly, we find that the regulations cause a gross inequity that warrants the approval of exception relief.

Similar to our approach in *Electrolux*, we have determined that an energy efficiency standard should be established for Maytag's new product utilizing the incremental increase in allowable energy consumption attributable to the "through-the-door ice service" feature in other classes of products. Most closely analogous to the present case, 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 can be established for Maytag's automatic defrost refrigerator-freezer, with bottom mounted freezer with through-the-door ice service, 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 $5.0AV+539.0$.

Accordingly, Maytag will be granted exception relief establishing the energy standard equation for maximum energy use (kWh/yr) for Maytag's automatic defrost refrigerator-freezer, with bottom mounted freezer with through-the-door ice service, of $5.0AV+539.0$. Maytag must label its new product in accordance with regulations of the Federal Trade Commission, 16 C.F.R. Part 305,5 and state the expected energy

5/ This labeling instruction is in accordance with Federal Trade Commission regulations set forth at 16 C.F.R. § 305.10(b), which states:

- (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

(continued...)

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 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,” or modifies the existing standard for “Refrigerator-Freezers – automatic defrost with bottom-mounted freezer without through-the-door ice service” (Class 5).

It Is Therefore Ordered That:

(1) The Application for Exception filed by Maytag Corporation on June 24, 2005, 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 Maytag Corporation, 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 an “Refrigerator-Freezers – automatic defrost with bottom mounted freezer with through-the-door ice service,” or modifies the existing standard for “Refrigerator-Freezers – automatic defrost with bottom-mounted freezer without through-the-door ice service” (Class 5).

(3) In marketing the refrigerator-freezer described in this decision, Maytag 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).

5/ (...continued)

(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: August 11, 2005