



[6450-01-P]

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

[Case No. RF-023]

Decision and Order Granting a Waiver to GE Appliances from the Department of Energy Residential Refrigerator and Refrigerator-Freezer Test Procedures

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

ACTION: Decision and Order.

SUMMARY: The U.S. Department of Energy (DOE) gives notice of the decision and order (Case No. RF-023) that grants to GE Appliances (GE) a waiver from the DOE electric refrigerator and refrigerator-freezer test procedures for the basic models set forth in its petition for waiver in Case RF-023. In its petition, GE provides an alternate test procedure that is the same as the test procedure DOE published in a final rule dated January 25, 2012 (77 FR 3559). Under today's decision and order, GE shall be required to test and rate these refrigerator-freezers using an alternate test procedure as adopted in DOE's final rule dated January 25, 2012 (77 FR 3559) that takes multiple defrost cycles into account when measuring energy consumption.

DATES: This Decision and Order is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Mr. Bryan Berringer, U.S. Department of Energy, Building Technologies Program, Mailstop EE-2J, 1000 Independence Avenue, SW., Washington, DC 20585-0121. Telephone: (202) 586-0371, E-mail: Bryan.Berringer@ee.doe.gov.

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SUPPLEMENTARY INFORMATION: In accordance with Title 10 of the Code of Federal Regulations (10 CFR 430.27(l)), DOE gives notice of the issuance of its decision and order as set forth below. The decision and order grants GE a waiver from the applicable residential refrigerator and refrigerator-freezer test procedures in 10 CFR part 430, subpart B, appendix A1 for certain basic models of refrigerator-freezers with multiple defrost cycles, provided that GE tests and rates such products using the alternate test procedure described in this notice. Today's decision prohibits GE from making representations concerning the energy efficiency of these products unless the product has been tested consistent with the provisions and restrictions in the alternate test procedure set forth in the decision and order below, and the representations fairly disclose the test results.

Distributors, retailers, and private labelers are held to the same standard when making representations regarding the energy efficiency of these products. 42 U.S.C. 6293(c).

Issued in Washington, DC, on November 19, 2012.

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

Decision and Order

In the Matter of: GE Appliances (Case No. RF-023)

I. *Background and Authority*

Title III, Part B of the Energy Policy and Conservation Act of 1975 (EPCA), Pub. L. 94-163 (42 U.S.C. 6291-6309, as codified) established the Energy Conservation Program for Consumer Products Other Than Automobiles, a program covering most major household appliances, which includes the residential electric refrigerators and refrigerator-freezers that are the focus of this notice.¹ 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 which measure energy efficiency, energy use, or estimated operating costs, and that are not unduly burdensome to conduct. (42 U.S.C. 6293(b)(3)) The test procedure for residential electric refrigerators and refrigerator-freezers is set forth in 10 CFR part 430, subpart B, appendix A1.

DOE's regulations for covered products contain provisions allowing a person to seek a waiver from the test procedure requirements for a particular basic model for covered consumer products when (1) the petitioner's basic model for which the petition for waiver was submitted contains one or more design characteristics that prevent testing according to the prescribed test procedure, or (2) when prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics as to provide materially

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

inaccurate comparative data. 10 CFR 430.27(a)(1). Petitioners must include in their petition any alternate test procedures known to the petitioner to evaluate the basic model in a manner representative of its energy consumption characteristics.

The Assistant Secretary for Energy Efficiency and Renewable Energy (the Assistant Secretary) may grant a waiver subject to conditions, including adherence to alternate test procedures. 10 CFR 430.27(l). Waivers remain in effect pursuant to the provisions of 10 CFR 430.27(m).

Any interested person who has submitted a petition for waiver may also file an application for interim waiver of the applicable test procedure requirements. 10 CFR 430.27(a)(2). The Assistant Secretary will grant an interim waiver request if it is determined that the applicant will experience economic hardship if the interim waiver is denied, if it appears likely that the petition for waiver will be granted, and/or the Assistant Secretary 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(g).

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

On January 26, 2012, GE submitted a petition for waiver from the test procedure applicable to residential electric refrigerators and refrigerator-freezers set forth in 10 CFR Part 430, Subpart B, Appendix A1. GE is designing new refrigerator-freezers that incorporate multiple defrost cycles. In its petition, GE seeks a waiver from the procedure provided in Appendix A1 because that test procedure does not account for products that use multiple defrost

cycles. Therefore, GE has asked to use an alternate test procedure that is the same as the test procedure provisions for products with long time or variable defrost DOE published in an interim final rule (75 FR 78810, December 16, 2010). On January 27 and July 19, 2011, Samsung submitted similar petitions for waiver and requests for interim waiver for basic models of refrigerator-freezers that incorporate multiple defrost cycles. After initially granting these interim waiver requests, DOE ultimately granted Samsung with a waiver for the products specified in those petitions through a final decision and order that adopted a modified version of the interim final rule's procedure. 77 FR 1474 (Jan. 10, 2012). That modified procedure was also adopted by DOE as part of a recently published rule that finalized the test procedures that electric refrigerator and refrigerator-freezer manufacturers must use starting in 2014. See 77 Fed. Reg. 3559 (Jan. 25, 2012) (finalizing refrigerator and refrigerator-freezer test procedures for 2014 in 10 CFR Part 430, Appendix A).

GE's petition included an alternate test procedure to account for the energy consumption of its refrigerator-freezer models with multiple defrost cycles. The alternate test procedure requested by GE is the same as the test procedure published in the interim final rule referenced above. As noted above, DOE recently published a final test procedure for refrigerators, refrigerator-freezers, and freezers (77 FR 3559 (Jan. 25, 2012)). The alternate test procedure sought by GE is identical to the interim final rule test procedure provisions for products with long-time or variable defrost adopted in the final test procedure rule. Because DOE has finalized a test procedure that accounts for products that employ these long-time or variable defrost control strategies, DOE is granting GE's request but requiring that the company use the more recently finalized procedure in order to ensure testing consistency for all manufacturers when

measuring the energy consumption of these types of products.

Because the current applicable test procedure cannot be used to test the basic models at issue or would otherwise lead to materially inaccurate results, DOE previously granted a waiver to Samsung for other basic models incorporating multiple defrost technology (77 FR 1474, Jan. 10, 2012). DOE has determined that it is desirable to have similar basic models, such as those addressed by the GE petition, tested in a consistent manner and is adopting the same approach laid out in its prior decision by permitting GE to use the alternate test procedure specified in this Decision and Order.

III. *Consultations with Other Agencies*

DOE consulted with the Federal Trade Commission (FTC) staff concerning the GE petition for waiver. The FTC staff did not have any objections to granting a waiver to GE.

IV. *Conclusion*

After careful consideration of all the material that was submitted by GE and consultation with FTC staff, it is ordered that:

(1) The petitions for waiver submitted by the GE Appliances (Case No. RF-023) are hereby granted as set forth in paragraphs.

(2) GE shall be required to test and rate the following GE models according to the alternate test procedure set forth in paragraph (3) of this section.

CYE24T*****
CFE29T*****
DFE29J*****
GNE26G*****
GFE27G*****
GFE27H*****
GFE29H*****
PWE23K*****
PYE24K*****
PYE24P*****
PFE27K*****
PFE29P*****
PFH29P*****

(3) GE shall be required to test the products listed in paragraph (2) of this section according to the alternate test procedure as adopted in DOE's final rule, dated January 25, 2012 (77 FR 3559), amending 10 CFR Part 430, Appendix A.

(4) Representations. GE may make representations about the energy use of its refrigerator-freezer products for compliance, marketing, or other purposes only to the extent that such products have been tested in accordance with the provisions outlined above and such representations fairly disclose the results of such testing.

(5) This waiver shall remain in effect consistent with the provisions of 10 CFR 430.27(m).

(6) This waiver is issued on the condition that the statements, representations, and documentary materials provided by the petitioner are valid. 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.

(7) This waiver applies only to those basic models set out in GE's January 26, 2012 petition for waiver. Grant of this waiver does not release a petitioner from the certification requirements set forth at 10 CFR part 429.

Issued in Washington, DC, on November 19, 2012.

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

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