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[6450-01-P]

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

[Case No. CD-007]

Petition for Waiver and Notice of Granting the Application for Interim Waiver of BSH Home Appliances Corporation from the DOE Residential Clothes Dryer Test Procedure

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

ACTION: Notice of Petition for Waiver, Granting of Application for Interim Waiver, and Request for Public Comments.

SUMMARY: This notice announces receipt of and publishes the BSH Home Appliances Corporation (BSH) petition for waiver from specified portions of the U.S. Department of Energy (DOE) test procedure for determining the energy consumption of residential clothes dryers. The waiver request pertains to BSH's specified models of condensing residential clothes dryers. The existing test procedure does not apply to condensing clothes dryers. In addition, today's notice grants BSH an interim waiver from the DOE test procedure applicable to residential clothes dryers. DOE solicits comments, data, and information concerning BSH's petition.

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

ADDRESSES: You may submit comments, identified by case number CD-007, by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- E-mail: AS_Waiver_Requests@ee.doe.gov. Include the case number [Case No. CD-007] in the subject line of the message.
- Mail: Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE-2J, Petition for Waiver Case No. CD-007, 1000 Independence Avenue, SW, Washington, DC 20585-0121. Telephone: (202) 586-2945. Please submit one signed original paper copy.
- Hand Delivery/Courier: Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, 950 L'Enfant Plaza SW, Suite 600, Washington, DC 20024. Please submit one signed original paper copy.

Docket: For access to the docket to review the background documents relevant to this matter and comments received, you may visit the U.S. Department of Energy, 950 L'Enfant Plaza SW (Resource Room of the Building Technologies Program), Washington, DC, 20024; (202) 586-2945, between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays. Please call Ms. Brenda Edwards at the above telephone number for additional information regarding visiting the Resource Room.

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

Mr. James Silvestro, U.S. Department of Energy, Office of the General Counsel, Mail Stop GC-71, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585-0103. Telephone: (202) 286-4224. E-mail: James.Silvestro@hq.doe.gov.

SUPPLEMENTARY INFORMATION:

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 clothes dryers 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 clothes dryers is contained in 10 CFR part 430, subpart B, appendix D.

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

DOE's regulations set forth in 10 CFR 430.27 contain provisions that enable a person to seek a waiver from the test procedure requirements for covered consumer products. A waiver will be granted by the Assistant Secretary for Energy Efficiency and Renewable Energy (the Assistant Secretary) if it is determined that the basic model for which the petition for waiver was submitted contains one or more design characteristics that prevents testing of the basic model according to the prescribed test procedures, or if the prescribed test procedures may 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). 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. 10 CFR 430.27(b)(1)(iii). The Assistant Secretary may grant the 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).

The waiver process also allows the Assistant Secretary to grant an interim waiver from test procedure requirements to manufacturers that have petitioned DOE for a waiver of such prescribed test procedures if it is determined that the applicant will experience economic hardship if the application for interim waiver is denied, if it appears likely that the petition for waiver will be granted, and/or if 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(a)(2); 430.27(g). An interim waiver remains in effect for a period of

180 days or until DOE issues its determination on the petition for waiver, whichever is sooner, and may be extended for an additional 180 days, if necessary. 10 CFR 430.27(h).

Please note that on January 6, 2011, DOE published a test procedure final rule (76 FR 1032) to include provisions for testing ventless clothes dryers. The rule became effective on February 7, 2011, and requires compliance on or after January 1, 2015. Ventless clothes dryers manufactured on or after January 1, 2015, must be tested with the new DOE test procedure.

II. Petition for Waiver of Test Procedure

On May 10, 2013, BSH filed a petition for waiver and an application for interim waiver from the test procedure applicable to residential clothes dryers set forth in 10 CFR Part 430, subpart B, appendix D. BSH seeks a waiver from the applicable test procedure for its Bosch WTB86200UC, WTB86201UC, and WTB86202UC condensing clothes dryers because, BSH asserts, design characteristics of these models prevent testing in accordance with the currently prescribed test procedure, as described in greater detail in the following paragraph. DOE has already granted BSH a similar waiver pertaining to their condensing clothes dryers. *See* 76 FR 19087 (April 6, 2011) (interim waiver); 76 FR 33271 (June 8, 2011) (Decision and Order). DOE also granted waivers for the same type of clothes dryer to Miele Appliance, Inc. (Miele) (60 FR 9330, February 17, 1995; 76 FR 17637, March 30, 2011), LG Electronics (73 FR 66641, November 10, 2008), Whirlpool Corporation (74 FR 66334, December 15, 2009), and General Electric (75 FR 13122, March 18, 2010). BSH claims that its condensing clothes dryers cannot be tested pursuant to the DOE procedure and requests that the same waiver granted to other

manufacturers be granted for BSH's Bosch WTB86200UC, WTB86201UC, and WTB86202UC models.

In support of its petition, BSH claims that the current clothes dryer test procedure applies only to vented clothes dryers because the test procedure requires the use of an exhaust restrictor on the exhaust port of the clothes dryer during testing. Because condensing clothes dryers operate by blowing air through the wet clothes, condensing the water vapor in the airstream, and pumping the collected water into either a drain line or an in-unit container, these products do not use an exhaust port like a vented dryer does. BSH plans to market its condensing clothes dryers for situations in which a conventional vented clothes dryer cannot be used, such as high-rise apartments and other buildings where exhaust venting is not practical or is cost prohibitive.

The BSH Petition requests that DOE grant a waiver from the existing test procedure to allow for the sale of three new models (Bosch WTB86200UC, WTB86201UC, and WTB86202UC) until DOE prescribes final test procedures and minimum energy conservation standards appropriate to condensing clothes dryers. Similar to the other manufacturers of condensing clothes dryers, BSH did not include an alternate test procedure in its petition.

III. Application for Interim Waiver

BSH also requests an interim waiver from the existing DOE test procedure for immediate relief. Under 10 CFR 430.27(b)(2), each application for interim waiver “shall demonstrate likely success of the Petition for Waiver and shall address what economic hardship and/or competitive

disadvantage is likely to result absent a favorable determination on the Application for Interim Waiver.” An interim waiver may be granted if it is determined that the applicant will experience economic hardship if the application for interim waiver is denied, if it appears likely that the petition for waiver will be granted, and/or if the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination of the petition for waiver. 10 CFR 430.27(g).

DOE has determined that BSH’s application for interim waiver does not provide sufficient market, equipment price, shipments, and other manufacturer impact information to permit DOE to evaluate the economic hardship BSH might experience absent a favorable determination on its application for interim waiver. DOE understands, however, that the BSH condensing clothes dryers have a feature that prevents testing them according to the existing DOE test procedure. In addition, as stated in the previous section, DOE has previously granted waivers to Miele, LG, Whirlpool and GE for similar products. It is in the public interest to have similar products tested and rated for energy consumption on a comparable basis, where possible. Further, DOE has determined that BSH is likely to succeed on the merits of its petition for waiver and that it is desirable for policy reasons to grant immediate relief.

IV. Interim Waiver Granted

For the reasons stated above, DOE grants BSH’s application for interim waiver from testing of its condensing clothes dryer product line. Therefore, *it is ordered that:*

The application for interim waiver filed by BSH is hereby granted for BSH's Bosch WTB86200UC, WTB86201UC, and WTB86202UC condensing clothes dryers. Until a final decision is made on its petition for waiver, BSH shall not be required to test its Bosch WTB86200UC, WTB86201UC, and WTB86202UC condensing clothes dryers on the basis of the test procedure under 10 CFR Part 430 subpart B, appendix D.

DOE makes decisions on waivers and interim waivers for only those models specifically set out in the petition, not future models that may or may not be manufactured by the petitioner. BSH may submit a new or amended petition for waiver and request for grant of interim waiver, as appropriate, for additional models of clothes dryers for which it seeks a waiver from the DOE test procedure. In addition, DOE notes that grant of an interim waiver or waiver does not release a petitioner from the certification requirements set forth at 10 CFR 430.62.

Further, this interim waiver is conditioned upon the presumed validity of statements, representations, and documents provided by the petitioner. DOE may revoke or modify this interim waiver at any time upon a 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.

V. Summary and Request for Comments

Through today's notice, DOE grants BSH an interim waiver from the specified portions of the test procedure applicable to BSH's Bosch WTB86200UC, WTB86201UC, and

WTB86202UC condensing clothes dryers and announces receipt of BSH's petition for waiver from those same portions of the test procedure. DOE publishes BSH's petition for waiver in its entirety pursuant to 10 CFR 430.27(b)(1)(iv). The petition contains no confidential information.

DOE solicits comments from interested parties on all aspects of the petition. Pursuant to 10 CFR 430.27(b)(1)(iv), 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: Mr. Mike Peebles, Technical Services Manager, Laundry, BSH Home Appliances Corporation, 100 Bosch Blvd., New Bern, NC 28562. All submissions received must include the agency name and case number for this proceeding. Submit electronic comments in WordPerfect, 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).

According 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 to DOE: 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.

Issued in Washington, DC, on June 10, 2013.

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

May 10, 2013

Dr. David T. Danielson
Assistant Secretary, Energy Efficiency & Renewable Energy
U.S. Department of Energy
Mail Station EE-1
1000 Independence Avenue, SW
Washington, DC 20585
david.danielson@ee.doe.gov

Via e-mail (David.Danielson@ee.doe.gov) and overnight mail

Re: Petition of Waiver and Application for Interim Waiver, BSH Condenser Clothes Dryers

Dear Assistant Secretary Danielson:

BSH Home Appliances Corporation (“BSH”) hereby submits this Petition for Waiver and Application for Interim Waiver, pursuant to 10 CFR 430.27, for additional models of its condenser type clothes dryers.

BSH is the manufacturer of household appliances bearing the brand names of Bosch, Thermador, and Gaggenau. Its appliances include washing machines, clothes dryers, dishwashers, ovens, refrigerator-freezers, microwave ovens, and vacuum cleaners, and are sold worldwide, including in the United States. BSH’s United States operations are headquartered in Irvine, California.

This petition and application are based on the following major points:

1. BSH’s petition for new condenser clothes dryers introduced in the calendar year 2013 are for models WTB86200UC, WTB86201UC, WTB86202UC
2. DOE’s previously granted waiver covering BSH’s current models WTC82100US and WTE86300US. Case No. CD-006, dated June 8, 2011 FR Vol. 76, No. 110, pg 33271. <http://www.regulations.gov/#!documentDetail;D=EERE-2011-BT-WAV-0025-0002>
3. BSH’s new condenser dryers for calendar year 2013 and current models (waivered) have exactly the same drying concept and principles in relation to the applicable test procedures contained in 10 CFR part 430, subpart B, appendix D – Uniform Test Method for Measuring the Energy Consumption of Clothes Dryers.

BSH request the same waiver be granted for the new models (WTB86200UC, WTB86201UC, WTB86202UC) as was granted for the current comparable products (WTC82100US and WTE86300US).

Additional supplementary and background information is attached and can be reviewed at the end of this petition and application.

The grounds for the previous and this petition and application are:

- a. BSH condenser type clothes dryers do not vent exhaust air to the outside (exterior of house or apartment) as a conventional dryer does.

- b. Having no exhaust vent this type product is suited for installations where exhaust venting is not practical or is cost prohibitive. It thus benefits those dwellers of high-rise apartments and others who in many cases have no way to vent to the outside or at least not without considerable remodeling/construction expense.
- c. DOE's test procedure "10 CFR part 430, subpart B, appendix D – Uniform Test Method for Measuring the Energy Consumption of Clothes Dryers" does not provide any definition or means for testing dryers without an exhaust vent (condenser clothes dryers) and does not take into account the complex differences of energy usage between vented and non-vented clothes dryers.
- d. BSH is not aware of any alternative test procedure to evaluate in a manner representative of the energy consumption characteristics of condenser clothes dryers.
- e. Lack of relief will impose economic hardship on BSH:
 - o The product would be subject to a set of regulations that DOE already acknowledges is not applicable to such a product and cannot be complied with. Proven by existing waiver for current BSH dryers.
 - o BSH dryers are intended to be sold as a pair with BSH washing machines; an inability to sell the clothes dryer will harm sales of the washing machine as well.

The above clearly warrants a waiver. 10 CFR 430.27 provides for waiver of DOE test procedures on the grounds that design characteristics that either prevent testing according to the prescribed test procedure or produce data so unrepresentative that true energy consumption characteristics provide materially inaccurate comparative data. BSH condenser dryers contain a design characteristic—lack of an exhaust—that meet both these requirements.

A waiver should therefore be granted that provides that BSH is not required to test its condenser clothes dryers and the existing minimum energy conservation standard for clothes dryers also should not apply to these BSH condenser clothes dryers.

BSH also requests immediate relief by grant of an interim waiver.

We would be pleased to discuss this request with DOE and provide further information as needed.

BSH will notify all clothes dryer manufacturers of domestically marketed units known to BSH of this petition and application by letter.

Sincerely,

Mike Peebles
Technical Services Manager, Laundry
BSH Home Appliances Corporation
100 Bosch Blvd.
New Bern, NC 28562
mike.peebles@bshg.com
Phone (252) 636 4477

Additional supplementary and background information:

- i. From DOE's decision June 8, 2011:

Action

Decision and Order.

Summary

The U.S. Department of Energy (DOE) gives notice of the decision and order (Case No. CD-006) that grants to BSH Home Appliances Corporation (BSH) a waiver from the DOE clothes dryer test procedure. The waiver pertains to the specified models of condensing residential clothes dryer specified in BSH's petition. Condensing clothes dryers cannot be tested using the currently applicable DOE test procedure. Under today's decision and order, BSH shall not be required to test and rate its specified models of residential condensing clothes dryer pursuant to this test procedure.

Dates

This Decision and Order is effective June 8, 2011.

Supplementary Information

In accordance with Title 10 of the Code of Federal Regulations (10 CFR), Section 430.27(l), DOE gives notice of the issuance of its decision and order as set forth below. The decision and order grants BSH a waiver from the applicable residential clothes dryer test procedure at 10 CFR part 430 subpart B, appendix D, for the two models of condensing clothes dryer specified in its petition.

- ii. Excerpts from previous BSH petition for waiver

- a. DOE's existing test procedure for clothes dryers requires the use of an exhaust restrictor to simulate the backpressure effects of a vent tube in an installed condition. And the test procedure does not provide any definition or mention of condenser clothes dryers. Since BSH's condenser clothes dryers do not have an exhaust vent and the DOE test procedure does not provide any definition or mention of condenser clothes dryers, the products cannot be tested in accordance with the test procedure. Thus, the test procedure does not apply to them. Consequently, the DOE energy conservation standard for clothes dryers does not apply to BSH condenser dryers since the DOE standard must be "determined in accordance with test procedures prescribed under section 6293 of this title." 42 U.S.C. 6291(6).
- b. Further, the test procedure does not provide any definition or mention of condenser clothes dryers. The waiver should remain in effect until DOE prescribes final test procedures and minimum energy conservation standards appropriate to BSH's condenser clothes dryers.
- c. A warranted waiver is borne out by the fact that DOE has granted a waiver to Miele for the same type of product. 60 FR 9330 (Feb. 17, 1995). DOE stated: "The Department agrees with Miele and AHAM that the condenser clothes dryer offers the consumer additional utility, and is justified to consume more energy (lower energy factor) versus non-condenser clothes dryers. Furthermore, the Department believes that the existing clothes dryer test procedure is not applicable to the Miele condenser clothes dryers. This assertion is based on the fact that the existing test procedure requires the use of an exhaust restrictor and does not provide any definition or

- mention of condenser clothes dryers. The Department agrees with Miele that the current clothes dryer minimum energy conservation standard does not apply to Miele's condenser clothes dryers. Today's Decision and Order exempts Miele from testing its condenser clothes dryer and determining an Energy Factor. The Department is not publishing an amended test procedure for Miele at this time because there is not any reason to. The existing minimum energy conservation standard for clothes dryers is not applicable to the Miele condenser clothes dryer. Furthermore, the FTC does not have a labeling program for clothes dryers, therefore, Miele is not required to test its condenser clothes dryers.''
- d. The basic purpose of the Energy Policy and Conservation Act, as amended by the National Appliance Energy Conservation Act, is to foster purchase of energy-efficient appliances, not hinder such purchases. The BSH condenser clothes dryer makes a dryer available to households where for physical, structural reasons a vented dryer could otherwise not be installed. BSH condenser clothes dryers thus offer benefits in the public interest. To encourage and foster the availability of these products is in the public interest. Standards programs should not be used as a means to block innovative, improved designs.² DOE's rules thus should accommodate and encourage—not act to block—such a product.
 - e. Granting the interim waiver and waiver would also eliminate a non-tariff trade barrier. In addition, grant of relief would help enhance economic development and employment, including not only BSH's operations in California, North Carolina, and Tennessee, but also at major national retailers and regional dealers that carry BSH products. Furthermore, continued employment creation and ongoing investments in its marketing, sales and servicing activities will be fostered by approval of the interim waiver. Conversely, denial of the requested relief would harm the company and would be anticompetitive.

² See FTC Advisory Opinion No. 457, TRRP 1718.20 (1971 Transfer Binder); 49 FR 32213 (Aug. 13, 1984); 52 FR 49141, 49147–48 (Dec. 30, 1987).