

**United States Department of Energy
Office of Hearings and Appeals**

In the Matter of)
Liebherr Canada Ltd.)
)
Filing Date: September 30, 2013) Case No.: EXC-13-0004
_____)

Issued: November 6, 2013

Decision and Order

Liebherr Canada Ltd. filed an Application for Exception from a provision in the Department of Energy (DOE) Energy Conservation Program for Consumer Products: Energy Conservation Standards for Refrigerators, Refrigerator-Freezers and Freezers (the Refrigerator/Freezer Efficiency Standards). 10 C.F.R. Part 430. Liebherr states that it intends to manufacture and market a built-in automatic defrost upright freezer with through-the-door ice service and would suffer undue hardship if that product were required to adhere to the applicable standard. As set forth in this Decision and Order, we have determined that Liebherr's application should be granted.

I. Background

A. Refrigerator/Freezer Efficiency Standards

Pursuant to Part B of Title III of the Energy Policy and Conservation Act, as amended, 42 U.S.C. §§ 6291-6309 (EPCA), DOE promulgated the Refrigerator/Freezer Efficiency Standards on April 28, 1997. 62 Fed. Reg. 23,102. The standards became effective July 1, 2001. The DOE subsequently published new standards that will become effective on September 15, 2014, superseding the current standards. 76 Fed. Reg. 70865 (Nov. 16, 2011); 76 Fed. Reg. 57,516, 57,610 (Sept. 15, 2011); 10 C.F.R. § 430.32(a). Under the EPCA, manufacturers may not introduce into commerce any covered product that is not in compliance with those standards. 42 U.S.C. § 6302(a)(5). The standards are intended to reduce energy use and thereby reduce consumer costs as well as emissions of air pollutants associated with electricity production.¹

¹For each class of refrigerator/freezer products, the standards establish energy efficiency equations which limit energy usage. These equations are expressed in kilowatt-hours per year (kWh/yr).

B. Application for Exception

Liebherr manufactures refrigeration appliances, including refrigerators, refrigerator-freezers, freezers, and wine chillers. Liebherr currently markets a built-in upright freezer with automatic defrost and through-the-door ice service in other countries, and plans to introduce this model to the North American market in the near future. Liebherr states that its product falls within the current Class 9 standard, which applies to upright freezers with automatic defrost, and will fall within the Class 9I-BI standard under the standards that become effective on September 5, 2014. The firm further states, however, that this product is unable to comply with either standard due to the energy loss inherent in through-the-door ice service, which is not accounted for in either standard. Liebherr notes that this feature is taken into account in the current Class 6 standard and in the standard for Classes 5A, 5A-BI, 6, 7, and 7-BI in the standards that become effective on September 15, 2014, and that in “all cases the maximum energy use is increased when this feature is included.” Application at 2. As precedent for the grant of relief, Liebherr cites decisions granting relief where the applicable standard did not account for through-the-door ice service. *See, e.g., BSH Home Appliances Corp.*, OHA Case No. EXC-11-0001 (January 4, 2012) (*BSH II*) (automatic defrost upright freezer with through-the-door ice services); *BSH Home Appliances Corp.*, OHA Case No. TEE-0070 (2010) & *Maytag Corp.*, OHA Case No. TEE-0022 (June 24, 2005) (*Maytag*) (automatic defrost refrigerator-freezers with bottom-mounted freezer and through-the-door ice service).²

Liebherr served its application on interested parties, notifying them of the right to submit comments within 10 days. We received no comments regarding Liebherr’s application.

C. Standard for Exception Relief

Manufacturers may apply for exception relief with respect to the Part 430 regulations. Indeed, the preamble to the regulations discusses the basis for such exceptions:

Section 504 of the [DOE] Organization Act authorizes DOE to make adjustments of any rule or order issued under the [EPCA], 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 the unfair distribution of burdens.

² Decisions issued by the DOE Office of Hearings and Appeals (OHA) are available on the OHA website at <http://energy.gov/oha/product-efficiency-cases>.

62 Fed. Reg. at 23,108-09. Accordingly, the applicant has the burden of establishing the basis for exception relief.

II. Analysis

We have carefully reviewed Liebherr's Application for Exception. As explained below, we have determined that exception relief should be granted.

A. Relief from the Class 9 Energy Efficiency Standard

As with the product in *BSH II*, we find that Liebherr's model – a built-in automatic defrost upright freezer with through-the-door ice service – will be unable to meet the current Class 9 energy efficiency standard established for automatic defrost upright freezers due to the energy loss inherent in adding the through-the-door ice service feature. Consequently, if exception relief were denied, Liebherr would effectively be precluded from marketing its product. That would be an unintended consequence of the standard. In establishing the standards, the DOE did not intend to stifle innovation and the development and introduction into the marketplace of new technology. Indeed, a grant of relief to Liebherr is consistent with OHA precedent.

For example, in *BSH II*, we addressed automatic defrost upright freezers with through-the-door ice service, where the applicable standard did not account for through-the-door ice service. As we stated in *BSH II*, “[t]he 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.” *BSH II* at 3 (internal citation omitted). Accordingly, we determined that the application of a standard that did not account for through-the-door ice service would constitute a gross inequity, and we granted BSH's exception application. Similarly, we have granted relief to manufacturers of automatic defrost refrigerators with bottom-mounted freezers and through-the-door ice service. *Maytag; GE Appliances and Lighting*, OHA Case No. TEE-0074 (2011); *BSH Home Appliances Corp.*, OHA Case No. TEE-0070 (2010); *Samsung Electronics America*, OHA Case No. TEE-0047 (2007); *LG Electronics, Inc.*, OHA Case No. TEE-0025 (2005); *Maytag Corp.*, OHA Case No. TEE-0022 (2005). Thus, our precedent fully supports relief where a standard does not account for through-the-door ice service.

Because, as to the current Class 9 energy efficiency standard, the facts surrounding Liebherr's Application for Exception are virtually identical to those in *BSH II*, we have determined that Liebherr is entitled to the same exception relief from that standard that we granted in *BSH II*. In *BSH II*, we established an appropriate standard for the product at issue. Consistent with past decisions, we adjusted the applicable standard to allow for the energy loss associated with the through-the-door ice service feature. The standards establish a maximum energy consumption of $12.43AV + 326.10$ for automatic defrost upright freezers (Class 9). The additional energy consumption of through-the-door ice service is $0.36AV + 72.0$,³ giving a standard of $12.79AV +$

³The additional energy consumption ($0.36AV + 72.0$) of the through-the door ice service feature was calculated as follows: $.40AV + 80.0$ (the adjustment for through-the-door service for automatic defrost refrigerator-freezers with bottom-mount freezers) x 0.85 (usage-adjustment factor for upright freezers) x 90/85 (adjustment for

398.1. Accordingly, we will grant Liebherr's application for exception relief from the current Class 9 energy efficiency standard, establishing an energy standard equation for maximum energy use (kWh/yr) for Liebherr's built-in automatic defrost upright freezer with through-the-door ice service of $12.79AV + 398.1$.

B. Relief from the Class 9I-BI Energy Efficiency Standard Effective on September 15, 2014

For the same reasons set forth above, Liebherr's product will be unable to meet the Class 9I-BI energy efficiency standard, effective September 15, 2014, established for built-in upright freezers with automatic defrost with an automatic icemaker, as that standard does not account for the energy loss inherent in adding the through-the-door ice service feature.

Again, consistent with past decisions, we adjusted the applicable standard to allow for the energy loss associated with the through-the-door ice service feature. The standards establish a maximum energy consumption of $9.86AV + 344.9$ for built-in upright freezers with automatic defrost with an automatic icemaker (Class 9I-BI). For purposes of the 2014 standards, the additional energy consumption of through-the-door ice service is calculated as $0.28AV + 57.5$,⁴ giving a standard of $10.14AV + 402.4$. Accordingly, we will grant Liebherr's application for exception relief from the Class 9I-BI energy efficiency standard, starting on September 15, 2014, establishing an energy standard equation for maximum energy use (kWh/yr) for Liebherr's built-in automatic defrost upright freezer with through-the-door ice service of $10.14AV + 402.4$.

Liebherr must 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). The exception relief granted in this Decision will remain in effect until the DOE promulgates a rule for built-in automatic defrost upright freezers with through-the-door ice service.

It Is Therefore Ordered That:

- (1) The Application for Exception filed by Liebherr Canada Ltd. on September 30, 2013, be 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 $12.79AV + 398.1$ until September 15, 2014, and as $10.14AV + 402.4$ starting on September 15, 2014, for the "built-in upright freezer with automatic defrost with through-the-door ice service," to be

different test temperatures for freezers (0 F) and refrigerator-freezers (5 F)).

⁴ Similar to adjustment made for the current Class 9 standard above, *supra note* 3, which was calculated using the difference between the current standard for Class 3 and Class 6, the adjustment made here for the Class 9I-BI standard effective starting September 15, 2014, was calculated using the difference between the corresponding standards for Class 3I (automatic defrost refrigerator-freezers with top-mounted freezer, automatic icemaker, without through-the-door ice service) and Class 6 (automatic defrost refrigerator-freezers with top-mounted freezer and through-the-door ice service), $0.33AV + 67.7$, multiplied by 0.85 (usage-adjustment factor for upright freezers). No further adjustment for difference in test temperatures was required given the standardization of temperatures used for the 2014 standards.

manufactured and marketed by Liebherr Canada Ltd. as described in this Decision. The exception relief will remain in effect until such time as the DOE promulgates an energy efficiency standard for that product.

- (3) In marketing the freezer described in this Decision, Liebherr Canada Ltd. 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).
- (4) Any person aggrieved by this grant of exception relief may file an appeal with the Office of Hearings and Appeals in accordance with 10 C.F.R. Part 1003, Subpart C.

Poli A. Marmolejos
Director
Office of Hearings and Appeals

Date: November 6, 2013