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

In the Matter of Vestfrost Zrt)
)
Filing Date: May 18, 2018) Case No.: EXC-18-0001
)
_____)

Issued: October 29, 2018

Decision and Order

This Decision and Order considers an Application for Exception filed by Vestfrost Zrt (“Vestfrost”), a manufacturer of commercial refrigeration equipment. In its Application, Vestfrost seeks relief from the Energy Conservation Standards for Commercial Refrigeration Equipment (“Commercial Refrigeration Standards” or “Final Rule”), 79 Fed. Reg. 17,726 (March 28, 2014), codified at 10 C.F.R. Part 431, Subpart C.¹ Compliance with the Commercial Refrigeration Standards is required for equipment manufactured on or after March 27, 2017. Vestfrost asserts that it will face serious financial consequences if required to comply with the Final Rule when manufacturing three commercial refrigerator models intended for export to the U.S. market. As set forth in this Decision and Order, we have concluded that Vestfrost’s Application for Exception should be denied.

I. Background

A. Commercial Refrigeration Standards

Title III of the Energy Policy and Conservation Act of 1975, Pub. L. 94-163 (42 U.S.C. § 6291 *et seq.*) (EPCA), as amended, authorizes DOE to regulate the energy efficiency of a number of

¹ Subpart C of 10 C.F.R. Part 431, referring to the major types of commercial refrigeration equipment, is titled “Commercial Refrigerators, Freezers and Refrigerator-Freezers.”

consumer and industrial products, including commercial refrigerators, freezers, and refrigerator freezers (“commercial refrigeration equipment”). 42 U.S.C. § 6311(1)(E). As of 2014, DOE’s energy efficiency standards for commercial refrigeration equipment were established by: (1) EPCA, as amended by the Energy Policy Act of 2005, Pub. L. 109-58; (2) a final DOE rule published in 2009, 74 Fed. Reg. 1092 (January 9, 2009); and (3) the American Energy Manufacturing Technical Corrections Act of 2012, Pub. L. 112-210. *See* 79 Fed. Reg. at 17,732.

On March 28, 2014, DOE adopted more stringent energy conservation standards by issuing the Commercial Refrigeration Standards. The standards apply to equipment manufactured on or after March 27, 2017. *Id.* at 17,726-27; 10 C.F.R. § 431.66(e). The Commercial Refrigeration Standards establish energy conservation standards for 49 different equipment classes. 79 Fed. Reg. at 17,743. For each equipment class, DOE has established a maximum daily energy consumption as a function of either total display area or refrigerated volume. *Id.* at 17,727. In creating the standards, DOE aimed to achieve the maximum improvement in energy efficiency that was both technologically feasible and economically justified. 42 U.S.C. § 6295(o)(2)(A); 79 Fed. Reg. at 17,726-27. The Commercial Refrigeration Standards will, on an annualized basis, save 0.10 quadrillion British thermal units of energy, the equivalent of 0.5 percent of total U.S. commercial primary energy consumption in 2014. 79 Fed. Reg. at 17,728.

B. Application for Exception and Supplemental Filings

Vestfrost is a manufacturer of commercial refrigeration equipment based in Csongrád, Hungary. On February 15, 2018, Vestfrost submitted to DOE a request for exception relief. Petition for Exemption from Vestfrost Zrt (February 14, 2018) (“Petition for Exemption”) at 1. Because this submission did not clearly address the criteria for exception relief, found at 10 C.F.R. 1003, Subpart B,² we requested that Vestfrost submit a revised application. On May 18, 2018, Vestfrost filed the present Application for Exception.³ Application for Exception (May 17, 2018) (“Application for Exception”). We subsequently requested, and received, supplemental information from Vestfrost regarding its Application for Exception. *See, e.g.*, Response to Additional Information Request (July 13, 2018) (“Additional Information Response”).

In its Application, Vestfrost describes itself as a small company that produces commercial refrigeration equipment used mainly for cooling energy drinks in sales outlets.⁴ Application for

² As noted below, OHA has the authority to grant exception relief “based on an assertion [by the applicant] of serious hardship, gross inequity or unfair distribution of burdens.” 10 C.F.R. § 1003.20(a). In Vestfrost’s initial submission, it was not clear that Vestfrost was making such an assertion.

³ OHA’s procedural regulations require applicants for exception relief to comply with certain notice requirements, including providing a copy of the application to all reasonably ascertainable persons who would be aggrieved by a grant of such relief. 10 C.F.R. § 1003.23(a). When Vestfrost filed its initial submission on February 15, 2018, it did not comply with this notice requirement. However, after submitting its revised Application for Exception, Vestfrost provided the required notice to potentially aggrieved parties.

⁴ Vestfrost, however, is part of a larger business group. Vestfrost’s parent company, A/S Vestfrost, is based in Denmark. Additional Information Response at 1.

Vestfrost has produced data showing that in both 2015 and 2016, U.S. sales of its M028 model generated less than XXXX percent of its revenues and its profits. Additional Information Response at 3. Sales of its M030 model provided less than XXXX percent of its revenues and of its profits in those two years. *Id.* Because Vestfrost's M041 model is a new product, Vestfrost did not have any sales data available. *Id.* Vestfrost acknowledges that the M028 and M030 models "account for a relatively small proportion of our total business." *Id.* at 4. However, it claims that an inability to export the three models to the U.S. could lead Red Bull to use an alternative supplier for the three refrigerator models. According to Vestfrost, this might then persuade Red Bull to use a different supplier to produce refrigerators in other parts of the world and thus "seriously jeopardize" Vestfrost's overall business relationship with Red Bull. *Id.* Vestfrost's sales to Red Bull account for XXX XXXXX XXXX percent of its total revenues. *Id.*

Vestfrost also argues that requiring it to comply with the Commercial Refrigeration Standards could have harmful effects on Red Bull's sales and marketing strategy. *See* Application for Exception at 2; Additional Information Response at 5-6. It attributes this, at least in part, to the innovative design of the three refrigerator models. Vestfrost contends that "the average consumer will be more attracted to a transparent and aesthetically good-looking cooler than to an all-together solid cooler or a solid cooler with a glass door." Additional Information Response at 5. It adds: "The higher the degree of transparency and visibility of beverages the higher the attraction and the higher the sales." *Id.*

Vestfrost makes two additional arguments about the fairness of the VCT standard itself. First, Vestfrost contends that it should not be required to comply with the VCT standard because its refrigerators are too different from most of the other refrigerators in the VCT equipment class. To fall within this category, a refrigerator must have transparent doors. However, as noted, the three refrigerator models at issue have both transparent doors and transparent walls. Vestfrost argues that, although its refrigerator models technically fall into the VCT equipment class, "this category is not relevant to our fully transparent appliances." Application for Exception at 2 (emphasis in original). Essentially, Vestfrost asserts that the Commercial Refrigeration Standards fail to account for the possibility that refrigerators in the VCT equipment family could have transparent doors *and* transparent walls and that DOE should apply a different standard, with a higher maximum daily energy consumption, to the three refrigerator models.

Second, Vestfrost has provided a chart showing that for refrigerator models with a volume of less than 10 cubic feet, the Commercial Refrigeration Standards require refrigerators in the VCT equipment class to consume less energy than those in the "VCS.SC.M" equipment class ("VCS equipment class").⁷ Additional Information Response at 5; Petition for Exemption at 2. "VCS" stands for "Vertical Closed Solid." *See* 10 C.F.R. § 431.66(e)(1); 79 Fed. Reg. at 17,732.

⁷ The maximum daily energy consumption for commercial refrigerators in the VCS equipment family is calculated using the formula $0.05 \times V + 1.36$. 10 C.F.R. § 431.66(e)(1). Because the formula for equipment in the VCT equipment family is $0.1 \times V + 0.86$, commercial refrigerators in the VCS equipment family are permitted to consume more energy than those in the VCT equipment family when the volume is less than 10 cubic feet.

Refrigerators in the VCS equipment class have the same features as those in the VCT equipment class, but have solid doors. *See* 10 C.F.R. § 431.66(e)(1). Vestfrost’s argument appears to be that because transparent doors tend to reduce a refrigerator’s energy efficiency, refrigerators in the VCT equipment class, which have transparent doors, should always be allowed to consume more energy than those in the VCS equipment class.

Vestfrost has identified a number of design changes that would allow its three refrigerator models to become compliant with the VCT standard. These include using three-layer glass doors and variable speed compressors as well as making other changes to the compressor compartment and cooling system. Additional Information Response at 6. Vestfrost estimates that it will take at least a year to produce versions of its M028 and M030 refrigerators that are compliant with the VCT standard. *Id.* Vestfrost has not estimated the time it will take for the M041 model to become compliant. Nevertheless, as discussed below, Vestfrost has indicated that the M041 model may be able to meet the VCT standard with a single design adjustment. Vestfrost requests three years of exception relief, and it has suggested an alternative standard that DOE could use during that time to calculate a maximum daily energy consumption for the three models.⁸ *Id.*

C. Comments

Three companies filed comments in response to Vestfrost’s Application for Exception. True Manufacturing Co. (“True Manufacturing”) submitted a comment arguing that Vestfrost should not be granted exception relief. Comment by Charles Hon, True Manufacturing Co. (June 21, 2018) at 1. In its comment, True Manufacturing asserts that although it is more difficult to meet the Commercial Refrigeration Standards if a product is transparent on four sides, compliance with the standards is still possible. *Id.* The company states that it makes several models in the VCT equipment class that have transparent sides and that are compliant with the Final Rule. *Id.* True Manufacturing provided a link to three refrigerator models on its web site that have four transparent sides.⁹ *Id.* In response to this comment, Vestfrost claims that the refrigerators produced by True Manufacturing are much larger and taller than its own transparent models and that this “has a very decisive impact on cooler performance.”¹⁰ Additional Information Response at 4. Vestfrost asserts that it is “not aware of any other full transparent coolers of the same design and size which are similar or comparable to our coolers.” *Id.*

⁸ Vestfrost suggests that DOE calculate the maximum daily energy consumption using the formula $0.52 \times \text{TDA} + 1$, with “TDA” being the total display area in square feet. This is the same formula that the Commercial Refrigeration Standards use for the “SOC.SC.M” equipment family. 10 C.F.R. § 431.66(e)(1). This equipment family is for service over the counter, self-contained, medium temperature commercial refrigerators. *See* 10 C.F.R. § 431.66(e)(1); 79 Fed. Reg. at 17,732. Such refrigerators are used as a counter for transactions between sales personnel and customers and are equipped with transparent material in the front for displaying merchandise. *See* 10 C.F.R. § 431.62.

⁹ The link provided by True Manufacturing is <https://www.truemfg.com/search/G4SM>. The page shows three refrigerator models, each with four transparent sides.

¹⁰ Vestfrost claims that at least one of the True Manufacturing models has a volume of 20.11 cubic feet. Additional Information Response at 5. This is significantly larger than the M041 model, which has a volume of 7.25 cubic feet.

A second company, Hussman Corp. (“Hussman”), submitted a comment that also argues that OHA should not grant exception relief to Vestfrost. Comment by Ronald Shebik, Hussman (July 16, 2018) at 2. Responding to Vestfrost’s argument that the VCT standard does not account for the possibility that a refrigerator could have transparent walls, Hussman states that, for refrigerators in the VCT equipment class, the Final Rule “does not specify the type of materials used for the case enclosure sides.” Comment by Ronald Shebik, Hussman (July 16, 2018) at 1. Hussman contends that “[t]he inability to meet compliance due to the material used in the enclosure does not by itself mean that the equipment classification does not apply to that product.” *Id.* at 2.

In its comment, Red Bull supports Vestfrost’s request for exception relief. Comment from Carolin Prenninger, Red Bull (August 1, 2018) at 1. Red Bull claims that exception relief for Vestfrost would assist Red Bull with “innovative product placement” and indicates that the M041 model is an important element of its product placement strategy. *Id.* Additionally, describing the M041 model, Red Bull explains that the model does not meet the Commercial Refrigeration Standards partly because it uses a self-opening automatic door and because it uses an Internet of Things (“IoT”) module to track door openings, temperature, and other data. *Id.* Red Bull states that without the IoT module, the M041 model would meet the VCT standard. *Id.* Responding to Red Bull’s comment, Vestfrost confirms that the M041 model would meet the VCT standard, or come close to it, if it did not use the IoT module.¹¹ Email from Kálman Deák, Vestfrost, to Gregory Krauss, OHA (August 7, 2018).

II. Analysis

Section 504 of the Department of Energy Organization Act, 42 U.S.C. § 7194(a), authorizes the Secretary of Energy to make “such adjustments to any rule, regulation or order” issued under the EPCA, consistent with the other purposes of the Act, as “may be necessary to prevent special hardship, inequity, or unfair distribution of burdens.” The Secretary has delegated this authority to OHA, which administers exception relief pursuant to procedural regulations codified at 10 C.F.R. Part 1003, Subpart B. Under these provisions, persons subject to DOE’s energy efficiency standards, promulgated under DOE’s rulemaking authority, may apply to OHA for exception relief. *See, e.g., Diversified Refrigeration, Inc.*, OHA Case No. VEE-0079 (2001) (*Diversified Refrigeration*); *Amana Appliances*, OHA Case No. VEE-0054 (1999). The relevant regulations provide OHA the authority to grant “based on an assertion of serious hardship, gross inequity or unfair distribution of burdens.” 10 C.F.R. § 1003.20(a). The applicant has the burden of establishing the basis for exception relief. *See, e.g., Liebherr Canada Ltd.*, OHA Case No. EXC-13-0004 (2013) (*Liebherr*); *National Comfort Products*, OHA Case No. TEE-0065 (2010).

¹¹ Vestfrost has been in contact with the Appliance and Equipment Standards Program in the DOE’s Building Technologies Office regarding whether the IoT module’s energy use must be counted as part of the required test procedures. Email from Jeremy Domm, DOE Building Technologies Office (October 3, 2018). These conversations were ongoing as of the date of this Decision.

In considering Vestfrost's Application for Exception, we are mindful that DOE's adoption of the Commercial Refrigeration Standards is fully consistent with the policy objectives of the EPCA. The revised energy efficiency standards will not only save money for consumers, but will also conserve significant amounts of energy for the nation as a whole. In addition, the higher efficiency standards will have substantial environmental benefits by contributing to the reduction of greenhouse gas emissions and air pollution. Accordingly, an exception to DOE's energy efficiency standards is warranted only in limited circumstances to prevent a special hardship, inequity, or unfair distribution of burdens. *See, e.g., Reuland Electric Co.*, OHA Case No. EXC-15-0001 (2015) (*Reuland*); *Philips Electronics North America*, OHA Case No. EXC-16-0014 (2017) (*Philips Electronics*). After carefully evaluating Vestfrost's Application for Exception and its supplemental filings, as well as the comments received from True Manufacturing, Hussman, and Red Bull, we are unable to find that such circumstances exist in this case.

A. Special Hardship Claim

As an initial matter, Vestfrost has failed to show that it will suffer a special or serious hardship in the absence of exception relief. To support a claim of special hardship, Vestfrost must show that compliance with the Commercial Refrigeration Standards would substantially jeopardize its financial health or viability. *See, e.g., Reuland; Eaton Corp.*, OHA Case No. EXC-16-0004 (2016); *Sauder Fuel, Inc.*, OHA Case No. TEE-0059 (2009). According to the data provided by Vestfrost, U.S. sales of the M028 and M030 refrigerator models, the two models that it has previously exported to the United States, account for no more than seven percent of its revenues or its profits in a typical year. Vestfrost has requested exception relief for three years, though it appears that all three of its models could be compliant with the VCT standard in a shorter time period, perhaps approximately one year. Vestfrost has not shown that a loss of XXXX percent of its revenues or profits, for a period of around one year, would jeopardize its financial health or viability.

Vestfrost suggests that an inability to immediately export the three refrigerator models to the United States could jeopardize its global cooperation with Red Bull and lead to the loss of XXXX XXXX percent of its revenue. This claim is too speculative to be persuasive. Assuming that the three refrigerator models are as unique and customized as Vestfrost claims, it is not apparent that Red Bull could easily find another company that could step into Vestfrost's shoes and produce the same models, compliant with the VCT standard, on a more expedited basis than Vestfrost. Indeed, Vestfrost could identify no other company that produces, for the U.S. market, refrigerators that are transparent on four sides and of similar size. Moreover, even if it were true that a denial of exception relief would prompt Red Bull to find another supplier for these models, Vestfrost has not established that Red Bull would consequently decide to sever its entire global business relationship with Vestfrost. Accordingly, Vestfrost has not demonstrated that it would suffer a serious hardship if required to comply with the Commercial Refrigeration Standards.

B. Gross Inequity and Unfair Distribution of Burdens

We next consider whether Vestfrost has shown that it will suffer a gross inequity or unfair distribution of burdens if required to comply with the Commercial Refrigeration Standards. We have found that a manufacturer of a covered product will suffer a gross inequity if its compliance with the applicable DOE efficiency standard will result in a substantial detrimental impact not intended by the regulation or authorizing legislation. *See, e.g., Electrolux Home Products, Inc.*, Case No. TEE-0012 (2004) (*Electrolux*); *Maytag Corp.*, Case No. TEE-0022 (2005) (*Maytag*). In *Electrolux*, for example, we granted exception relief to a manufacturer of a chest freezer with an automatic defrost function. At the time the relevant energy efficiency standards had been promulgated, chest freezers with an automatic defrost feature were not on the market. We found that exception relief from the energy efficiency standards for residential refrigerators and freezers, found at 10 C.F.R. § 430.32(a), was merited to avoid “an unintended consequence of the existing regulatory scheme.”¹² *Electrolux* at 5. We explained: “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.” *Id.* at 5-6. In *Maytag*, we granted an exception from the same energy efficiency standards to a manufacturer of an automatic defrost refrigerator-freezer with a bottom-mounted freezer. The bottom-mounted freezer included through-the-door ice service, a then-new feature for such freezers.¹³

Vestfrost argues that its products do not belong in the VCT equipment class because they are transparent on four sides and because the VCT equipment class is defined only by the transparency of a refrigerator’s doors. Vestfrost believes that DOE should establish a new standard for products that are transparent on both doors and their walls.¹⁴ To some extent, this argument resembles the arguments made by the manufacturers in *Electrolux*, *Maytag*, and similar cases. In those cases, although the products fell into certain equipment classes, the manufacturers claimed that the standard for those equipment classes should not apply because their products were too different or unique, or offered an important new function. In the instant matter, Vestfrost and Red Bull have suggested that transparent walls are useful in promoting sales.

There are important differences, however, in this case. In *Electrolux* and *Maytag*, the applicants created products with unanticipated features following the promulgation of DOE energy efficiency standards. Reviewing the structure of the relevant standards, OHA found that DOE would have created separate equipment classes, based on those features, if the products had been in existence

¹² Section 430.32(a) is found with the DOE’s Energy Conservation Standards for Consumer Products. It establishes energy conservation standards for refrigerators, refrigerator-freezers, and freezers.

¹³ We subsequently granted exception relief to other manufacturers producing products with through-the-door ice service. *See, e.g., BSH Home Appliances Corp.*, OHA Case No. TEE-0070 (2010); *Samsung Electronics America*, OHA Case No. TEE-047 (2007); *LG Electronics, Inc.*, OHA Case No. TEE-0025 (2005).

¹⁴ If Vestfrost is arguing that OHA should establish a new equipment class, such a request is outside OHA’s authority. *See GE Appliances and Lighting*, TEE-0077 (2011). OHA has the authority to grant exception relief, adjusting energy efficiency standards for individual applicants and products, on a case-by-case basis. *Id.* However, new product classes can only be created as part of a rulemaking proceeding. *Id.*

at the time the regulations were issued. In *Maytag*, for example, we found that because through-the-door ice service was a feature that DOE had taken into account when establishing equipment classes for top-mounted freezers and side-mounted freezers, it was clear that DOE would have created a separate equipment class for bottom-mounted freezers with through-the-door ice service had such products existed at the time of the rulemaking. *Maytag* at 5-6; cf. *GE Appliances and Lighting*, OHA Case No. TEE-0077 (2011) (*GE Appliances*) (denying exception relief where at the time of the rulemaking, a product feature was not recognized as wanted or necessary).

Here, commercial refrigerators in the VCT equipment class, with transparent walls, are not a new product. Vestfrost has sold the M028 and M030 models since 2010, before the Commercial Refrigeration Standards were promulgated in 2014. DOE officials involved in the rulemaking have further informed us that, at the time of the rulemaking, they were aware of the transparent refrigerator products that Vestfrost supplies to Red Bull. See Memorandum of Telephone Conversation between Gregory Krauss, OHA, and Building Technologies Office officials (September 24, 2018) (“Armstrong Memo”) at 1. When deciding whether a product feature justifies the creation of a separate equipment class, DOE considers the utility of the feature. See 79 F.R. at 17,743. Although DOE officials recognized the utility of transparent doors, they did not see any added utility related to transparent refrigerator walls and so did not create new equipment classes based on that feature. Armstrong Memo at 1; see also *Zero Zone, Inc. v. U.S. Dep’t of Energy*, 832 F.3d 654, 665 n.7 (7th Cir. 2016) (*Zero Zone*) (reviewing a challenge to the Commercial Refrigeration Standards and finding that petitioners had not established that DOE’s approach to defining equipment classes was arbitrary or capricious).¹⁵ Accordingly, unlike in cases such as *Electrolux* and *Maytag*, it is not necessary to analyze whether DOE *would* have created a new equipment class if a product feature had existed when the rule was promulgated. Vestfrost’s products existed in 2014. DOE was aware of those products at the time of the rulemaking and decided not to create a separate equipment class. Therefore, applying the VCT standard to Vestfrost’s products would not result in any unintended consequences.

We also do not find important Vestfrost’s observation that, at a volume of less than 10 cubic feet, refrigerators in the VCT equipment class are allowed to consume less energy than refrigerators in the VCS equipment class. This appears to be another argument that the Commercial Refrigeration Standards may have consequences that DOE did not anticipate. However, when issuing a prior version of the Commercial Refrigeration Standards in 2009, DOE was cognizant of the need to allow smaller commercial refrigeration equipment to consume some minimum amount of energy. DOE therefore introduced an “offset factor” into each standard. See Technical Support Document for Commercial Refrigeration Equipment (February 2014) (“Technical Support Document”) at 5-68; *Zero Zone*, 832 F.3d at 665. The offset factors reflected the energy consumption necessary to

¹⁵ The Seventh Circuit Court of Appeals stated: “It is clear to us that DOE undertook a study of industry patterns, compared those patterns to the ones it had encountered in earlier rulemaking, and concluded that the categories it implemented were an accurate reflection of the current industry situation.” *Zero Zone*, 832 F.3d at 665 n. 7.

operate a piece of commercial refrigeration equipment, regardless of the size.¹⁶ Technical Support Document at 5-3; *Zero Zone*, 832 F.3d at 665. When issuing the Final Rule in 2014, DOE adjusted the offset factors taking into account what was both economically justified and technically feasible. Armstrong Memo at 1; *see also* Technical Support Document at 5-69 (describing the methodology used to determine the offset factors). Although refrigerators in the VCS equipment class have a larger offset factor than refrigerators in the VCT equipment class, we do not consider this an unintended consequence of the Final Rule. It is merely a reflection of the methodology that DOE used to determine the offset factors. In any event, we believe that determinations regarding components of energy efficiency standards, such as offset factors, are best made during a rulemaking process and not in the context of a request for exception relief.

It has previously been stated that a gross inequity is a substantial detrimental impact not intended by the regulatory scheme or the authorizing legislation. Thus, to support a claim of gross inequity, Vestfrost would also need to show that requiring it to adhere to the Commercial Refrigeration Standards would result in a detrimental impact that is substantial. As discussed, Vestfrost has not demonstrated that it will suffer any serious economic hardship in the absence of exception relief. As for the impact on product innovation, even if Vestfrost could establish that its three transparent refrigerator models are innovative products with a distinct utility, the impact of a denial of exception relief would not be substantial. In cases in which we have granted exception relief based on a gross inequity, such as *Electrolux* and *Maytag* and similar cases, the manufacturer typically has been precluded from offering the product. In the instant matter, Vestfrost may be able to bring its models into compliance with the Commercial Refrigeration Standards within a year. Any impact on the availability of Vestfrost's products is likely to be temporary and insignificant.

For similar reasons, Vestfrost's arguments do not support a finding that it has been subject to an unfair distribution of burdens. We have found that an unfair distribution of burdens exists where a manufacturer will suffer a grossly disproportionate impact in comparison to similarly situated firms in the industry. *See, e.g., Reuland; Philips Lighting Co., et al.*, OHA Case Nos. EXC-12-0001, *et al.* (2012) (*Philips Lighting*). Vestfrost appears to believe that the Commercial Refrigeration Standards place too heavy a burden on it, compared with manufacturers of similarly-sized refrigerators in the VCS equipment family, or compared with manufacturers that produce similar refrigerators with solid walls or larger volumes. We are unable to find, however, that this is a situation in which the Commercial Refrigeration Standards somehow unfairly favor competing manufacturers, or create an unfair competitive playing field. Other manufacturers would face the same challenges and constraints if they opted to create small commercial refrigerators with four transparent sides. Moreover, to the extent that Vestfrost is facing economic burdens that other manufacturers are not, it may partly result from Vestfrost's decision to plan on being able to manufacture a new product, the M041 model, for export to the United States, even though Vestfrost

¹⁶ The offset factor is the value of the constant in each formula. Technical Support Document at 5-68. For example, for the VCT standard, which limits the maximum daily energy consumption to $0.1 \times V + 0.86$, the offset factor is 0.86. Consequently, the smallest VCT refrigerators are permitted to consume at least 0.86 kWh/day. For refrigerators in the VCS equipment family, because the maximum daily energy consumption is calculated using the formula $0.05 \times V + 1.36$, the offset factor is 1.36 kWh/day.

had not obtained exception relief for that product or verified that it would be compliant with the Commercial Refrigeration Standards. OHA does not grant exception relief to alleviate burdens attributable to discretionary business decisions. *See, e.g., GE Appliances; Felix Storch, Inc.*, OHA Case No. EXC-14-0001 (2014).

C. Other Considerations

We have previously found that the same factors considered by the agency in promulgating energy conservation standards are useful in evaluating claims for exception relief. *See, e.g. Siemens Medical Solutions USA, Inc.*, OHA Case No. EXC-16-0012; *Philips Lighting; Viking Range Corp.*, OHA Case No. VEE-0075 (2000). These factors are specified in section 325 of the EPCA and include the economic impact on manufacturers and consumers, net consumer savings, energy savings, impact on product utility, impact on competition, the need for energy conservation, and other relevant factors. *See* 42 U.S.C. § 6295(o)(2)(B)(i); 42 U.S.C. § 6316(e)(1).

None of these other factors persuade us that exception relief is merited in this case. For example, looking beyond the economic impact on Vestfrost itself, both Vestfrost and Red Bull have indicated that the three refrigerator models, particularly the M041 model, are an important part of Red Bull's sales strategy. Yet, neither Vestfrost nor Red Bull has shown, let alone alleged, that a denial of exception relief would result in any serious economic impact on Red Bull or on any other entity. This is also not a circumstance in which a failure to grant exception relief could have an impact on health or safety, or deny an important service to the general public. *See, e.g. Philips Electronics* (granting exception relief to a manufacturer of MRI machines containing electric motors in order to reduce the impact on health care institutions and patients); *Emerson Motor Technologies*, OHA Case No. TEE-0003 (2002) (allowing an electric motor manufacturer to sell a single replacement motor to a nuclear power plant to prevent an unfair distribution of burdens on electricity customers).

For the foregoing reasons, we have determined that Vestfrost should not be granted exception relief with respect to its M028, M030, and M041 refrigerator models. Should Vestfrost or Red Bull wish to argue that refrigerators with transparent walls offer a utility that justifies a new equipment class, or that the offset factor for refrigerators in the VCT equipment family should be adjusted, they may do so during the next rulemaking. In the meantime, Vestfrost must bring its products into compliance with the Commercial Refrigeration Standards prior to distribution in commerce in the United States.

It Is Therefore Ordered That:

- (1) The Application for Exception filed by Vestfrost Zrt on May 18, 2018, OHA Case No. EXC-18-0001, is hereby denied.
- (2) Any person aggrieved or adversely affected by the denial of a request for exception relief filed pursuant to § 504 of the Department of Energy Organization Act, 42 U.S.C. § 7194,

may appeal to the Federal Energy Regulatory Commission, in accordance with the Commission's regulations.

Poli A. Marmolejos
Director
Office of Hearings and Appeals

Date: October 29, 2018