Kimberly D. Bose,

Secretary.

[FR Doc. E9–13002 Filed 6–3–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

[Case No. RF–009]

Energy Conservation Program for Consumer Products: Publication of the Petition for Waiver and Notice of Granting the Application for Interim Waiver of Electrolux From the Department of Energy Residential Refrigerator and Refrigerator-Freezer Test Procedures

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

ACTION: Notice of Petition for Waiver, Notice of Granting Application for Interim Waiver, and request for public comments.

SUMMARY: This notice announces receipt of and publishes the Electrolux Home Products, Inc. (Electrolux) Petition for Waiver (hereafter, ''Petition'') from parts of the Department of Energy (DOE) test procedure for determining the energy consumption of electric refrigerators and refrigerator-freezers. The waiver request pertains to Electrolux's specified French door bottom-mount residential refrigerators and refrigerator-freezers, a product line that utilizes a control logic that changes the wattage of the anti-sweat heaters based upon the ambient relative humidity conditions in order to prevent condensation. The existing test procedure does not take humidity or adaptive control technology into account. Therefore, Electrolux has suggested an alternate test procedure that takes adaptive control technology into account when measuring energy consumption. DOE is soliciting comments, data, and information concerning Electrolux's Petition and the suggested alternate test procedure. DOE is also publishing notice of its March 3, 2009 grant of an interim waiver to Electrolux. Subsequently, DOE received a request from Electrolux to expand the scope of its interim waiver to four additional products. DOE has decided to grant this request.

DATES: DOE will accept comments, data, and information with respect to Electrolux's Petition until, but no later than July 6, 2009.

ADDRESSES: You may submit comments, identified by case number [RF–009], 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 either the case number [RF–009], and/or ''Electrolux Petition'' 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. RF–008, 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.

Instructions: 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 Exchange (ASCII)) file format. Avoid the use of special characters or any form of encryption. Wherever possible, include the electronic signature of the author. Absent an electronic signature, comments submitted electronically must be followed and authenticated by submitting the signed original paper document. DOE does not accept telefacsimiles (faxes).

Pursuant to section 430.27(b)(1)(iv) of 10 CFR Part 430, any person submitting written comments must also send a copy of the comments to the petitioner. The contact information for the petitioner is: Ms. Sheila A. Millar, Keller and Heckman, LLP, 1001 G Street, NW., Washington, DC 20001. Telephone: (202) 434–4100. *E-mail: millar@khlaw.com.*

Under 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: 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.

Docket: For access to the docket to review the documents relevant to this matter, 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) 586–9127, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Please call Ms. Brenda Edwards at (202) 586–2945 for additional information regarding visiting the Resource Room. Please note that the DOE's Freedom of Information Reading Room (formerly Room 1E–190 in the Forrestal Building) is no longer housing rulemaking materials.

FOR FURTHER INFORMATION CONTACT: Dr. Michael G. Raymond, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121, (202) 586–9611. E-mail: *Michael.Raymond@ee.doe.gov.*

Ms. Francine Pinto or Mr. Michael Kido, U.S. Department of Energy, Office of the General Counsel, Mailstop GC–72, 1000 Independence Avenue, SW., Washington, DC 20585–0103. Telephone: (202) 586–9507. E-mail: *Francine.Pinto@hq.doe.gov* or *Micael.Kido@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

I. Background and Authority

Title III of the Energy Policy and Conservation Act (''EPCA'') sets forth a variety of provisions concerning energy efficiency. Part A[1] of Title III provides for the ''Energy Conservation Program for Consumer Products Other Than Automobiles.'' (42 U.S.C. 6291–6309) Part A includes definitions, test procedures, labeling provisions, energy conservation standards, and the authority to require information and reports from manufacturers. Further, Part A 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 refrigerators and refrigerator-freezers is contained in 10 CFR Part 430, Subpart B, Appendix A1.

The 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

[1] This part was originally titled Part B; however, it was redesignated Part A after Part B was repealed by Public Law 109–58.

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 Part 430.27(a)(1). Petitioners must include in their petition any alternate test procedures known 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). In general, waivers remain in effect until the effective date of a final rule which prescribes amended test procedures appropriate to the model series manufactured by the petitioner, thereby eliminating any need for the continuation of the waiver. 10 CFR Part 430.27(m).

II. Petition for Waiver

On November 6, 2008, Electrolux filed 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. Electrolux is designing new refrigerators and refrigerator-freezers that contain variable anti-sweat heater controls that detect a broad range of temperature and humidity conditions, and respond by activating adaptive heaters, as needed, to evaporate excess moisture. According to the petitioner, Electrolux's technology is similar to that used by General Electric Company (GE) and Whirlpool Corporation (Whirlpool) for refrigerator-freezers which were the subject of Petitions for Waiver published April 17, 2007 and July 10, 2008, respectively. 72 FR 19189; 73 FR 39684. GE's waiver was granted on February 27, 2008. 73 FR 10425. Electrolux seeks a waiver from the existing DOE test procedure applicable to refrigerators and refrigerator-freezers under 10 CFR Part 430 because it takes neither ambient humidity nor adaptive technology into account. Therefore, Electrolux stated that the test procedure does not accurately measure the energy consumption of Electrolux's new refrigerators and refrigerator-freezers that feature variable anti-sweat heater controls and adaptive heaters. Consequently, Electrolux has submitted to DOE for approval an alternate test procedure that would allow it to correctly calculate the energy consumption of this new product line. Electrolux's alternate test procedure is essentially the same as that prescribed for GE refrigerators and refrigerator-freezers (and petitioned for by Whirlpool) that are equipped with the same type of technology. The alternate test procedure applicable to the GE products simulates the energy used by the adaptive heaters in a typical consumer household, as explained in the Decision and Order which DOE published in the **Federal Register** on February 27, 2008. 73 FR 10425. As DOE has stated in the past, it is in the public interest to have similar products tested and rated for energy consumption on a comparable basis.

III. Application for Interim Waiver

The Electrolux Petition also requests an 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 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))

In view of the above, Electrolux's Application for Interim Waiver does not provide sufficient information to permit DOE to evaluate the economic hardship Electrolux might experience absent a favorable determination on its Application for Interim Waiver. Public policy would tend to favor granting Electrolux an Interim Waiver, pending determination of the Petition for Waiver. On February 27, 2008, DOE granted the General Electric Company (GE) a waiver from the refrigerator-freezer test procedure because it takes neither ambient humidity nor adaptive technology into account. 73 FR 10425. The test procedure would not accurately represent the energy consumption of refrigerator-freezers containing relative humidity sensors and adaptive control anti-sweat heaters. This argument is equally applicable to Electrolux, which has products containing similar relative humidity sensors and anti-sweat heaters. Electrolux is seeking a very similar waiver to the one DOE granted to GE, with the same alternate test procedure, and it is very likely Electrolux's Petition for Waiver will be granted.

Therefore, in light of the recent waiver to GE that DOE granted on March 3, 2009, Electrolux's application for Interim Waiver from testing of its refrigerator-freezer product line containing relative humidity sensors and adaptive control anti-sweat heaters is also granted. Electrolux subsequently requested that DOE expand the Interim Waiver to cover four additional products. For the same reasons it granted the interim waiver, DOE is extending coverage of that waiver to these additional products. This granting of Interim Waiver may be modified at any time upon a determination that the factual basis underlying the application is incorrect.

III. Alternate Test Procedure

Electrolux's new line of refrigerators and refrigerator-freezers contains sensors that detect ambient humidity and interact with controls that vary the effective wattage of anti-sweat heaters to evaporate excess moisture. The existing DOE test procedure cannot be used to calculate the energy consumption of these features. The variable anti-sweat heater contribution to the refrigerator's energy consumption is entirely dependent on the ambient humidity of the test chamber, which the DOE test procedure does not specify. The energy consumption of the anti-sweat heaters will be modeled and added to the energy consumption measured with the anti-sweat heaters disabled. The anti-sweat contribution to the product's total energy consumption will be calculated by the same methodology that was set forth in the GE Petition. For units with an energy saver switch, the energy test results with and without the added heater contribution would be averaged to produce the final energy number for the product. For those units that do not include an energy saver switch, the final energy number would be equal to the test result of the heater-disabled test plus the added heater contribution. The objective of this approach is to simulate the average energy used by the adaptive anti-sweat heaters as activated in refrigerators and refrigerator-freezers of typical consumer households across the United States.

To determine the conditions in a typical consumer household, GE compiled historical data on the monthly average outdoor temperatures and humidities for the top 50 metropolitan areas of the U.S. over approximately the last 30 years. In light of the similarity of technologies at issue, Electrolux is using the same data compiled by GE for its determination of the anti-sweat heater energy use. Like GE and Whirlpool, Electrolux includes in its test procedure a ''system-loss factor'' to calculate system losses attributed to operating anti-sweat heaters, controls, and related components.

IV. Summary and Request for Comments

Through today's notice, DOE announces receipt of Electrolux's Petition for Waiver from certain parts of the test procedure applicable to Electrolux's new line of refrigerators and refrigerator-freezers with variable anti-sweat heater controls and adaptive heaters. DOE is publishing Electrolux's Petition for Waiver in its entirety pursuant to 10 CFR 430.27(b)(1)(iv). The Petition contains no confidential information. The Petition includes a suggested alternate test procedure and calculation methodology to determine the energy consumption of Electrolux's specified refrigerators and refrigerator-freezers with adaptive anti-sweat heaters. DOE is interested in receiving comments from interested parties on all aspects of the Petition, including the suggested alternate test procedure and calculation methodology. 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, whose contact information is included in the **ADDRESSES** section above.

Issued in Washington, DC, on May 27, 2009.

Steven G. Chalk,

Principal Deputy Assistant Secretary, Energy Efficiency and Renewable Energy.

November 5, 2008

Via Overnight Delivery

The Honorable John F. Mizroch,
Acting Assistant Secretary, Office of Energy Efficiency and Renewable Energy, U.S. Department of Energy, Mail Station EE–10, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585–0121.

Re: Petition for Waiver and Application for Interim Waiver from the Department of Energy Residential Refrigerator and Refrigerator-Freezer Test Procedures by Electrolux Home Products, Inc.

Dear Secretary Mizroch:

On behalf of our client, Electrolux Home Products, Inc. (''Electrolux''), we respectfully submits this Petition for Waiver and Application for interim Waiver requesting exemption by the Department of Energy from certain parts of the test procedure for determining refrigerator-freezer energy consumption under 10 CFR 430.27. The requested waiver will allow Electrolux to test its refrigerator-freezer to the amended procedure set out by this petition.

This petition for waiver contains no confidential business information and may be released pursuant to Freedom of Information Act requests.

I. Background

Electrolux seeks the Department's approval of this proposed amendment to the refrigerator test procedure to be assured of properly calculating the energy consumption and properly labeling its new refrigerator. Recently, General Electric Corporation (''GE'') and Electrolux Corporation (''Electrolux'') each filed Petitions for Waiver to establish a new methodology to calculate the energy consumption of a refrigerator-freezer when such a product contains adaptive anti-sweat heaters. Electrolux has developed its own adaptive anti-sweat system that uses a humidity sensor to operate the anti-sweat heaters. Electrolux could have designed the system so that the anti-sweat heaters showed no impact during energy testing. However, like GE and Electrolux, Electrolux is following the intent of the regulations to more accurately represent the energy consumed by the new refrigerator when used in the home. Accordingly, Electrolux is filing this Petition for Waiver to appropriately modify the relevant portions of the DOE regulations.

The Department's regulations provide that the Assistant Secretary will grant a petition for waiver upon ''determination that the basic model for which the waiver was requested contains a design characteristic which either prevents testing of the basic model according to the prescribed test procedures, or 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.'' [1]

Electrolux respectfully submits that sufficient grounds exist for the Assistant Secretary to grant this Petition on both points. First, the refrigerator energy test procedure does not allow the energy used by Electrolux's new refrigerator to be accurately calculated. The new refrigerator contains adaptive anti-sweat heaters (*i.e.,* anti-sweat heaters that respond to humidity conditions found in consumers' homes). Since the test conditions specified by the test procedure neither define required humidity conditions nor otherwise take ambient humidity conditions into account in calculating energy consumption, the adaptive feature of Electrolux's new refrigerator cannot be properly tested.

[1] 10 CFR 430.27(l).

Second, testing Electrolux's new refrigerator according to the test procedure would provide results that do not accurately measure the energy used by the new refrigerator.

II. The Refrigerator Energy Test Procedure

The test procedure for calculating energy consumption specifies that the test chamber must be maintained at 90° Fahrenheit (''F'').[2] This ambient temperature is not typical of conditions in most consumers' homes. Rather, it is intended to simulate the heat load of a refrigerator in a 70° F ambient temperature with typical usage by the consumer. But the test procedure does not specify test chamber humidity conditions. Sweat occurs on refrigerators when specific areas on the unit are below the local dew point. Higher relative humidity levels result in an increase of the dew point. Sweat has been addressed by installing anti-sweat heaters on mullions and other locations where sweat accumulates. Previous anti-sweat heaters operated at a fixed amount of power, and turned on or off regardless of the humidity or amount of sweat on the unit.

III. Electrolux's Proposed Modifications

The circumstances of this petition are similar to those in the Department's earlier decisions granting waiver petitions, including the 2001 waiver granted in *In the Matter of Electrolux Home Appliances*.[3] The test procedure at issue in Electrolux's 2001 waiver request was originally developed when simple mechanical defrost timers were the norm. Accordingly, Electrolux sought a test procedure waiver to accommodate its advanced defrost timer. The Assistant Secretary, in granting the waiver, acknowledged the role of technology advances in evaluating the need for test procedure waivers. With this current petition, Electrolux again seeks to change how it tests its new models to take into account advances in sensing technology, *i.e.,* sensors that detect temperature and humidity conditions and interact with controls to vary the effective wattage of anti-sweat heaters to evaporate excess sweat.

The Electrolux models, with the new anti-sweat technology, subject to this Petition are:

[2] 10 CFR Part 430, Subpart B, App. A1.

[3] *Energy Conservation Program for Consumer Products: Granting of the Application for Interim Waiver and Publishing of the Petition for Waiver of Electrolux Home Products from the DOE Refrigerator and Refrigerator-Freezer Test Procedure (Case No. RF–005),* 66 FR 40,689 (Aug. 3, 2001).

EI28BS55IW, EI28BS55IB, EI28BS55IS, EW28BS70IW, EW28BS70IB, EW28BS70IS, EI23BC55IW, EI23BC55IB, EI23BC55IS, EW23BC70IW, EW23BC70IB, EW23BC70IS, E23BC78ISS, E23BC78PIS.

Electrolux proposes to run the energy-consumption test with the anti-sweat heater switch in the ''off'' position and then, because the test chamber is not humidity-controlled, to add to that result the kilowatt hours per day derived by calculating the energy used when the anti-sweat heater is in the ''on'' position. This contribution will be calculated by the same method that was proposed by GE and Electrolux in their Petitions for Waiver.[4] The objective of the proposed approach is to simulate the average energy used by the adaptive anti-sweat heaters as activated in typical consumer households across the United States.

In formulating its Petition, GE conducted research to determine the average humidity level experienced across the United States. The result of this research was that GE was able to determine the probability that any U.S. household would experience certain humidity conditions during any month of the year. This data was consolidated into 10 bands each representing a 10% range of relative humidity. In submitting this Petition, Electrolux is confirming the validity of using such bands to represent the average humidity experienced across the United States and will adopt the same population weighting as proposed by GE. The bands proposed by GE are as follows:

	% Relative humidity	Probability (percent)	Constant designation
1	0–10	3.4	A1
2	10–20	21.1	A2
3	20–30	20.4	A3
4	30–40	16.6	A4
5	40–50	12.6	A5
6	50–60	11.9	A6
7	60–70	6.9	A7
8	70–60	4.7	A8
9	80–90	0.8	A9
10	90–100	1.5	A10

Since system losses are involved with operating anti-sweat heaters, Electrolux proposes to include in the calculation a factor to account for such energy. This additional energy includes the electrical energy required to operate the anti-sweat heater control and related components, and the additional energy required to increase compressor run time to remove heat introduced into the refrigerator compartments by the anti-sweat heater. Based on Electrolux's experience, this ''System-loss Factor'' is 1.3. Simply stated, the Correction Factor that Electrolux proposes to add to the energy-consumption test results obtained with the anti-sweat heater switch in the ''off'' position is calculated as follows:

Correction Factor = (Anti-sweat Heater Power × System-loss Factor) × (24 hours/1 day) × (1 kW/1000 W)

Continue by calculating the national average power in watts used by the anti-sweat heaters. This is done by totaling the product of constants A1–A10 multiplied by the respective heater watts used by a refrigerator operating in the median percent relative humidity for that band and the following standard refrigerator conditions:

- Ambient temperature of 72 °F,
- Fresh food (FF) average temperature of 45 °F; and
- Freezer (FZ) average temperature of 5 °F.

Anti-sweat Heater Power = A1 * (Heater Watts at 5% RH) + A2 * (Heater Watts at 15% RH) + A3 * (Heater Watts at 25% RH) + A4 * (Heater Watts at 35% RH) + A5 * (Heater Watts at 45% RH) + A6 * (Heater Watts at 55% RH) + A7 * (Heater Watts at 65% RH) + A8 * (Heater Watts at 75% RH) + A9 * (Heater Watts at 85% RH) + A10 * (Heater Watts at 95% RH)

As explained above, bands A1–A10 were selected as representative of humidity conditions in all U.S. households. Utilizing such weighed bands will allow the calculation of the national average energy consumption for each product.

Based on the above, Electrolux proposes to test its new models as if the test procedure were modified to calculate the energy of the unit with the anti-sweat heaters in the on position as equal to the energy of the unit tested with the anti-sweat heaters in the off position plus the Anti-Sweat Heater Power times the System Loss Factor (expressed in KWH/YR).

IV. Conclusion

Electrolux urges the Assistant Secretary to grant its Petition for Waiver and allow Electrolux to test its new refrigerator models as noted above. Granting Electrolux's Petition for Waiver will encourage the introduction of advanced technologies while providing proper consideration of energy consumption.

V. Affected Persons

Primarily affected persons in the refrigerator-freezer category include BSH Home Appliances Corp. (Bosch-Siemens Hausgerate GmbH), Equator, Fisher & Paykel Appliances Inc., GE Appliances, Gorenje USA, Haier America Trading, L.L.C., Heartland Appliances, Inc., Kelon Electrical Holdings Co., Ltd., Liebherr Hausgerate, LG Electronics Inc., Northland Corporation, Samsung Electronics America, Inc., Sanyo Fisher Company, Sears, Sub-Zero Freezer Company, U-Line, Viking Range, W. C. Wood Company, and Electrolux Corporation. The Association of Home Appliance Manufacturers is also generally interested in energy efficiency requirements for appliances, including freezers. Electrolux will notify all these entities as required by the Department's rules and provide them with a version of this Petition.

Sincerely,

Sheila A. Millar.

cc: Michael Raymond, DOE Office of Energy Efficiency and Renewable Energy

[4] Publication of the Petition for Waiver of General Electric Company From the Department of Energy Refrigerator and Refrigerator/Freezer Test Procedures, 72 FR 19,189 (Apr. 17, 2007); Publication of the Petition for Waiver of Electrolux Corporation From the Department of Energy Refrigerator and Refrigerator/Freezer Test Procedures, 73 FR 39,684 (July 10, 2008).

March 24, 2009

Via Electronic and Overnight Delivery

Assistant Secretary for Conservation and Renewable Energy, U.S. Department of Energy, Mail Station EE–10, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585–0121.

Re: Request by Electrolux Home Products, Inc. to Expand Coverage of Interim Waiver and Petition for Waiver From the Department of Energy Residential Refrigerator and Refrigerator-Freezer Test Procedures

Dear Assistant Secretary:

We write to respectfully request an expansion of the March 3, 2009, Interim Waiver you granted our client, Electrolux Home Products, Inc. (''Electrolux'') to include four additional residential refrigerator-freezer models. We also request the incorporation of these four models into the Electrolux Petition for Waiver, which we understand is still under review by your office, and has not yet been published for public review and comment in the **Federal Register**. The four Electrolux residential refrigerator-freezer models listed below contain the same or similar relative humidity sensors and adaptive control anti-sweat heaters for which the Department of Energy (''Department'' or ''DOE'') recently granted Electrolux the enclosed Interim Waiver from the test procedures at 10 CFR part 430, subpart B, appendix A1:

EI28BS56IW/B/S, EW28BS71IW/B/S, EI23BC56IW/B/S, EW23BC71IW/B/S

This document contains no confidential business information and may be released pursuant to Freedom of Information Act requests.

The Department's regulations provide that the Assistant Secretary will grant a Petition for Waiver upon ''determination that the basic model for which the waiver was requested contains a design characteristic which either prevents testing of the basic model according to the prescribed test procedures, or 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.'' [1] In addition, the Assistant Secretary will grant an Interim Waiver ''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 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.'' [2]

Although Electrolux would not experience economic hardship without a waiver of the test procedures—indeed, the alternate test procedure imposes an energy penalty—the DOE letter granting the Electrolux Interim Waiver recognized that:

* * * public policy would favor granting Electrolux an Interim Waiver, pending determination of the Petition for Waiver. On February 27, 2008, DOE granted the General Electric Company (''GE'') a waiver from the refrigerator-freezer test procedure because it takes neither ambient humidity nor adaptive technology into account. 73 FR 10425. The test procedure would not accurately represent the energy consumption of refrigerator-freezers containing relative humidity sensors and adaptive control anti-sweat heaters. This argument is equally applicable to Electrolux, which has products containing similar relative humidity sensors and anti-sweat heaters. Electrolux is seeking a very similar waiver to the one DOE granted to GE, with the same alternate test procedure, and it is very likely Electrolux's Petition for Waiver will be granted.

As Electrolux noted in its December 15, 2008, Petition for Waiver and Application for Interim Waiver, the Company could have designed its adaptive anti-sweat system so that the anti-sweat heaters showed no impact during energy testing. However, like GE and Whirlpool Corporation, Electrolux is following the intent of the regulations to more accurately represent the energy consumed by the new refrigerators when used in the home.[3] Accordingly, Electrolux respectfully submits that sufficient grounds exist for the Assistant Secretary to include the four additional models listed above as part of the March 3, 2009 Interim Waiver and Petition for Waiver on both points.

First, the refrigerator energy test procedure does not allow the energy used by the above-referenced Electrolux models to be accurately calculated. These new models contain adaptive anti-sweat heaters (*i.e.,* anti-sweat heaters that respond to humidity conditions found in consumers' homes). Since the test conditions specified by the test procedure neither define required humidity conditions nor otherwise take ambient humidity conditions into account in calculating energy consumption, the adaptive feature of Electrolux's new refrigerators cannot be properly tested. Second, testing Electrolux's new refrigerators according to the test procedure would provide results that do not accurately measure the energy used by the new refrigerator. In addition, the DOE regulations make clear that once a waiver has been granted, the Department must take steps to incorporate the new procedure and eliminate the need for continuing waivers:

Within one year of the granting of any waiver, the Department of Energy will publish in the **Federal Register** a notice of proposed rulemaking to amend its regulations so as to eliminate any need for the continuation of such waiver. As soon thereafter as practicable, the Department of Energy will publish in the **Federal Register** a final rule. Such waiver will terminate on the effective date of such final rule.[4]

Requiring Electrolux to submit a separate Petition for Waiver and Application for Interim Waiver for the identical technology which was granted in an Interim Waiver a bit more than two weeks ago, and for which the Department has indicated ''it is very likely Electrolux's Petition for Waiver will be granted'' at a minimum violates the spirit of this provision and is inconsistent with advancing sound energy testing objectives.

The Refrigerator Energy Test Procedure

The test procedure for calculating energy consumption specifies that the test chamber must be maintained at 90° Fahrenheit (''F'').[5] This ambient temperature is not typical of conditions in most consumers' homes. Rather, it is intended to simulate the heat load of a refrigerator in a 70° F ambient with typical usage by the consumer. But the test procedure does not specify test chamber humidity conditions. Sweat occurs on refrigerators when specific areas on the unit are below the local dew point. Higher relative humidity levels result in an increase of the dew point. Sweat has been addressed by installing anti-sweat heaters on mullions and other locations where sweat accumulates. Previous anti-sweat heaters operated at a fixed amount of power, and turned on or off regardless

[1] 10 CFR 430.27(l).

[2] 10 CFR 430.27(g).

[3] General Electric Corporation (''GE'') and Whirlpool Corporation (''Whirlpool'') each filed Petitions for Waiver to establish a new methodology to calculate the energy consumption of a refrigerator-freezer when such a product contains adaptive anti-sweat heaters.

[4] 10 CFR 430.27(m).

[5] 10 CFR Part 430, Subpart B, App. A1.

of the humidity or amount of sweat on the unit.

Test Procedure Modifications From the Electrolux Interim Waiver

The adaptive anti-sweat system in the four Electrolux models referenced above are identical or similar to those addressed by the March 3, 2009 Interim Waiver. Allowing Electrolux to test these models using the Alternate Test Procedure specified in the Interim Waiver would ensure Electrolux energy efficiency tests take into account advances in sensing technology, *i.e.,* sensors that detect temperature and humidity conditions and interact with controls to vary the effective wattage of anti-sweat heaters to evaporate excess sweat consistent with the same method DOE has approved in connection with the Electrolux Interim Waiver and waivers granted to other manufacturers.[6] The objective of the proposed approach is to simulate the average energy used by the adaptive anti-sweat heaters as activated in typical consumer households across the United States.

Conclusion

Electrolux urges the Assistant Secretary to expand the Interim Waiver granted to Electrolux and to revise the Electrolux Petition for Waiver to allow Electrolux to test for its new refrigerator models, identified by Model numbers EI28BS56IW/B/S, EW28BS71IW/B/S, EI23BC56IW/B/S, EW23BC71IW/B/S, as noted above.

Primarily affected persons in the refrigerator-freezer category include BSH Home Appliances Corp. (Bosch-Siemens Hausgerate GmbH), Equator, Fisher & Paykel Appliances Inc., GE Appliances, Gorenje USA, Haier America Trading, L.L.C., Heartland Appliances, Inc., Kelon Electrical Holdings Co., Ltd., Liebherr Hausgerate, LG Electronics Inc., Northland Corporation, Samsung Electronics America, Inc., Sanyo Fisher Company, Sears, Sub-Zero Freezer Company, U-Line, Viking Range, W. C. Wood Company, and Whirlpool Corporation.

The Association of Home Appliance Manufacturers is also generally interested in energy efficiency requirements for appliances, including freezers. Electrolux will notify all these entities as required by the Department's rules and provide them with a version of this Petition.

Sincerely,

Sheila A. Millar.

Enclosure.

cc: Michael Raymond, DOE Office of Energy Efficiency and Renewable Energy
Michael K. Kido, Office of the DOE Assistant General Counsel for Loan Program and Renewable Energy

[FR Doc. E9–12912 Filed 6–3–09; 8:45 am]

BILLING CODE 6450–01–P

[6] *Publication of the Petition for Waiver of General Electric Company From the Department of Energy Refrigerator and Refrigerator/Freezer Test Procedures,* 72 FR 19,189 (Apr. 17, 2007); *Publication of the Petition for Waiver of Whirlpool Corporation From the Department of Energy Refrigerator and Refrigerator/Freezer Test Procedures,* 73 FR 39,684 (July 10, 2008).

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8913–2]

Virginia Commonwealth Prohibition on Discharges of Vessel Sewage; Receipt of Application and Tentative Determination

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of tentative determination.

SUMMARY: Notice is hereby given that an application dated December 8, 2008 was received from the Commonwealth of Virginia on December 11, 2008 requesting a determination by the Regional Administrator, EPA Region III, pursuant to section 312(f) of Public Law 92–500, as amended by Public Law 95–217 and Public Law 100–4 (the Clean Water Act), that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for the navigable waters of the Broad Creek, Jackson Creek and Fishing Bay Watersheds in Middlesex County, VA.

DATES: Comments and views regarding this application and EPA's tentative determination may be filed on or before July 6, 2009.

ADDRESSES: Comments or requests for information or copies of the State's application should be addressed to Robert Runowski, EPA Region III, Office of State and Watershed Partnerships, 1650 Arch Street, Philadelphia, PA 19103.

FOR FURTHER INFORMATION CONTACT: Robert Runowski, EPA Region III, Office of State and Watershed Partnerships, 1650 Arch Street, Philadelphia, PA 19103. Telephone: (215) 814–5385. Fax: (215) 814–2301. E-mail: *runowski.bob@epa.gov.*

SUPPLEMENTARY INFORMATION: This application was made by the Virginia Secretary of Natural Resources on behalf of the Commonwealth of Virginia Department of Environmental Quality (VDEQ). Upon receipt of an affirmative determination in response to this application, VDEQ would completely prohibit the discharge of sewage, whether treated or not, from any vessel in Broad Creek, Jackson Creek and Fishing Bay watersheds in accordance with section 312(f)(3) of the Clean Water Act and 40 CFR 140.4(a).

Section 312(f)(3) states: After the effective date of the initial standards and regulations promulgated under this section, if any State determines that the protection and enhancement of the quality of some or all of the waters within such States require greater environmental protection, such State may completely prohibit the discharge from all vessels of any sewage, whether treated or not, into such waters, except that no such prohibition shall apply until the Administrator determines that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for such water to which such prohibition would apply.

The Broad Creek, Jackson Creek and Fishing Bay watersheds are located in the eastern-most part of Middlesex County (*i.e.,* Deltaville), Virginia. The Broad Creek discharges north to the Rappahannock River near its confluence to the Chesapeake Bay. Jackson Creek discharges east into the mouth of the Piankatank River, and Fishing Bay discharges directly south to the Piankatank River, which discharges to the east to the Chesapeake Bay. These watersheds, including Porpoise Cove and Moore Creek, encompass an area of land and water of approximately 3.4 sq mi with nearly 18 miles of shoreline. All these water bodies are oligohaline and subject to the action of tides. The majority of the waters outside the bays are shallow with maintained channel depths of six to 10 feet, although some of the areas may not exceed four (4) feet in depth.

Many people enjoy the Broad Creek, Jackson Creek and Fishing Bay watersheds for a variety of activities, including boating, fishing, crabbing, water skiing, and swimming. The shoreline surrounding these three watersheds includes 1,583 housing units (824 year round), public access areas, thirty two (32) marinas, boat launch facilities, and waterside restaurants. Both recreational and commercial large and small boats, personal watercraft, canoes, kayaks, water skiers, and swimmers enjoy these rivers for their recreational benefits. The full time resident population of 1,716 people (increasing to several thousand during the summer months) use these adjacent areas for boating, fishing, and