

**DEPARTMENT OF ENERGY****Office of Energy Efficiency and Renewable Energy**

[Case No. CR-001]

**Notice of Petition for Waiver of Hill PHOENIX From the Department of Energy Commercial Refrigerator, Freezer and Refrigerator-Freezer Test Procedure**

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

**ACTION:** Notice of petition for waiver and request for comments.

**SUMMARY:** This notice announces receipt of and publishes the Hill PHOENIX Inc. (Hill PHOENIX) petition for waiver (hereafter, "petition") from the U.S. Department of Energy (DOE) test procedure for determining the energy consumption of commercial refrigerators, freezers and refrigerator-freezers. Through this notice, DOE also solicits comments with respect to the Hill PHOENIX petition.

**DATES:** DOE will accept comments, data, and information with respect to the Hill PHOENIX petition until March 7, 2012.

**ADDRESSES:** You may submit comments, identified by case number CR-001, by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Email:*

*AS\_Waiver\_Requests@ee.doe.gov*. Include "Case No. CR-001" in the subject line of the message.

- *Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE-2/1000 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, you may visit the U.S. Department of Energy, 950 L'Enfant Plaza SW., Washington, DC, 20024; (202) 586-2945, between 9 a.m. and 4 p.m., Monday through Friday, except on Federal holidays. Available documents include the following items: (1) This notice; (2) public comments received; (3) the petition for waiver; and (4) DOE rulemakings and waivers regarding commercial refrigeration equipment.

Please call Ms. Brenda Edwards at the above telephone number for additional information.

**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. Email: *AS\_Waiver\_Requests@ee.doe.gov*. Ms. Elizabeth Kohl, 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) 586-7796. Email: *mailto:Elizabeth.Kohl@hq.doe.gov*.

**SUPPLEMENTARY INFORMATION:****I. Background and Authority**

Title III, Part B of the Energy Policy and Conservation Act of 1975 (EPCA), Public Law 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. 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)). Part C of Title III provides for a similar energy efficiency program titled "Certain Industrial Equipment," which includes commercial refrigerators, freezers and refrigerator-freezers and other types of commercial equipment.<sup>1</sup> (42 U.S.C. 6311-6317)

Section 343(a)(6)(C) of EPCA (42 U.S.C. 6314(a)(6)(C)) directs DOE to develop test procedures to establish the appropriate rating temperatures for products for which standards will be established under section 342(c)(4), *i.e.*, (1) ice-cream freezers; (2) commercial refrigerators, freezers, and refrigerator-freezers with a self-contained condensing unit without doors; and (3) commercial refrigerators, freezers, and refrigerator-freezers with a remote condensing unit. Other provisions of section 343(a)(6) provide DOE with additional authority to establish and amend test procedures for commercial refrigeration equipment. On December

8, 2006, DOE published a final rule adopting test procedures for commercial refrigeration equipment, effective January 8, 2007. 71 FR 71340. Title 10 of the Code of Federal Regulations (10 CFR) 431.64 directs manufacturers of commercial refrigerators, freezers and refrigerator-freezers to use Air-Conditioning and Refrigeration Institute (ARI) Standard 1200-2006, "Performance Rating of Commercial Refrigerated Display Merchandisers and Storage Cabinets" when measuring the energy consumption of those products. DOE established energy conservation standards for certain classes of commercial refrigerators effective January 1, 2012 (74 FR 1092, Jan. 9, 2009). The basic models included in Hill PHOENIX's petition are subject to the applicable standards established in that rulemaking and are therefore required to be tested and rated according to the prescribed DOE test procedure, AHRI 1200-2006, as of January 1, 2012.

The regulations set forth in 10 CFR part 431.401 contain provisions that enable a person to seek a waiver from the test procedure requirements for covered products. The Assistant Secretary for Energy Efficiency and Renewable Energy (the Assistant Secretary) will grant a waiver 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 431.401(f)(4). 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 430.401(b)(1)(iii). The Assistant Secretary may grant the waiver subject to conditions, including adherence to alternate test procedures. 10 CFR 431.401(f)(4). Waivers remain in effect pursuant to the provisions of 10 CFR 430.401(g).

**II. Petition for Waiver**

On December 1, 2011, Hill PHOENIX submitted a petition for waiver from the DOE test procedure applicable to commercial refrigerators, freezers and refrigerator-freezers set forth in 10 CFR 431.64. Hill PHOENIX requested the waiver for its refrigerated display merchandisers designed to display only non-perishable products refrigerated for

<sup>1</sup> For editorial reasons, upon codification in the U.S. Code, Parts B and C were re-designated as Parts A and A-1, respectively.

customer convenience. This equipment is classified as commercial refrigerator, freezer, and refrigerator-freezer with a self-contained condensing unit and without doors (category viii of the applicable test procedure requirement set forth in the table at 10 CFR 431.64(b)(2)). The applicable test procedure for this equipment is ARI 1200–2006. Manufacturers are directed to use this test procedure pursuant to 10 CFR 431.64.

Hill PHOENIX seeks a waiver from the applicable test procedures under 10 CFR 431.64 on the grounds that its refrigerated display merchandisers contain design characteristics that prevent testing according to the current DOE test procedure. Specifically, Hill PHOENIX asserts that the merchandisers are not able to operate at the specified integrated average temperature of 38 °F. Consequently, Hill PHOENIX requested that DOE grant a waiver from the applicable test procedures, allowing the specified products to be tested at 50 °F, which Hill PHOENIX asserts is the lowest product application temperature.

The following basic models are included in the petition:

FBI FT FEA NFD NFO NFT  
OB SF

DOE makes decisions on waivers for only those models specifically set out in the petition, not future models that may be manufactured by the petitioner. Hill PHOENIX may submit a petition for waiver for additional models of commercial refrigerators, freezers and refrigerator-freezers for which it seeks a waiver from the DOE test procedure. In addition, grant of a waiver does not release a petitioner from the certification requirements set forth at 10 CFR part 429.

#### IV. Summary and Request for Comments

Through today's notice, DOE announces receipt of Hill PHOENIX's petition for waiver from the test procedures that apply to commercial refrigerators, freezers and refrigerator-freezers. DOE is publishing Hill PHOENIX's petition for waiver in its entirety pursuant to 10 CFR 430.401(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 431.401(d), any person submitting written comments must also send a copy of such comments to the petitioner. The contact information for the petitioner is: Arnie Stephens,

Research and Development Manager,  
Barker Specialty Products by Hill

PHOENIX, 703 Franklin Street, Keosauqua, IA 52565. All submissions received must include the case number for this proceeding, CR–001. 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: 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 January 30, 2012.

**Kathleen B. Hogan,**

*Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy.*

December 1, 2011

Assistant Secretary for Energy Efficiency and Renewable Energy U.S.  
Department of Energy

To Whom It May Concern:

Subject: Petition for Test Waiver as described in 10 CFR 431.401

Barker Specialty Products by Hill PHOENIX has several base models of refrigerated display merchandisers that operate significantly higher than the specified application temperatures for rating merchandisers in accordance with 10 CFR 431.62 and 431.64. These merchandisers are specifically designed and produced to only display non-perishable products that are refrigerated for customer convenience. The product displayed in these merchandisers are floral, wine and bulk produce that is not required to be refrigerated under any current food safety regulation. These products are slightly chilled primarily for customer convenience. There is some extension of product life by displaying it in a chilled space but it is not a requirement.

These merchandisers are designed specifically for these higher application temperatures. Many of the components in the merchandisers will not perform adequately at lower application temperatures. For example, the evaporator coils on these cases are smaller and designed to operate above

freezing, the insulation in the case is thinner than what would be found in a medium temperature (38 °F) application merchandiser, and the airflow is matched for the particular application. In many instances, the merchandisers do not have the capacity to meet the 38 °F product temperature requirements. Requiring these merchandisers to achieve a 38 °F integrated product temperature requires significant design changes to the merchandiser and results in a more expensive product. In addition, testing the merchandiser at the medium temperature rating is extremely unrepresentative of its true energy consumption characteristics as to provide materially inaccurate comparative data.

This petition is to waive the requirement to test the merchandisers at the rating temperature for medium temperature of an integrated product temperature of 38 °F. The remaining test procedures will be followed and the energy usage and limits will be calculated based on current specifications.

1. The following basic models are included in this petition:

- a. FBI
- b. FT
- c. FEA
- d. NFD
- e. NFO
- f. NFT
- g. OB
- h. SF

2. These merchandisers are utilized only for non-perishable merchandise and operate at a higher product temperature than 38 °F.

3. The test procedure requires these models to be tested at the medium temperature application rating of 38 °F. This test is not representative of how the merchandisers are utilized in application.

4. Testing the merchandisers at this application rating increases the design and production costs of the case and is unrepresentative of its true energy consumption.

5. This petition is to waive the energy usage tests being conducted at the medium temperature application rating of 38 °F. These merchandisers would be tested and the energy usage recorded in accordance with the remaining test procedures, however the application temperature rating would be an integrated average temperature of 50°F.

6. The case models above are designed and produced only for these higher application temperatures.

7. While there are a limited number of other manufacturers of similar merchandisers, it is not known if the

design is specific to these higher temperature applications.

Very Respectfully,  
Arnie Stephens  
*Research and Development Manager*

[FR Doc. 2012-2563 Filed 2-3-12; 8:45 am]

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## DEPARTMENT OF ENERGY

### Office of Energy Efficiency and Renewable Energy

[Case No. RF-020]

#### Decision and Order Granting a Waiver to Sub-Zero From the Department of Energy Residential Refrigerator and Refrigerator-Freezer Test Procedures

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

**ACTION:** Decision and Order.

**SUMMARY:** The U.S. Department of Energy (DOE) gives notice of the decision and order (Case No. RF-020) that grants to Sub-Zero, Inc. (Sub-Zero) a waiver from the DOE electric refrigerator and refrigerator-freezer test procedures for determining the energy consumption of residential refrigerator-freezers for the basic models set forth in its petition for waiver. Under today's decision and order, Sub-Zero shall be required to test and rate its refrigerator-freezers with dual compressors using an alternate test procedure that takes this technology into account when measuring energy consumption.

**DATES:** This Decision and Order is effective February 6, 2012.

**FOR FURTHER INFORMATION CONTACT:** Mr. Bryan Berringer, U.S. Department of Energy, Building Technologies Program, Mailstop EE-2], 1000 Independence Avenue SW., Washington, DC 20585-0121. Telephone: (202) 586-0371, Email: [Bryan.Berringer@ee.doe.gov](mailto:Bryan.Berringer@ee.doe.gov). Ms. Elizabeth Kohl, U.S. Department of Energy, Office of the General Counsel, Mail Stop GC-71, 1000 Independence Avenue SW., Washington, DC 20585-0103, (202) 586-7796, Email: [Elizabeth.Kohl@hq.doe.gov](mailto:Elizabeth.Kohl@hq.doe.gov).

**SUPPLEMENTARY INFORMATION:** In accordance with Title 10 of the Code of Federal Regulations (10 CFR 430.27(l)), DOE gives notice of the issuance of its decision and order as set forth below. The decision and order grants Sub-Zero a waiver from the applicable residential refrigerator and refrigerator-freezer test procedures found in 10 CFR part 430, subpart B, appendix A1 for certain basic models of refrigerator-freezers with dual compressors, provided that Sub-Zero

tests and rates such products using the alternate test procedure described in this notice. Today's decision prohibits Sub-Zero from making representations concerning the energy efficiency of these products unless the product has been tested consistent with the provisions and restrictions in the alternate test procedure set forth in the decision and order below, and the representations fairly disclose the test results.

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

Issued in Washington, DC, on January 30, 2012.

**Kathleen B. Hogan,**

*Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy.*

#### Decision and Order

*In the Matter of:* Sub-Zero, Inc. (Case No. RF-020)

##### I. Background and Authority

Title III, Part B of the Energy Policy and Conservation Act of 1975 (EPCA), Pub. L. 94-163 (42 U.S.C. 6291-6309, as codified) established the Energy Conservation Program for Consumer Products Other Than Automobiles, a program covering most major household appliances, which includes the residential electric refrigerators and refrigerator-freezers that are the focus of this notice.<sup>1</sup> Part B includes definitions, test procedures, labeling provisions, energy conservation standards, and the authority to require information and reports from manufacturers. Further, Part B authorizes the Secretary of Energy to prescribe test procedures that are reasonably designed to produce results which measure energy efficiency, energy use, or estimated operating costs, and that are not unduly burdensome to conduct. (42 U.S.C. 6293(b)(3)) The test procedure for residential electric refrigerators and refrigerator-freezers is set forth in 10 CFR part 430, subpart B, appendix A1.

DOE's regulations for covered products contain provisions allowing a person to seek a waiver from the test procedure requirements for a particular basic model for covered consumer products when (1) the petitioner's basic model for which the petition for waiver was submitted contains one or more design characteristics that prevent testing according to the prescribed test procedure, or (2) when prescribed test

procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inaccurate comparative data. 10 CFR 430.27(a)(1). Petitioners must include in their petition any alternate test procedures known to the petitioner to evaluate the basic model in a manner representative of its energy consumption characteristics. 10 CFR 430.27(b)(1)(iii).

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

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

##### II. Sub-Zero's Petition for Waiver: Assertions and Determinations

On September 6, 2011, Sub-Zero submitted a petition for waiver and application for interim waiver (petition) from the test procedure applicable to residential electric refrigerators and refrigerator-freezers set forth in 10 CFR Part 430, subpart B, appendix A1. Sub-Zero is designing new refrigerator-freezers that incorporate dual compressors. In its petition, Sub-Zero seeks a waiver from the existing DOE test procedure applicable to refrigerators and refrigerator-freezers under 10 CFR Part 430 for Sub-Zero's dual compressor products. Sub-Zero states that the test procedure was designed to test independent, sealed systems while Sub-Zero's dual compressor products have shared systems. Sub-Zero further states that it may not be possible to use the DOE test procedure for these products, or that use of the DOE test procedure would provide inaccurate results. In its petition, Sub-Zero set forth an alternate test procedure developed in conjunction with an independent test laboratory. DOE did not receive any comments on the Sub-Zero petition.

The DOE test procedure for dual compressor systems assumes

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