

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

[Case No. DW-005]

Energy Conservation Program for Consumer Products; Decision and Order Granting a Waiver to BSH Corporation From the Department of Energy Residential Dishwasher Test Procedure

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. DW-005) that grants to BSH Corporation (BSH) a waiver from the DOE dishwasher test procedure for certain basic models containing integrated or built-in water softeners. Under today's decision and order, BSH shall be required to test and rate its dishwashers with integrated water softeners using an alternate test procedure that takes this technology into account when measuring energy and water consumption.

DATES: This Decision and Order is effective June 29, 2011.

FOR FURTHER INFORMATION CONTACT: Dr. Michael G. Raymond, U.S. Department of Energy, Building Technologies Program, Mail Stop EE-2J, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585-0121. Telephone: (202) 586-9611. E-mail: Michael.Raymond@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. E-mail: 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 BSH a waiver from the applicable residential dishwasher test procedure in 10 CFR part 430, subpart B, appendix C for certain basic models of dishwashers with built-in or integrated water softeners, provided that BSH tests and rates such products using the alternate test procedure described in this notice. Today's decision prohibits BSH from making representations concerning the energy efficiency of these products unless the product has been tested consistent with the provisions of 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 June 21, 2011.

Kathleen Hogan,

Deputy Assistant Secretary for Energy Efficiency, Office of Technology Development, Energy Efficiency and Renewable Energy.

Decision and Order

In the Matter of: BSH Corporation (Case No. DW-005).

I. Background and Authority

Title III of the Energy Policy and Conservation Act (EPCA) sets forth a variety of provisions concerning energy efficiency. Part B of Title III provides for the "Energy Conservation Program for Consumer Products Other Than Automobiles."¹ 42 U.S.C. 6291-6309. 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 that 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 dishwashers, the subject of today's notice, is contained in 10 CFR part 430, subpart B, appendix C.

DOE's regulations for covered products contain provisions allowing a person to seek a waiver for a particular basic model from the test procedure requirements 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. BSH's Petition for Waiver: Assertions and Determinations

On February 4, 2011, BSH filed a petition for waiver from the test procedure applicable to residential dishwashers set forth in 10 CFR part 430, subpart B, appendix C. The products covered by the petition employ integrated or built-in water softeners. BSH asserted that the DOE test procedure does not account for the energy and water use incurred by water softener regeneration. BSH's petition was published in the **Federal Register** on March 30, 2011. 76 FR 17639. DOE received one comment, from Whirlpool Corporation (Whirlpool), on the BSH petition, discussed below.

BSH claims that water softeners can prevent consumer behaviors that consume additional energy and water. BSH asserts that a dishwasher equipped with a water softener will minimize pre-rinsing and rewashing, and that consumers will have less reason to run their dishwasher through a clean-up cycle periodically. Further, BSH claims that the amount of water consumed by the regeneration operation of a water softener in a dishwasher is very small, but that it varies significantly depending on the adjustment of the softener.

The regeneration operation takes place infrequently, and the frequency is related to the level of water hardness. According to Whirlpool's petition for waiver, which DOE granted October 7, 2010 (75 FR 62127), including water use attributable to the regeneration operation in the measurement of water consumption during an individual energy test cycle could overstate water

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

use by as much as 12 percent, and energy use by as much as 6 percent. In view of the small amount of water consumed during softener regeneration and the relative infrequency of the regeneration operation, BSH requests approval to measure water consumption of its dishwashers equipped with water softeners without including the water consumed by the dishwasher during softener regeneration. This is the approach used in European Standard EN 50242, "Electric Dishwashers for Household Use—Methods for Measuring the Performance" (EN 50242), which BSH recommends.

The current DOE test procedure registers water consumption from softener regeneration only in a small, variable fraction of test runs, producing variable results. As a result, and using the information provided by BSH, DOE has determined that test results may provide materially inaccurate comparative data. DOE has considered EN 50242 as an alternate test procedure. This standard excludes water use due to softener regeneration from its water use efficiency measure. Use of EN 50242 would provide repeatable results, but would underestimate the energy and water use of these models. DOE notes that if water consumption of a regeneration operation is to be apportioned across all cycles of operation, then manufacturers would need to make calculations regarding average water hardness and average water consumptions due to regeneration operations that are not currently provided for or allowed by the test procedure. In its petition, BSH estimated that, on average, 23.8 gallons/year of water and 4 kWh/year would be consumed in softener regeneration. These values are based on internal testing conducted by BSH, and are similar to the values submitted by Whirlpool in its petition.

Whirlpool's comment pointed out the BSH softener regeneration measurement of 5.0 liters of water per regeneration, which is approximately double the 2.4 liters of water used by a Whirlpool dishwasher per regeneration. The total energy and water use claimed by BSH is nearly equal to that of Whirlpool because BSH included a 50% deduction in energy and water based on an estimate that at least 50% of homes already have a water softening system. BSH submitted no data to support this claim. In the alternate test procedure DOE granted in July 2010 in response to BSH's application for interim waiver, DOE added the constant values of 23 gallons/year of water and 4 kWh/year to the energy consumption measured by appendix C, including the 50%

deduction. To maintain the same methodology used in the Whirlpool waiver, DOE is not including the 50% deduction in its final waiver. Therefore, in this waiver the constant values added are 47.6 gallons per year for water consumption and 8.0 kWh per year for energy consumption.

III. Consultations With Other Agencies

DOE consulted with the Federal Trade Commission (FTC) staff concerning the BSH petition for waiver. The FTC staff did not have any objections to granting a waiver to BSH.

IV. Conclusion

After careful consideration of all the material that was submitted by BSH, the comment submitted by GE, and consultation with the FTC staff, it is ordered that:

(1) The petition for waiver submitted by the BSH Corporation (Case No. DW-005) is hereby granted as set forth in the paragraphs below.

(2) BSH shall not be required to test or rate the following models on the basis of the current test procedures contained in 10 CFR part 430, subpart B, appendix C. Instead, it shall be required to test and rate such products according to the alternate test procedure as set forth in paragraph (3) below:

Bosch brand:

- SHX68E05UC;
- SHE68E05UC;
- SHX68E15UC;
- SHE68E15UC;
- SHV68E13UC;
- SGE63E0#UC;
- SHX58E15UC;
- SHV58E13UC;
- SHX58E2#UC.

Gaggenau brand:

- DF261760;
- DF260760.

Kenmore brand:

- 630.13993.01#;
- 630.13023.01#;
- 630.13003.01#.

(3) BSH shall be required to test the products listed in paragraph (2) above according to the test procedures for dishwashers prescribed by DOE at 10 CFR part 430, appendix C, except that, for the BSH products listed in paragraph (2) only:

In Section 4.1, *Test cycle*, add at the end, "The start of the DOE test should begin on a cycle immediately following a regeneration cycle."

In Section 4.3, the water energy consumption, *W* or *Wg*, is calculated based on the water consumption as set forth below:

§ 4.3 *Water consumption*. Measure the water consumption, *V*, expressed as the number of gallons of water delivered to

the machine during the entire test cycle, using a water meter as specified in section 3.3 of this Appendix. Where the regeneration of the water softener depends on demand and water hardness, and does not take place every cycle, BSH shall measure the water consumption of dishwashers having water softeners without including the water consumed by the dishwasher during softener regeneration. If a regeneration operation takes place within the test, the water consumed by the regeneration operation shall be disregarded when declaring water and energy consumption. Constant values of 47.6 gallons/year of water and 8 kWh/year of energy shall be added to the values measured by appendix C.

(4) Representations. BSH may make representations about the energy use of its dishwashers containing integrated or built-in water softeners for compliance, marketing, or other purposes only to the extent that such products have been tested in accordance with the provisions outlined above and such representations fairly disclose the results of such testing.

(5) This waiver shall remain in effect consistent with the provisions of 10 CFR 430.27(m).

(6) This waiver is granted for only those models specifically set out in BSH's petition, not future models that may be manufactured by BSH. BSH may submit a new or amended petition for waiver and request for grant of interim waiver, as appropriate, for additional dishwasher models for which it seeks a waiver from the DOE test procedure. Grant of this waiver also does not release BSH from the certification requirements set forth at 10 CFR part 429.

(7) This waiver is issued on the condition that the statements, representations, and documentary materials provided by the petitioner are valid. DOE may revoke or modify this waiver at any time if it determines the factual basis underlying the petition for waiver is incorrect, or the results from the alternate test procedure are unrepresentative of the basic models' true energy consumption characteristics.

Issued in Washington, DC, on June 21, 2011.

Kathleen Hogan,

Deputy Assistant Secretary for Energy Efficiency, Office of Technology Development, Energy Efficiency and Renewable Energy.

[FR Doc. 2011-16301 Filed 6-28-11; 8:45 am]

BILLING CODE 6450-01-P