

April 1, 2003
DECISION AND ORDER
OFFICE OF HEARINGS AND APPEALS

Application for Exception

Case Name: EMI Corporation

Date of Filing: January 23, 2003

Case Number: TEE-0006

This Decision and Order considers an Application for Exception filed by EMI Corporation (EMI) seeking relief from the provisions of 10 C.F.R. Part 430, Energy Efficiency Program for Consumer Products. In its exception request, EMI seeks relief that would allow it to produce and sell its MH series split ductless multiple zone non-defrosting heat pumps without conducting a low temperature test mandated by 10 C.F.R. Part 430. ^{1/} As set forth in this Decision and Order, we have concluded that EMI's Application for Exception should be granted.

I. Background

A. Regulatory Standards

The Energy Policy and Conservation Act, as amended, 42 U.S.C. §§ 6291-6317 (EPCA), set energy efficiency standards which heat pumps are required to meet and mandated that the Department of Energy (DOE) to establish test procedures by which manufacturers can certify that their heat pump products met the required energy efficiency standards. ^{2/} The DOE testing procedures for heat pumps are set out at 10 C.F.R. Part 430. Pertinent to the present case, heat pumps must be tested to determine their energy consumption using the methods set forth in 10 C.F.R. § 430.23.

Section 504 of the Department of Energy Organization Act authorizes the DOE Office of Hearings and Appeals (OHA) to make adjustments to any rule or order issued under the Energy Policy and Conservation Act, consistent with the other purposes of the Act, if necessary to prevent special hardship, inequity, or

^{1/} A multiple zone split-system heat pump is used is used to provide heat and/or air-conditioning to buildings that do not possess a central duct system in which to circulate air throughout. The MH series heat pump system is referred to as multiple zone because it can cool air in four different areas of a building.

^{2/} The EPCA requires that the Seasonal Energy Efficiency Ratio (SEER) for split system heat pumps not be less than 10.0 and that the Heating Seasonal Performance Factor (HSPF) be not less than 6.8 for split systems. 42 U.S.C. § 6295(d)(1)(A), (d)(2)(A).

unfair distribution of burdens. 42 U.S.C. § 7194(a). Accordingly, persons subject to the various product standards of Part 430 may apply to the OHA for exception relief. 10 C.F.R. Part 1003 Subpart C.

B. Application for Exception

EMI is a manufacturer of ductless multiple zone split-system heat pumps, the MH series heat pumps. The MH series of heat pumps are produced in six models each with a different range of cooling capacity. ^{3/} EMI requests that it be permanently excepted from the Part 430 requirement that its MH series heat pumps be tested under low temperature test conditions. Part 430 specifies that, as part of the energy efficiency testing for heat pumps, a heat pump must be tested at 17 degrees to obtain data to be used to calculate the heat pump's HSPF. ^{4/} See 10 C.F.R. Part 430, Appendix M §§ 3.2.1.4 and 5.2. The MH series heat pumps are designed only to operate at temperatures of 35 degrees and above and thus cannot be tested using the Part 430 test procedures for low temperature test conditions. In further support of its application, EMI believes that it is the only manufacturer in the United States that produces ductless multiple zone heat pumps. EMI's sales of its MH series heat pumps constitute approximately 10 percent of its total sales.

II. Analysis

We have carefully considered EMI's Application for Exception, and concluded that the firm's exception request should be approved in part. An official at the DOE's Office of Energy Efficiency and Renewable Energy confirmed that the MH series heat pumps cannot be tested using the methodology prescribed in 10 C.F.R. Part 430. At temperatures of 35 degrees and below a MH heat pump shuts down. Without the low temperature test a heat pump's HSPF cannot be calculated.

In addition, to require the MH heat pumps to comply with the low temperature testing procedures could limit the manufacture of ductless multiple zone heat pumps in the United States. EMI would be severely affected as would owners of homes and business without central ducts. We conclude that an undue burden would fall upon owners of homes and commercial buildings without central ducts or who otherwise need multiple zone ductless heating or cooling. Under the unique circumstances of this case, the inability of the MH series heat pumps to be tested at temperatures below 35 degrees and the burden that would be placed on a small class of purchasers of ductless cooling heat pumps, we have concluded that EMI should be granted an exception from complying with the low temperature test of Part 430. See *Viking Range Corp.*, 28 DOE ¶ 81,002 (2000).

^{3/} In 1992, EMI applied for and was granted a waiver from "Central Air Conditioner Test Procedures" for its MH series heat pumps by the DOE's Office of Conservation and Renewable Energy. 57 Fed. Reg. 53735 (November 12, 1992). The Decision and Order granting the waiver also specified that EMI was required to state in all printed material related to the MH series heat pumps that no HSPF value has been measured for the heat pumps. 57 Fed. Reg. at 53736.

^{4/} All temperatures referenced in this decision are measured using the Fahrenheit (F) scale.

EMI has requested an indefinite exception from the Part 430 low temperature testing procedures for its MH series heat pumps. We believe that a 5 year exception from the date of this decision is more appropriate. If EMI continues to manufacture the MH series heat pumps after this 5 year exception it may apply to the Office of Hearings and Appeals for another exception. As part of this exception from the Part 430 low temperature test requirement, we will require that EMI state in all printed material containing information concerning the MH series heat pumps, such as catalogues and advertisements, that no HSPF value can be measured for these heat pumps since they cannot be operated at temperatures below 35 degrees.

EMI shall therefore be granted relief from the low temperature testing requirement for its MH series ductless, multiple zone heat pumps under 10 C.F.R. Part 430 for a period of 5 years from the date of this decision.

It Is Therefore Ordered That:

(1) The Application for Exception filed by EMI Corporation on January 23, 2003, is hereby granted as set forth in Paragraph (2) below.

(2) Notwithstanding the requirements of 10 C.F.R. Part 430, EMI Corporation may sell its MH series of ductless multiple zone heat pumps without conducting the required Part 430 low temperature test for a period of 5 years from the date of this decision.

(3) EMI is required to state in all printed material containing information concerning the MH series heat pumps, such as catalogues and advertisements, that no HSPF value can be measured for these heat pumps since they cannot be operated at temperatures below 35 degrees Fahrenheit.

(4) This Exception is based upon the presumed validity of statements submitted by the applicant. This Exception may be revoked or modified at any time upon a determination that the factual basis underlying the Application for Exception is incorrect.

(5) Any person aggrieved by the approval of exception relief in this Decision and Order may file an appeal with the Office of Hearings and Appeals in accordance with 10 C.F.R. Part 1003, Subpart C.

George B. Breznay
Director
Office of Hearings and Appeals

Date: April 1, 2003

