



[6450-01-P]

DEPARTMENT OF ENERGY

[Case No. RF-044]

Notice of Decision and Order Granting a Waiver to New Shunxiang Electrical Appliance Co., Ltd., from the Department of Energy Refrigerator, Refrigerator-Freezer, Freezer Test Procedure

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

ACTION: Notice of decision and order.

SUMMARY: This notice announces a Decision and Order granting to New Shunxiang Electrical Appliance Co., Ltd., (“New Shunxiang”) a waiver from specified portions of the DOE test procedure for determining the energy consumption of specified refrigerator and refrigerator-freezer basic models. New Shunxiang is required to test and rate the specified basic model of its combination cooler refrigeration product in accordance with the alternate test procedure described in the Decision and Order.

DATES: This Decision and Order is effective on ***[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]***.

FOR FURTHER INFORMATION CONTACT:

Ms. Lucy deButts, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE-5B, 1000 Independence Avenue, SW., Washington, DC, 20585-0121. Telephone: (202) 287-1604. E-mail: AS_Waiver_Requests@ee.doe.gov.

Mr. Michael Kido, U.S. Department of Energy, Office of the General Counsel, Mail Stop GC-33,
Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585-0103.

Telephone: (202) 586-8145. E-mail: *Michael.Kido@hq.doe.gov*.

SUPPLEMENTARY INFORMATION:

On October 14, 2015, New Shunxiang submitted a petition for waiver from the applicable refrigerator and refrigerator-freezer test procedure set forth in 10 CFR part 430, subpart B, appendix A (“Appendix A”). On July 19, 2017, DOE published a notice announcing its receipt of the petition for waiver from New Shunxiang. 82 FR 33099. In that notice, DOE also solicited comments from interested parties on all aspects of the petition and specified an alternate test procedure that DOE was considering to require New Shunxiang to follow for testing and certifying the specific basic models for which New Shunxiang requested a waiver. *Id.* (New Shunxiang did not seek an interim waiver from the test procedure.) On **[INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**, DOE publishes the notice announcing a Decision and Order granting a waiver to New Shunxiang.

Issued in Washington, DC, on March 9, 2018.

Kathleen B. Hogan,

Deputy Assistant Secretary for Energy Efficiency,

Energy Efficiency and Renewable Energy.

Case #RF-044
Decision and Order

I. Background and Authority

The Energy Policy and Conservation Act of 1975 (“EPCA” or “the Act”),¹ Public Law 94-163 (42 U.S.C. 6291–6317, as codified), among other things, authorizes DOE to regulate the energy efficiency of a number of consumer products and industrial equipment. Title III, Part B² of EPCA established the Energy Conservation Program for Consumer Products Other Than Automobiles, a program that includes consumer refrigerators and refrigerator-freezers. (42 U.S.C. 6292(a)(1)) Under EPCA, DOE’s energy conservation program consists essentially of four parts: (1) testing, (2) labeling, (3) Federal energy conservation standards, and (4) certification and enforcement procedures.

The Federal testing requirements consist of test procedures that manufacturers of covered products must use as the basis for: (1) certifying to DOE that their products comply with the applicable energy conservation standards adopted pursuant to EPCA (42 U.S.C. 6295(s)), and (2) making representations about the efficiency of that product (42 U.S.C. 6293(c)). Similarly, DOE must use these test procedures to determine whether the product complies with relevant standards promulgated under EPCA. (42 U.S.C. 6295(s))

¹ All references to EPCA in this document refer to the statute as amended through the EPS Improvement Act of 2017, Public Law 115–115 (January 12, 2018).

² For editorial reasons, upon codification in the U.S. Code, Part B was redesignated as Part A.

Under 42 U.S.C. 6293, EPCA sets forth the criteria and procedures DOE is required to follow when prescribing or amending test procedures for covered products. EPCA requires that test procedures prescribed or amended under this section must be reasonably designed to produce test results which reflect the energy efficiency, energy use or estimated annual operating cost of a covered product during a representative average use cycle or period of use and requires that test procedures not be unduly burdensome to conduct. (42 U.S.C. 6293(b)(3)) The test procedure for consumer refrigerators and refrigerator-freezers is contained in 10 CFR part 430, subpart B, appendix A (“Appendix A”).

Under 10 CFR 430.27, any interested person may submit a petition for waiver from DOE’s test procedure requirements. DOE will grant a waiver from the test procedure requirements if DOE determines either that the basic model for which the waiver was requested contains a design characteristic that prevents testing of the basic model according to the prescribed test procedures, or that the prescribed test procedures evaluate the basic model in a manner so unrepresentative of its true energy or water consumption characteristics as to provide materially inaccurate comparative data. 10 CFR 430.27(f)(2). DOE may grant the waiver subject to conditions, including adherence to alternate test procedures. *Id.*

II. New Shunxiang’s Petition for Waiver: Assertions and Determinations

By email with attachment sent to DOE on October 14, 2015, New Shunxiang submitted a petition for waiver for its combination cooler refrigeration product basic model JG50-2D1. In its petition, New Shunxiang stated that it was unclear to it as to how this product would be classified under DOE’s regulations. As indicated in New Shunxiang’s submitted data, the product includes

both a cooler (which can reach temperatures down to 40.2 degrees Fahrenheit (°F)) and a refrigerator (which can reach temperatures down to 35 °F). Such a basic model is subject to the existing refrigerator energy conservation standards for the product class that would apply if the model did not include a cooler compartment.³

Subsequent to the submission of New Shunxiang's petition, DOE issued a final rule that, among other things, established test procedures for miscellaneous refrigeration products ("MREFs"), which includes coolers and combination cooler refrigeration products. 81 FR 46768 (July 18, 2016); 81 FR 49868 (July 29, 2016). The final rule also added new definitions to DOE's regulations, including for cooler-refrigerator and combination cooler refrigeration products, and amended the definition of refrigerator. 81 FR 46791-46792. Under the new and amended definitions, the basic model for which New Shunxiang seeks a waiver currently meets the definition of both combination cooler refrigeration product and refrigerator, and the basic model will continue to meet the definition of refrigerator until October 28, 2019, the compliance date of standards for MREFs, including combination cooler refrigeration products. *Id.*

The amended test procedure adopted in the final rule contains provisions specific to combination cooler refrigeration products, including a standardized cooler compartment temperature of 55 °F and a correction factor of 0.55. However, a prefatory note to Appendix A states that use of these provisions for representations of energy use for combination cooler refrigeration products is not required until the compliance date of any energy conservation

³ See the relevant 2011 guidance documents for consumer refrigerators and freezers available at https://www1.eere.energy.gov/buildings/appliance_standards/pdfs/hybridwinechiller_faq3_2011-02-10.pdf and https://www1.eere.energy.gov/buildings/appliance_standards/pdfs/hybridwinechiller_faq_2011-02-10.pdf.

standards for these products, October 28, 2019. 81 FR 46795. As explained in the July 2016 final rule, prior to the compliance date of the MREF energy conservation standards, combination cooler refrigeration products, including the product identified in New Shunxiang's petition, are subject to the energy conservation standards for refrigerators based on testing according to relevant test procedure waivers. 81 FR 46771.

DOE granted a waiver for products similar to those identified in New Shunxiang's petition for waiver—products combining a high-temperature compartment (a cooler) with a refrigerator—to Panasonic Appliances Refrigeration Systems Corporation of America (“PAPRSA”) in 2012 (under PAPRSA's previous corporate name, Sanyo E&E Corporation) (Case No. RF-022, 77 FR 49443 (August 16, 2012)), in 2013 (Case No. RF-031, 78 FR 57139; September 17, 2013)), and 2014 (Case No. RF-041, 79 FR 55769; September 17, 2014)). On October 4, 2012, DOE issued a notice of correction to its Decision and Order in Case No. RF-022 by incorporating a K-factor (correction factor) value of 0.85 when calculating the energy consumption of the affected models. 77 FR 60688. On January 26, 2016, due to issues with the equations detailed in the prior waiver decisions, DOE issued a proposed modification of its prior waivers and granted PAPRSA an interim waiver (81 FR 4270) under Case No. RF-043 to correct these known issues. In May 2017, DOE issued a Decision and Order granting PAPRSA with a waiver. See 82 FR 21209 (May 5, 2017). DOE also previously granted a similar waiver to Sub-Zero Group Inc. through an interim waiver (79 FR 55772; September 17, 2014) and a subsequent Decision and Order (80 FR 7854; February 12, 2015) under Case No. RF-040. More recently, DOE granted a similar waiver to AGA Marvel through an interim waiver (81 FR 41531; June 27, 2016) and a subsequent Decision and Order (82 FR 21211; May 5, 2017) under case RF-045.

While the recent amendments to Appendix A include provisions designed to test for compliance with the combination cooler refrigeration product standards, such compliance is not yet required. The basic models for which DOE most recently granted waivers to PAPRSA and AGA Marvel are still required to comply with the energy conservation standards for refrigerators. DOE determined in previous waivers that a correction factor of 0.85 is appropriate to account for the thermal load from loading warm items and from door openings in these products when subject to the current refrigerator energy conservation standards. Thus, the PAPRSA and AGA Marvel waivers effectively required that the manufacturers test the basic models using the test procedure specified for combination cooler refrigeration products,⁴ with one exception. The waivers required that the manufacturers apply a correction factor of 0.85 rather than the 0.55 established in the MREF test procedure for combination cooler refrigeration products.

DOE published a notice on July 19, 2017, announcing receipt of New Shunxiang's petition for waiver (hereafter "notice of petition for waiver"). 82 FR 33099. DOE received no comments in response to the notice of petition for waiver. DOE has determined that applying the DOE test procedure to the basic model of combination cooler refrigeration product listed in New Shunxiang's petition for waiver (*i.e.*, basic model JG50-2D1) would yield results unrepresentative of the efficiency of that product in use.

⁴ Waivers granted prior to the effective date of recent amendments to Appendix A specified a standardized temperature of 55 °F for cooler compartments. The more recent waivers do not specify this, as it is included in the amended test procedure as applied to combination cooler refrigeration products.

In this Decision and Order, DOE is requiring that New Shunxiang test and rate the combination cooler refrigeration product for which it has requested a waiver according to the alternate test procedure specified in this Decision and Order, which is identical to that proposed in the notice of petition for waiver.

In its petition, New Shunxiang sought a test procedure waiver for a single basic model. This Decision and Order is applicable only to the basic model listed and does not extend to any other basic models.

Consistent with 10 CFR 430.27(j), not later than 60 days after **[INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]** any manufacturer currently distributing in commerce in the United States a product employing a technology or characteristic that results in the same need for a waiver from the applicable test procedure must submit a petition for waiver.

Manufacturers not currently distributing such a product in commerce in the United States must petition for and be granted a waiver prior to the distribution in commerce of that product in the United States. Manufacturers may also submit a request for interim waiver pursuant to the requirements of 10 CFR 430.27.

III. Consultations with Other Agencies

In accordance with 10 CFR 430.27(f)(2), DOE consulted with the Federal Trade Commission (“FTC”) staff concerning the New Shunxiang petition for waiver. The FTC staff did not have any objections to granting a waiver to New Shunxiang.

IV. Order

After careful consideration of all the material that was submitted by New Shunxiang, DOE grants a waiver regarding the basic model specified below. Therefore, in accordance with 10 CFR 430.2, it is **ORDERED** that:

(1) New Shunxiang must test and rate the following New Shunxiang basic model as set forth in paragraph (2) of this section: JG50-2D1.

(2) The alternate test procedure for the basic model specified in paragraph (1) of this section is the test procedure for combination cooler refrigeration products specified in 10 CFR part 430, subpart B, appendix A, with the exception that New Shunxiang must calculate energy consumption using a correction factor (“K-factor”) of 0.85, instead of the prescribed 0.55.

(3) Representations. New Shunxiang must make representations about the energy use of the specified basic model identified in paragraph (1) of this section for compliance, marketing, or other purposes only to the extent that such product has been tested in accordance with the provisions outlined above and such representations fairly disclose the results of such testing in accordance with 10 CFR part 430, subpart B, appendix A and 10 CFR 429.14.

(4) This waiver shall remain in effect consistent with the provisions of 10 CFR 430.27. This Decision and Order will terminate on October 28, 2019, in conjunction with the compliance date of the recently published standards for MREFs. Testing to demonstrate compliance with those standards, and any other representations of energy use made on or after October 28, 2019, will require manufacturers to use the relevant test procedure for these products.

(5) 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 model's true energy consumption characteristics. 10 CFR 430.27(k)(1). Likewise, New Shunxiang may request that DOE rescind or modify the waiver if New Shunxiang discovers an error in the information provided to DOE as part of its petition, determines that the waiver is no longer needed, or for other appropriate reasons. 10 CFR 430.27(k)(2). If New Shunxiang believes that a test method other than that specified in this Decision and Order provides representative results and is less burdensome, New Shunxiang may submit a request for modification under 10 CFR 430.27(k)(2) that explains why DOE should adopt the test procedure submitted by New Shunxiang and addresses the reasons for DOE's modifications provided in this Decision and Order.

(6) Granting of this waiver does not release New Shunxiang from the certification requirements set forth at 10 CFR part 429.

Signed in Washington, DC, on March 9, 2018.

Kathleen B. Hogan, Ph.D.
Deputy Assistant Secretary for Energy Efficiency
Energy Efficiency and Renewable Energy
[FR Doc. 2018-05366 Filed: 3/15/2018 8:45 am; Publication Date: 3/16/2018]