



**DEPARTMENT OF ENERGY**

[Case Number 2021-005, EERE-2020-BT-WAV-0035]

**Energy Conservation Program: Extension of Waiver to Ningbo FOTILE Kitchen Ware Co. Ltd. from the Department of Energy Dishwashers Test Procedure**

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

**ACTION:** Notification of extension of waiver.

**SUMMARY:** The U.S. Department of Energy (“DOE”) is granting a waiver extension (Case No. 2021-005) to Ningbo FOTILE Kitchen Ware Co. Ltd (FOTILE) from specified portions of the DOE dishwashers test procedure for determining the energy and water consumption of the specified FOTILE dishwasher basic models. Under this extension, FOTILE is required to test and rate the specified basic models in accordance with the alternate test procedure specified in the waiver.

**DATES:** The Extension of Waiver is effective on **[INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**. The Extension of Waiver will terminate upon the compliance date of any future amendment to the test procedure for dishwasher located in 10 CFR part 430, subpart B, appendix C1 that addresses the issues presented in this waiver. At such time, FOTILE must use the relevant test procedure for the specified basic models of dishwashers for any testing to demonstrate compliance with standards, and any other representations of energy use.

**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. E-mail: [AS\\_Waiver\\_Requests@ee.doe.gov](mailto:AS_Waiver_Requests@ee.doe.gov).

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**SUPPLEMENTARY INFORMATION:** In accordance with title 10 of the Code of Federal Regulations (10 CFR 430.27(g)), DOE gives notification of the issuance of an Extension of Waiver as set forth below. The Extension of Waiver extends the waiver granted to FOTILE in a Decision and Order issued on May 17, 2021 (86 FR 26712, “May 2021 Decision and Order”) to include the FOTILE basic models specified in this waiver extension, as requested by FOTILE on May 18, 2021.<sup>1</sup> FOTILE must test and rate the specifically identified dishwasher basic models in accordance with the alternate test procedure specified in the May 2021 Decision and Order. FOTILE’s representations concerning the energy and water consumption of the specified basic models must be based on testing according to the provisions and restrictions in the alternate test procedure set forth in the May 2021 Decision and Order, and the representations must fairly disclose the test results. Distributors, retailers, and private labelers are held to the same requirements when making representations regarding the energy and water consumption of these products. (42 U.S.C. 6393(c))

DOE makes decisions on waiver extensions for only those basic models specifically set out in the request, not future models that may be manufactured by the petitioner. FOTILE may

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<sup>1</sup> FOTILE’s request is available at <https://www.regulations.gov/docket/EERE-2020-BT-WAV-0035-0005>. The specified basic models are: SD2F-P3 and SD2F-P3L.

submit a new or amended petition for waiver and request for grant of interim waiver, as appropriate, for additional basic models of dishwashers. Alternatively, if appropriate, FOTILE may request that DOE extend the scope of a waiver or interim waiver to include additional basic models employing the same technology as the basic models set forth in the original petition consistent with 10 CFR 430.27(g).

**Case Number 2020-020**  
**Extension of Waiver**

**I. Background and Authority**

The Energy Policy and Conservation Act, as amended (“EPCA”),<sup>1</sup> authorizes DOE to regulate the energy efficiency of a number of consumer products and certain industrial equipment. (42 U.S.C. 6291–6317) Title III, Part B<sup>2</sup> of EPCA, Public Law 94-163 (42 U.S.C. 6291-6309, as codified), established the Energy Conservation Program for Consumer Products Other Than Automobiles, which sets forth a variety of provisions designed to improve energy efficiency for certain types of consumer products. These products include dishwashers, the focus of this document. (42 U.S.C. 6292(a)(6))

Under EPCA, the energy conservation program consists essentially of four parts: (1) testing, (2) labeling, (3) Federal energy conservation standards, and (4) certification and enforcement procedures. Relevant provisions of EPCA include definitions (42 U.S.C. 6291), energy conservation standards (42 U.S.C. 6295), test procedures (42 U.S.C. 6293), labeling provisions (42 U.S.C. 6294), and the authority to require information and reports from manufacturers (42 U.S.C. 6296).

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))

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<sup>1</sup> All references to EPCA in this document refer to the statute as amended through the Energy Act of 2020, Public Law 116-260 (Dec. 27, 2020).

<sup>2</sup> 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 any 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 covered product during a representative average use cycle and requires that test procedures not be unduly burdensome to conduct. (42 U.S.C. 6293(b)(3)) The test procedure for dishwashers is contained in 10 CFR part 430, subpart B, appendix C1 - *Uniform Test Method for the Measurement of Energy Consumption Dishwashers* (“Appendix C1”).

Any interested person may submit a petition for waiver from DOE’s test procedure requirements. 10 CFR 430.27(a)(1). 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.*

A petitioner may request that DOE extend the scope of a waiver or an interim waiver to include additional basic models employing the same technology as the basic model(s) set forth in the original petition. 10 CFR 430.27(g). DOE will publish any such extension in the *Federal Register*. *Id.*

## **II. Request for an Extension of Waiver: Assertions and Determinations**

On May 17, 2021, DOE issued a Decision and Order in Case Number 2020-020 granting FOTILE a waiver to test its basic models specified in that waiver using an alternate test procedure. 86 FR 26712 (“May 2021 Decision and Order”). In the October 15, 2020 petition for waiver, FOTILE stated that the subject dishwasher models, which FOTILE described as “in-sink” compact dishwashers, do not have a main detergent compartment and have different

installation instructions than under-counter or under-sink dishwashers. FOTILE requested that DOE waive sections of the dishwasher test procedure pertaining to installation requirements and placement of the detergent. FOTILE suggested an alternate test procedure to install the dishwasher basic models from the top of a rectangular enclosure (as opposed to the front) and to specify placement of the detergent directly into the dishwasher chamber. 86 FR 26712, 26713.

Based on its review, including the information provided by FOTILE, DOE determined that the current test procedure at Appendix C1 would evaluate the dishwasher basic models specified in the May 2021 Decision and Order in a manner so unrepresentative of their true energy and water consumption characteristics as to provide materially inaccurate comparative data. 86 FR 26712, 26713-26714. DOE concluded that the alternate test procedure suggested by the petitioner, with modifications, will allow for the accurate measurement of the energy and water use of these products and alleviates the problems with testing and representation of dishwashers. 86 FR 26712, 26714. The May 2021 Decision and Order specifies that FOTILE must test and rate the subject basic models such that the compact in-sink dishwasher with a combination sink must be installed in a rectangular enclosure constructed of nominal 0.374 inch (9.5 mm) plywood painted black. 86 FR 26712, 26714-26715. The enclosure must consist of a front, a bottom, a back, and two sides and the dishwasher must be installed from the top and mounted to the edges of the enclosure. 86 FR 26712, 26715. The front, back, and sides of the enclosure must be brought into the closest contact with the appliance that the configuration of the dishwasher will allow. *Id.* The height of the rectangular test enclosure must be the height that provides the minimum clearances as specified in the manufacturer's operation manual. *Id.* The dishwasher must be installed from the top and mounted to the edges of the enclosure. *Id.* Additionally, for compact in-sink dishwashers with a combination sink that have neither prewash program nor a main detergent compartment, the amount of main wash detergent (in grams) to be added directly into the washing chamber should be determined according to section 2.10.2 of Appendix C1. *Id.*

On May 18, 2021, FOTILE submitted a request to extend the scope of the waiver, Case Number 2021-005, to the basic models SD2F-P3 and SD2F-P3L. FOTILE stated that these basic models have the same characteristics that prevent testing of the product according to the prescribed DOE test procedure as the models covered by the existing waiver.

DOE has reviewed FOTILE's waiver extension request and determined that the dishwasher basic models identified in FOTILE's request incorporate the same design characteristics as those basic models covered under the waiver in Case Number 2020-020 such that the test procedure evaluates these basic models in a manner that is unrepresentative of their actual energy and water use. Specifically, the models identified in FOTILE's waiver extension request do not have a main detergent compartment and cannot be installed using the current installation instructions in Appendix C1. *See* 86 FR 26712, 26713. DOE also determined that the alternate procedure specified in Case Number 2020-020 will allow for the accurate measurement of the energy and water use of the dishwasher basic models identified by FOTILE in its waiver extension request.

### III. Order

After careful consideration of all the material submitted by FOTILE in this matter, it is **ORDERED** that:

(1) FOTILE must, as of the date of publication of this Extension of Waiver in the *Federal Register*, test and rate the following FOTILE brand dishwasher basic models with the alternate test procedure as set forth in paragraph (2):

Brand	Basic Model
FOTILE	SD2F-P3
FOTILE	SD2F-P3L

(2) The alternate test procedure for the FOTILE basic models referenced in paragraph (1) of this Order is the test procedure for dishwashers prescribed by DOE at 10 CFR part 430,

subpart B, appendix C1, with the modifications provided below. All other requirements of Appendix C1 and DOE's regulations remain applicable.

In section 2.1, Installation, add at the end of the section:

A compact in-sink dishwasher with a combination sink must be installed in a rectangular enclosure constructed of nominal 0.374 inch (9.5 mm) plywood painted black. The enclosure must consist of a front, a bottom, a back, and two sides. The front, back, and sides of the enclosure must be brought into the closest contact with the appliance that the configuration of the dishwasher will allow. The height of the rectangular test enclosure must be the height that provides the minimum clearances as specified in the manufacturer's operation manual. The dishwasher must be installed from the top and mounted to the edges of the enclosure.

In section 2.10, Detergent, add at the end of the section:

For compact in-sink dishwashers with a combination sink that have neither prewash program nor a main detergent compartment, determine the amount of main wash detergent (in grams) to be added directly into the washing chamber according to section 2.10.2 of Appendix C1.

(3) *Representations*. FOTILE may not make representations about the energy and water use of a basic model listed in paragraph (1) of this Order for compliance, marketing, or other purposes unless that basic model has been tested in accordance with the provisions of paragraph (2) of this Order and such representations fairly disclose the results of such testing.

(4) This Extension of Waiver shall remain in effect according to the provisions of 10 CFR 430.27.

(5) This Extension of Waiver is issued on the condition that the statements, representations, and documentation provided by FOTILE are valid. If FOTILE makes any modifications to the controls or configurations of these basic models, the waiver will no longer be valid and FOTILE will either be required to use the current Federal test method or submit a



new application for a test procedure waiver. DOE may rescind or modify this Extension of Waiver (and/or the underlying Order issued in Case Number 2020-020) at any time if it determines the factual basis underlying the petition for extension of waiver (and/or the underlying Order issued in Case Number 2020-020) is incorrect, or the results from the alternate test procedure are unrepresentative of a basic model's true energy consumption characteristics. 10 CFR 430.27(k)(1). Likewise, FOTILE may request that DOE rescind or modify the Extension of Waiver (and/or the underlying Order issued in Case Number 2020-020) if FOTILE 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).

(6) FOTILE remains obligated to fulfill all applicable requirements set forth at 10 CFR part 429.

DOE makes decisions on waiver extensions, for only those basic models specifically set out in the request, not future models that may be manufactured by the petitioner. FOTILE may submit a new or amended petition for waiver and request for grant of interim waiver, as appropriate, for additional basic models of dishwashers. Alternatively, if appropriate, FOTILE may request that DOE extend the scope of a waiver or interim waiver to include additional basic models employing the same technology as the basic models set forth in the original petition consistent with 10 CFR 430.27(g).

### **Signing Authority**

This document of the Department of Energy was signed on July 17, 2021, by Kelly Speakes-Backman, Principal Deputy Assistant Secretary and Acting Assistant Secretary for Energy Efficiency and Renewable Energy, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal

Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the *Federal Register*.

Signed in Washington, DC, on July 19, 2021.

**Treena V. Garrett,**  
*Federal Register Liaison Officer,*  
*U.S. Department of Energy.*

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