



[6450-01-P]

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

[Case No. RF-031]

Notice of Petition for Waiver of Panasonic Appliances Refrigeration Systems Corporation of America Corporation (PAPRSA) from the Department of Energy Residential Refrigerator and Refrigerator-Freezer Test Procedure and Grant of Interim Waiver

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

ACTION: Notice of Petition for Waiver, Notice of Granting Application for Interim Waiver, and Request for Public Comments.

SUMMARY: This notice announces receipt of a petition for waiver from Panasonic Appliances Refrigeration Systems Corporation of America (PAPRSA) seeking an exemption from specified portions of the U.S. Department of Energy (DOE) test procedure for determining the energy consumption of electric refrigerators and refrigerator-freezers. PAPRSA's request pertains to the specific hybrid wine chiller/beverage center basic models set forth in its petition. PAPRSA seeks permission to use an alternate test procedure to test the wine chiller compartment of these devices at 55 °F instead of the prescribed temperature of 38 °F. That procedure would apply a K factor (correction factor) value of 0.85 when calculating the energy consumption of a tested model and replace the energy consumption calculation currently required under 10 CFR

Part 430, Appendix A1. DOE solicits comments, data, and information concerning PAPRSA's petition and the suggested alternate test procedure. Today's notice also grants PAPRSA with an interim waiver from the electric refrigerator-freezer test procedure, subject to use of the alternative test procedure set forth in this notice.

DATES: DOE will accept comments, data, and information with respect to the PAPRSA Petition until **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: You may submit comments, identified by case number "RF-031," by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- E-mail: AS_Waiver_Requests@ee.doe.gov Include the case number [Case No. RF-031] in the subject line of the message.
- Mail: Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE-2J/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 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays. Available documents include the following items: (1) this notice; (2) public comments received; (3) the petition for waiver and application for interim waiver; and (4) prior DOE rulemakings regarding similar refrigerator-freezers. 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. E-mail: Bryan.Berringer@ee.doe.gov.

Mr. Michael Kido, 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) 586-8145. E-mail: Michael.Kido@hq.doe.gov.

SUPPLEMENTARY INFORMATION:

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 electric refrigerators and refrigerator-freezers that are the focus of

this notice.¹ 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 the energy efficiency, energy use, or estimated annual operating costs of a covered product, and that are not unduly burdensome to conduct. (42 U.S.C. 6293(b)(3)) The test procedure for electric refrigerators and electric refrigerator-freezers is contained in 10 CFR part 430, subpart B, appendix A1.

The regulations set forth in 10 CFR 430.27 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 430.27(l). 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. The Assistant Secretary may grant the 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).

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

The waiver process also allows the Assistant Secretary to grant an interim waiver from test procedure requirements to manufacturers that have petitioned DOE for a waiver of such prescribed test procedures. 10 CFR 430.27(g). An interim waiver remains in effect for 180 days or until DOE issues its determination on the petition for waiver, whichever occurs earlier. DOE may extend an interim waiver for an additional 180 days. 10 CFR 430.27(h).

II. Petition for Waiver of Test Procedure

On April 29, 2013, PAPRSA submitted a petition for waiver from the test procedure applicable to residential electric refrigerators and refrigerator-freezers set forth in 10 CFR part 430, Subpart B, Appendix A1. In its petition, PAPRSA has set forth an alternate test procedure and notes in support of its petition that DOE previously granted Sanyo E&E Corporation (Sanyo) a similar waiver pertaining to its wine chiller/beverage centers. See 77 FR 19654 (April 2, 2012) (petition for waiver) and 77 FR 49443 (August 16, 2012) (Decision and Order). The petition also notes that Sanyo E&E Corporation has since changed its corporate name to Panasonic Appliances Refrigeration Systems Corporation of America, meaning that it is the same manufacturer to which DOE granted the August 2012 waiver. On October 4, 2012, DOE issued a correction notice to the Decision and Order. That notice incorporated a K factor (correction factor) value of 0.85 when calculating the energy consumption of a tested model (77 FR 60688). PAPRSA is requesting a waiver with respect to the test procedures for its hybrid models that consist of a single cabinet equipped with a refrigerated beverage compartment in the top portion and a wine storage compartment in the bottom portion of each unit. DOE issued guidance that clarified the test procedures to be used for hybrid products such as the PAPRSA models at issue,

which is available at the following link:

http://www1.eere.energy.gov/buildings/appliance_standards/residential/pdfs/refrigerator_definition_faq.pdf

This guidance specifies that basic models such as the ones PAPRSA identifies in its petition, which do not have a separate wine storage compartment with a separate exterior door, are to be tested according to the DOE test procedure in Appendix A1, with the temperatures specified therein. PAPRSA asserts that the wine storage compartment cannot be tested at the prescribed temperature of 38 °F, because the minimum compartment temperature is 45 °F.

PAPRSA also requests an interim waiver from the existing DOE test procedure. An interim waiver may be granted if it is determined that the applicant will experience economic hardship if the application for 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 of the petition for waiver. See 10 CFR 430.27(g).

For the reasons discussed above, DOE has determined that use of the currently required DOE test procedure would provide test results so unrepresentative as to provide materially inaccurate comparative data. Therefore, it appears likely that PAPRSA's petition for waiver will be granted. For these same reasons, DOE has also determined that it is desirable for public policy reasons to grant PAPRSA immediate relief pending a determination of the petition for waiver. DOE grants PAPRSA's application for interim waiver from testing of its hybrid wine chiller/beverage center basic models.

Therefore, *it is ordered that*:

The application for interim waiver filed by PAPRSA is hereby granted for PAPRSA's hybrid wine chiller/beverage center basic product lines are subject to the following specifications and conditions below. PAPRSA shall be required to test and rate its hybrid wine chiller/beverage center product line according to the alternate test procedure as set forth in section III, "Alternate test procedure."

The following basic models are included in PAPRSA's petition:

SR5180JBC
JUB24FLARS0*
JUB24FRARS0*
JUB24FRACX0*

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. PAPRSA may submit a subsequent petition for waiver for additional models of electric refrigerators and refrigerator-freezers for which it seeks a waiver from the DOE test procedure. In addition, DOE notes that the grant of a waiver does not release a petitioner from the certification requirements set forth at 10 CFR part 429.

Further, this interim waiver is conditioned upon the presumed validity of statements, representations, and documents provided by the petitioner. DOE may revoke or modify this interim waiver at any time upon a determination that the factual basis underlying the petition for

waiver is incorrect, or upon a determination that the results from the alternate test procedure are unrepresentative of the basic models' true energy consumption characteristics.

III. Alternate Test Procedure

PAPRSA submitted an alternate test procedure to account for the energy consumption of its wine chiller/beverage centers. That alternate procedure would test the wine chiller compartment at 55 °F, instead of the prescribed 38 °F. PAPRSA shall also use the K factor (correction factor) value of 0.85 when calculating the energy consumption of one of the models listed above and replace energy consumption calculation of appendix A1 with the following:

Energy consumption is defined by the higher of the two values calculated by the following two formulas (according to 10 CFR part 430, subpart B, Appendix A1):

Energy consumption of the wine compartment:

$$EWine = (ET1 + [(ET2-ET1) \times (55 \text{ °F}-TW1) / (TW2-TW1)]) \times 0.85$$

Energy consumption of the refrigerated beverage compartment:

$$EBeverage \text{ Compartment} = ET1 + [(ET2-ET1) \times (38 \text{ °F}-TBC1) / (TBC2-TBC1)].$$

IV. Summary and Request for Comments

Through today's notice, DOE grants PAPRSA an interim waiver from the specified portions of the test procedure applicable to PAPRSA's line of hybrid wine chiller/beverage center basic and announces receipt of PAPRSA's petition for waiver from those same portions of

the test procedure. DOE is publishing PAPRSA's petition for waiver in its entirety. The petition contains no confidential information. The petition includes a suggested alternate test procedure to determine the energy consumption of PAPRSA's specified hybrid refrigerators. PAPRSA is required to follow this alternate procedure as a condition of its interim waiver, and DOE is considering including this alternate procedure in its subsequent Decision and Order.

DOE solicits comments from interested parties on all aspects of the petition, including the suggested alternate test procedure and calculation methodology. Pursuant to 10 CFR 430.27(d), any person submitting written comments to DOE must also send a copy of such comments to the petitioner. The contact information for the petitioner is: Adam D. Bowser, ARENT FOX LLP, 1717 K St., NW, Washington, DC 20036-5369, (202) 857-6450. All submissions received must include the agency name and case number for this proceeding. 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 to DOE: 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 June 7, 2013.

Kathleen B. Hogan
Deputy Assistant Secretary for Energy Efficiency
Energy Efficiency and Renewable Energy

**BEFORE THE
U.S. DEPARTMENT OF ENERGY
Washington, D.C. 20585**

In the Matter of:)
)
Panasonic Appliances Refrigeration) Case Number: _____
Systems Corporation of America,)
)
Petitioner)

**PETITION FOR WAIVER AND
APPLICATION FOR INTERIM WAIVER**

Panasonic Appliances Refrigeration Systems Corporation of America (“PAPRSA”) respectfully submits this Petition for Waiver and Application for Interim Waiver (“Petition”) pursuant to 10 C.F.R. § 430.27 on the ground that its hybrid wine chiller/beverage center model (“hybrid model”) listed below contains one or more design characteristics that prevent testing of the basic model according to the test procedures prescribed in 10 C.F.R. § 430, subpart B, appendix A1. As detailed more fully below, the Department of Energy (“DOE”) has previously granted PAPRSA’s corporate predecessor, SANYO E&E Corp.,² a waiver from DOE’s electric refrigerator and refrigerator-freezer test procedures for determining the energy consumption of substantially similar hybrid models in Case No. RF-022 (the “waiver hybrid models”). PAPRSA has developed a new basic hybrid model, SR5180JBC, that contains the same design characteristics as its waiver hybrid models that make it impossible to certify, rate, and sell this new hybrid model under the existing testing procedures.³ PAPRSA therefore respectfully requests that it be permitted to employ the alternative testing method for this new basic hybrid model that has already been approved by DOE for the waiver hybrid models.

1. Existing Waiver Background and Product Characteristics of PAPRSA’s Hybrid Models

On June 2, 2011, PAPRSA submitted a petition for waiver with respect to the test procedures for its waiver hybrid models that consist of a combination of a refrigerated “beverage” compartment in the top portion of these single-cabinet units and a wine storage compartment on the bottom of the units, and for which an alternative testing procedure was

² Effective April 1, 2013, SANYO E&E Corporation changed its corporate name to Panasonic Appliances Refrigeration Systems Corporation of America. Throughout this Petition, PAPRSA will be used to refer to both SANYO E&E Corporation and Panasonic Appliances Refrigeration Systems Corporation of America, unless otherwise indicated.

³ At present, PAPRSA intends to market three derivative individual models based on basic hybrid model SR5180JBC that have variances in their cosmetic features: JUB24FLARS0*, JUB24FRARS0*, and JUB24FRACX0*. To the extent this Petition is granted, PAPRSA may develop additional derivative individual models based on basic hybrid model SR5180JBC in the future.

necessary in order to certify, rate, and sell such models. The waiver hybrid models include the following models: JUB248LB, JUB248RB, JUB248LW, JUB248RW, KBCO24LS, KBCS24LS, KBCO24RS, KBCS24RS, and MBCM24FW.

As PAPRSA previously explained, PAPRSA designed the wine storage compartments of its waiver hybrid models to operate between a minimum temperature of 45 °F and a maximum temperature of 64 °F, with an average temperature of 55 to 57 °F. In fact, heaters are used to ensure that the temperature in the wine storage compartment never drops below 45 °F, as wines chilled below this temperature risk becoming crystallized and, therefore, ruined. Currently, however, DOE's testing procedures contained in 10 C.F.R. § 430, subpart B, appendix A1, mandate that energy consumption be measured when the compartment temperature is set at 38 °F. Based on the design characteristics of its waiver hybrid models noted above, however, PAPRSA needed a waiver with respect to DOE's testing procedures in order to properly "certify, rate, and sell such models," because the existing test procedures contained in 10 C.F.R. § 430, subpart B, appendix A1, do not contemplate a product that is designed to be incapable of achieving a temperature below 45 °F.

On April 2, 2012, DOE published PAPRSA's previous petition for waiver and sought public comment, and DOE subsequently extended the deadline for comments after PAPRSA submitted a request for extension to clarify the scope of its original petition for waiver. *See* Federal Register, Vol. 77, No. 96, 29331-29333. No comments were filed opposing the relief requested in PAPRSA's petition for waiver.

On August 9, 2012, DOE granted PAPRSA a waiver from DOE's electric refrigerator and refrigerator-freezer test procedures for determining the energy consumption of the basic models listed in its June 2, 2011 petition for waiver. *See* Federal Register, Vol. 77, No. 159, 49443-44. In permitting PAPRSA to test the wine chiller compartment at 55 °F, DOE noted "that the test procedures for wine chillers adopted by the Association of Home Appliance Manufacturers (AHAM), California Energy Commission (CEC), and Natural Resources Canada all use a standardized compartment temperature of 55 °F for wine chiller compartments, which is consistent with [PAPRSA's] approach." *Id.* at 49444.

On September 26, 2012, DOE issued a correction to its August 9, 2012 order that incorporated the K factor (correction factor) value of .85 that PAPRSA should utilize when calculating the energy consumption of its waiver hybrid models. *See* Federal Register, Vol. 77, No. 193, 60688-89. Accordingly, DOE ultimately directed PAPRSA to utilize the following test procedure for its waiver hybrid models:

Energy consumption is defined by the higher of the two values calculated by the following two formulas (according to 10 CFR part 430, subpart B, Appendix A1):

Energy consumption of the wine compartment:

$$EWine = (ET1 + [(ET2-ET1) \times (55 \text{ °F}-TW1) / (TW2-TW1)]) \times 0.85$$

Energy consumption of the refrigerated beverage compartment:

$$E_{\text{Beverage Compartment}} = ET1 + [(ET2 - ET1) \times (38 \text{ }^\circ\text{F} - TBC1) / (TBC2 - TBC1)].$$

See Federal Register, Vol. 77, No. 193 at 60689.

2. Request to Test, Certify and Rate New Basic Model SR5180JBC Under Previously Approved Alternative Testing Procedure

As indicated above, PAPRSA has developed a new basic hybrid model, SR5180JBC, that shares the same design characteristics that led DOE to approve PAPRSA’s June 2, 2011 petition for waiver. SR5180JBC is a single cabinet hybrid model that would be classified as a compact refrigerator with automatic defrost without through-the-door ice service, but which has a wine-chiller compartment designed for an average temperature of 55 to 57 °F. Just as PAPRSA’s waiver hybrid models, SR5180JBC contains a heater that makes it impossible for the temperature of the wine-chiller compartment to reach a temperature below 45 °F. Thus, testing SR5180JBC at 38 °F is simply not possible and not representative of the energy consumption characteristics of this new basic hybrid model.

Further, SR5180JBC, just as PAPRSA’s waiver hybrid models, will have a door-opening usage aligned with household freezers, thus 0.85 should also be the employed K factor (correction factor) for this basic hybrid model. See Appendix B1 to Subpart 430, 5.2.1.1, because Subpart 430 does not recognize wine chiller as a category.

In short, there are no material differences between SR5180JBC and PAPRSA’s waiver hybrid models as it impacts this Petition. While SR5180JBC has a total adjusted volume of 4.7 cubic feet (instead of the slightly higher volumes of the waiver hybrid models) that would be used in calculating the theoretical maximum allowable annual energy consumption for this basic hybrid model, the design characteristics of SR5180JBC are the same as PAPRSA’s waiver hybrid models that led DOE to allow PAPRSA to use the following testing procedure:

Energy consumption is defined by the higher of the two values calculated by the following two formulas (according to 10 CFR part 430, subpart B, Appendix A1):

Energy consumption of the wine compartment:

$$E_{\text{Wine}} = (ET1 + [(ET2 - ET1) \times (55 \text{ }^\circ\text{F} - TW1) / (TW2 - TW1)]) \times 0.85$$

Energy consumption of the refrigerated beverage compartment:

$$E_{\text{Beverage Compartment}} = ET1 + [(ET2 - ET1) \times (38 \text{ }^\circ\text{F} - TBC1) / (TBC2 - TBC1)].$$

Accordingly, PAPRSA respectfully requests that it be permitted to use this approved alternative testing method to test, certify and rate new basic hybrid model SR5180JBC in the same manner as its waiver hybrid models subject to the existing waiver.

3. Manufacturers of Other Basic Models Marketed in the United States Known to Incorporate Similar Design Characteristics

After reviewing publicly available product manuals of comparable hybrid models, PAPRSA was unable to locate a basic model marketed in the United States that incorporates similar design characteristics and that also would be considered a “covered product” under Section 430.62 of DOE’s rules.⁴

4. Grounds for Interim Waiver

Pursuant to 10 CFR part 430.27(b)(2), applicants for an interim waiver should address the likely success of their petition and what economic hardships and/or competitive disadvantages are likely to arise absent the grant of an interim waiver.

As detailed above, it is highly likely that DOE will grant this Petition, as PAPRSA is simply seeking to test a new basic hybrid model under the alternative testing procedure already approved by DOE for PAPRSA’s other hybrid models subject to the existing waiver. SR5180JBC contains no materially different design characteristics that should warrant a different result.

Further, as DOE has previously stated, “[f]ully recognizing that product development occurs faster than the test procedure rulemaking process, the Department’s rules permit manufacturers of models not contemplated by the test procedures ... to petition for a test procedure waiver in order to certify, rate, and sell such models.” GC Enforcement Guidance on the Application of Waivers and on the Waiver Process at 2 (rel. Dec. 23, 2010);⁵ *see also* DOE FAQ Guidance Regarding Coverage of Wine Chillers, Etc. in the R/F Standard/Test Procedure at 2 (rel. Feb. 10, 2011) (“DOE recognizes the potential disparity in treatment among these hybrid products. As DOE indicated ..., the Department plans to engage in a future rulemaking to more comprehensively address these types of products.”).

⁴ PAPRSA cannot guarantee that its search disclosed every possible competing model, as PAPRSA ordinarily does not search for and retain this information in the normal course of business, but to the best of PAPRSA’s knowledge, certain GE hybrid models appear to be the closest substitutes to SANYO E&E’s hybrid models in terms of both functionality and design characteristics. However, GE represents in its product manuals that its hybrid models, specifically, ZDBC240, ZDBT240, ZDBR240, and ZDBI240, do not achieve temperatures below 40 °F and thus would not be considered a covered product under DOE regulations. PAPRSA is uncertain if GE means that the average temperature of the entire cabinet does not drop below 40 °F, which is the case with all PAPRSA’s hybrid models, or whether GE is representing that no portion of its single-cabinet models can achieve temperatures below 40 °F. Based on this uncertainty, PAPRSA excluded GE from this section. PAPRSA’s research did not reveal any other basic models that, after review of the design characteristics, were comparable to PAPRSA’s hybrid models.

⁵ Available at http://www.gc.energy.gov/documents/LargeCapacityRCW_guidance_122210.pdf.

As noted in Section 3 above, certain manufacturers design comparable hybrid models so that the beverage center compartment does not reach below 40 °F, and thus are not covered products under DOE's regulations. Unless PAPRSA is granted an interim waiver, it will be at a competitive disadvantage by being unable to introduce new basic hybrid models to compete with manufacturers that design their hybrid models in a manner that falls outside of DOE's jurisdiction.

Thus, given that this Petition is likely to be granted and PAPRSA will face economic hardship unless an interim waiver is granted, permitting PAPRSA to immediately certify new basic hybrid model SR5180JBC under the alternative testing method already approved by DOE is in the public interest.

Respectfully submitted,

/s/ _____
Alan G. Fishel
Adam D. Bowser
ARENT FOX LLP
1717 K St., NW
Washington, DC 20036-5369
(202) 857-6450
fishel.alan@arentfox.com
bowser.adam@arentfox.com

*Counsel for Panasonic Appliances Refrigeration
Systems Corporation of America*

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