



[6450-01-P]

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

[Case No. DW-012]

Notice of Petition for Waiver of Miele Incorporated from the Department of Energy

Dishwashers Test Procedures and Grant of Interim Waiver

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

ACTION: Notice of petition for waiver and grant of interim waiver, and request for public comment.

SUMMARY: This notice announces receipt of and publishes a petition for waiver from Miele Incorporated (Miele) seeking an exemption from specified portions of the U.S. Department of Energy (DOE) test procedure for determining the energy consumption of dishwashers that operate at 208 volts under Title 10 of the Code of Federal Regulations (CFR) part 430, subpart B, appendix C1. Section 2.2 of appendix C1 has provisions for testing at 115 and 240 volts only. Consequently, Miele submitted to DOE an alternate test procedure that allows for testing of one specified basic model at 208 volts. This notice also announces that DOE has granted Miele an interim waiver from the DOE dishwasher test procedure for the specified dishwasher basic model, subject to use of the alternative test procedure as set forth in this notice. DOE solicits comments, data, and information concerning Miele's petition and its suggested alternate test procedure.

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

ADDRESSES: You may submit comments, identified by Case Number DW-012, 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. DW-012] in the subject line of the message. Submit electronic comments in WordPerfect, Microsoft Word, PDF, or ASCII file format, and avoid the use of special characters or any form of encryption.
- Postal Mail: Mr. Bryan Berringer, U.S. Department of Energy, Building Technologies Office, Mailstop EE-5B, Petition for Waiver Case No. DW-012, 1000 Independence Avenue, SW., Washington, DC 20585-0121. Telephone: (202) 586-0371. If possible, please submit all items on a compact disc (CD), in which case it is not necessary to include printed copies.
- Hand Delivery/Courier: Appliance and Equipment Standards Program, U.S. Department of Energy, Building Technologies Office, 950 L'Enfant Plaza, SW., 6th Floor, Washington, DC, 20024. Telephone: (202) 586-6636. If possible, please submit all items on a CD, in which case it is not necessary to include printed copies.

Docket: The docket, which includes Federal Register notices, comments, and other supporting documents/materials, is available for review at www.regulations.gov. All documents in the

docket are listed in the www.regulations.gov index. However, some documents listed in the index, such as those containing information that is exempt from public disclosure, may not be publicly available.

FOR FURTHER INFORMATION CONTACT: Mr. Bryan Berringer, U.S. Department of Energy, Building Technologies Office, Mailstop EE-5B, 1000 Independence Avenue, SW., Washington, DC 20585-0121. Telephone: (202) 586-0371. E-mail: Bryan.Berringer@ee.doe.gov.

Ms. Elizabeth Kohl, U.S. Department of Energy, Office of the General Counsel, GC-33, 1000 Independence Avenue, SW., Washington, DC, 20585-0121. Telephone: (202) 586-7796. E-mail: Elizabeth.Kohl@hq.doe.gov.

SUPPLEMENTARY INFORMATION:

I. Background and Authority

Title III, Part B¹ of the Energy Policy and Conservation Act of 1975 (EPCA), Public Law 94-163 (42 U.S.C. 6291-6309, as codified) established the Energy Conservation Program for Consumer Products Other Than Automobiles, a program that includes the dishwashers that are the focus of this notice.² 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

¹ For editorial reasons, upon codification in the U.S. Code, Part B was redesignated as Part A.

² All references to EPCA in this document refer to the statute as amended through the Energy Efficiency Improvement Act of 2015 (EEIA), Public Law 114-11 (April 30, 2015).

reasonably designed to produce results that measure energy efficiency, energy use, or estimated operating costs during a representative average-use cycle, and that are not unduly burdensome to conduct. (42 U.S.C. 6293(b)(3)) The test procedure for dishwashers is contained in Title 10 of the CFR part 430, subpart B, appendix C1, Uniform Test Method for Measuring the Energy Consumption of Dishwashers.

DOE's regulations set forth at 10 CFR 430.27 contain provisions that allow a person to seek a waiver from the test procedure requirements for a particular basic model of a type of covered consumer product 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) 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(a)(1). A petitioner must include in its petition any alternate test procedures known to the petitioner to evaluate the basic model in a manner representative of its energy consumption. 10 CFR 430.27(b)(1)(iii).

DOE may grant a waiver subject to conditions, including adherence to alternate test procedures. 10 CFR 430.27(f)(2). As soon as practicable after the granting of any waiver, DOE will publish in the Federal Register a notice of proposed rulemaking to amend its regulations so as to eliminate any need for the continuation of such waiver. As soon thereafter as practicable, DOE will publish in the Federal Register a final rule. 10 CFR 430.27(l).

The waiver process also allows DOE to grant an interim waiver if it appears likely that the petition for waiver will be granted and/or if DOE 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(e)(2). Within one year of issuance of an interim waiver, DOE will either: (i) publish in the Federal Register a determination on the petition for waiver; or (ii) publish in the Federal Register a new or amended test procedure that addresses the issues presented in the waiver. 10 CFR 430.27(h)(1). When DOE amends the test procedure to address the issues presented in a waiver, the waiver will automatically terminate on the date on which use of that test procedure is required to demonstrate compliance. 10 CFR 430.27(h)(2).

II. Petition for Waiver of Test Procedure and Application for Interim Waiver

On July 13, 2016, Miele filed a petition for waiver and application for interim waiver from the test procedure applicable to dishwashers set forth in 10 CFR part 430, subpart B, appendix C1. Miele has designed a dishwasher that runs on an electrical supply voltage of 208 volts. The existing test procedure under section 2.2 of 10 CFR part 430, subpart B, appendix C1 has provisions for testing at 115 and 240 volts only. In its petition for waiver, Miele submitted to DOE an alternate test procedure that allows for testing of one specified basic model at 208 volts.

DOE granted a petition for waiver submitted for the previous design generation of Miele dishwasher rated for 208 volts (Case No. DW-006) on December 27, 2011 as 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 a 208 volt supply voltage, provided that Miele tests and rates such products using the alternate test procedure described in the petition. 76 FR 80920.

As previously noted, an interim waiver may be granted if it appears likely that the petition for waiver will be granted, and/or if DOE 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(e)(2).

DOE understands that absent an interim waiver, the basic model identified by Miele in its petition cannot be tested and rated for energy consumption on a basis representative of their true energy consumption characteristics. DOE has reviewed the alternate procedure suggested by Miele and concludes that it will allow for the accurate measurement of the energy use of these products, while alleviating the testing problems associated with Miele's implementation of dishwasher testing. Consequently, DOE has determined that Miele's petition for waiver will likely be granted and has decided that it is desirable for public policy reasons to grant Miele immediate relief pending a determination on the petition for waiver. Miele requests to use an alternate test procedure that would follow the test procedure for dishwashers prescribed by DOE at 10 CFR part 430, subpart B, appendix C1 with a modification of section 2.2 for dishwashers that operate with an electrical supply of 208 volts.

III. Summary of Grant of Interim Waiver

For the reasons stated above, DOE has granted Miele's application for interim waiver from testing for its specified dishwasher basic model. The substance of the interim waiver is summarized below.

Miele is required to test and rate Miele dishwasher basic model PG8056-208V according to the alternate test procedure as set forth in section IV, “Alternate Test Procedure.”

Miele is permitted to make representations about the energy use of this basic model for compliance, marketing, or other purposes only to the extent that such products have been tested in accordance with the provisions set forth in the alternate test procedure and such representations fairly disclose the results of such testing in accordance with 10 CFR 429.19.

DOE makes decisions on waivers and interim waivers for only those basic models specifically set out in the petition, not future models that may be manufactured by the petitioner. Miele 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 consistent with 10 CFR 430.27(g). In addition, DOE notes that granting of an interim waiver or waiver does not release a petitioner from the certification requirements set forth at 10 CFR part 429. See also 10 CFR 430.27(a) and (i).

The interim waiver shall remain in effect consistent with 10 CFR 430.27(h). Furthermore, this interim waiver is conditioned upon the presumed validity of statements, representations, and documents provided by the petitioner. DOE may rescind or modify a waiver or interim waiver at any time upon a determination that the factual basis underlying the petition for waiver or interim waiver is incorrect, or upon a determination that the results from the alternate test procedure are unrepresentative of the basic model’s true energy consumption characteristics. See 10 CFR 430.27(k).

IV. Alternate Test Procedure

EPCA requires that manufacturers use DOE test procedures when making representations about the energy consumption and energy consumption costs of products and equipment covered by the statute. (42 U.S.C. 6293(c); 6314(d)) Consistent representations about the energy efficiency of covered products and equipment are important for consumers evaluating products when making purchasing decisions and for manufacturers to demonstrate compliance with applicable DOE energy conservation standards. Pursuant to its regulations applicable to waivers and interim waivers from applicable test procedures at 10 CFR 430.27, and after considering public comments on the petition, DOE will announce its decision as to an alternate test procedure for Miele in a subsequent Decision and Order.

During the period of the interim waiver granted in this notice, Miele shall test the basic model listed in section III according to the test procedure for dishwashers prescribed by DOE at 10 CFR part 430, subpart B, appendix C1, except that Miele must use section 2.2 of appendix C1 with the modification set forth below:

Dishwashers that operate with an electrical supply of 208 volts. Maintain the electrical supply to the dishwasher at 208 volts \pm 2 percent and within 1 percent of its nameplate frequency as specified by the manufacturer. Maintain a continuous electrical supply to the unit throughout testing, including the preconditioning cycles, specified in section 2.9 of this appendix, and in between all test cycles.

V. Summary and Request for Comments

Through this notice, DOE announces receipt of Miele's petition for waiver from the DOE test procedure for certain basic models of Miele dishwasher, and announces DOE's decision to grant Miele an interim waiver from the test procedure for its dishwasher. DOE is publishing Miele's petition for waiver in its entirety, pursuant to 10 CFR 430.27(b)(1)(iv). The petition contains no confidential information. The petition includes a suggested alternate test procedure to determine the energy consumption of its dishwasher. DOE will consider public comments on the petition in issuing its 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 Steve Polinski, Senior Manager Regulatory Affairs, Miele Incorporated, 9 Independence Way, Princeton, New Jersey 08540. All comment submissions must include the agency name and Case Number DW-012 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).

Pursuant 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 marked "confidential" with all of the information believed to be confidential included, and one copy of the document marked "non-confidential" with all of 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 November 22, 2016

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

Miele

July 13, 2016

Via Email:

AS_Waiver_Requests@ee.doe.gov

Assistant Secretary for Conservation and Renewable Energy

U.S. Department of Energy Building Technologies Program, Test Procedure Waiver

1000 Independence Avenue, SW

Washington, DC 20585

John.Cymbalski@ee.doe.gov

Re: Application for Interim Waiver and Petition for Waiver, 10 C.F.R. 430 Subpart B, Appendix C1- Uniform Test Method For Measuring Energy Consumption of Dishwashers

Miele Inc. is submitting this Application for Interim Waiver and Petition for Waiver of the Department of Energy's test procedure pursuant to 10 CFR 430.27, to the Department of Energy concerning the test procedure found in 10 CFR 430, Subpart B, Appendix C1 for measuring energy consumption of dishwashers specifically the Miele PG8056-208V.

The request for this waiver is focused on the testing voltages specified in the existing test procedure found in Section 2.2.

2.2.1 Dishwashers that operate with an electrical supply of 115 volts. Maintain the electrical supply to the dishwasher at 115 Volts ± 2 percent and within 1 percent of the nameplate frequency as specified by the manufacturer.

2.2.2 Dishwashers that operate with an electrical supply of 240 Volts. Maintain the electrical supply to the dishwasher at 240 volts ± 2 percent and within 1 percent of its nameplate frequency as specified by the manufacturer.

Currently there is no provision to test dishwashers using 208 Volts.

There are many instances where only 208 Volts are provided to the consumer. Dishwashers rated at 240 Volts would not allow the proper operation of a dishwasher when connected to a 208 Volt supply. To achieve the data plate rating, appropriate voltage components are used in the design of the 208 Volt dishwashers.

The proposed test procedure would allow for a variation in electrical supply voltage to 208 Volts based on the electrical safety test data plate rating. In the case of the PG8056-208V, a rating of 208 Volts ± 2 percent and within 1 percent of its nameplate frequency as specified by the manufacturer would be used to perform the energy test.

Miele requests immediate relief by grant of the proposed interim waiver, justified by the following reasons:

Economic Hardship. Since the Miele PG8056-208V dishwasher is intended to be sold in

applications where 240 volts power supply is not available to the consumer, denial of this Application for Interim Waiver and Petition for Waiver would eliminate the possibility of high performance dishwasher sales where a compatible voltage is not present. This will also greatly affect sales of all other Miele product categories where consumers most frequently choose one brand of appliance for their home.

Acceptance of Predicate Model A Petition for Waiver submitted for the previous design generation of Miele dishwasher rated for 208 volts, (Case No. DW-006) was granted by the DOE on December 27, 2011 as 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 a 208 volt supply voltage, provided that Miele tests and rates such products using the alternate test procedure described in the petition.

Public Policy Merits. The public policy benefits of encouraging business success and fostering innovation in high performance dishwasher design are additional reasons for prompt approval of the requested interim waiver.

We hereby certify that all dishwasher manufacturers of domestically-marketed units known to Miele Inc. have been notified by letter of this application, copies of which are attached.

Thank you for your timely attention to this Application for Interim Waiver and Petition for Waiver.

Best regards,
Steve Polinski
Senior Manager Regulatory Affairs
Miele Incorporated
9 Independence Way
Princeton, New Jersey 08540
SPolinski@MieleUSA.com
Phone: 609 419 9898

richard.bollard@fp.co.nz;
EARL.JONES@GE.COM
John.taylor@lge.com
AHAMORGANIZATION@AHAM.ORG
jcleary@AHAM.org
Bernt.Svensson@asko.se
wayne_p_klug@whirlpool.com
manfred.staebler@bshg.com
dennis.a.poyner@electrolux.com
jmiller@vikingrange.com
richard_j_koenes@whirlpool.com
marco.darsie@indesit.com;
brian.wylie@subzero.com
szbugay@arcelik.com
mtroisi@haieramerica.com

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