

waiver does not release a petitioner from the certification requirements set forth at 10 CFR part 429.

Issued in Washington, DC, on February 6, 2015.

**Kathleen B. Hogan,**

*Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy.*

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## DEPARTMENT OF ENERGY

### Office of Energy Efficiency and Renewable Energy

[Case No. RF-040]

#### Decision and Order Granting a Waiver to Sub-Zero From the Department of Energy Residential Refrigerator and Refrigerator-Freezer Test Procedures

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

**ACTION:** Decision and Order.

**SUMMARY:** The U.S. Department of Energy (DOE) gives notice of the decision and order in Case No. RF-040 that grants to Sub-Zero Group, Inc. a waiver from the DOE electric refrigerator and refrigerator-freezer test procedures for determining the energy consumption of residential refrigerator-freezers. Sub-Zero's request pertains to the specific hybrid refrigerated "storage-wine storage" basic models set forth in its petition. Sub-Zero 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 39 °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. Under today's decision and order, Sub-Zero shall be required to test and rate the hybrid refrigerated "storage-wine storage" basic models identified in its petition using an alternate test procedure that takes the nature of these products into account when measuring energy consumption.

**DATES:** This Decision and Order is effective February 12, 2015.

**FOR FURTHER INFORMATION CONTACT:** Mr. Bryan Berringer, U.S. Department of Energy, Building Technologies Program, Mail Stop EE-5B, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585-0121. Telephone: (202) 586-0371. Email: [Bryan.Berringer@ee.doe.gov](mailto:Bryan.Berringer@ee.doe.gov).

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**SUPPLEMENTARY INFORMATION:** DOE gives notice of the issuance of its decision and order as set forth below. The decision and order grants Sub-Zero a waiver from the applicable residential refrigerator and refrigerator-freezer test procedures found in 10 CFR part 430, subpart B, appendix A for certain basic models of hybrid refrigerated "storage-wine storage," provided that Sub-Zero tests and rates such products using the alternate test procedure described in this notice. Today's decision prohibits Sub-Zero from making representations concerning the energy efficiency of these products unless the product has been tested in a manner consistent with the provisions and restrictions in the alternate test procedure set forth in the decision and order below, and the representations fairly disclose the test results.

Distributors, retailers, and private labelers are held to the same standard when making representations regarding the energy efficiency of these products.

Issued in Washington, DC, on February 4, 2015.

**Kathleen B. Hogan,**

*Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy.*

#### Decision and Order

*In the Matter of:* Sub-Zero Group, Inc. (Case No. RF-040)

#### 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 residential electric refrigerators and refrigerator-freezers that are the focus of this notice.<sup>1</sup> 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 measuring energy efficiency, energy use, or estimated operating costs, and that are not unduly burdensome to conduct. (42 U.S.C. 6293(b)(3)) The test procedure for residential electric

refrigerators and refrigerator-freezers is set forth in 10 CFR part 430, subpart B, appendix A.

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. DOE 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(f)(2). 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. DOE may grant the waiver subject to conditions, including adherence to alternate test procedures. 10 CFR 430.27(f)(2). Waivers remain in effect pursuant to the provisions of 10 CFR 430.27(l).

DOE may also grant a petitioning manufacturer with an interim waiver from the test procedure requirements when such relief is sought. 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. Sub-Zero's Petition for Waiver: Assertions and Determinations

On May 19, 2014, Sub-Zero 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 A. See 79 FR 55772 (Sept. 17, 2014). In its petition, Sub-Zero explained that it is unable to certify a hybrid refrigerator basic model (*i.e.*, refrigerators that have a combination of one or more refrigerated storage compartments and a wine storage compartment) as compliant with DOE's energy conservation standards without a waiver. Sub-Zero asserted that the DOE test procedure does not contain a method to test these types of hybrid

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

products in a manner that would “truly represent the energy-consumption characteristics of these products” and offered an alternate test procedure that Sanyo E&E Corporation (Sanyo), now Panasonic Appliances Refrigeration Systems Corporation of America (PAPRSA), used in prior waiver requests. See 77 FR 49443 (Aug. 16, 2012) and 78 FR 57139 (Sept. 17, 2013). (On October 4, 2012, a correction notice to the August 16, 2012 Decision and Order was published. See 77 FR 60688.) These earlier decisions incorporated a K factor (correction factor) value of 0.85 when calculating the energy consumption of a tested model (77 FR 60688). Sub-Zero requested that it be permitted to apply the same procedure when testing the energy usage of its hybrid refrigerated storage-wine storage models.

Against this background, DOE had previously issued guidance in 2011 that clarified the test procedures to be used for hybrid products such as the Sub-Zero models at issue. That guidance is available at the following link: [http://www1.eere.energy.gov/buildings/appliance\\_standards/pdfs/hybridwinechiller\\_fa2\\_2011-02-10.pdf](http://www1.eere.energy.gov/buildings/appliance_standards/pdfs/hybridwinechiller_fa2_2011-02-10.pdf). The guidance specifies that basic models that do not have a separate wine storage compartment with a separate exterior door, such as those models identified in Sub-Zero’s petition, are to be tested using the DOE test procedure in Appendix A, with the temperatures specified therein. Sub-Zero’s waiver request seeks to replace the application of this general guidance with the more recent and specific approach outlined in determinations for similar hybrid products offered by Sanyo and PAPRSA when measuring the efficiency of these products.

Sub-Zero also requested an interim waiver from the existing DOE test procedure, which DOE granted. See 79 FR at 55774. 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(e)(2).

DOE did not receive any comments on the Sub-Zero petition. However, on January 16, 2015, Sub-Zero via email to DOE indicated that there was an error in their waiver submission pertaining to the Wine Energy equation which had a set of parentheses missing and should be the same equation as requested by

Panasonic Appliances Refrigeration Systems Corporation of America (PAPRSA) in the Extension of Waiver (Case No. RF-041) published in the **Federal Register** on September 17, 2014. 79 FR 55769. DOE has reviewed the alternate procedure and believes that it will allow for the accurate measurement of the energy use of these products, while alleviating the testing problems associated with Sub-Zero’s hybrid refrigerator basic model.

### III. Consultations With Other Agencies

DOE consulted with the Federal Trade Commission (FTC) staff concerning the Sub-Zero petition for waiver. The FTC staff did not have any objections to granting a waiver to Sub-Zero.

### IV. Conclusion

After careful consideration of all the material that was submitted by Sub-Zero and consultation with the FTC staff, it is ordered that:

(1) The petition for waiver submitted by Sub-Zero Group, Inc. (Case No. RF-040) is hereby granted as set forth in the paragraphs below.

(2) Sub-Zero shall be required to test and rate the following Sub-Zero models according to the alternate test procedure set forth in paragraph (3) below.

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(3) Sub-Zero shall be required to test the products listed in paragraph (2) above according to the test procedures for electric refrigerator-freezers prescribed by DOE at 10 CFR part 430, appendix A, except that, for the Sub-Zero product listed in paragraph (2) only, with a standardized temperature for the wine chiller compartment of 55 °F, instead of the prescribed 39 °F. Sub-Zero shall also use the K factor (correction factor) value of 0.85 when calculating the energy consumption of the model listed and calculate the energy consumption of this model as follows:

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 A):

Energy consumption of the wine compartment:  

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

Energy consumption of the refrigerated beverage compartment:

$$E_{\text{Refrigerated Compartment}} = ET1 + [(ET2 - ET1) \times (39^\circ\text{F} - TRC1)/(TRC2 - TRC1)].$$

(4) Representations. Sub-Zero may make representations about the energy use of its hybrid refrigerated “storage-wine storage” products for compliance,

marketing, or other purposes only to the extent that such products have been tested in accordance with the provisions outlined above and such representations fairly disclose the results of such testing.

(5) This waiver shall remain in effect consistent with the provisions of 10 CFR 430.27(l).

(6) 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 models’ true energy consumption characteristics.

(7) This waiver applies only to those basic models set out in Sub-Zero’s May 19, 2014 petition for waiver. Grant of this waiver does not release a petitioner from the certification requirements set forth at 10 CFR part 429.

Issued in Washington, DC, on February 4, 2015.

**Kathleen B. Hogan,**

*Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy.*

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Project No. 2503-154]

#### **Duke Energy Carolinas, LLC; Notice of Application Accepted for Filing, Soliciting Motions To Intervene and Protests, Ready for Environmental Analysis, and Soliciting Comments, Recommendations, Preliminary Terms and Conditions, and Preliminary Fishway Prescriptions**

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Major License.  
 b. *Project No.:* 2503-154.  
 c. *Date filed:* August 27, 2014.  
 d. *Applicant:* Duke Energy Carolinas, LLC.

e. *Name of Project:* Keowee-Toxaway Hydroelectric Project.

f. *Location:* The existing Keowee-Toxaway Project is located on the Toxaway, Keowee, and Little Rivers in Oconee County and Pickens County, South Carolina and Transylvania County, North Carolina. The Keowee-