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[6450-01-P]

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

[Case No. CW-026]

Energy Conservation Program for Consumer Products: Decision and Order Granting a Waiver to Whirlpool from the Department of Energy Residential Clothes Washer Test Procedure

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 a decision and order (Case No. CW-026) that grants to Whirlpool Corporation (Whirlpool) a waiver from the DOE clothes washer test procedure for determining the energy consumption of clothes washers. Under this decision and order, Whirlpool is required to test and rate its clothes washers with clothes containers greater than 6.0 cubic feet using an alternate test procedure that takes this larger capacity into account when measuring energy consumption.

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

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. E-mail: Bryan.Berringer@ee.doe.gov.

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SUPPLEMENTARY INFORMATION: In accordance with Title 10 of the Code of Federal Regulations (10 CFR 430.27(f)(2)), DOE gives notice of the issuance of its decision and order as set forth below. The decision and order grants Whirlpool a waiver from the applicable clothes washer test procedure in 10 CFR part 430, subpart B, appendix J2 for certain basic models of clothes washers with capacities greater than 6.0 cubic feet, provided that Whirlpool tests and rates such products using the alternate test procedure described in this notice. Whirlpool's representations concerning the energy efficiency of these products must be based on testing consistent with the provisions and restrictions in the alternate test procedure set forth in the decision and order below, and the representations must 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. 42 U.S.C. 6293(c).

Not later than [INSERT DATE 60 days after publication in the Federal Register], any manufacturer currently distributing in commerce in the United States a residential clothes washer with a capacity larger than 6.0 cubic feet must submit a petition for waiver pursuant to the requirements of this section. Manufacturers not currently distributing such products in commerce in the United States must petition for and be granted a waiver prior to distribution in commerce in the United States. Manufacturers may also submit a request for interim waiver pursuant to the requirements of 10 CFR 430.27.

Issued in Washington, DC, on April 26, 2016.

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

Decision and Order

In the Matter of: Whirlpool Corporation (Case No. CW-026)

I. *Background and Authority*

Title III, Part B of the Energy Policy and Conservation Act of 1975 (EPCA) (42 U.S.C. 6291-6309) established the Energy Conservation Program for Consumer Products Other Than Automobiles, a program covering most major household appliances, including the residential clothes washers.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 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 clothes washers is contained in 10 CFR part 430, subpart B, appendix J2.

The regulations set forth in 10 CFR 430.27 enable a person to seek a waiver from the test procedure requirements for covered products. DOE will grant a waiver if DOE determines 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). DOE may grant the waiver subject to conditions, including adherence to alternate test procedures. 10 CFR 430.27(f)(2).

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

II. *Whirlpool's Petition for Waiver: Assertions and Determinations*

On November 9, 2015, Whirlpool submitted a petition for waiver from the DOE test procedure applicable to automatic and semi-automatic clothes washers as set forth in 10 CFR part 430, subpart B, appendix J2. Whirlpool requested the waiver because the mass of the test load used in the procedure, which is based on the basket volume of the test unit, is currently not defined for basket sizes greater than 6.0 cubic feet. In its petition, Whirlpool sought a waiver for the specified basic models, which have capacities greater than 6.0 cubic feet, as the current DOE test procedure specifies test load sizes only for machines with capacities up to 6.0 cubic feet. (See 77 FR 13888, Mar. 7, 2012; the “March 2012 Final Rule”)

Table 5.1 of Appendix J2 defines the test load sizes used in the test procedure as linear functions of the basket volume. Whirlpool requested that DOE grant a waiver for testing and rating based on a revised Table 5.1. Whirlpool also requested an interim waiver from the existing DOE test procedure, which DOE granted. See 80 FR at 78208. After reviewing the alternate procedure suggested by Whirlpool, DOE granted the interim waiver because DOE concluded that it would allow for the accurate measurement of the energy use of these products, while alleviating the testing problems associated with testing clothes washers with capacities greater than 6.0 cubic feet.

Whirlpool's petition was published in the Federal Register on December 16, 2015. 80 FR 78208. DOE received one comment on the Whirlpool petition filed jointly by the Appliance Standards Awareness Project (ASAP), Alliance to Save Energy (ASE), American Council for an

Energy-Efficient Economy (ACEEE), Natural Resources Defense Council (NRDC), and Northwest Energy Efficiency Alliance (NEEA) (hereinafter the “Joint Commenters”). The Joint Commenters did not object to manufacturers being able to test and certify clothes washers with capacities greater than 6.0 cu. ft. They reiterated concerns raised in the rulemaking that culminated in the March 2012 Final Rule, however, regarding a potential bias in the test procedure towards large capacity washers, and asserted that these concerns would be exacerbated with a further extension of Table 5.1 of appendix J2 up to 8.0 cu. ft. (Joint Commenters, No. 2 at p. 1)²

DOE granted a waiver to Whirlpool for a similar request under Decision and Order (75 FR 69653, Nov. 15, 2010) to allow for the testing of clothes washers with container volumes between 3.8 cubic feet and 6.0 cubic feet. In addition to the previous waiver granted to Whirlpool, DOE granted waivers to LG (CW-016 (76 FR 11233, Mar. 1, 2011), CW-018 (76 FR 21879, Apr. 19, 2011), and CW-021 (76 FR 64330, Oct. 18, 2011); General Electric (75 FR 76968, Dec. 10, 2010), Samsung (76 FR 13169, Mar. 10, 2011); 76 FR 50207, Aug. 12, 2011), and Electrolux (76 FR 11440, Mar. 2, 2011) to allow for the testing of clothes washers with container volumes between 3.8 cubic feet and 6.0 cubic feet.

For the reasons set forth in DOE’s March 2012 Final Rule, DOE concludes that extending the linear relationship between test load size and container capacity to larger capacities represents the best possible approach for determining load size for large capacity washers. DOE will continue to evaluate the possibility of a bias in the test procedure with respect to large capacity

² A notation in the form “Joint Commenters, No. 2 at p. 1” identifies a written comment: (1) made by the ASAP, ASE, ACEEE, NRDC, and NEEA (hereinafter the “Joint Commenters”); (2) recorded in document number 2 that is filed in the docket of this waiver (Docket No. EERE–2015– BT–WAV–0020) and available for review at www.regulations.gov; and (3) which appears on page 1 of document number 2.

washers in the next revision to the DOE test procedure in appendix J2. In addition, DOE determines that testing a basic model with a capacity larger than 6.0 cubic feet using the current procedure at Appendix J2 could evaluate the basic models in a manner so unrepresentative of their true energy consumption as to provide materially inaccurate comparative data.

III. *Consultations with Other Agencies*

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

IV. *Order*

After careful consideration of all the material that was submitted by Whirlpool and the Joint Commenters, the testing and analysis conducted for the March 2012 Final Rule, and consultation with the FTC staff, in accordance with 10 CFR 430.27, it is ORDERED that:

(1) The petition for waiver submitted by the Whirlpool Corporation (Case No. CW-026) is hereby granted as set forth in the paragraphs below.

(2) Whirlpool must test and rate the Whirlpool basic models specified in paragraph (3) on the basis of the current test procedure contained in 10 CFR part 430, subpart B, appendix J2, except that Table 5.1 of appendix J2 is supplemented by the following additional rows:

TABLE 5.1—TEST LOAD SIZES - SUPPLEMENT

Container volume	Minimum	Maximum	Average load
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		load		load			
cu. ft. ≥ <	liter ≥ <	lb	kg	lb	kg	lb	Kg
6.00-6.10	169.9-172.7	3.00	1.36	24.80	11.25	13.90	6.30
6.10-6.20	172.7-175.6	3.00	1.36	25.20	11.43	14.10	6.40
6.20-6.30	175.6-178.4	3.00	1.36	25.60	11.61	14.30	6.49
6.30-6.40	178.4-181.2	3.00	1.36	26.00	11.79	14.50	6.58
6.40-6.50	181.2-184.1	3.00	1.36	26.40	11.97	14.70	6.67
6.50-6.60	184.1-186.9	3.00	1.36	26.90	12.20	14.95	6.78
6.60-6.70	186.9-189.7	3.00	1.36	27.30	12.38	15.15	6.87
6.70-6.80	189.7-192.6	3.00	1.36	27.70	12.56	15.35	6.96
6.80-6.90	192.6-195.4	3.00	1.36	28.10	12.75	15.55	7.05
6.90-7.00	195.4-198.2	3.00	1.36	28.50	12.93	15.75	7.14
7.00-7.10	198.2-201.0	3.00	1.36	28.90	13.11	15.95	7.23
7.10-7.20	201.0-203.9	3.00	1.36	29.30	13.29	16.15	7.33
7.20-7.30	203.9-206.7	3.00	1.36	29.70	13.47	16.35	7.42
7.30-7.40	206.7-209.5	3.00	1.36	30.10	13.65	16.55	7.51
7.40-7.50	209.5-212.4	3.00	1.36	30.60	13.88	16.80	7.62
7.50-7.60	212.4-215.2	3.00	1.36	31.00	14.06	17.00	7.71
7.60-7.70	215.2-218.0	3.00	1.36	31.40	14.24	17.20	7.80
7.70-7.80	218.0-220.9	3.00	1.36	31.80	14.42	17.40	7.89
7.80-7.90	220.9-223.7	3.00	1.36	32.20	14.61	17.60	7.98
7.90-8.00	223.7-226.5	3.00	1.36	32.60	14.79	17.80	8.07

(3) This order applies only to the following three basic models:

V15EAg50(3B);
V15EBg50(3B); and
V15ECg50(3B).

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

Issued in Washington, DC, on April 26, 2016.

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

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