

On August 4, 2003, Fisher & Paykel certified to the Department that it had circulated copies of its Application for Interim Waiver and Petition for Waiver to all known clothes washer manufacturers for comment. On September 15, 2003, the Department received copies of questions submitted by members of the Association of Home Appliance Manufacturers (AHAM) to Fisher & Paykel, in response to the circulated waiver, along with minutes from a conference call held on August 21, 2003, between AHAM Home Laundry Specialists and Fisher & Paykel, to discuss the waiver. The AHAM members requested clarifications on two points: (1) Confirmation that the #3 "How Dirty" setting met the 70 percent minimum run time requirement for the test procedure, and (2) Fisher & Paykel's intent regarding the selection of both maximum and minimum spin cycles. Subsequent to this discussion, Fisher & Paykel made changes to the waiver to clarify these issues. It added a table to show the wash times for each "How Dirty" setting and language to make clear that both the maximum and minimum spin speeds would be included in the test. Fisher & Paykel resubmitted its waiver to the Department with the revisions requested by the AHAM clothes washer

manufacturers on August 31, 2003. On September 15, 2003, AHAM reported to the Department that the changes made to the waiver by Fisher & Paykel were acceptable to its members. DOE received no additional comments.

Based on the above, the Department agrees that the Fisher & Paykel IW clothes washer, using an adaptive control system without a "normal" cycle, has a design characteristic which prevents the company from testing that model according to the prescribed test procedures. Because Fisher & Paykel has suggested a reasonable method for selecting an equivalent cycle for testing and will conduct the remainder of the test procedure according to the established DOE test procedure, the Department believes that it is likely that this Petition for Waiver will be granted. To deny Fisher & Paykel the ability to test and market an adaptive control clothes washer in the United States would discourage innovation, deny consumers new options in clothes washer features, and create economic hardship for the company.

The Department is therefore granting Fisher & Paykel the Interim Waiver it has requested for its IW clothes washer. Fisher & Paykel shall be permitted to test its adaptive control clothes washer using the default cycle which begins when a consumer presses the power/

start button and does not manually select an alternative "How Dirty" setting.

This Interim Waiver is based upon the presumed validity of statements and all allegations submitted by the company. This Interim Waiver may be removed or modified at any time upon a determination that the factual basis underlying the Application is incorrect.

This Interim Waiver shall remain in effect for a period of 180 days after issuance or until DOE acts on the Petition for Waiver, whichever is sooner, and may be extended for an additional 180-day period, if necessary. Pursuant to 10 CFR 430.27(b), DOE is hereby publishing the "Petition for Waiver" in its entirety. The Petition contains no confidential information. The Department solicits comments, data, and information respecting the Petition. Any person submitting written comments to DOE concerning either the Petition for Waiver or Interim Waiver must also send a copy of such comments to the petitioner. 10 CFR 430.27(b)(1)(iv) and 430.27(d).

Issued in Washington, DC, on October 30, 2003.

David K. Garman,

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