

**DEPARTMENT OF ENERGY****Office of Energy Efficiency and Renewable Energy**

[Case No. RF-045]

**Energy Conservation Program for Consumer Products: Decision and Order Granting a Waiver to AGA Marvel From the Department of Energy 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 a Decision and Order (Case No. RF-045) that grants to AGA Marvel a waiver from the DOE test procedure for determining the energy consumption of electric refrigerators and refrigerator-freezers. Under this Decision and Order, AGA Marvel is required to test and rate specified basic models of its combination cooler-refrigerator in accordance with the applicable DOE test procedure, with the exception that it must calculate energy consumption using a correction factor (“K-factor”) of 0.85.

**DATES:** This Decision and Order is effective May 5, 2017. This Decision and Order will terminate on October 28, 2019, in conjunction with the compliance date of the recently published standards for miscellaneous refrigeration products. Testing to demonstrate compliance with those standards, and any other representations of energy use made on or after October 28, 2019, will require manufacturers to use the relevant test procedure for these products.

**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: [AS\\_Waiver\\_Requests@ee.doe.gov](mailto:AS_Waiver_Requests@ee.doe.gov).

Mr. Michael Kido, U.S. Department of Energy, Office of the General Counsel, Mail Stop GC-33, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585-0103. Telephone: (202) 586-8145. E-mail: [Michael.Kido@hq.doe.gov](mailto:Michael.Kido@hq.doe.gov).

**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 AGA Marvel a waiver from the applicable test procedure in 10 CFR part 430, subpart B, appendix A for certain basic models of combination cooler-refrigerators provided that AGA Marvel tests and rates such products using the alternate test procedure described in this notice. AGA Marvel’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).

Consistent with 10 CFR 430.27(j), not later than July 5, 2017, any manufacturer currently distributing in commerce in the United States a product employing a technology or characteristic that results in the same need for a waiver from the applicable test procedure must submit a petition for waiver. Manufacturers not currently distributing such products in commerce in the United States must petition for and be granted a waiver prior to the distribution in commerce of those products 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 28, 2017.

**Kathleen Hogan,**

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

**Decision and Order**

*In the Matter of:* AGA Marvel (Case No. RF-045)

**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 that includes residential refrigerators and refrigerator-freezers.<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,

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

and that are not unduly burdensome to conduct. (42 U.S.C. 6293(b)(3)) The test procedure for residential refrigerators and refrigerator-freezers is contained in 10 CFR part 430, subpart B, appendix A.

The regulations set forth in 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 product when the petitioner’s basic model for which the petition for waiver was submitted contains one or more design characteristics that: (1) Prevent testing according to the prescribed test procedure, or (2) cause the prescribed test procedures to 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). DOE may grant the waiver subject to conditions, including adherence to alternate test procedures. 10 CFR 430.27(f)(2). DOE recently published standards for miscellaneous refrigeration products (“MREFs”). See 81 FR 75194 (Oct. 28, 2016). Testing to demonstrate compliance with those standards will require manufacturers to use the MREF test procedure established in a final rule published in July 2016. See 81 FR 46768 (July 18, 2016) (MREF coverage determination and test procedure final rule) and 81 FR 49868 (July 29, 2016) (MREF test procedure final rule correction notice). Under these rules, DOE has determined that products such as those that are at issue here fall into the MREF category. Accordingly, consistent with these MREF-specific provisions, these products will be evaluated under prescribed procedures and against specified standards that are tailored to account for their particular characteristics.

**II. AGA Marvel’s Petition for Waiver: Assertions and Determinations**

By letter dated January 26, 2016, AGA Marvel submitted a petition for waiver and application for interim waiver under 10 CFR 430.27(a) for 12 basic models of combination cooler-refrigerators that are required to be tested using the test procedure detailed at appendix A to subpart B of 10 CFR part 430. AGA Marvel supplemented its filing with a March 9, 2016, email identifying the basic models. At the time of the petition, Appendix A required measuring the energy consumption of refrigerators using a standardized compartment temperature of 39 degrees Fahrenheit (°F), a temperature that, according to AGA Marvel, its products are not capable of achieving in all compartments. As a

result, AGA Marvel petitioned for a waiver to appendix A's procedure to apply a standardized compartment temperature of 55 °F to the cooler compartments within its products. These compartments maintain a higher temperature that is typical for storing wine. AGA Marvel also requested that the products be tested with a 0.55 usage factor, rather than with no usage factor as required according to appendix A. Both the compartment temperature and usage factor are consistent with the requirements incorporated into appendix A from the July 2016 MREF test procedure final rule. 81 FR 46768.

DOE granted a similar waiver to Panasonic Appliances Refrigeration Systems Corporation of America ("PAPRSA") in 2012 (under PAPRSA's previous corporate name, Sanyo E&E Corporation) (Case No. RF-022, 77 FR 49443 (August 16, 2012)), in 2013 (Case No. RF-031, 78 FR 57139 (Sept. 17, 2013)), and 2014 (Case No. RF-041, 79 FR 55769 (September 17, 2014)). On October 4, 2012, DOE issued a notice of correction to this Decision and Order by incorporating a K-factor (correction factor) value of 0.85 when calculating the energy consumption of the affected models. (77 FR 60688) On January 26, 2016, due to issues with regard to the equations detailed in the prior waiver decisions, DOE issued a proposed modification of its prior waivers and granted PAPRSA with an interim waiver (81 FR 4270) under Case No. RF-043 to correct these known issues. DOE also previously granted a similar waiver to Sub-Zero Group Inc. through an interim waiver (79 FR 55772 (September 17, 2014)) and a subsequent Decision and Order (80 FR 7854 (February 12, 2015)) under Case No. RF-040.

AGA Marvel's petition for waiver included an alternate test procedure to account for the energy consumption of its combination cooler-refrigerator products. Specifically, it proposed using the test procedure for combination cooler refrigeration products in appendix A. However, DOE's recent notice detailing a modified version of the calculation method used to measure and rate the energy use of products similar to AGA Marvel's combination cooler-refrigerators provides a simpler and equitable solution to the problems identified in AGA Marvel's petition. See 81 FR 4270 (notice granting interim waiver and seeking comment on DOE's proposal to modify PAPRSA's alternative test method for combination cooler refrigeration products). Accordingly, applying the test method outlined in the recent PAPRSA interim waiver to determine compliance with the existing refrigerator standards would

follow an already-established approach and help ensure consistency when testing similar products (*i.e.*, a correction factor of 0.85 rather than 0.55 is appropriate for determining compliance with refrigerator standards).

AGA Marvel also requested an interim waiver from the existing DOE test procedure, which DOE granted. See 81 FR at 41531. DOE did not receive any comments on the AGA Marvel petition or the interim waiver.

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 AGA Marvel's combination cooler-refrigerator basic models.

### III. Consultations With Other Agencies

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

### IV. Order

After careful consideration of all the material that was submitted by AGA Marvel 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 AGA Marvel. (Case No. RF-045) is hereby granted as set forth in the paragraphs below.

(2) AGA Marvel must test and rate the AGA Marvel basic models specified in paragraph (3) on the basis of the current test procedure contained in 10 CFR part 430, subpart B, appendix A, with the exception that it must calculate energy consumption using a correction factor ("K-factor") of 0.85.

Therefore, the energy consumption is defined by:

If compartment temperatures are below their respective standardized temperatures for both test settings (according to 10 CFR part 430, subpart B, appendix A, sec. 6.2.4.1):

$$E = (ET1 \times 0.85) + IET.$$

If compartment temperatures are not below their respective standardized temperatures for both test settings, the higher of the two values calculated by the following two formulas (according to 10 CFR part 430, subpart B, appendix A, sec. 6.2.4.2):

Energy consumption of the "cooler compartment":

$$ECooler\ Compartment = (ET1 + [(ET2 - ET1) \times (55\ ^\circ F - TC1)/(TC2 - TC1)]) \times 0.85 + IET$$

Energy consumption of the "fresh food compartment":

$$EFreshFood\ Compartment = (ET1 + [(ET2 - ET1) \times (39\ ^\circ F - TR1)/(TR2 - TR1)]) \times 0.85 + IET.$$

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

Basic models under the MARVEL brand:

ML24WBG\*\*\*1  
ML24WBF\*\*\*1  
ML24WBS\*\*\*1  
ML24WBP\*\*\*1

Basic models under the MARVEL Outdoor brand:

MO24WBG\*\*\*1  
MO24WBF\*\*\*1  
MO24WBS\*\*\*1  
MO24WBP\*\*\*1

Basic models under the MARVEL Professional brand:

MP24WBG\*\*\*1  
MP24WBF\*\*\*1  
MP24WBS\*\*\*1  
MP24WBP\*\*\*1

Where (\*) represents a character in the model number that corresponds to door swing, door style, color, or marketing features and has no impact on the number of compartments, compartment function, product class, or test method.

(4) Representations. AGA Marvel may make representations about the energy use of the specified basic models of its combination cooler-refrigerator 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 Decision and Order will terminate on October 28, 2019, in conjunction with the compliance date of the recently published standards for miscellaneous refrigeration products ("MREFs"). See 81 FR 75194 (Oct. 28, 2016). Starting on October 28, 2019, testing to demonstrate compliance with those standards must be performed in accordance with the MREF test procedure final rule. See 81 FR 46768 (July 18, 2016) (MREF test procedure final rule) and 81 FR 49868 (July 29, 2016) (MREF test procedure final rule correction notice).

(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) 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 4/28/2017.  
Kathleen B. Hogan,  
Deputy Assistant Secretary for Energy  
Efficiency, Energy Efficiency and Renewable  
Energy.

[FR Doc. 2017-09131 Filed 5-4-17; 8:45 am]

BILLING CODE 6450-01-P

**DEPARTMENT OF ENERGY**

**Office of Energy Efficiency and  
Renewable Energy**

**Energy Conservation Program for  
Consumer Products: Representative  
Average Unit Costs of Energy**

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

**ACTION:** Notice.

**SUMMARY:** In this notice, the U.S.  
Department of Energy (DOE) is  
forecasting the representative average  
unit costs of five residential energy  
sources for the year 2017 pursuant to  
the Energy Policy and Conservation Act  
(Act). The five sources are electricity,  
natural gas, No. 2 heating oil, propane,  
and kerosene.

**DATES:** The representative average unit  
costs of energy contained in this notice  
will become effective June 5, 2017 and  
will remain in effect until further notice.

**FOR FURTHER INFORMATION CONTACT:** John  
Cymbalsky, U.S. Department of Energy,  
Office of Energy Efficiency and  
Renewable Energy Forrestal Building,  
Mail Station EE-5B, 1000 Independence  
Avenue SW., Washington, DC 20585-  
0121, (202) 287-1692,  
*ApplianceStandardsQuestions@  
ee.doe.gov*.

Francine Pinto, Esq., U.S. Department  
of Energy, Office of General Counsel  
Forrestal Building, Mail Station GC-33,  
1000 Independence Avenue SW.,

Washington, DC 20585-0103, (202) 586-  
7432, *Francine.Pinto@hq.doe.gov*.

**SUPPLEMENTARY INFORMATION:** Section  
323 of the Energy Policy and  
Conservation Act requires that DOE  
prescribe test procedures for the  
measurement of the estimated annual  
operating costs or other measures of  
energy consumption for certain  
consumer products specified in the Act.  
(42 U.S.C. 6293(b)(3)) These test  
procedures are found in Title 10 of the  
Code of Federal Regulations (CFR) part  
430, subpart B.

Section 323(b)(3) of the Act requires  
that the estimated annual operating  
costs of a covered product be calculated  
from measurements of energy use in a  
representative average use cycle or  
period of use and from representative  
average unit costs of the energy needed  
to operate such product during such  
cycle. (42 U.S.C. 6293(b)(3)) The section  
further requires that DOE provide  
information to manufacturers regarding  
the representative average unit costs of  
energy. (42 U.S.C. 6293(b)(4)) This cost  
information should be used by  
manufacturers to meet their obligations  
under section 323(c) of the Act. Most  
notably, these costs are used to comply  
with Federal Trade Commission (FTC)  
requirements for labeling.

Manufacturers are required to use the  
revised DOE representative average unit  
costs when the FTC publishes new  
ranges of comparability for specific  
covered products, 16 CFR part 305.  
Interested parties can also find  
information covering the FTC labeling  
requirements at *http://www.ftc.gov/  
appliances*.

DOE last published representative  
average unit costs of residential energy  
in a **Federal Register** notice entitled,  
“Energy Conservation Program for  
Consumer Products: Representative  
Average Unit Costs of Energy”, dated  
March 23, 2016, 81 FR 15513.

On June 5, 2017, the cost figures  
published in this notice will become

effective and supersede those cost  
figures published on March 23, 2016.  
The cost figures set forth in this notice  
will be effective until further notice.

DOE’s Energy Information  
Administration (EIA) is the data source  
for the 2017 representative average unit  
after-tax residential costs found in this  
notice. These costs for electricity,  
natural gas, No. 2 heating oil, and  
propane are based on simulations used  
to produce the April 2017, *EIA Short-  
Term Energy Outlook* (EIA releases the  
*Outlook* monthly). The representative  
average unit after-tax cost for kerosene  
is derived from its price relative to that  
of heating oil, based on the 2010-to-2013  
averages of the U.S. refiner price to end  
users, which include all the major  
energy-consuming sectors in the U.S. for  
these fuels. The source for these price  
data is the April 2017, *Monthly Energy  
Review* DOE/EIA-0035(2017/04). The  
*Short-Term Energy Outlook* and the  
*Monthly Energy Review* are available on  
the EIA Web site at *http://  
www.eia.doe.gov*. The representative  
average unit after-tax cost for propane is  
derived from its price relative to that of  
heating oil, based on the 2017 averages  
of the U.S. residential sector prices  
found in the *Annual Energy Outlook  
2017*, AEO2017 (January 5, 2017). For  
more information on the data sources  
used in this Notice, contact the National  
Energy Information Center, Forrestal  
Building, EI-30, 1000 Independence  
Avenue SW., Washington, DC 20585,  
(202) 586-8800, email: *infoctr@  
eia.doe.gov*.

The 2017 representative average unit  
costs under section 323(b)(4) of the Act  
are set forth in Table 1, and will become  
effective June 5, 2017. They will remain  
in effect until further notice.

Issued in Washington, DC, on May 1, 2017.

**Daniel Simmons,**

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

**TABLE 1—REPRESENTATIVE AVERAGE UNIT COSTS OF ENERGY FOR FIVE RESIDENTIAL ENERGY SOURCES  
[2017]**

Type of energy	Per million Btu <sup>1</sup>	In commonly used terms	As required by test procedure
Electricity .....	\$37.72	12.9c/kWh <sup>2,3</sup> .....	\$0.129/kWh.
Natural Gas .....	10.52	\$1.052/therm <sup>4</sup> or \$10.86/MCF <sup>5,6</sup> .....	\$0.00001052/Btu.
No. 2 Heating Oil .....	18.83	\$2.59/gallon <sup>7</sup> .....	\$0.00001883/Btu.
Propane .....	16.72	\$1.53/gallon <sup>8</sup> .....	\$0.00001672/Btu.
Kerosene .....	22.32	\$3.01/gallon <sup>9</sup> .....	\$0.00002232/Btu.

**Sources:** U.S. Energy Information Administration, *Short-Term Energy Outlook* (April 11, 2017), *Annual Energy Outlook* (January 5, 2017), and *Monthly Energy Review* (April 25, 2017).

**Notes:** Prices include taxes.

1. Btu stands for British thermal units.
2. kWh stands for kilowatt hour.
3. 1 kWh = 3,412 Btu.
4. 1 therm = 100,000 Btu.