

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

[Case No. CW-022]

Decision and Order Granting a Waiver to LG From the Department of Energy 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 the decision and order (Case No. CW-022) that grants to LG Electronics U.S.A., Inc. (LG) a waiver from the DOE clothes washer test procedure for determining the energy consumption of clothes washers for the basic models set forth in its petition for waiver. Under today's decision and order, LG shall be required to test and rate these clothes washers using an alternate test procedure that takes their large capacities into account when measuring energy consumption.

DATES: This Decision and Order is effective February 1, 2012.

FOR FURTHER INFORMATION CONTACT: Dr. Michael G. Raymond, U.S. Department of Energy, Building Technologies Program, Mailstop EE-2J, 1000 Independence Avenue SW., Washington, DC 20585-0121. Telephone: (202) 586-9611, Email: <mailto:Michael.Raymond@ee.doe.gov>. Elizabeth Kohl, U.S. Department of Energy, Office of the General Counsel, Mail Stop GC-71, 1000 Independence Avenue SW., Washington, DC 20585-0103. Telephone: (202) 586-7796, Email: <mailto:mailto:Elizabeth.Kohl@hq.doe.gov>.

SUPPLEMENTARY INFORMATION: In accordance with Title 10 of the Code of Federal Regulations (10 CFR 430.27(l), 430.401(f)(4)), DOE gives notice of the issuance of its decision and order as set forth below. The decision and order grants LG a waiver from the applicable clothes washer test procedure in 10 CFR part 430, subpart B, appendix J1 for certain basic models of clothes washers with capacities greater than 3.8 cubic feet, provided that LG tests and rates such products using the alternate test procedure described in this notice. Today's decision prohibits LG from making representations concerning the energy efficiency of these products unless the product has been tested 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. 42 U.S.C. 6293(c).

Issued in Washington, DC, on January 25, 2012.

Kathleen B. Hogan,

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

Decision and Order

In the Matter of: LG Electronics U.S.A., Inc. (Case No. CW-022)

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 clothes washers that are the focus of this notice. 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 which measure energy efficiency, energy use, or estimated operating costs, and that are not unduly burdensome to conduct. (42 U.S.C. 6293(b)(3)). Part C of Title III provides for a similar energy efficiency program titled "Certain Industrial Equipment," which includes commercial clothes washers and other types of commercial equipment.¹ (42 U.S.C. 6311-6317) The test procedure for automatic and semi-automatic clothes washers (both residential and commercial) is contained in 10 CFR part 430, subpart B, appendix J1. (See 42 U.S.C. 6314(a)(8), requiring that the test procedure for commercial clothes washers be the same as the test procedure established for residential clothes washers.)

The regulations set forth in 10 CFR parts 430.27 and 431.401 contain provisions that enable a person to seek a waiver from the test procedure requirements for covered products and equipment. The Assistant Secretary for Energy Efficiency and Renewable Energy (the Assistant Secretary) 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(l), 431.401(f)(4). 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. 10 CFR 430.27(b)(1)(iii), 430.401(b)(1)(iii). The Assistant Secretary may grant the waiver subject to conditions, including adherence to alternate test procedures. 10 CFR 430.27(l), 431.401(f)(4). Waivers remain in effect pursuant to the provisions of 10 CFR 430.27(m) or 430.401(g), as appropriate.

The waiver process also allows the Assistant Secretary to grant an interim waiver from test procedure requirements to manufacturers that have petitioned DOE for a waiver of such prescribed test procedures. 10 CFR 430.27(g), 430.401(e)(3). An interim waiver remains in effect for 180 days or until DOE issues its determination on the petition for waiver, whichever is sooner. DOE may extend an interim waiver for an additional 180 days. 10 CFR 430.27(h), 430.401(e)(4).

On December 23, 2010, DOE issued enforcement guidance for large-capacity clothes washers. This guidance can be found on DOE's Web site at http://energy.gov/sites/prod/files/gcprod/documents/LargeCapacityRCW_guidance_122210.pdf.

II. LG's Petition for Waiver: Assertions and Determinations

On October 31, 2011, LG submitted the instant petition for waiver and application for interim waiver (petition) from the test procedure applicable to automatic and semi-automatic clothes washers set forth in 10 CFR part 430, subpart B, appendix J1. LG requested a waiver to test specified basic models with basket volumes greater than 3.8 cubic feet on the basis of the test procedures contained in 10 CFR part 430, Subpart B, Appendix J1, with a revised Table 5.1 which extends the range of container volumes beyond 3.8 cubic feet. LG's October 31, 2011 petition and DOE's grant of interim waiver were published in the **Federal Register** on November 16, 2011. 76 FR 70999. DOE received no comments on the LG petition.

LG's petition seeks a waiver from the DOE test procedure because the mass of

¹For editorial reasons, upon codification in the U.S. Code, Parts B and C were re-designated Parts A and A-1, respectively.

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 3.8 cubic feet. The basic models specified in LG's February 2011 petition have capacities larger than 3.8 cubic feet. In addition, if the current maximum test load mass is used to test these products, the tested energy use would be less than the actual energy usage and could evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inaccurate comparative data.

Table 5.1 of Appendix J1 defines the test load sizes used in the test procedure as linear functions of the basket volume. LG requests that DOE grant a waiver for testing and rating based on a revised Table 5.1, the same table as set forth in the waiver granted to LG on April 19, 2011 (76 FR 21879). The table is identical to the Table 5.1 found in DOE's clothes washer test procedure Notice of Proposed Rulemaking (NPR). 75 FR 57556 (Sept. 21, 1010).

DOE has determined that it is in the public interest to have similar products tested and rated for energy consumption on a comparable basis. Previously, DOE granted a test procedure waiver to Whirlpool for specified Whirlpool's clothes washer models with container capacities greater than 3.8 cubic feet. 75 FR 69653 (Nov. 15, 2010). This notice contained an alternate test procedure, which extended the linear relationship

between maximum test load size and clothes washer container volume in Table 5.1 to include a maximum test load size of 15.4 pounds (lbs) for clothes washer container volumes of 3.8 to 3.9 cubic feet. This extended Table 5.1 was set forth in DOE's September 2010 NPR. On December 10, 2010, DOE granted a similar waiver to General Electric Company (GE), which used the same alternate test procedure. 75 FR 76968. DOE has also granted waivers to Electrolux (76 FR 11440 (Mar. 2, 2011)), LG (76 FR 11233 (Mar. 1, 2011)); (76 FR 21879 (Apr. 19, 2011)); (76 FR 79666 (Dec. 22, 2011)) and Samsung (76 FR 13169 (Mar. 10, 2011)); 76 FR 50207 (Aug. 12, 2011)).

DOE notes that its supplemental proposed rule (http://www.eere.energy.gov/buildings/appliance_standards/residential/pdfs/rcw_tp_snopr.pdf) to amend the test procedures for clothes washers makes slight adjustments to Table 5.1 to correct for rounding errors. (76 FR 49238, Aug. 9, 2011). The alternate test procedure set forth in this decision and order adopts this updated table.

III. Consultations With Other Agencies

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

IV. Conclusion

After careful consideration of all the material that was submitted by LG, the

waivers granted to Whirlpool, GE, Samsung and Electrolux, as well as previously to LG, the clothes washer test procedure rulemaking, and consultation with the FTC staff, it is ordered that:

(1) The petition for waiver submitted by the LG Electronics America, Inc. (Case No. CW-022) is hereby granted as set forth in the paragraphs in this section.

(2) LG shall be required to test and rate the following LG models according to the alternate test procedure set forth in paragraph IV(3).

Residential model groups:

Model	Brand
WM9000H**	LG
WM8500H**	LG
WM3470H**	LG

Commercial model groups:

Model	Brand
CW2079C**	LG
GCW1069**	LG

(3) LG shall be required to test the products listed in paragraph IV(2) according to the test procedures for clothes washers prescribed by DOE at 10 CFR part 430, appendix J1, except that the expanded Table 5.1 of this section shall be substituted for Table 5.1 of appendix J1.

TABLE 5.1—TEST LOAD SIZES

Container volume		Minimum load		Maximum load		Average load	
cu. ft. ≥	liter ≥	lb	kg	lb	kg	lb	kg
0–0.8	0–22.7	3.00	1.36	3.00	1.36	3.00	1.36
0.80–0.90	22.7–25.5	3.00	1.36	3.50	1.59	3.25	1.47
0.90–1.00	25.5–28.3	3.00	1.36	3.90	1.77	3.45	1.56
1.00–1.10	28.3–31.1	3.00	1.36	4.30	1.95	3.65	1.66
1.10–1.20	31.1–34.0	3.00	1.36	4.70	2.13	3.85	1.75
1.20–1.30	34.0–36.8	3.00	1.36	5.10	2.31	4.05	1.84
1.30–1.40	36.8–39.6	3.00	1.36	5.50	2.49	4.25	1.93
1.40–1.50	39.6–42.5	3.00	1.36	5.90	2.68	4.45	2.02
1.50–1.60	42.5–45.3	3.00	1.36	6.40	2.90	4.70	2.13
1.60–1.70	45.3–48.1	3.00	1.36	6.80	3.08	4.90	2.22
1.70–1.80	48.1–51.0	3.00	1.36	7.20	3.27	5.10	2.31
1.80–1.90	51.0–53.8	3.00	1.36	7.60	3.45	5.30	2.40
1.90–2.00	53.8–56.6	3.00	1.36	8.00	3.63	5.50	2.49
2.00–2.10	56.6–59.5	3.00	1.36	8.40	3.81	5.70	2.59
2.10–2.20	59.5–62.3	3.00	1.36	8.80	3.99	5.90	2.68
2.20–2.30	62.3–65.1	3.00	1.36	9.20	4.17	6.10	2.77
2.30–2.40	65.1–68.0	3.00	1.36	9.60	4.35	6.30	2.86
2.40–2.50	68.0–70.8	3.00	1.36	10.00	4.54	6.50	2.95
2.50–2.60	70.8–73.6	3.00	1.36	10.50	4.76	6.75	3.06
2.60–2.70	73.6–76.5	3.00	1.36	10.90	4.94	6.95	3.15
2.70–2.80	76.5–79.3	3.00	1.36	11.30	5.13	7.15	3.24
2.80–2.90	79.3–82.1	3.00	1.36	11.70	5.31	7.35	3.33
2.90–3.00	82.1–85.0	3.00	1.36	12.10	5.49	7.55	3.42
3.00–3.10	85.0–87.8	3.00	1.36	12.50	5.67	7.75	3.52
3.10–3.20	87.8–90.6	3.00	1.36	12.90	5.85	7.95	3.61

TABLE 5.1—TEST LOAD SIZES—Continued

Container volume		Minimum load		Maximum load		Average load	
cu. ft. ≥	liter ≥	lb	kg	lb	kg	lb	kg
3.20–3.30	90.6–93.4	3.00	1.36	13.30	6.03	8.15	3.70
3.30–3.40	93.4–96.3	3.00	1.36	13.70	6.21	8.35	3.79
3.40–3.50	96.3–99.1	3.00	1.36	14.10	6.40	8.55	3.88
3.50–3.60	99.1–101.9	3.00	1.36	14.60	6.62	8.80	3.99
3.60–3.70	101.9–104.8	3.00	1.36	15.00	6.80	9.00	4.08
3.70–3.80	104.8–107.6	3.00	1.36	15.40	6.99	9.20	4.17
3.80–3.90	107.6–110.4	3.00	1.36	15.80	7.16	9.40	4.26
3.90–4.00	110.4–113.3	3.00	1.36	16.20	7.34	9.60	4.35
4.00–4.10	113.3–116.1	3.00	1.36	16.60	7.53	9.80	4.45
4.10–4.20	116.1–118.9	3.00	1.36	17.00	7.72	10.00	4.54
4.20–4.30	118.9–121.8	3.00	1.36	17.40	7.90	10.20	4.63
4.30–4.40	121.8–124.6	3.00	1.36	17.80	8.09	10.40	4.72
4.40–4.50	124.6–127.4	3.00	1.36	18.20	8.27	10.60	4.82
4.50–4.60	127.4–130.3	3.00	1.36	18.70	8.46	10.85	4.91
4.60–4.70	130.3–133.1	3.00	1.36	19.10	8.65	11.05	5.00
4.70–4.80	133.1–135.9	3.00	1.36	19.50	8.83	11.25	5.10
4.80–4.90	135.9–138.8	3.00	1.36	19.90	9.02	11.45	5.19
4.90–5.00	138.8–141.6	3.00	1.36	20.30	9.20	11.65	5.28
5.00–5.10	141.6–144.4	3.00	1.36	20.70	9.39	11.85	5.38
5.10–5.20	144.4–147.2	3.00	1.36	21.10	9.58	12.05	5.47
5.20–5.30	147.2–150.1	3.00	1.36	21.50	9.76	12.25	5.56
5.30–5.40	150.1–152.9	3.00	1.36	21.90	9.95	12.45	5.65
5.40–5.50	152.9–155.7	3.00	1.36	22.30	10.13	12.65	5.75
5.50–5.60	155.7–158.6	3.00	1.36	22.80	10.32	12.90	5.84
5.60–5.70	158.6–161.4	3.00	1.36	23.20	10.51	13.10	5.93
5.70–5.80	161.4–164.2	3.00	1.36	23.60	10.69	13.30	6.03
5.80–5.90	164.2–167.1	3.00	1.36	24.00	10.88	13.50	6.12
5.90–6.00	167.1–169.9	3.00	1.36	24.40	11.06	13.70	6.21

Notes: (1) All test load weights are bone dry weights.
(2) Allowable tolerance on the test load weights are ± 0.10 lbs (0.05 kg).

(4) Representations. LG may make representations about the energy use of its clothes washer products for compliance, marketing, or other purposes only to the extent that such products have been tested in accordance with the provisions outlined in this section 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(m) and 430.401(g).

(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 LG's October 31, 2011 petition for waiver and listed in section IV(2) of this section. 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 January 25, 2012.

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. VHE–001]

Publication of the Petition for Waiver From Empire Comfort Systems From the Department of Energy Vented Home Heating Equipment Test Procedure

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

ACTION: Notice of re-opening of public comment period.

SUMMARY: On November 3, 2011, DOE published the Empire Comfort Systems Inc. (Empire) petition for waiver from the vented home heating equipment test procedure. This document announces

that the period for submitting comments on the Empire petition for waiver is re-opened until March 2, 2012.

DATES: The comment period for the Empire petition for waiver, published on November 3, 2011 (76 FR 68180), is reopened. DOE will accept comments, data, and information regarding the petition for waiver received no later than March 2, 2012.

ADDRESSES: Any comments submitted must identify the Empire Comfort Systems Inc. petition for waiver, and provide case number VHE–001. Comments may be submitted using any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Email:* AS_Waiver_Requests@ee.doe.gov. Include the case number [Case No. VHE–001] in the subject line of the message.

- *Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2/1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–2945. Please submit one signed original paper copy.
- *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy,