[6450-01-P]

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

[Case No. CW-020]

Decision and Order Granting a Waiver to Samsung 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 the decision and order (Case No. CW-020) that grants to Samsung Electronics America, Inc. (Samsung) 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, Samsung shall be required to test and rate these clothes washers using an alternate test procedure that takes the large capacities into account when measuring energy consumption.

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

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SUPPLEMENTARY INFORMATION: In accordance with Title 10 of the Code of Federal Regulations (10 CFR 430.27(l)), DOE gives notice of the issuance of its decision and order as set forth below. The decision and order grants Samsung 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 Samsung tests and rates such products using the alternate test procedure described in this notice. Today's decision prohibits Samsung 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 November 8, 2011.

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

Decision and Order

In the Matter of: Samsung Electronics America, Inc. (Case No. CW-020)

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 clothes washers that are the focus of this notice.[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 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)) The test procedure for automatic and semi-automatic clothes washers is set forth in 10 CFR part 430, subpart B, appendix J1.

DOE's regulations for covered products contain provisions allowing a person to seek a waiver from the test procedure requirements for a particular basic model for covered consumer products when (1) the petitioner's basic model for which the petition for waiver was submitted contains one or more design characteristics that prevent testing according to the prescribed test procedure, or (2) when 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(a)(1). Petitioners must include in their petition any

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

alternate test procedures known to the petitioner to evaluate the basic model in a manner representative of its energy consumption characteristics. 10 CFR 430.27(b)(1)(iii).

The Assistant Secretary for Energy Efficiency and Renewable Energy (the Assistant Secretary) may grant a waiver subject to conditions, including adherence to alternate test procedures. 10 CFR 430.27(l). Waivers remain in effect pursuant to the provisions of 10 CFR 430.27(m).

Any interested person who has submitted a petition for waiver may also file an application for interim waiver of the applicable test procedure requirements. 10 CFR 430.27(a)(2). The Assistant Secretary will grant an interim waiver request if it is determined that the applicant will experience economic hardship if the 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 on the petition for waiver. 10 CFR 430.27(g).

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. *Samsung's Petition for Waiver: Assertions and Determinations*

On June 20, 2011, Samsung 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. Samsung requested a waiver to test specified basic models of its residential clothes washers 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. Samsung's instant petition and DOE's grant of interim waiver were published in the Federal Register on August 8, 2011. 76 FR 48149. DOE received no comments on the Samsung petition.

Samsung's petition seeks a waiver from the DOE test procedure 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 3.8 cubic feet. The basic models specified in Samsung'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. Samsung 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 Samsung on

March 10, 2011 (76 FR 13169). The table is identical to the Table 5.1 found in DOE's clothes washer test procedure Notice of Proposed Rulemaking (NOPR). 75 FR 57556 (Sept. 21, 1010).

As DOE has stated in the past, 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 three of 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 test procedure was set forth in DOE's September 2010 NOPR. 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)) and Samsung (76 FR 13169 (Mar. 10, 2011); 76 FR 50207 (Aug. 12, 2011)).

DOE notes that its recently issued 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. The alternate test procedure set forth in this decision and order adopts this updated table. (76 FR 49238, Aug. 9, 2011).

III. *Consultations with Other Agencies*

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

IV. *Conclusion*

After careful consideration of all the material that was submitted by Samsung, the waivers granted to Whirlpool, GE, LG and Electrolux, as well as previously to Samsung, the clothes washer test procedure rulemaking, and consultation with the FTC staff, it is ordered that:

(1) The petition for waiver submitted by the Samsung Electronics America, Inc. (Case No. CW-020) is hereby granted as set forth in the paragraphs below.

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

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(3) Samsung shall be required to test the products listed in paragraph (2) above 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 below 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
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. Samsung 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 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(m).

(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 Samsung's June 20, 2011 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 November 8, 2011.

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

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