The following is a U.S. Department of Energy interpretive rule, which sets out the Department's views on the application of the clothes washer testing procedure described in 10 CFR § 430 Appendix J1.

This interpretive rule represents the Department's interpretation of its existing regulations and is exempt from the notice and comment requirements of the Administrative Procedure Act. *See* 5 U.S.C. § 553(b)(A). Nevertheless, we solicited feedback from the public on the draft guidance and considered the three comments received in issuing the final guidance. Two of the comments generally supported the draft guidance, and the Department determined that the third comment did not warrant changes to the draft; as a result, the Department issues its draft interpretive rule as a final document without change.

Additional Guidance Regarding Application of Current Procedures for Testing Energy Consumption of Clothes Washers with Warm Rinse Cycles
Issued: September 21, 2010

The Energy Policy and Conservation Act of 1975 (EPCA or the Act), as amended, requires the Department of Energy (DOE or the Department) to prescribe standardized test procedures to measure the energy consumption of certain consumer products. *See* 42 U.S.C. §§ 6293, 6295(r). The Department's current test procedure for residential clothes washers is set forth at 10 C.F.R. Part 430, Subpart B, Appendix J1, Uniform Test Method for Measuring the Energy Consumption of Automatic and Semi-Automatic Clothes Washers. DOE issues this guidance to resolve any confusion regarding the application of the current test procedure to washers that offer a warm rinse option that is not included in the recommended cycle for washing cotton or linen clothes.

The clothes washer testing procedure described in Appendix J1 requires that energy test cycles accurately reflect consumer use. 10 C.F.R. § 430, Appendix J1. Section 1.7 of the products test procedure provides:

> "Energy test cycle for a basic model means (A) the cycle recommended by the manufacturer for washing cotton or linen clothes, and includes all wash/rinse temperature selections and water levels offered in that cycle, and (B) for each other wash/rinse temperature selection or water level available on that basic

> model, the portion(s) of other cycle(s) with that temperature selection or water level that, when tested pursuant to these test procedures, will contribute to an accurate representation of the energy consumption of the basic model as used by consumers."

DOE adopted this definition of energy test cycle in its 1997 final rule. In so doing, the Department expanded the definition of the cycle used during testing, which had previously been limited to the cycle recommended for washing cotton and linen clothes. This change was made, in part, to respond to the Department's concerns about machines that only offered certain temperature selections, such as a warm rinse option, on cycles other than the normal cycle. As the rule explained, this was of "significant concern to the Department," because "absence of temperature selections from the energy test cycle of a clothes washer may mean that cycle is not representative and may lead to manufacturer representations that do not reflect true energy consumption." 62 Fed. Reg. 45,496. To address this, the Department adopted part B of section 1.7, which requires that the energy test cycle include temperature selections available on cycles other than the recommended cotton/linen cycle that, when tested pursuant to the test procedure, will contribute to an accurate representation of energy consumption.

Under the test procedure, temperature selections are pro-rated during testing to reflect consumer use patterns. The current test procedure requires that results reflect use of the warm rinse selection 27% of the time. 10 C.F.R. § 430, Appendix J1, Table 4.1.1 – Temperature Use Factors (1997).

The Department chose this percentage based on consumer use data provided to the record by industry partners. During the 1997 rulemaking comment period, industry partners submitted consumer survey data describing temperature use patterns in the field. Based on a range of use patterns described by industry, the Department selected a 27% warm rinse use factor. 62 Fed.

Reg. 45,493-45,494. Based on the record in that proceeding, the temperature use factor for warm rinse reflected industry consensus regarding consumer use patterns at the time.

We understand some manufacturers may be confused about how this test procedure should be applied to washers that offer warm rinse only on cycles other than the cycle recommended for cotton and linen clothes. As discussed, section 1.7 expressly provides that the energy test cycle should include all temperature selections that "will contribute to an accurate representation of the energy consumption of the basic model as used by consumers." We understand that some manufacturers may have been relying on proprietary data about consumers' use of the warm rinse option when applying section 1.7(B) of the existing test procedure to determine the energy consumption of such models. The Department's test procedure, however, cannot turn on proprietary data to which only the manufacturer has access. The procedure must be standardized, administrable, and enforceable.

Thus, we wish to make clear the Department's view that, to implement section 1.7(B)'s requirement that the test cycle include "portions(s) of other cycle(s) with that temperature selection…that…will contribute to an accurate representation of the energy consumption of the basic model as used by consumers", the energy test cycle should include the warm rinse of the cycle most comparable to the cottons and linens cycle if warm rinse is not available on the cottons and linens cycle. The test procedure itself states, based on data used to support the 1997 rulemaking, that warm rinse is used by consumers 27 % of the time. In addition, the history of the rulemaking suggests that the Department adopted 1.7(B) precisely to address the issue of machines that "locked out" the warm rinse from the normal cycle, thereby excluding representative energy use from the test procedure measurement. Selecting this temperature use factor, and explicitly including it in the testing procedure, allowed the Department to develop a

testing standard that was clear, administrable, and standardized across all manufacturers and models.

The Department is currently engaged in a rulemaking to revise the residential clothes washer test procedure. The rulemaking will seek comment on the latest information, and on 1997 data, about when and how consumers utilize warm rinse cycles, and whether their use habits have changed. These changes will ensure accurate and up-to-date temperature use factors are applied industry-wide. In the interim, this guidance document seeks to clarify our existing test procedure and testing expectations.

We understand that due to confusion about the Department's view, manufacturers may have made design and production decisions based on a different interpretation of the test procedure. In recognition of this, the Department will allow manufacturers to rely on their interpretation of the testing procedure based on their proprietary consumer survey data until 180 days from the issuance of the Department's final guidance. After that date, all manufacturers must test products according to the test procedure as clarified by that guidance. Failure to do so will result in enforcement action, as appropriate.

The Department has been testing, and will continue to test, clothes washers according to the test procedure as clarified by this draft guidance, using the 27 % temperature use factor for warm rinse. However, until 180 days from the issuance of final guidance, manufacturers will have an opportunity to demonstrate to the Department that a model's energy use rating was based on an interpretation of the test procedure that relied on proprietary, model-specific consumer use data with respect to consumers' use of the warm rinse option.

This guidance represents the Department's interpretation of existing regulations and announcement of the agency's general policy with respect exercising its existing enforcement authority. It is not intended to create or remove any rights or duties, nor is it intended to affect any other aspect of EPCA or DOE regulations.