DEPARTMENT OF ENERGY

[Case No. CAC–020]

Energy Conservation Program for Certain Industrial Equipment: Decision and Order Granting a Waiver to Mitsubishi Electric & Electronics USA, Inc. From the Department of Energy Commercial Package Air Conditioner and Heat Pump Test Procedures

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

ACTION: Decision and Order.

SUMMARY: This notice publishes the U.S. Department of Energy's (DOE) Decision and Order in Case No. CAC–020, which grants a waiver to Mitsubishi Electric & Electronics USA, Inc. (MEUS) from the existing DOE test procedure applicable to commercial package central air conditioners and heat pumps. The waiver is specific to the MEUS variable speed and variable refrigerant volume S&L Class (commercial) multi-split heat pumps and heat recovery systems. As a condition of this waiver, MEUS must test and rate its S&L Class multi-split products according to the alternate test procedure set forth in this notice.

DATES: This Decision and Order is effective December 15, 2009.

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. *E-mail: Michael.Raymond@ee.doe.gov*.

Francine Pinto or Michael Kido, U.S. Department of Energy, Office of the General Counsel, Mail Stop GC–72, 1000 Independence Avenue, SW., Washington, DC 20585–0103. *Telephone:* (202) 586–9507. *E-mail: Francine.Pinto@hq.doe.gov* or *Michael.Kido@hq.doe.gov*.

SUPPLEMENTARY INFORMATION: In accordance with Title 10 of the Code of Federal Regulations (10 CFR 431.401(f)(4), DOE gives notice of the issuance of its Decision and Order as set forth below. In this Decision and Order, DOE grants MEUS a waiver from the existing DOE commercial package air conditioner and heat pump test procedures [1] for its S&L Class multi-split products, subject to a condition requiring MEUS to test and rate its S&L Class multi-split products pursuant to the alternate test procedure provided in this notice. Further, today's decision requires that MEUS may not make any representations concerning the energy efficiency of these products unless such product has been tested consistent with the provisions and restrictions in the alternate test procedure set forth in the Decision and Order below, and such representations fairly disclose the results of such testing. Consistent with the statute, 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. 6314(d))

Issued in Washington, DC, on December 8, 2009.

Cathy Zoi,

Assistant Secretary, Energy Efficiency and Renewable Energy.

Decision and Order

In the Matter of: Mitsubishi Electric & Electronics USA, Inc. (MEUS) (Case No. CAC–020).

Background

Title III of the Energy Policy and Conservation Act (EPCA) sets forth a variety of provisions concerning energy efficiency, including Part A [2] of Title III which establishes the ''Energy Conservation Program for Consumer Products Other Than Automobiles.'' (42 U.S.C. 6291–6309) Similar to the program in Part A, Part A–1 [3] of Title III provides for an energy efficiency program titled, ''Certain Industrial Equipment,'' which includes large and small commercial air conditioning equipment, package boilers, storage water heaters, and other types of commercial equipment. (42 U.S.C. 6311–6317)

Today's notice involves commercial equipment under Part A–1. The statute specifically includes definitions, test procedures, labeling provisions, and energy conservation standards, and provides the Secretary of Energy (the Secretary) with the authority to require information and reports from manufacturers. 42 U.S.C. 6311–6317. With respect to test procedures, the statute generally authorizes the Secretary to prescribe test procedures that are reasonably designed to produce test results which reflect energy efficiency, energy use, and estimated annual operating costs, and that are not unduly burdensome to conduct. (42 U.S.C. 6314(a)(2))

For commercial package air-conditioning and heating equipment, EPCA provides that ''the test procedures shall be those generally accepted industry testing procedures or rating procedures developed or recognized by the Air-Conditioning and Refrigeration Institute (ARI) or by the American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE), as referenced in ASHRAE/IES Standard 90.1 and in effect on June 30, 1992.'' (42 U.S.C. 6314(a)(4)(A)) Under 42 U.S.C. 6314(a)(4)(B), the Secretary must amend the test procedure for a covered commercial product if the applicable industry test procedure is amended, unless the Secretary determines, by rule and based on clear and convincing evidence, that such a modified test procedure does not meet the statutory criteria set forth in 42 U.S.C. 6314(a)(2) and (3).

On December 8, 2006, DOE published a final rule adopting test procedures for commercial package air-conditioning and heating equipment, effective January 8, 2007. 71 FR 71340. DOE adopted ARI Standard 210/240–2003 for small commercial package air-cooled air conditioning and heating equipment with capacities <65,000 British thermal units per hour (Btu/h) and ARI Standard 340/360–2004 for large commercial package air-cooled air conditioning and heating equipment with capacities ≥65,000 Btu/h and <760,000 Btu/h. *Id.* at 71371. Pursuant to this final rule, DOE's regulations at 10 CFR 431.95(b)(1)–(2) incorporate by reference the relevant ARI standards, and 10 CFR 431.96 directs manufacturers of commercial package air conditioning and heating equipment to use the appropriate procedure when measuring energy efficiency of those products. The cooling capacities of MEUS's S&L Class commercial multi-split products, which have capacities between 72,000 Btu/hr to 360,000 Btu/hr, fall in the range covered by ARI Standard 340/360–2004.

In addition, DOE's regulations contain provisions allowing a person to seek a waiver for a particular basic model from the test procedure requirements for covered commercial equipment, for which the petitioner's basic model contains one or more design characteristics which prevent testing 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 431.401(a)(1). A waiver petition must include any alternate test procedures

[1] The applicable test procedure is the Air-Conditioning and Refrigeration Institute (ARI) Standard 340/360–2004, ''Performance Rating of Commercial and Industrial Unitary Air-Conditioning and Heat Pump Equipment'' (incorporated by reference at 10 CFR 431.95(b)(2)).

[2] Part B of Title III of EPCA was redesignated Part A by Public Law 109–58 for editorial reasons.

[3] Part C of Title III of EPCA was redesignated Part A–1 by Public Law 109–58 for editorial reasons.

known to the petitioner to evaluate characteristics of the basic model in a manner representative of its energy consumption. 10 CFR 431.401(b)(1)(iii). The Assistant Secretary for Energy Efficiency and Renewable Energy (Assistant Secretary) may grant a waiver subject to conditions, including adherence to alternate test procedures. 10 CFR 431.401(f)(4). Waivers remain effective pursuant to the provisions of 10 CFR 431.401(g).

The waiver process also allows any interested person who has submitted a petition for waiver to file an application for interim waiver from the applicable test procedure requirements. 10 CFR 431.401(a)(2). An interim waiver will terminate 180 days after issuance or upon the issuance of DOE's determination on the petition for waiver, whichever occurs first, which may be extended by DOE for an additional 180 days. 10 CFR 431.401(e)(4).

On March 28, 2008, MEUS filed a petition for waiver and an application for interim waiver from the test procedures applicable to small and large commercial package air-cooled air-conditioning and heating equipment. The applicable test procedure is ARI 340/360–2004, specified in Tables 1 and 2 to 10 CFR 431.96. MEUS asserted that the two primary factors that prevent testing of multi-split variable speed products are the same factors stated in the waivers that DOE granted previously to MEUS, and also to Fujitsu General Ltd. (Fujitsu), and Samsung Air Conditioning (Samsung) for similar lines of commercial multi-split air-conditioning systems: (1) Testing laboratories cannot test products with so many indoor units; and (2) There are too many possible combinations of indoor and outdoor unit to test. On December 11, 2008, DOE published MEUS's Petition for Waiver in the **Federal Register**, asking for public comment thereon, and granted the Application for Interim Waiver. 73 FR 75408. DOE received no comments on the MEUS petition.

In a similar case, DOE published a Petition for Waiver from MEUS for products very similar to the S&L Class multi-split products. 71 FR 14858 (March 24, 2006). In the March 24, 2006, **Federal Register** notice, DOE also published and requested comment on an alternate test procedure for the MEUS products at issue. DOE stated that if it specified an alternate test procedure for MEUS in the subsequent Decision and Order, DOE would consider applying the same procedure to similar waivers for residential and commercial central air conditioners and heat pumps, including such products for which waivers had previously been granted. *Id.* at 14861. Comments were published along with the MEUS Decision and Order in the **Federal Register** on April 9, 2007. 72 FR 17528 (April 9, 2007). Most of the comments responded favorably to DOE's proposed alternate test procedure; while one commenter did not believe a waiver was necessary, the commenter did not provide a solution to the testing difficulties that led to the grant of previous waivers for similar products. *Id.* at 17529. Also, there was general agreement that an alternate test procedure is necessary while a final test procedure for these types of products is being developed. *Id.* The MEUS Decision and Order included the alternate test procedure adopted by DOE. *Id*

Assertions and Determinations

MEUS's Petition for Waiver

MEUS seeks a waiver from the DOE test procedures for this product class on the grounds that its S&L Class multi-split heat pump and heat recovery systems contain design characteristics that prevent testing according to the current DOE test procedures. As stated above, MEUS asserts that the two primary factors that prevent testing of multi-split variable speed products, regardless of manufacturer, are the same factors stated in the waivers that DOE granted previously to MEUS, and also to Fujitsu General Ltd. (Fujitsu), and Samsung Air Conditioning (Samsung) for similar lines of commercial multi-split air-conditioning systems:

- Testing laboratories cannot test products with so many [4] indoor units.
- There are too many possible combinations of indoor and outdoor unit to test.

Mitsubishi (72 FR 17528, April 9, 2007); Samsung (72 FR 71387, Dec. 17, 2007); Fujitsu (72 FR 71383, Dec. 17, 2007); Daikin (73 FR 39680, July 10, 2008); Daikin (74 FR 15955, April 8, 2009); Sanyo (74 FR 16193, April 9, 2009); and Daikin (74 FR 16373, April 10, 2009).

The S&L Class has operational characteristics similar to Mitsubishi's R22 and R410A models, which have already been granted waivers, and the WR2 and WY products, which have been granted an interim waiver. Each of the S&L Class indoor units is designed to be used with up to 50 other indoor units, which need not be the same models. There are 64 different indoor models. Unlike other multi-split products, Mitsubishi's S&L Class has the capability to combine outdoor units to create a larger capacity system. MEUS further states that its S&L Class products' capability to perform simultaneous heating and cooling is not captured by the DOE test procedure. Notwithstanding this fact, DOE is required by EPCA to use the full-load descriptor Energy Efficiency Ratio (EER) for these products, and simultaneous heating and cooling does not occur when operating at full load.

Accordingly, MEUS requests that DOE grant a waiver from the applicable test procedures for its S&L Class product designs, until a suitable test procedure can be prescribed. DOE believes that the S&L Class MEUS equipment and equipment for which waivers have previously been granted are alike with respect to the factors that make them eligible for test procedure waivers. DOE is therefore granting to MEUS an S&L Class product waiver similar to the previous MEUS multi-split waivers. Mitsubishi is requesting one modification to the alternate test procedure granted in previous waivers made necessary to account for the ability of S&L Class products to connect multiple outdoor units. This modification would allow representation of non-tested combinations based on the capacity-weighted average of the efficiency ratings of tested combinations of the outdoor units used in the system. DOE is adopting this modification, which enables testing of products with multiple outdoor units.

Previously, in addressing MEUS's R410A CITY MULTI VRFZ products, which are similar to the MEUS products at issue here, DOE stated:

> To provide a test procedure from which manufacturers can make valid representations, the Department is considering setting an alternate test procedure for MEUS in the subsequent Decision and Order. Furthermore, if DOE specifies an alternate test procedure for MEUS, DOE is considering applying the alternate test procedure to similar waivers for residential and commercial central air conditioners and heat pumps. Such cases include Samsung's petition for its DVM products (70 FR 9629, February 28, 2005), Fujitsu's petition for its Airstage variable refrigerant flow (VRF) products (70 FR 5980, February 4, 2005), and MEUS's petition for its R22 CITY MULTI VRFZ products. (69 FR 52660, August 27, 2004).
>
> 71 FR 14861.

[4] According to the MEUS petition, up to 50 indoor units of its commercial package multi-split air conditioners may be connected in a single system. However, DOE believes that, based on communications with multi-split manufacturers and commercial testing laboratories, test room limitations at laboratory testing facilities make testing this number of indoor units extremely difficult.

MEUS requested that DOE apply the alternate test procedure provided in the R410A Waiver to the S&L Class. This alternate test procedure was published in the **Federal Register** on April 9, 2007. 72 FR 17528; 72 FR 17533.

To enable MEUS to make energy efficiency representations for its specified S&L Class multi-split products, DOE has decided to require use of the alternate test procedure described below, as a condition of MEUS's waiver. With the exception of the modification for testing multiple outdoor units, this alternate test procedure is the same as the one that DOE applied to the waiver for MEUS's R22 and R410A products, which was published at 72 FR 17528.

DOE understands that existing testing facilities have a limited ability to test multiple indoor units at one time, and the number of possible combinations of indoor and outdoor units for some variable refrigerant flow zoned systems is impractical to test. We further note that subsequent to the waiver that DOE granted for MEUS's R22 multi-split products, ARI formed a committee to discuss the issue and to work on developing an appropriate testing protocol for variable refrigerant flow systems. However, to date, no additional test methodologies have been adopted by the committee or submitted to DOE.

DOE issues today's Decision and Order granting MEUS a test procedure waiver for its commercial S&L Class multi-split heat pumps. MEUS must use the alternate test procedure described below as a condition of the waiver. With the exception of the modification for testing multiple outdoor units, this alternate test procedure is the same as the one that DOE applied to the previous MEUS waivers.

Alternate Test Procedure

The alternate test procedure developed in conjunction with the MEUS waiver permits MEUS to designate a ''tested combination'' for each model of outdoor unit. The indoor units designated as part of the tested combination must meet specific requirements. For example, the tested combination must have from two to eight [5] indoor units so that it can be tested in available test facilities. The tested combination must be tested consistent with the provisions of the alternate test procedure as set forth below.

The alternate DOE test procedure also allows MEUS to represent the energy efficiency of that product. These representations must fairly disclose the results of such testing. The DOE test procedure, as modified by the alternate test procedure set forth in this Decision and Order, provides for efficiency rating of a non-tested combination in one of two ways: (1) At an energy efficiency level determined under a DOE-approved alternative rating method; or (2) at the efficiency level of the tested combination utilizing the same outdoor unit.

As in the MEUS matter, DOE believes that allowing MEUS to make energy efficiency representations for non-tested combinations by adopting this alternative test procedure as described above is reasonable because the outdoor unit is the principal efficiency driver. The current DOE test procedure for commercial products tends to rate these products conservatively. The multi-zoning feature of these products, which enables them to cool only those portions of the building that require cooling, would be expected to use less energy than if the unit is operated to cool the entire home or a comparatively larger area of a commercial building in response to a single thermostat. This feature would not be captured by the current test procedure, which requires full-load testing. Full load testing, under which the entire building would require cooling, disadvantages these products because they are optimized for their highest efficiency when operating with less than full loads. Therefore, the alternate test procedure will provide a conservative basis for assessing the energy efficiency for such products.

With regard to the laboratory testing of commercial products, some of the difficulties associated with the existing test procedure are avoided by the alternate test procedure's requirements for choosing the indoor units to be used in the manufacturer-specified tested combination. For example, in addition to limiting the number of indoor units, another requirement is that all of the indoor units must be subject to meeting the same minimum external static pressure. This requirement allows the test lab to manifold the outlets from each indoor unit into a common plenum that supplies air to a single airflow measuring apparatus. This requirement eliminates situations in which some of the indoor units are ducted and some are non-ducted. Without this requirement, the laboratory must evaluate the capacity of a subgroup of indoor coils separately, and then sum the separate capacities to obtain the overall system capacity. This would require that the test laboratory be equipped with multiple airflow measuring apparatuses (which is unlikely), or that the test laboratory connect its one airflow measuring apparatus to one or more common indoor units until the contribution of each indoor unit has been measured.

Furthermore, DOE stated in the notice publishing the MEUS Petition for Waiver that if the Department decided to specify an alternate test procedure for MEUS, it would consider applying the procedure to waivers for similar residential and commercial central air conditioners and heat pumps produced by other manufacturers. 71 FR 14858, 14861 (March 24, 2006). Most of the comments received by DOE in response to the March 2006 notice supported the proposed alternate test procedure. 72 FR 17529. Comments generally agreed that an alternate test procedure is appropriate for an interim period while a final test procedure for these products is being developed. *Id.*

Based on the discussion above, DOE believes that the testing problems described above would prevent testing of MEUS's S&L Class multi-split products according to the test procedure currently prescribed in 10 CFR 431.96 (ARI Standard 340/360–2004) and incorporated by reference in DOE's regulations at 10 CFR 431.95(b)(2). After careful consideration, DOE has decided to adopt the proposed alternate test procedure for MEUS's S&L Class multi-split products, with the clarifications discussed above.

Consultations With Other Agencies

DOE consulted with the Federal Trade Commission (FTC) staff concerning the MEUS Petition for Waiver. The FTC staff did not have any objections to the issuance of a waiver to MEUS.

Conclusion

After careful consideration of all the materials submitted by MEUS, the absence of any comments, and consultation with the FTC staff, it is ordered that:

(1) The ''Petition for Waiver'' filed by MEUS AC (Americas), Inc., (MEUS) (Case No. CAC–019) is hereby granted as set forth in the paragraphs below.

(2) MEUS shall not be required to test or rate its S&L Class multi-split air conditioner and heat pump models listed below on the basis of the currently applicable test procedure cited in 10 CFR 431.96, specifically, ARI Standard 340/360–2004 (incorporated by reference in 10 CFR 431.95(b)(2)), but shall be required to test and rate such

[5] The ''tested combination'' was originally defined to consist of one outdoor unit matched with between 2 and 5 indoor units. The maximum number of indoor units in a tested combination is here increased from 5 to 8 to account for the fact that these larger-capacity products can accommodate a greater number of indoor units.

products according to the alternate test procedure as set forth in paragraph (3).

CITY MULTI Variable Refrigerant Flow Zoning System Outdoor Equipment:

- Y–Series (PUHY) 208/230–3–60 and 460–3–60 split-system variable-speed heat pumps with individual model nominal capacities ranging from 65,000 to 144,000 Btu/h, and combined model nominal capacities ranging from 130,000, to 480,000 Btu/h.
- H2I–Series (PUHY–HP) 208/230–3–60 and 460–3–60 split-system variable-speed heat pumps with hyper-heat technology, with individual model nominal capacities ranging from 65,000 to 120,000 Btu/h, and combined model nominal capacities ranging from 130,000 to 300,000 Btu/h.
- R2–Series (PURY) 208/230–3–60 and 460–3–60 split-system variable-speed heat pumps with heat recovery and with individual model nominal capacities ranging from 65,000 to 144,000 Btu/h, and combined model nominal capacities ranging from 130,000 to 300,000 Btu/h. CITY MULTI Variable Refrigerant Flow Zoning System Indoor Equipment: P*FY models, ranging from 6,000 to 48,000 Btu/h, 208/230–1–60 and from 72,000 to 120,000 Btu/h, 208/230–3–60 split system variable-capacity air conditioner or heat pump:
- PCFY Series—Ceiling Suspended—with capacities of 12/18/24/30/36 MBtu/h.
- PDFY Series—Ceiling Concealed Ducted—with capacities of 06/08/12/15/18/24/27/30/36/48 MBtu/h.
- PEFY Series—Ceiling Concealed Ducted (Low Profile)—with capacities of 06/08/12/18/24 MBtu/h.
- PEFY Series—Ceiling Concealed Ducted (Alternate High Static Option)—with capacities of 15/18/24/27/30/36/48/54/72/96 MBtu/h.
- PEFY–F Series—Ceiling Concealed Ducted (100% OA Option)—with capacities of 30/54/72/96/120 MBtu/h.
- PFFY Series—Floor Standing (Concealed)—with capacities of 06/08/12/15/18/24 MBtu/h.
- PFFY Series—Floor Standing (Exposed)—with capacities of 06/08/12/15/18/24 MBtu/h.
- PKFY Series—Wall-Mounted—with capacities of 06/08/12/18/24/30 MBtu/h.
- PLFY Series—4–Way Airflow Ceiling Cassette—with capacities of 12/18/24/30/36 MBtu/h.
- PMFY Series—1–Way Airflow Ceiling Cassette—with capacities of 06/08/12/15 MBtu/h.

(3) *Alternate test procedure.*

(A) MEUS shall be required to test the products listed in paragraph (2) above according to the test procedure for central air conditioners and heat pumps prescribed by DOE at 10 CFR Part 431 (ARI 340/360–2004, (incorporated by reference in 10 CFR 431.95(b)(2)), except that MEUS shall test a ''tested combination'' selected in accordance with the provisions of subparagraph (B) of this paragraph. For every other system combination using the same outdoor unit as the tested combination, MEUS shall make representations concerning the S&L Class products covered in this waiver according to the provisions of subparagraph (C) below.

(B) *Tested combination.* The term ''tested combination'' means a sample basic model comprised of units that are production units, or are representative of production units, of the basic model being tested. For the purposes of this waiver, the tested combination shall have the following features:

(i) The basic model of a variable refrigerant flow system used as a tested combination shall consist an outdoor unit (an outdoor unit can include multiple outdoor units that have been manifolded into a single refrigeration system, with a specific model number) that is matched with between 2 and 8 indoor units in total; for multi-split systems, each of these indoor units shall be designed for individual operation.

(ii) The indoor units shall—

(a) Represent the highest sales model family, or another indoor model family if the highest sales model family does not provide sufficient capacity (see ii);

(b) Together, have a nominal cooling capacity that is between 95% and 105% of the nominal cooling capacity of the outdoor unit;

(c) Not, individually, have a nominal cooling capacity that is greater than 50% of the nominal cooling capacity of the outdoor unit;

(d) Operate at fan speeds that are consistent with the manufacturer's specifications; and

(e) Be subject to the same minimum external static pressure requirement while being configurable to produce the same static pressure at the exit of each outlet plenum when manifolded as per section 2.4.1 of 10 CFR Part 430, Subpart B, Appendix M.

(C) *Representations.* In making representations about the energy efficiency of its S&L Class variable speed and variable refrigerant volume air-cooled multi-split heat pump and heat recovery system products, for compliance, marketing, or other purposes, Mitsubishi must fairly disclose the results of testing under the DOE test procedure, doing so in a manner consistent with the provisions outlined below:

(i) For S&L Class combinations using a single outdoor unit tested in accordance with this alternate test procedure, Mitsubishi may make representations based on these test results.

(ii) For S&L Class combinations using a single outdoor unit that have not been tested, Mitsubishi may make representations based on the testing results for the tested combination and which are consistent with either of the two following methods:

(a) Representation of non-tested combinations according to an Alternative Rating Method (ARM) approved by DOE; or

(b) Representation of non-tested combinations at the same energy efficiency level as the tested combination with the same outdoor unit.

(iii) For S&L Class combinations utilizing multiple outdoor units that have been tested in accordance with this alternate test procedure, MEUS may make representations based on those test results.

(iv) For S&L Class combinations utilizing multiple outdoor units that have not been tested, MEUS may make representations which are consistent with any of the three following methods:

(a) Representation of non-tested combinations according to an Alternative Rating Method (''ARM'') approved by DOE.

(b) Representation of non-tested combinations at the same energy efficiency level as the tested combination with the same combination of outdoor units.

(c) Representation of non-tested combinations based on the capacity-weighted average of the efficiency ratings for the tested combinations for each of the individual outdoor units used in the system, as determined in accordance with the provisions of this alternate test procedure.

(4) This waiver shall remain in effect from the date of issuance of this Order consistent with the provisions of 10 CFR 431.401(g).

(5) This waiver is conditioned upon the presumed validity of statements, representations, and documentary materials provided by the petitioner. This waiver may be revoked or modified at any time upon a determination that the factual basis underlying the Petition for Waiver is incorrect, or DOE determines that the results from the alternate test procedure are unrepresentative of the basic models' true energy consumption characteristics.

Issued in Washington, DC, on December 8, 2009.

Cathy Zoi,

Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. E9–29775 Filed 12–14–09; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[Case No. CAC–024]

Energy Conservation Program for Certain Industrial Equipment: Publication of the Petition for Waiver From Daikin AC (Americas), Inc. and Granting of the Application for Interim Waiver From the Department of Energy Residential Central Air Conditioner and Heat Pump Test Procedure

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

ACTION: Notice of petition for waiver, granting of application for interim waiver, and request for comments.

SUMMARY: This notice announces receipt of and publishes a petition for waiver from Daikin AC (Americas), Inc. (Daikin). The petition for waiver (hereafter ''Daikin Petition'') requests a waiver from the U.S. Department of Energy (DOE) test procedure applicable to residential central air conditioners and heat pumps. The waiver request is specific to the Daikin Altherma air-to-water heat pump with integrated domestic water heating. Through this document, DOE is: (1) Soliciting comments, data, and information with respect to the Daikin Petition; and (2) granting an interim waiver to Daikin from the applicable DOE test procedure for the subject residential central air conditioning heat pump.

DATES: DOE will accept comments, data, and information with respect to the Daikin Petition until, but no later than January 14, 2010.

ADDRESSES: You may submit comments, identified by case number ''CAC–024,'' by any of the following methods:

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

• *E-mail: AS_Waiver_Requests@ee.doe.gov.* Include either the case number [CAC–024], and/or ''Daikin Petition'' in the subject line of the message.

• *Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J/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, Building Technologies Program, 950 L'Enfant Plaza, SW., Suite 600, Washington, DC 20024. Please submit one signed original paper copy.

Instructions: All submissions received must include the agency name and case number for this proceeding. Submit electronic comments in WordPerfect, Microsoft Word, Portable Document Format (PDF), or text (American Standard Code for Information Interchange (ASCII)) file format and avoid the use of special characters or any form of encryption. Wherever possible, include the electronic signature of the author. DOE does not accept telefacsimiles (faxes).

Any person submitting written comments must also send a copy of such comments to the petitioner, pursuant to Title 10 of the Code of Federal Regulations (10 CFR) 431.401(d). The contact information for the petitioner is: Mr. Lee Smith, Director of Product Marketing, Daikin AC (Americas), Inc., 1645 Wallace Drive, Suite 110, Carrollton, Texas 75006.

According to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit two copies: One copy of the document including all the information believed to be confidential, and one copy of the document with the information believed to be confidential deleted. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

Docket: For access to the docket to review the background documents relevant to this matter, you may visit the U.S. Department of Energy, 950 L'Enfant Plaza, SW., (Resource Room of the Building Technologies Program), Washington, DC 20024; (202) 586–2945, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Available documents include the following items: (1) This notice; (2) public comments received; (3) the petition for waiver and application for interim waiver; and (4) prior DOE rulemakings regarding similar central air conditioning and heat pump equipment. Please call Ms. Brenda Edwards at the above telephone number for additional information regarding visiting the Resource Room.

FOR FURTHER INFORMATION CONTACT: Dr. Michael G. Raymond, U.S. Department of Energy, Building Technologies Program, Mail Stop EE–2J, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585–0121. *Telephone:* (202) 586–9611. *E-mail: AS_Waiver_Requests@ee.doe.gov.*

Ms. Francine Pinto or Mr. Michael Kido, U.S. Department of Energy, Office of the General Counsel, Mail Stop GC–72, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585–0103. *Telephone:* (202) 586–9507. *E-mail: Francine.Pinto@hq.doe.gov* or *Michael.Kido@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

I. Background and Authority

Title III of the Energy Policy and Conservation Act, as amended (''EPCA'') sets forth a variety of provisions concerning energy efficiency. Part A of Title III provides for the ''Energy Conservation Program for Consumer Products Other Than Automobiles.'' (42 U.S.C. 6291–6309) Part A includes definitions, test procedures, labeling provisions, energy conservation standards, and the authority to require information and reports from manufacturers. Further, Part A 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 residential central air conditioners is contained in 10 CFR part 430, subpart B, appendix M.

The regulations set forth in 10 CFR 430.27 contain provisions that enable a person to seek a waiver from the test procedure requirements for covered consumer products. A waiver will be granted by the Assistant Secretary for Energy Efficiency and Renewable Energy (the Assistant Secretary) 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 part 430.27(l). Petitioners must include in their petition any alternate test procedures known to evaluate the basic model in a manner representative of its energy consumption. 10 CFR 430.27(b)(1)(iii). The Assistant Secretary may grant the 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 part 430.27(m).