

implementation. [Based on requirement in 41 CFR 105–71.111(d)(1)]

New or amended Federal statutes or regulations, including appropriations statutes, resulting in a change in scope, purpose, budget, or period of availability of funds requires an amended State plan.

Example: Congress passes legislation to amend the Title III requirements of HAVA.

(2) New or revised State law, organization, or policy affecting HAVA implementation. [Based on requirement in 41 CFR 105–71.111(d)(2)]

New or amended State statutes, organization, or policy resulting in a change in scope, purpose, budget, or period of availability of funds requires an amended State plan.

Example: (1) State legislation is passed that changes the voting equipment requirements for the State, thus changing the method of implementation of Title III Voting Systems requirements; (2) The responsibility for implementing the plan was previously with the State Attorney General and has now changed to Secretary of State.

(3) A budget change of 10 percent or more of the HAVA fiscal year's cumulative budget across budgeted programs, activities, functions or activities. [Based on requirement in 41 CFR 105–71.130(c)(1)(ii)]

A change of more than 10 percent of the cumulative budget of the fiscal year's requirement payment from one budgeted category to another requires an amended State plan.

Example: A portion of funds, greater than 10 percent of the requirements payment received, budgeted for use in developing the Computerized Statewide Voter Registration List is determined to no longer be needed for the budgeted purpose, and the State would like to use the funds for improvements to the administration of Federal elections.

(4) A revision in the scope or objective of the project. [Based on requirement in 41 CFR 105–71.130(d)(1)]

A change in the means by which a State plans to achieve the HAVA objectives requires an amended State plan.

Example: (1) The State decides to purchase equipment at the State level instead of subgranting to the counties; (2) The State changes the development of the Computerized Statewide Voter Registration List from a bottom up system to a state centralized system; (3) The State files a certification under HAVA Section 251(b)(2)(A), indicating that the State has implemented the requirements of Title III and will use the requirements payments to carry out other activities to improve the administration of elections for Federal office, and did not account for post-Title III compliance activities in the original State

plan; (4) The State changes the type of voting system originally planned for use in Title III compliance; the State decides to use an optical scan system with ballot marking devices instead of a direct recording electronic (DRE) system.

(5) An extension in the period of availability of HAVA funds. [Based on requirement in 41 CFR 105–71.130(d)(2)]

An increase in the amount of funding authorized under HAVA appropriated to the State not provided for in the original State plan or funds remaining in a fiscal year not covered by the original State plan requires an amended State plan.

Example: (1) A new requirements payment is appropriated for a fiscal year not covered by the State plan; (2) The State has funds from a previous fiscal year's requirements payment remaining in a fiscal year not provided for under the current State plan.

Dated: July 2, 2008.

Thomas R. Wilkey,

Executive Director, U.S. Election Assistance Commission.

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DEPARTMENT OF ENERGY

[Case No. CAC–011]

Energy Conservation Program for Consumer Products: Decision and Order Granting a Waiver to Daikin U.S. Corporation From the Department of Energy Commercial Package Air Conditioner and Heat Pump Test Procedures and Denying a Waiver From the Residential Central 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 Department of Energy's Decision and Order in Case No. CAC–011, which grants a waiver to Daikin U.S. Corporation (Daikin) from the existing Department of Energy (DOE) commercial package air conditioner and heat pump test procedures for specified VRV (commercial) Variable Refrigerant Volume multi-split heat pumps and heat recovery systems. As a condition of this waiver, Daikin must test and rate its VRV multi-split products according to the alternate test procedure as set forth in this notice. DOE is denying as moot Daikin's request for a waiver from the residential central air conditioner and heat pump test procedures, because those test procedures, as amended and

currently effective, can be used to test Daikin's VRV–S (residential) products.

DATES: This Decision and Order is effective July 10, 2008, and will remain in effect until the effective date of a DOE final rule prescribing amended test procedures appropriate for the model series of Daikin VRV multi-split central air conditioners and heat pumps covered by this waiver.

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

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

SUPPLEMENTARY INFORMATION: In accordance with 10 CFR 430.27(l) and 10 CFR 431.401(f)(4), DOE gives notice of the issuance of its Decision and Order as set forth below. In the Decision and Order, DOE grants Daikin a waiver from the existing DOE commercial package air conditioner and heat pump test procedures¹ for its VRV multi-split products, subject to a condition requiring Daikin to test and rate its VRV multi-split products pursuant to the alternate test procedure provided in this notice. Further, today's Decision and Order requires that Daikin may not make any representations concerning the energy efficiency of these products unless such product has been tested in accordance with the DOE test procedure, consistent with the provisions and restrictions of the alternate test procedure set forth in the Decision and Order below, and such representations fairly disclose the results of such testing.² (42 U.S.C. 6293(c); 42 U.S.C. 6314(d))

DOE is denying as moot Daikin's request for a waiver from the DOE residential central air conditioner and

¹ For commercial products, 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 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. 6293(c); 42 U.S.C. 6314(d)).

heat pump test procedures³ for its VRV-S multi-split products. As amended, the applicable DOE test procedure for these residential products will allow Daikin to test and rate its residential VRV-S multi-split products.

Issued in Washington, DC, on June 23, 2008.

Alexander A. Karsner,

Assistant Secretary, Energy Efficiency and Renewable Energy.

Decision and Order

In the Matter of: Daikin U.S. Corporation (Daikin) (Case No. CAC-011).

Background

Title III of the Energy Policy and Conservation Act (EPCA) sets forth a variety of provisions concerning energy efficiency, including Part A of Title III which establishes the "Energy Conservation Program for Consumer Products Other Than Automobiles."⁴ (42 U.S.C. 6291-6309) Similar to the Program in Part A, Part A-1 of Title III provides for an energy efficiency program titled, "Certain Industrial Equipment," which includes commercial air conditioning equipment, package boilers, water heaters, and other types of commercial equipment.⁵ (42 U.S.C. 6311-6317)

Today's notice involves residential products under Part A, as well as commercial equipment under Part A-1. Both parts specifically provide for definitions, test procedures, labeling provisions, energy conservation standards, and the authority to require information and reports from manufacturers. Further, both parts generally authorize the Secretary of Energy (the Secretary) to prescribe test procedures that are reasonably designed to produce results which measure energy efficiency, energy use, or estimated annual operating costs, and that are not unduly burdensome to conduct. (42 U.S.C. 6293(b)(3); 42 U.S.C. 6314(a)(2))

Relevant to the current Petition for Waiver, the test procedure for residential central air conditioning and heat pump products is set forth in 10 CFR part 430, subpart B, Appendix M. On October 22, 2007, DOE amended the test procedures for residential central air

conditioners and central air conditioning heat pumps to implement test procedure changes for small-duct, high-velocity systems, two-capacity units, and to update references to the current American Society of Heating, Refrigerating, and Air-Conditioning Engineers (ASHRAE) standards. 72 FR 59906. The October 22, 2007, final rule became effective on April 21, 2008. These amendments to the DOE test procedures set forth in 10 CFR part 430, subpart B, Appendix M now allow Daikin to test its VRV-S residential multi-split air conditioners and heat pumps. Therefore, a waiver is no longer necessary for Daikin's VRV-S residential multi-split air conditioners and heat pumps. Accordingly, the following discussion will focus only on Daikin's commercial VRV products, for which its waiver request remains pertinent.

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), this section also directs the Secretary to amend the test procedure for a covered commercial product if the industry test procedure is amended, unless the Secretary determines 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 commercial package air conditioning and heating equipment with capacities <65,000 British thermal units per hour (Btu/h) and ARI Standard 340/360-2004 for commercial package air conditioning and heating equipment with capacities ≥65,000 Btu/h and <240,000 Btu/h. *Id.* at 71371. Pursuant to this rulemaking, DOE's regulations at 10 CFR 431.95(b)(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 capacities of Daikin's commercial VRV multi-split products fall in the

ranges covered by ARI Standard 340/360-2004.)

DOE's regulations for covered products contain provisions allowing a person to seek a waiver from the test procedure requirements for covered consumer products, for which the petitioner's basic model contains one or more design characteristics that prevent testing according to the prescribed test procedures, or when the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption as to provide materially inaccurate comparative data. 10 CFR 430.27(a)(1). The waiver provisions for commercial equipment are substantively identical to those for covered consumer products and are found at 10 CFR 431.401. 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); 10 CFR 431.401(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); 10 CFR 431.401(f)(4). Waivers generally terminate on the effective date of a final rule which prescribes amended test procedures appropriate to the model series manufactured by the petitioner, thereby eliminating any need for the continuation of the waiver. 10 CFR 430.27(m); 10 CFR 431.401(g).

The waiver process contained in DOE's regulations also allows any interested person who has submitted a Petition for Waiver to file an Application for Interim Waiver of the applicable test procedure requirements. 10 CFR 430.27(a)(2); 10 CFR 431.401(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 of the Petition for Waiver. 10 CFR 430.27(g); 10 CFR 431.401(e)(3). An Interim Waiver remains in effect for a period of 180 days or until DOE issues its determination on the Petition for Waiver, whichever occurs first, and may be extended by DOE for 180 days, if necessary. 10 CFR 430.27(h); 10 CFR 431.401(e)(4).

On May 12, 2005, Daikin filed a Petition for Waiver and an Application for Interim Waiver from the test

³ For residential products, the applicable test procedure is set forth in 10 CFR part 430, subpart B, Appendix M.

⁴ This part was originally titled Part B; however, it was redesignated Part A, after Part B of Title III was repealed by Pub. L. 109-58.

⁵ This part was originally titled Part C; however, it was redesignated Part A-1, after Part C of Title III was repealed by Pub. L. 109-58.

procedures applicable to its VRV-S and VRV lines of residential and commercial multi-split air conditioning and heating equipment. Daikin's petition requested a waiver from both the residential and commercial test procedures. As stated above, the applicable residential test procedures are contained in 10 CFR part 430, subpart B, Appendix M, and the applicable commercial test procedures are contained in ARI Standard 340/360-2004⁶ (incorporated by reference at 10 CFR 431.95(b)(2)). Daikin requested a waiver from the applicable test procedures because it argued that the design characteristics of its VRV-S and VRV systems prevent testing according to the currently prescribed test procedures.

On July 2, 2007, DOE published in the **Federal Register** Daikin's Petition for Waiver and published notice of the granting of the Application for Interim Waiver which had been granted on August 14, 2006. 72 FR 35986. In a similar and relevant case, DOE published a Petition for Waiver from Mitsubishi Electric and Electronics USA, Inc. (MEUS) for products very similar to Daikin's VRV-S and VRV 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. Most of the comments responded favorably to DOE's proposed alternate test procedure. 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. The MEUS Decision and Order, including the alternate test procedure, was published in the **Federal Register** on April 9, 2007. 72 FR 17528.

DOE received no comments on the Daikin Petition.

Assertions and Determinations

Daikin's Petition for Waiver

On May 12, 2005, Daikin submitted a Petition for Waiver and an Application for Interim Waiver from the test procedures applicable to residential and commercial package air conditioning and heating equipment for its new VRV-S and VRV multi-split products. Daikin's petition presented several arguments in support of its claim that the design characteristics of its VRV-S and VRV multi-split systems prevent testing according to the currently prescribed test procedures. Daikin claimed that there are the following difficulties with applying the test procedures: (1) There is no provision to accommodate having indoor units operating at several different static pressure ratings during a single test; (2) The precise number of part-load tests required for fully or infinitely variable speed products are not identified; (3) There is no direction about how to test systems that have millions of combinations of indoor units configurable to a single outdoor unit; (4) There is no test method to measure part-load performance of a system performing both heating and cooling functions at the same time.

Therefore, the Daikin Petition requested that DOE grant a waiver from existing test procedures until such time as a representative test procedure is developed and adopted for this class of products. Daikin did not include an alternate test procedure in its Petition for Waiver. (However, DOE understands that Daikin is actively working with ARI to develop test procedures that accurately reflect the operation and energy consumption of these particular product designs.⁷)

Regardless of their accuracy, DOE believes that these assertions are inapposite to the present case for the following reasons. First, for commercial systems, EPCA mandates use of the full-load energy efficiency ratio (EER) descriptor, and the relevant energy performance is the peak-load efficiency, not the seasonal energy savings. (42 U.S.C. 6313(a)(1)(C)) A waiver can only be granted if a test procedure does not fairly represent the peak-load energy consumption characteristics, which EER measures. Nevertheless, there are deficiencies in the current DOE test methods and calculation algorithms when applied to multi-split systems.

⁷ DOE understands that ARI is seeking to address this issue through promulgation of ARI Standard 1230. Once this standard has been formally adopted by ARI, it will then be ready for presentation to ASHRAE to be considered for incorporation into ASHRAE/IES Standard 90.1.

DOE has previously acknowledged these limitations in its current test procedure, and accordingly, MEUS was granted a waiver on the following grounds:

1. No existing test procedure provides a method for testing and rating a system that utilizes one outdoor unit and sixteen indoor units.

2. No existing test procedure can provide a method for rating systems where the type and capacity of the indoor unit can be mixed in the same system. The multi-split system can mix together six different indoor models with seven different capacities, resulting in over 1,000 combinations.

Given the present situation, Daikin can make the same claims regarding its VRV multi-split products. Therefore, the bases for Daikin's Petition for Waiver involve: (1) The problem of being physically unable to test most of the complete systems in a laboratory; (2) difficulties associated with the regulatory requirement to test the highest-sales-volume combination; and (3) the lack of a method for predicting the performance of untested combinations.

As mentioned above, DOE recently addressed a situation regarding multi-split products that is relevant to the Daikin products at issue here. Specifically, on March 24, 2006, DOE published in the **Federal Register** a Petition for Waiver from MEUS relating to its R410A CITY MULTI VRFZ products, which are very similar to Daikin's VRV multi-split products. 71 FR 14858. In that publication, 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 14858, 14861 (March 24, 2006).

Since that time, DOE has developed such an alternate test procedure. That alternate test procedure served as the basis for the October 22, 2007 final rule's relevant amendments to the test procedures for residential central air conditioners and central air conditioning heat pumps found at 10 CFR part 430, subpart B, Appendix M,

⁶ In its petition, Daikin also requested a waiver from ARI Standard 210/240-2003 (incorporated by reference at 10 CFR 431.95(b)(1)). However, based on a review of the products listed by Daikin in its petition, DOE has determined that none of these products has the combined features (*i.e.*, three-phase power and rated capacity less than 65,000 Btu/h) as would necessitate a waiver from ARI Standard 210/240-2003.

which became effective April 21, 2008. Since the residential test procedure is now in place for central air conditioners and central air conditioning heat pumps, this enables Daikin to make energy efficiency representations for its specified VRV-S residential multi-split products. Accordingly, a waiver for Daikin's residential units is no longer necessary. However, the same problem described above still applies to Daikin's commercial products. Therefore, DOE is issuing today's Decision and Order granting Daikin a test procedure waiver for its commercial VRV multi-split heat pumps and heat recovery systems, but is requiring the use of the alternate test procedure described below as a condition of Daikin's waiver. This alternate test procedure is substantially the same as the one that DOE applied to the MEUS waiver.

DOE's Alternate Test Procedure

The alternate test procedure has two basic components. First, it permits Daikin 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 five indoor units so that it can be tested in available test facilities. The tested combination must be tested according to the applicable DOE test procedure, as modified by the provisions of the alternate test procedure. Second, provision of a DOE test procedure that can be applied to Daikin's product allows it to represent the energy efficiency of that product, because any such representation must fairly disclose the results of such testing. The DOE test procedure, as modified by the alternate test procedure provided in this Decision and Order, provides for testing of a non-tested combination in two ways: (1) At an energy efficiency level determined under a DOE-approved alternative rating method; or, if method (1) is not available, then (2) at the efficiency level of the tested combination utilizing the same outdoor unit. Until an alternative rating method is developed, all combinations with a particular outdoor unit may use the rating of the combination tested with that outdoor unit.

DOE believes that allowing Daikin to make energy efficiency representations for non-tested combinations by adopting this alternate test procedure for its commercial products as described above is reasonable because the outdoor unit is the principal efficiency driver. The current test procedures for commercial products tend to rate these products

conservatively. This is because 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 test procedure, which requires full-load testing. Under full load, the entire building would require cooling. Additionally, the current test procedure for commercial equipment requires full-load testing, which disadvantages these products because they are optimized for best efficiency when operating with less than full loads. In fact, these products normally operate at part-load conditions. Therefore, the alternate test procedure will provide a conservative basis for assessing the energy efficiency for such commercial products.

For today's Decision and Order, the changes made by the final rule published in the **Federal Register** on October 22, 2007 to test procedure sections 2.1, 2.2.3, 2.4.1, 3.2.4 (including Table 6), 3.6.4 (including Table 12), 4.1.4.2, and 4.2.4.2 that apply to residential central air conditioners and heat pumps constitute mandatory elements of the alternate test procedure for the commercial products covered under this waiver. These changes allow indoor units to cycle off, allow the manufacturer to specify the compressor speed used during certain tests, and introduce a new algorithm for estimating power consumption.

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 meet 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 must 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 DOE decides 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 favored the proposed alternate test procedure. The 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. Such action has been completed for residential central air conditioners and heat pumps.

Based on the discussion above, DOE believes that the testing problems described above would prevent testing of Daikin's VRV basic models according to the test procedures currently prescribed in ARI Standard 340/360-2004. After careful consideration, DOE has decided to adopt the alternate test procedure for Daikin's commercial products, with the clarifications discussed above.

Consultations With Other Agencies

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

Conclusion

After careful consideration of all the material that was submitted by Daikin and consultation with the FTC staff, it is ordered that:

(1) The "Petition for Waiver" submitted by Daikin U.S. Corporation (Daikin) (Case No. CAC-011) is hereby granted as set forth in the paragraphs below.

(2) Daikin shall not be required to test or rate its commercial Variable Refrigerant Volume (VRV) products listed below on the basis of the currently applicable test procedures (contained in ARI Standard 340/360-2004 (incorporated by reference in 10 CFR 431.95(b)(2))), but shall be required to test and rate such products according to the alternate test procedure as set forth in paragraph (3).

Outdoor units:

1. RXYQ Series Heat Pumps with nominal capacities of 72 and 96 kBtu/

h, when combined with two or more of the below listed indoor units.

2. REYQ Series Heat Recovery units with nominal capacities of 72 and 96 kBtu/h, when combined with two or more of the below listed indoor units.

Indoor units:

1. FXAQ Series wall mounted indoor units with nominally rated capacities of 7, 9, 12, 18, and 24 kBtu/h.

2. FXLQ Series floor mounted indoor units with nominally rated capacities of 12, 18, and 24 kBtu/h.

3. FXNQ Series concealed floor mounted indoor units with nominally rated capacities of 12, 18, and 24 kBtu/h.

4. FXDQ Series low static ducted indoor units with nominally rated capacities of 7, 9, 12, 18, and 24 kBtu/h.

5. FXSQ Series medium static ducted indoor units with nominally rated capacities of 7, 9, 12, 24, 30, 36, and 48 kBtu/h.

6. FXMQ Series high static ducted indoor units with nominally rated capacities of 30, 36, and 48 kBtu/h.

7. FXZQ Series recessed cassette indoor units with nominally rated capacities of 7, 9, 12, 18, and 24 kBtu/h.

8. FXFQ Series recessed cassette indoor units with nominally rated capacities of 12, 18, 24, 30, and 36 kBtu/h.

9. FXHQ Series ceiling suspended indoor units with nominally rated capacities of 12, 24, and 36 kBtu/h.

(3) Alternate test procedure.

(A) Daikin shall be required to test the products listed in paragraph (2) above according to those test procedures for central air conditioners and heat pumps prescribed by DOE at 10 CFR part 431, except that for those commercial products covered by 10 CFR part 431, Daikin 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, Daikin shall make representations concerning the VRV multi-split 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 of an outdoor

unit that is matched with between two and five indoor units.

(ii) The indoor units shall:

(a) Represent the highest sales volume type models;

(b) Together, have a capacity between 95 percent and 105 percent of the capacity of the outdoor unit;

(c) Not, individually, have a capacity greater than 50 percent of the capacity of the outdoor unit;

(d) Have a fan speed that is consistent with the manufacturer's specifications; and

(e) All have the same external static pressure.

(C) *Representations.* In making representations about the energy efficiency of its VRV multi-split products, for compliance, marketing, or other purposes, Daikin 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 VRV combinations tested in accordance with this alternate test procedure, Daikin must disclose these test results.

(ii) For VRV combinations that are not tested, Daikin must make a disclosure based on the testing results for the tested combination and which are consistent with either of the two following methods, except that only method (a) may be used, if available:

(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.

(4) This waiver shall remain in effect from the date of issuance of this Decision and Order until the effective date of a DOE final rule prescribing amended test procedures appropriate to the above model series manufactured by Daikin.

(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 June 23, 2008.

Alexander A. Karsner,

Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. E8-15705 Filed 7-9-08; 8:45 am]

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DEPARTMENT OF ENERGY

[Case No. RF-008]

Energy Conservation Program for Consumer Products: Publication of the Petition for Waiver of Whirlpool Corporation From the Department of Energy Residential Refrigerator and Refrigerator-Freezer Test Procedures

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

ACTION: Notice of Petition for Waiver and request for public comments.

SUMMARY: This notice announces receipt of and publishes Whirlpool Corporation's (Whirlpool's) Petition for Waiver (hereafter, "Petition") from parts of the Department of Energy (DOE) test procedure for determining the energy consumption of electric refrigerators and refrigerator-freezers. The waiver request pertains to Whirlpool's specified French door bottom-mounted residential refrigerators and refrigerator-freezers, a product line that utilizes a control logic that changes the wattage of the anti-sweat heaters based upon the ambient relative humidity conditions in order to prevent condensation. The existing test procedure does not take humidity or adaptive control technology into account. Therefore, Whirlpool has suggested an alternate test procedure that takes adaptive control technology into account when measuring energy consumption. DOE is soliciting comments, data, and information concerning Whirlpool's Petition and the suggested alternate test procedure.

DATES: DOE will accept comments, data, and information with respect to Whirlpool's Petition until, but no later than August 11, 2008.

ADDRESSES: You may submit comments, identified by case number [RF-008], by any of the following methods:

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

- *E-mail:*

Michael.Raymond@ee.doe.gov. Include either the case number [RF-008] and/or "Whirlpool Petition" in the subject line of the message.

- *Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE-2J,