

DEPARTMENT OF ENERGY**[Case No. CAC-019]****Energy Conservation Program for Commercial Equipment: Decision and Order Granting a Waiver to Daikin AC (Americas), 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 Department of Energy's Decision and Order in Case No. CAC-019, which grants a waiver to Daikin AC (Americas), Inc. (Daikin) from the existing Department of Energy (DOE) test procedure applicable to commercial package central air conditioners and heat pumps. The waiver is specific to the Daikin variable speed and variable refrigerant volume (VRV-III) (commercial) multi-split heat pumps and heat recovery systems. As a condition of this waiver, Daikin must test and rate its VRV-III multi-split products according to the alternate test procedure set forth in this notice.

DATES: This Decision and Order is effective April 8, 2009, 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-III multi-split central air conditioners and heat pumps covered by this waiver.

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SUPPLEMENTARY INFORMATION: In accordance with 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 Daikin a Waiver from the existing DOE commercial package air conditioner and heat pump test procedures¹ for its

VRV-III multi-split products, subject to a condition requiring Daikin to test and rate its VRV-III multi-split products pursuant to the alternate test procedure provided in this notice. Further, today's decision 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 in 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. 6314(d))

Issued in Washington, DC, on March 30, 2009.

Steven G. Chalk,

Principal Deputy Assistant Secretary, Energy Efficiency and Renewable Energy.

Decision and Order

In the Matter of: Daikin AC (Americas) Inc., (Daikin) (Case No. CAC-019).

Background

Title III of the Energy Policy and Conservation Act (EPCA) sets forth a variety of provisions concerning energy efficiency, including Part A³ 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-1⁴ 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, 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

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))

³ Part B of Title III of EPCA was redesignated Part A in the United States Code for editorial reasons.

⁴ Part C of Title III of EPCA was redesignated Part A-1 in the United States Code for editorial reasons.

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 or by the American Society of Heating, Refrigerating and Air-Conditioning Engineers, 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 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 Air-Conditioning and Refrigeration Institute (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 <240,000 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 Daikin's VRV-III VRF commercial multi-split products, which have capacities between 72,000 Btu/hr and 240,000 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 if that 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

¹ The applicable test procedure is the Air-Conditioning and Refrigeration Institute (ARI)

of its true energy consumption characteristics as to provide materially inaccurate comparative data. 10 CFR 431.401(a)(1). The waiver provisions for commercial equipment are found at 10 CFR 431.401 and are substantively identical to those for covered consumer products. A waiver petition must include any alternate test procedures known 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). In general, a waiver terminates on the effective date of a final rule, published in the **Federal Register**, 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 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 August 31, 2007, Daikin 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, because, as discussed above, this is the test procedure specified in Tables 1 and 2 to 10 CFR 431.96. On January 7, 2008, DOE published Daikin's Petition for Waiver in the **Federal Register** and granted the Application for Interim Waiver. 73 FR 1207.

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 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. *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.*

DOE received no comments on the Daikin petition.

Assertions and Determinations

Daikin's Petition for Waiver

Daikin seeks a waiver from the DOE test procedures for this product class on the grounds that its VRV–III multi-split heat pump and heat recovery systems contain design characteristics that prevent testing according to the current DOE test procedures. Specifically, Daikin 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 to MEUS, 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 indoor units.
- There are too many possible combinations of indoor and outdoor unit to test. 69 FR 52661 (August 27, 2004) (MEUS); 72 FR 17528 (April 9, 2007) (MEUS); 72 FR 71383 (December 17, 2007) (Fujitsu); 72 FR 71387 (December 17, 2007) (Samsung).

Further, Daikin states that its VRV–III indoor units have nine different indoor static pressure ratings, and the test procedure does not provide for operation of indoor units at several different static pressure ratings during a single test. The indoor units are designed to operate at many different external static pressure values, which compounds the difficulty of testing. The number of connectable indoor units for each outdoor unit ranges up to 64. A testing facility could not manage proper airflow at several different external static pressure values to the many indoor units that would be connected to a VRV–III outdoor unit. Daikin further states that its VRV–III 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, Daikin requests that DOE grant a waiver from the applicable test procedures for its VRV–III product designs, until a suitable test procedure can be prescribed. DOE believes that the VRV–III Daikin 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 Daikin a VRV–III product waiver similar to the previous MEUS multi-split waivers.

Previously, in addressing MEUS's R410A CITY MULTI VRFZ products, which are similar to the Daikin 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.

Daikin did not include an alternate test procedure in its Petition for Waiver. However, in response to two recent Petitions for Waiver from MEUS, DOE specified an alternate test procedure to provide a basis from which MEUS could test and make valid energy efficiency representations for its R410A CITY MULTI products, as well as for its R22 multi-split products. Alternate test procedures related to the MEUS petitions were published in the **Federal Register** on April 9, 2007. 72 FR 17528; 72 FR 17533.

To enable Daikin to make energy efficiency representations for its specified VRV–III multi-split products, DOE has decided to require 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 waiver for MEUS's R22 and R410A products, which was published at 72 FR 17528.

In general, 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.

Therefore, as discussed below, as a condition for granting this Waiver to Daikin, DOE is including an alternate test procedure similar to those granted to MEUS for its R22 and R410A products. DOE is issuing today's Decision and Order granting Daikin a test procedure waiver for its commercial VRV-III multi-split heat pumps, 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.

Alternate Test Procedure

The alternate test procedure developed in conjunction with the MEUS waiver 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 eight⁵ 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 as set forth below.

Second, having an alternate DOE test procedure that can be applied to its products allows Daikin 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) if the first method is not available, then 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.

As in the MEUS matter, DOE believes that allowing Daikin 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 and 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 favored the proposed alternate test procedure. 72 FR 17529. Commenters responding to that prior notice 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 Daikin's VRV-III 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 Daikin's commercial water-source products, with the clarifications discussed above.

Consultations With Other Agencies

DOE consulted with the 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 materials submitted by Daikin, the absence of any comments, and consultation with the FTC staff, it is ordered that:

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

(2) Daikin shall not be required to test or rate its VRV-III VRF 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 products according to the alternate test procedure as set forth in paragraph (3).

VRV-III Series Outdoor Units

460V/3-phase/60Hz Models

- Heat Pump models RXYQ72PYDN, RXYQ96PYDN, RXYQ120PYDN,

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.

RXYQ144PYDN, RXYQ168PYDN, RXYQ192PYDN, RXYQ216PYDN, RXYQ240PYDN with nominally rated cooling capacities of 72,000, 96,000, 120,000, 144,000, 168,000, 192,000, 216,000, and 240,000, respectively.

- Heat Recovery models

REYQ72PYDN, REYQ96PYDN, REYQ120PYDN, REYQ144PYDN (2x REMQ72PYDN), REYQ168PYDN (1x REMQ96PYDN + 1x REMQ72PYDN), REYQ192PYDN (1x REMQ120PYDN + 1x REMQ72PYDN), REYQ216PYDN (1x REMQ120PYDN + 1x REMQ96PYDN), REYQ240PYDN (2x REMQ120PYDN) with nominally rated cooling capacities of 72,000, 96,000, 120,000, 144,000, 168,000, 192,000, 216,000, and 240,000 respectively.

208–230V/3-phase/60Hz Models

- Heat Pump models RXYQ72PTJU,

RXYQ96PTJU, RXYQ120PTJU, RXYQ144PTJU, RXYQ168PTJU, RXYQ192PTJU, RXYQ216PTJU, RXYQ240PTJU with nominally rated cooling capacities of 72,000, 96,000, 120,000, 144,000, 168,000, 192,000, 216,000, and 240,000 respectively.

- Heat Recovery models

REYQ72PTJU, REYQ96PTJU, REYQ120PTJU, REYQ144PTJU, REYQ168PTJU (1x REMQ96PTJU + 1x REMQ72PTJU), REYQ192PTJU (1x REMQ120PTJU + 1x REMQ72PTJU), REYQ216PTJU (1x REMQ120PTJU + 1x REMQ96PTJU), REYQ240PTJU (2x REMQ120PTJU) with nominally rated cooling capacities of 72,000, 96,000, 120,000, 144,000, 168,000, 192,000, 216,000, and 240,000 respectively.

Compatible Indoor Units for Above-Listed Outdoor Units:

- FXAQ Series all mounted indoor units with nominally rated capacities of 7,500, 9,500, 12,000, 18,000 and 24,000 BTU/Hr.

- FXLQ Series floor mounted indoor units with nominally rated capacities of 7,500, 9,500, 12,000, 18,000 and 24,000 BTU/Hr.

- FXNQ Series concealed floor mounted indoor units with nominally rated capacities of 7,500, 9,500, 12,000, 18,000 and 24,000 BTU/Hr.

- FXDQ Series low static ducted indoor units with nominally rated capacities of 7,500, 9,500, 12,000, 18,000 and 24,000 BTU/Hr.

- FXSQ Series medium static ducted indoor units with nominally rated capacities of 7,500, 9,500, 12,000, 18,000, 24,000, 30,000, 36,000, 48,000, 72,000 and 96,000 BTU/Hr.

- FXMQ Series high static ducted indoor units with nominally rated capacities of 18,000, 24,000, 30,000,

36,000 48,000, 72,000 and 96,000 BTU/Hr.

- FXZQ Series recessed cassette indoor units with nominally rated capacities of 7,500, 9,500, 12,000, 15,000 and 18,000 BTU/Hr.

- FFXQ Series recessed cassette indoor units with nominally rated capacities of 12,000, 18,000, 24,000, 30,000 and 36,000 BTU/Hr.

- FXHQ Series ceiling suspended indoor units with nominally rated capacities of 12,000, 24,000 and 36,000 BTU/Hr.

- FXOQ Series ceiling suspended indoor units with nominally rated capacities of 12,000, 18,000, 24,000, 30,000, 36,000, 42,000 and 48,000 BTU/Hr.

- FXMQ–MF Series concealed ducted indoor units with nominally rated capacities of 48,000, 72,000, and 96,000 BTU/Hr.

(3) Alternate test procedure.

(A) Daikin 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 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–III 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 eight indoor units; 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 b);

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

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

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

(e) All be subject to the same minimum external static pressure requirement.

(C) *Representations.* In making representations about the energy efficiency of its VRV–III 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–III multi-split combinations tested in accordance with this alternate test procedure, Daikin may make representations based on these test results.

(ii) For VRV–III multi-split combinations that are not tested, Daikin may make representations 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 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 Order until the effective date of a DOE final rule prescribing amended test procedures appropriate to the model series manufactured by Daikin listed above.

(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 March 30, 2009.

Steven G. Chalk,

Principal Deputy Assistant Secretary, Energy Efficiency and Renewable Energy.

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