

I have assigned Mr. Richard Stark, Director, Office of Facilities Operations Support, as the Department's responsible manager for developing the Implementation Plan. He can be reached on (301) 903-4407.

Sincerely,



Samuel W. Bodman

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## DEPARTMENT OF ENERGY

### Office of Energy Efficiency and Renewable Energy

#### Notice of Clarification to Energy Conservation Program for Consumer Products: Publication of the Petition for Waiver of Fujitsu General Limited from the DOE Residential Air Conditioner and Heat Pump Test Procedures (Case No. CAC-010)

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

**ACTION:** Notice of clarification.

**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, (202) 586-9611; e-mail: [Michael.Raymond.ee.doe.gov](mailto:Michael.Raymond.ee.doe.gov); or Francine Pinto, Esq., or Thomas DePriest, Esq., U.S. Department of Energy, Office of General Counsel, Mail Stop GC-72, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585-0103, (202) 586-9507; e-mail: [Francine.Pinto@hq.doe.gov](mailto:Francine.Pinto@hq.doe.gov), or [Thomas.DePriest@hq.doe.gov](mailto:Thomas.DePriest@hq.doe.gov).

#### SUPPLEMENTARY INFORMATION:

##### Clarification

On February 4, 2005, the Department of Energy (Department or DOE) published a petition for waiver of Fujitsu General Limited from the DOE residential air conditioner and heat pump test procedures. (70 FR 5980) Subsequent to the publication of the waiver, DOE received two comments that identified an inadvertent error which has caused confusion.<sup>1</sup>

<sup>1</sup> DOE has placed these comments in the docket file for this rulemaking. They are available at the

On page 5981, there is a discussion of applicable test procedures: "On October 21, 2004, the Department published a direct final rule adopting ARI Standard 210/240-2003 for small commercial package air conditioning and heating equipment ≤ 65,000 Btu/h. (69 FR 61962) The test procedures in that direct final rule apply to three-phase products, but the Fujitsu product is single phase for both residential and commercial use. There is no prescribed test procedure for single-phase, small commercial packaged air conditioning and heating equipment, so no test procedure waiver is required for commercial Airstage products." The last sentence in the quotation is in error. The Fujitsu products are single-phase central air conditioners and heat pumps with capacities <math>\leq 65,000</math> Btu/h, for both residential and commercial use. Such products are not "small commercial package air conditioning and heating equipment," a subcategory of "industrial equipment." They belong to the category "central air conditioners and central air conditioning heat pumps," a subcategory of "consumer products."

The definition of "consumer product" in 42 U.S.C. 6291 is:

(1) The term "consumer product" means any article (other than an automobile \* \* \*) of a type—

- (A) which in operation consumes, or is designed to consume, energy \* \* \*; and
- (B) which, to any significant extent, is distributed in commerce for personal use or consumption by individuals; without regard to whether such article of such type is in fact distributed in commerce for personal use or consumption by an individual \* \* \*.

Single-phase central air conditioners and heat pumps with capacities < 65,000 Btu/h clearly meet criterion (A),

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regardless of whether they are for residential or commercial use. They also meet criterion (B). These products are distributed in commerce, to a very significant extent, for personal use or consumption by individuals. They are primarily for personal use or consumption by individuals. The second part of (B), above, means that even if particular units are distributed for commercial use, they are still consumer products, because single-phase central air conditioners and heat pumps with capacities < 65,000 Btu/h, are, to a significant extent, distributed in commerce for personal use or consumption by individuals.

In short, single phase equipment < 65,000 Btu/h, regardless of whether it is for residential or commercial use, is a consumer product.

In order to correct the Fujitsu petition for waiver itself, it is only necessary to strike the sentence "There is no prescribed test procedure for single-phase, small commercial packaged air conditioning and heating equipment, so no test procedure waiver is required for commercial Airstage products." As stated in Fujitsu's petition, the correct test procedure for the products for which Fujitsu is seeking a waiver is the residential test procedure for central air conditioners contained in 10 CFR Part 430, Subpart B, Appendix M.

Issued in Washington, DC, on May 13, 2005.

**David K. Garman,**

*Assistant Secretary, Energy Efficiency and Renewable Energy.*

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