

A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Kimberly D. Bose,
Secretary.

[FR Doc. 2010-9936 Filed 4-28-10; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

[Case No. CAC-026]

Energy Conservation Program for Commercial Equipment: Decision and Order Granting a Waiver to Daikin AC (Americas), Inc. (Daikin) 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-026, which grants Daikin a waiver from the existing DOE test procedure applicable to commercial package central air conditioners and heat pumps. The waiver is specific to the Daikin variable capacity VRV-WIII (commercial) water-source multi-split heat pumps. As a condition of this waiver, Daikin must use the alternate test procedure set forth in this notice to test and rate its VRV-WIII multi-split products.

DATES: This decision and order is effective April 29, 2010.

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. Betsy Kohl, U.S. Department of Energy, Office of General Counsel, Mail Stop GC-71, 1000 Independence Avenue, SW., Washington, DC 20585-0103, (202) 586-9507; E-mail: Elizabeth.Kohl@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 that it issues the decision and order 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 procedures for its VRV-WIII multi-split products. The waiver requires Daikin use the alternate test procedure provided in this notice to test and rate the specified models from its VRV-WIII multi-split product line. The capacities of the Daikin VRV-WIII multi-split heat pumps range from 72,000 Btu/hr to 252,000 Btu/hr. The applicable test procedure for Daikin's commercial VRV-WIII multi-split heat pumps with capacities less than 135,000 Btu/hr is ISO Standard 13256-1 (1998). There is no applicable test procedure for the larger-capacity Daikin VRV-WIII heat pumps. Today's decision prohibits Daikin from making any representations concerning the energy efficiency of these products unless the product has been tested consistent with the provisions and restrictions in the alternate test procedure set forth in the decision and order below, and the representations fairly disclose the test results. 42 U.S.C. 6314(d).

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).

Issued in Washington, DC, on April 22, 2010.

Cathy Zoi,

Assistant Secretary, Energy Efficiency and Renewable Energy.

Decision and Order

In the Matter of: Daikin AC (Americas), Inc. (Daikin) (Case No. CAC-026).

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." 42 U.S.C. 6291-6309. Part A-1 of Title III provides for a similar 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. It also provides the Secretary of Energy (the Secretary) with the authority to require

information and reports from manufacturers. 42 U.S.C. 6311-6317. The statute authorizes the Secretary to prescribe test procedures that are reasonably designed to produce test results that 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, 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 the International Organization for Standardization (ISO) Standard 13256-1-1998, "Water-source heat pumps—Testing and rating for performance—Part 1: Water-to-air and brine-to-air heat pumps," for small commercial package water-source heat pumps with capacities < 135,000 British thermal units per hour (Btu/h). *Id.* at 71371. Pursuant to this rulemaking, DOE's regulations at 10 CFR 431.95(b)(3) incorporate by reference ISO Standard 13256-1-1998. In addition, Table 1 of 10 CFR 431.96 directs manufacturers of commercial package water-source air conditioning and heating equipment to use the appropriate procedure when measuring the energy efficiency of those products. The cooling capacities of Daikin's commercial VRV-WIII multi-split heat pump products at issue in the waiver petition range from 72,000 Btu/hr to 252,000 Btu/hr. The Daikin products with capacities ≥ 135,000 Btu/hr are not covered by this waiver because there is no DOE test procedure for water-source heat pumps with capacities ≥ 135,000 Btu/hr.

In addition, DOE's regulations allow a person to seek a waiver for a particular

basic model from the test procedure requirements for covered commercial equipment if: (1) That basic model contains one or more design characteristics which prevent testing according to the prescribed test procedures, or (2) 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 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 in effect 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 may be granted if the Assistant Secretary determines that the applicant will experience economic hardship if the application for interim waiver is denied, if it appears likely that the petition for waiver will be granted, and/or if the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the petition for waiver. 10 CFR 431.401(e)(3). An interim waiver remains in effect for 180 days or until DOE issues its determination on the petition for waiver, whichever occurs first. The interim waiver may be extended by DOE for an additional 180 days. 10 CFR 431.401(e)(4).

On November 10, 2009, 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 ISO Standard 13256-1-1998, specified in Tables 1 and 2 of 10 CFR 431.96. Daikin asserted 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 Mitsubishi Electric & Electronics USA, Inc. (Mitsubishi) for a similar line of commercial multi-split air-conditioning systems:

- Testing laboratories cannot test products with so many indoor units; and
- There are too many possible combinations of indoor and outdoor units 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); Daikin, 74 FR 16373 (April 10, 2009); and LG, 74 FR 66330 (December 15, 2009).

On January 29, 2010, DOE published Daikin's petition for waiver in the **Federal Register**, seeking public comment pursuant to 10 CFR 431.3401(b)(1)(iv), and granted the application for interim waiver. 75 FR 4795. DOE received no comments on the Daikin petition.

In a similar case, DOE published a petition for waiver from Mitsubishi 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 Mitsubishi decision and order in the **Federal Register** on April 9, 2007. 72 FR 17528. Most of the comments were favorable. One commenter indicated that a waiver was unnecessary. However, the commenter did not present a satisfactory method of testing the products. *Id.* at 17529. Generally, commenters agreed that an alternate test procedure is necessary while a final test procedure for these types of products is being developed. *Id.* The Mitsubishi decision and order included the alternate test procedure adopted by DOE. *Id.*

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-WIII multi-split heat pumps contain design characteristics that prevent them from being tested using the current DOE test procedures. As stated above, 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 Mitsubishi, Fujitsu General Ltd. (Fujitsu), Samsung Air Conditioning (Samsung), Sanyo and LG for similar lines of commercial multi-split air-conditioning systems: (1) Testing laboratories cannot test products with so many indoor units; (2) there are too many possible combinations of indoor and outdoor unit to test.

The Daikin VRV-WIII systems have operational characteristics similar to the commercial multi-split products manufactured by Mitsubishi, Samsung, Fujitsu, LG and Sanyo. As indicated above, DOE has granted waivers for these products. The VRV-WIII system can be connected to the complete range of Daikin ceiling-mounted, concealed, ducted, corner, cassette, wall-mounted and floor-mounted and other indoor fan coil units. Each of these units has nine different indoor static pressure ratings as standard. Additional pressure ratings are available. There are over one million combinations possible with the Daikin VRV-WIII system. Consequently, Daikin requested that DOE grant a waiver from the applicable test procedures for its VRV-WIII product designs until a suitable test method can be prescribed. DOE believes that the Daikin VRV-WIII 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 therefore grants Daikin a VRV-WIII multi-split product waiver similar to the multi-split product waivers already issued to other manufacturers.

Previously, in addressing Mitsubishi'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, [DOE] is considering setting an alternate test procedure for MEUS in the subsequent Decision and Order. Furthermore, if DOE specifies an alternate test procedure for [Mitsubishi], 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 [Mitsubishi]'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 Mitsubishi, DOE specified an alternate test

procedure that Mitsubishi could use to test and make valid energy efficiency representations for its R410A CITY MULTI products and its R22 multi-split products. Alternate test procedures related to the Mitsubishi petitions were published in the **Federal Register** on April 9, 2007. 72 FR 17533.

DOE understands that existing testing facilities have a limited ability to test multiple indoor units simultaneously. It also understands that it is impractical to test some variable refrigerant flow zoned systems because of the number of possible combinations of indoor and outdoor units. DOE further notes that after the waiver granted Mitsubishi's R22 multi-split products, AHRI formed a committee to develop a testing protocol for variable refrigerant flow systems. The committee developed AHRI Standard 1230—2009: "Performance Rating of Variable Refrigerant Flow (VRF) Multi-Split Air-Conditioning and Heat Pump Equipment." AHRI has adopted the standard.

DOE issues today's decision and order granting Daikin a test procedure waiver for its commercial VRV—VIII [water-source?] multi-split heat pumps. As a condition of this waiver, Daikin must use the alternate test procedure described below. This alternate test procedure is the same in all relevant particulars as the one that DOE applied to the Mitsubishi waiver.

Alternate Test Procedure

The alternate test procedure 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 between 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 as set forth below.

The alternate DOE test procedure also allows Daikin to represent the products' energy efficiency. These representations must fairly disclose the test results. 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 using a DOE-approved alternative rating method; or (2) at the efficiency level of the tested combination utilizing the same outdoor unit.

As in the Mitsubishi waiver, DOE believes that allowing Daikin to make

energy efficiency representations for non-tested combinations by adopting the alternative test procedure 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 because it does not account for their multi-zoning feature. The multi-zoning feature of these products enables them to cool only those portions of the building that require cooling. Products with a multi-zoning feature are expected to use less energy than units controlled by a single thermostat, which cool the entire home or commercial building regardless of whether only portions need cooling. The multi-zoning feature would not be properly evaluated by the current test procedure, which requires full-load testing. Full load testing requires the entire building to be cooled. Products using a multi-zoning feature and subjected to full-load testing would be at a disadvantage because they are optimized for highest efficiency when operating with less than full loads. The alternate test procedure will provide a conservative basis for assessing the energy efficiency of 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 the indoor units must be subjected the same minimum external static pressure. This requirement enables 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 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. Measuring capacity in this way would require that the test laboratory be equipped with multiple airflow measuring apparatuses. It is unlikely that any test laboratory would be equipped with the necessary number of such apparatuses. Alternatively, the test laboratory could connect its one airflow measuring apparatus to one or more common indoor units until the contribution of each indoor unit had been measured. That would be so time-consuming as to be impractical.

Furthermore, DOE stated in the March 24, 2006 notice publishing the Mitsubishi petition for waiver that if it decided to specify an alternate test procedure for Mitsubishi 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 14861. As noted above, most of the comments received by DOE in response to the March 2006 notice supported 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.*

For the reasons discussed above, DOE believes Daikin's VRV—VIII multi-split products cannot be tested using the procedure prescribed in 10 CFR 431.96 (ISO Standard 13256—1 (1998) and incorporated by reference in DOE's regulations at 10 CFR 431.95(b)(3). After careful consideration, DOE has decided to prescribe the alternate test procedure first developed for the Mitsubishi waiver for Daikin's commercial multi-split products. The alternate test procedure for the Daikin products must include the modifications described 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 issuing 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 (Case No. CAC—026) is hereby granted as set forth in the paragraphs below.

(2) Daikin shall not be required to test or rate its VRV—VIII multi-split air conditioner and heat pump models listed below on the basis of the test procedure cited in 10 CFR 431.96, specifically, ISO Standard 13256—1 (1998) (incorporated by reference in 10 CFR 431.95(b)(3)). Instead, it shall be required to test and rate such products according to the alternate test procedure as set forth in paragraph (3).

VRV—VIII Series Outdoor Units

- Models RWEYQ72PTJU, RWEYQ84PTJU.

- Compatible Indoor Units For Above Listed Outdoor Units:

- FXAQ Series wall mounted indoor units with nominally rated capacities of 7,000, 9,000, 12,000, 18,000 and 24,000 Btu/hr.

- FXLQ Series floor mounted indoor units with nominally rated capacities of 12,000, 18,000 and 24,000 Btu/hr.

- FXNQ Series concealed floor mounted indoor units with nominally rated capacities of 12,000, 18,000 and 24,000 Btu/hr.

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

- FXSQ Series medium static ducted indoor units with nominally rated capacities of 7,000, 9,000, 12,000, 18,000, 24,000, 30,000, 36,000 and 48,000 Btu/hr.

- FXMQ-M Series high static ducted indoor units with nominally rated capacities of 30,000, 36,000, 48,000, 72,000 and 96,000 Btu/hr.

- FXMQ-P Series high static ducted indoor units with nominally rated capacities of 7,000, 9,000, 12,000, 18,000, 24,000, 30,000, 36,000 and 48,000 Btu/hr.

- FXMQ-MF Series Outdoor Air Processing indoor units with nominally rated capacities of 48,000, 72,000 and 96,000 Btu/hr.

- FXTQ-P Series Vertical Air Handler indoor units with nominally rated capacities of 12,000, 18,000, 24,000, 30,000, 36,000, 42,000, 48,000 and 54,000 Btu/hr.

- FXZQ Series recessed cassette indoor units with nominally rated capacities of 7,000, 9,000, 12,000, 18,000 and 24,000 Btu/hr.

- FXFQ 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.

(3) *Alternate test procedure.*

(A) Daikin is 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 (ISO Standard 13256-1 (1998) (incorporated by reference in 10 CFR 431.95(b)(3)), except that Daikin shall test a tested combination selected in accordance with the provisions of subparagraph (3)(B). For every other system combination using the same outdoor unit as the tested combination, Daikin shall make representations concerning the VRV-WIII 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. 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) Be subject to the same minimum external static pressure requirement.

(C) *Representations.* In making representations about the energy efficiency of its VRV-WIII multi-split products, for compliance, marketing, or other purposes, Daikin must fairly disclose the results of testing under the DOE test procedure in a manner consistent with the provisions outlined below:

(i) For VRV-WIII multi-split combinations tested in accordance with this alternate test procedure, Daikin may make representations based on these test results.

(ii) For VRV-WIII multi-split combinations that are not tested, Daikin may make representations based on the testing results for the tested combination and that are consistent with either of the two following methods:

(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 this order is issued, consistent with the provisions of 10 CFR 431.401(g).

(5) This waiver is issued on the condition that the statements, representations, and documentary materials provided by the petitioner are valid. DOE may revoke or modify the waiver at any time if it determines that the factual basis underlying the Petition for Waiver is incorrect, or the results from the alternate test procedure are unrepresentative of the basic models' true energy consumption characteristics.

Issued in Washington, DC on April 22, 2010.

Cathy Zoi,

Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 2010-9972 Filed 4-28-10; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

[Case No. RF-012]

Energy Conservation Program for Consumer Products: Decision and Order Granting a Waiver to Electrolux Home Products, Inc. From the Department of Energy Residential Refrigerator and Refrigerator-Freezer Test Procedure

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

ACTION: Decision and order.

SUMMARY: The U.S. Department of Energy (DOE) gives notice of the decision and order (Case No. RF-012) that grants to Electrolux Home Products, Inc. (Electrolux) a waiver from the DOE electric refrigerator and refrigerator-freezer test procedure for certain basic models containing relative humidity sensors and adaptive control anti-sweat heaters. Under today's decision and order, Electrolux shall be required to test and rate its refrigerator-freezers with adaptive control anti-sweat heaters using an alternate test procedure that takes this technology into account when measuring energy consumption.

DATES: This Decision and Order is effective April 29, 2010.

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:* AS_Waiver_Requests@ee.doe.gov. Betsy Kohl, U.S. Department of Energy, Office of the General Counsel, Mail Stop GC-71, 1000 Independence Avenue, SW.,