Financing Program, by mail, commercial carrier or fax. All notices of intent must be received by the Department on or before December 29, 2008. Notices of intent sent by mail should be addressed to Mr. Watson at 1990 K Street, NW., Room 6151, Washington, DC 20006. Notices of intent sent by fax should be faxed to Mr. Watson at (202) 502–7852. Although neither telephone nor e-mail submission of notices of intent are acceptable, Mr. Watson's telephone is (202) 219–7037 and his e-mail is *donald.watson@ed.gov.* All notices must include the entity's name, address, telephone number, e-mail address, fax number, and point of contact. The Department will then supply the entity with copies of the current DBA agreements, forms, and documentation described earlier in this notice.

Each interested entity must send, by mail or commercial carrier, eight (8) copies of its written proposal. Proposals must be sent to Mr. Watson at the above address, and must be received by him on or before January 30, 2009. Written proposals cannot be submitted by fax or e-mail. Written proposals submitted by entities that failed to submit a notice of intent or submitted its notice of intent late will not be considered.

We do not consider any proposal that does not comply with the deadline requirements. If your proposal is sent after the deadline date, we will not consider it.

Consideration of all proposals submitted will be based on the 16 criteria listed. The Department will rank the proposals quantitatively after giving each criterion a score of 1 to 10, with 1 being generally unfavorable and 10 being generally favorable. Highest-ranking proposals will be contacted for an oral interview, currently scheduled for the last week of February 2009.

The Secretary or Secretary's delegate will make a final selection of the DBA, upon consideration of a written record that includes the highest-ranking proposals and staff recommendations. The record will be publicly available. The Department expects to complete the selection process within approximately ten weeks of the date of this notice.

The appointment of the DBA will become effective as of the date of expiration of the incumbent DBA's appointment, which will occur immediately after the selection of the new DBA.

Electronic Access to This Document: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF), on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF, you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Program Authority: 20 U.S.C. 1066 *et seq.*

Dated: December 8, 2008.

Vickie Schray,

Acting Deputy Assistant Secretary, Higher Education Programs, Office of Postsecondary Education.

[FR Doc. E8–29378 Filed 12–10–08; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

[Case No. CAC–020]

Energy Conservation Program for Commercial Equipment: Publication of the Petition for Waiver From Mitsubishi Electric & Electronics USA, Inc. and Granting of the Application for Interim Waiver From the Department of Energy Commercial Package Air Conditioner and Heat Pump Test Procedure

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

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

SUMMARY: This notice announces receipt of and publishes a Petition for Waiver from Mitsubishi Electric & Electronics USA, Inc. (Mitsubishi). The Petition for Waiver (hereafter ''Mitsubishi Petition'') requests a waiver of the Department of Energy (DOE) test procedure applicable to commercial package air-cooled central air conditioners and heat pumps. The waiver request is specific to the Mitsubishi variable speed and variable refrigerant volume S&L Class (commercial) multi-split heat pumps and heat recovery systems. Through this document, DOE is: (1) Soliciting comments, data, and information with respect to the Mitsubishi Petition; and (2) announcing our determination to grant an Interim Waiver to Mitsubishi from the applicable DOE test procedure for the subject commercial air-cooled, multi-split air conditioners and heat pumps.

DATES: DOE will accept comments, data, and information with respect to the Mitsubishi Petition until, but no later than January 12, 2009.

ADDRESSES: You may submit comments, identified by case number ''CAC–020,'' 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 [CAC–020], and/or ''Mitsubishi Petition'' in the subject line of the message.
- *Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J/1000 Independence Avenue, SW., Washington, DC 20585–0121. *Telephone:* (202) 586–2945. Please submit one signed original paper copy.
- *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, 950 L'Enfant Plaza, SW., Suite 600, Washington, DC 20024. Please submit one signed original paper copy.

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

Any person submitting written comments must also send a copy of such comments to the petitioner, pursuant to 10 CFR 431.401(d). The contact information for the petitioner is: Mr. William Rau, Senior Vice President and General Manager, HVAC Advanced Products Division, Mitsubishi Electric & Electronics USA, Inc., 4300 Lawrenceville-Suwanee Road, Suwanee, GA 30024.

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

status of the information and treat it according to its determination.

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

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

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

SUPPLEMENTARY INFORMATION:

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I. Background and Authority

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.'' [1] (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.[2] (42 U.S.C. 6311–6317)

Today's notice involves commercial equipment under Part A–1. Part A–1 specifically includes definitions (42 U.S.C. 6311), test procedures (42 U.S.C. 6314), labeling provisions (42 U.S.C. 6315), energy conservation standards (42 U.S.C 6313), and the authority to require information and reports from manufacturers (42 U.S.C. 6316). With respect to test procedures, it generally authorizes the Secretary of Energy (the Secretary) to prescribe test procedures that are reasonably designed to produce results which measure energy efficiency, energy use, and estimated annual operating costs, and that are not unduly burdensome to conduct. (42 U.S.C. 6314(a)(2))

For commercial package air-conditioning and heating equipment, EPCA provides that ''the test procedures shall be those generally accepted industry testing procedures or rating procedures developed or recognized by the Air-Conditioning and Refrigeration Institute [ARI] or by the American Society of Heating, Refrigerating and Air-Conditioning Engineers [ASHRAE], as referenced in ASHRAE/IES Standard 90.1 and in effect on June 30, 1992.'' (42 U.S.C. 6314(a)(4)(A)) Under 42 U.S.C. 6314(a)(4)(B), the statute further 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 340/360–2004, ''Performance Rating of Commercial and Industrial Unitary Air-Conditioning and Heat Pump Equipment,'' for small and large commercial package air-cooled heat pumps with capacities ≥ 65,000 Btu/h and < 760,000 British thermal units per hour (Btu/h). *Id.* at 71370. Pursuant to this rulemaking, DOE's regulations at 10 CFR 431.95(b)(2) incorporate by reference the relevant ARI Standard, and Table 1 to 10 CFR 431.96 directs manufacturers of commercial package air-cooled air conditioning and heating equipment to use the appropriate procedure when measuring energy efficiency of those products. (The cooling capacities of Mitsubishi's commercial S&L Class multi-split heat pump products range from 72,000 Btu/hr to 360,000 Btu/hr, thereby resulting in these products falling within the range covered by ARI Standard 340/360–2004.)

In addition, DOE's regulations contain provisions allowing a person to seek a waiver from the test procedure requirements for covered commercial equipment, for which the petitioner's basic model contains one or more design characteristics which prevent testing according to the prescribed test procedures, or if the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption 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. 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 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 person who has submitted a Petition for Waiver to file an Application for Interim Waiver of the applicable test procedure requirements. 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 Application for 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 on the Petition for Waiver. 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 it may be extended by DOE for an additional 180 days, if necessary. 10 CFR 431.401(e)(4).

[1] This part was originally titled Part B; however, it was redesignated Part A, after Part B of Title III was repealed by Public Law 109–58.

[2] This part was originally titled Part C; however, it was redesignated Part A–1, after Part B of Title III was repealed by Public Law 109–58.

II. Petition for Waiver

On March 28, 2008, Mitsubishi filed a Petition for Waiver from the test procedures at 10 CFR 431.96 which are applicable to commercial package air-cooled heat pumps and an Application for Interim Waiver. As noted above, the applicable test procedure for Mitsubishi's commercial S&L Class multi-split heat pumps is ARI Standard 340/360–2004, which manufacturers are directed to use pursuant to Table 1 of 10 CFR 431.96. The capacities of the Mitsubishi S&L Class multi-split heat pumps range from 72,000 Btu/hr to 240,000 Btu/hr, and outdoor units may be combined to create systems of up to 360,000 Btu/hr capacity. Accordingly, the applicable test procedure for all these sizes is ARI Standard 340/360–2004.

Mitsubishi seeks a waiver from the applicable test procedures under 10 CFR 431.96 on the grounds that its S&L Class multi-split heat pumps and heat recovery systems contain design characteristics that prevent testing according to the current DOE test procedures. Specifically, Mitsubishi 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 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.
- There are too many possible combinations of indoor and outdoor units to test.

72 FR 71383 (December 17, 2007); 72 FR 71387 (December 17, 2007); 72 FR 17528 (April 9, 2007); 69 FR 52661 (August 27, 2004).

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

Accordingly, Mitsubishi requests that DOE grant a waiver from the applicable test procedures for its S&L Class product designs, until a suitable test method can be prescribed. DOE believes that the S&L Class Mitsubishi equipment and Mitsubishi 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 Mitsubishi an S&L Class product waiver similar to the previous Mitsubishi multi-split waivers. Mitsubishi is requesting one modification to the alternate test procedure granted in previous waivers made necessary to account for the ability of S&L Class products to connect multiple outdoor units. This modification would allow representation of non-tested combinations based on the capacity-weighted average of the efficiency ratings of tested combinations of the outdoor units used in the system. Furthermore, Mitsubishi states that failure to grant the waiver would result in economic hardship because it would prevent the company from marketing its S&L Class products. Also, Mitsubishi states that it is willing to work closely with DOE, ARI, and other agencies to develop appropriate test procedures, as necessary.

III. Application for Interim Waiver

On March 28, 2008, in addition to its Petition for Waiver, Mitsubishi submitted to DOE an Application for Interim Waiver. Mitsubishi's Application for Interim Waiver does not provide sufficient information to evaluate the level of economic hardship Mitsubishi will likely experience if its Application for Interim Waiver is denied. However, in those instances where the likely success of the Petition for Waiver has been demonstrated, based upon DOE having granted a waiver for similar product designs, it is in the public interest to have similar products tested and rated for energy consumption on a comparable basis. DOE has previously granted Interim Waivers to Daikin, Mitsubishi, Samsung and Fujitsu for comparable commercial multi-split air conditioners and heat pumps. 72 FR 35986 (July 2, 2007), 72 FR 17533 (April 9, 2007), 70 FR 9629 (Feb. 28, 2005), 70 FR 5980 (Feb. 4, 2005), respectively.

Moreover, as noted above, DOE approved the Petition for Waiver from Daikin, Fujitsu, Samsung and Mitsubishi for their comparable lines of multi-split air conditioners and heat pumps. 73 FR 39680 (July 10, 2008); 72 FR 71383 (Dec. 17, 2007); 72 FR 71387 (Dec. 17, 2007); 72 FR 17528 (April 9, 2007). The two principal reasons for granting the waivers also apply to Mitsubishi's S&L Class products: (1) Test laboratories cannot test products with so many indoor units; [3] and (2) it is impractical to test so many combinations of indoor units with each outdoor unit. Thus, DOE has determined that it is likely that Mitsubishi's Petition for Waiver will be granted for its new S&L Class multi-split models. Therefore, *it is ordered that:*

The Application for Interim Waiver filed by Mitsubishi is hereby granted for Mitsubishi's S&L Class air-cooled multi-split central air conditioning heat pumps, subject to the specifications and conditions below.

1. Mitsubishi shall not be required to test or rate its S&L Class commercial air-cooled multi-split products on the basis of the currently applicable test procedure under 10 CFR 431.96, which incorporates by reference ARI Standard 340/360–2004.

2. Mitsubishi shall be required to test and rate its S&L Class commercial air-cooled multi-split products according to the alternate test procedure as set forth in section IV(3), ''Alternate test procedure.''

The Interim Waiver applies to the following models:

CITY MULTI Variable Refrigerant Flow Zoning System Outdoor Equipment:

- Y–Series (PUHY) 208/230–3–60 and 460–3–60 split-system variable-speed heat pumps with individual model nominal cooling capacities of 72,000, 96,000, 120,000 and 144,000 Btu/h, and associated combined model nominal cooling capacities in the range between 144,000 and 360,000 Btu/hr.
- Hyper-heat Y–Series (PUHY–HP) 208/230–3–60 split-system variable-speed heat pumps with hyper-heat technology, with individual model nominal cooling capacities of 72,000 and 96,000 Btu/h, and associated combined model nominal cooling capacities in the range between 144,000 and 192,000 Btu/hr.

CITY MULTI Variable Refrigerant Flow Zoning System Indoor Equipment:

P*FY models, ranging from 6,000 to 48,000 Btu/h, 208/230–1–60 and from 72,000 to 120,000 Btu/h, 208/230–3–60 split system variable-capacity air conditioner or heat pump.

[3] According to the Mitsubishi petition, up to 50 indoor units are possible candidates for testing of its commercial package multi-split heat pump and heat recovery systems. However, DOE believes that the practical limits for testing would be about five units.

• PCFY Series—Ceiling Suspended—with capacities of 12/18/24/30/36 MBtu/h.

• PDFY Series—Ceiling Concealed Ducted—with capacities of 06/08/12/15/18/24/27/30/36/48 MBtu/h.

• PEFY Series—Ceiling Concealed Ducted (Low Profile)—with capacities of 06/08/12/18/24 MBtu/h.

• PEFY Series—Ceiling Concealed Ducted (Alternate High Static Option)—with capacities of 15/18/24/27/30/36/48/54/72/96 MBtu/h.

• PEFY–F Series—Ceiling Concealed Ducted (100% OA Option)—with capacities of 30/54/72/96/120 MBtu/h.

• PFFY Series—Floor Standing (Concealed)—with capacities of 06/08/12/15/18/24 MBtu/h.

• PFFY Series—Floor Standing (Exposed)—with capacities of 06/08/12/15/18/24 MBtu/h.

• PKFY Series—Wall-Mounted—with capacities of 06/08/12/18/24/30 MBtu/h.

• PLFY Series—4-Way Airflow Ceiling Cassette—with capacities of 12/18/24/30/36 MBtu/h.

• PMFY Series—1-Way Airflow Ceiling Cassette—with capacities of 06/08/12/15 MBtu/h.

This Interim Waiver is conditioned upon the presumed validity of statements, representations, and documents provided by the petitioner. DOE may revoke or modify this Interim Waiver at any time upon a determination that the factual basis underlying the Petition for Waiver is incorrect, or upon a determination that the results from the alternate test procedure are unrepresentative of the basic models' true energy consumption characteristics.

IV. Alternate Test Procedure

In response to two recent Petitions for Waiver from Mitsubishi, DOE specified an alternate test procedure to provide a basis from which Mitsubishi 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 Mitsubishi petitions were published in the **Federal Register** on April 9, 2007. 72 FR 17528; 72 FR 17533.

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 Mitsubishi'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. The ARI committee has considered a draft ISO methodology, ISO CD 15042, for multi-split systems. However, it contains no guidance that would affect this waiver.

Therefore, as discussed below, as a condition for granting this Interim Waiver to Mitsubishi, DOE is including an alternate test procedure similar to those granted to Mitsubishi for its R22 and R410A products. DOE plans to consider the same alternate test procedure in the context of the subsequent Decision and Order pertaining to Mitsubishi's Petition for Waiver. Utilization of this alternate test procedure will allow Mitsubishi to test and make energy efficiency representations for its S&L Class products. More broadly, DOE has applied a similar alternate test procedure to other waivers for similar commercial air conditioners and heat pumps. Such cases include Samsung's waiver for its multi-split products at 72 FR 71387 (Dec. 17, 2007), Fujitsu's waiver for its multi-split products at 72 FR 71383 (Dec. 17, 2007), and Daikin's waiver for its multi-split products at 73 FR 39680 (July 10, 2008). DOE believes that an alternate test procedure is needed so that manufacturers of such products can make valid and consistent representations of energy efficiency for their air-conditioning and heat pump products.

In the present case, DOE is modifying the alternate test procedure taken from the above-referenced waiver granted to Mitsubishi for its R410A and R22 CITY MULTI products, with an additional modification to account for combinations using multiple outdoor units. DOE plans to consider inclusion of the following waiver language in the Decision and Order for Mitsubishi's S&L Class commercial multi-split air-cooled heat pump models:

(1) The ''Petition for Waiver'' filed by Mitsubishi Electric & Electronics USA, Inc. is hereby granted as set forth in the paragraphs below.

(2) Mitsubishi shall not be required to test or rate its S&L Class variable refrigerant volume multi-split heat pump products listed above in section III, on the basis of the currently applicable test procedures, but shall be required to test and rate such products according to the alternate test procedure as set forth in paragraph (3).

(3) *Alternate test procedure.*

(A) Mitsubishi shall be required to test the products listed in section III above according to the test procedures for central air conditioners and heat pumps prescribed by DOE at 10 CFR 431.96, except that Mitsubishi 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, Mitsubishi shall make representations concerning the S&L Class products covered in this waiver according to the provisions of subparagraph (C) below.

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

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

(2) The indoor units shall—

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

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

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

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

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

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

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

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

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

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

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

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

V. Summary and Request for Comments

Through today's notice, DOE announces receipt of the Mitsubishi Petition for Waiver from the test procedures applicable to Mitsubishi's S&L Class commercial multi-split heat pump products, and for the reasons articulated above, DOE is granting Mitsubishi an Interim Waiver from those procedures. As part of this notice, DOE is publishing Mitsubishi's Petition for Waiver in its entirety. The Petition contains no confidential information. Furthermore, today's notice includes an alternate test procedure that Mitsubishi is required to follow as a condition of its Interim Waiver and that DOE is considering including in its subsequent Decision and Order. In this alternate test procedure, DOE is defining a ''tested combination'' which Mitsubishi could use in lieu of testing all retail combinations of its S&L Class multi-split heat pump products.

Furthermore, should a subsequent manufacturer be unable to test all retail combinations, DOE is considering allowing such manufacturers to rate waived products according to an ARM approved by DOE, or to rate waived products the same as the specified tested combination with the same outdoor unit(s). DOE is also considering applying a similar alternate test procedure to other comparable Petitions for Waiver for commercial air conditioners and heat pumps. Such cases include Samsung's Petition for Waiver for its Digital Variable Multi (DVM) products at 72 FR 71387 (Dec. 17, 2007), and Fujitsu's Petition for Waiver for its Airstage variable refrigerant flow products at 72 FR 71383 (Dec. 17, 2007). DOE is interested in receiving comments on the issues addressed in this notice. Pursuant to 10 CFR 431.401(d), any person submitting written comments must also send a copy of such comments to the petitioner, whose contact information is included in the section entitled **ADDRESSES** section above.

Issued in Washington, DC, on December 1, 2008.

David E. Rodgers,

Deputy Assistant Secretary for Energy Efficiency, Office of Technology Development, Energy Efficiency and Renewable Energy.

March 28, 2008
Alexander Karsner
Assistant Secretary
Office of Energy Efficiency & Renewable Energy
U.S. Department of Energy
1000 Independence Ave., SW.
Washington, DC 20585–0121

Re: *Petition for Waiver of Test Procedures and Application for Interim Waiver for CITY MULTI VRFZ S&L Class Air Conditioners and Heat Pumps*

Dear Assistant Secretary Karsner:

Mitsubishi Electric & Electronics USA, Inc. (''MEUS'') respectfully submits this petition for waiver, and application for interim waiver, of the commercial test procedures applicable to the new S&L Class of MEUS's CITY MULTI Variable Refrigerant Flow Zoning (''VRFZ'') product line pursuant to the provisions of 10 CFR 431.401. The S&L Class is similar to the R22 and R410A models of MEUS's CITY MULTI VRFZ product line, which were previously granted waivers, except that (1) these units have a more compact chassis design, and (2) the outdoor units may be installed individually in a VRFZ system or combined together to create larger capacity VRFZ systems, up to 240,000 Btu/h for the R2–Series units and 360,000 Btu/h for the Y–Series units. Similar to the CITY MULTI systems covered by the earlier waivers, the systems covered by this petition cannot be tested according to the prescribed test procedures for commercial products, and, therefore, should be granted a waiver from the applicable test procedures. MEUS proposes that DOE impose an alternate test procedure that can be applied practicably to these products, consistent with the alternate test procedure outlined in the waivers applicable to the R22 and R410A models. MEUS simultaneously requests an interim waiver covering the S&L Class.

The S&L Class contains units that fall into the commercial category of air conditioners. Thus, MEUS is seeking a waiver from the commercial test procedures applicable to these models. While the Department of Energy (''DOE'' or ''Department'') has provided a test procedure which allows manufacturers to practically test and rate their residential multi-split systems that can be combined into many potential system combinations,[4] currently no such solution exists for similar commercial products. The Air-Conditioning, Heating and Refrigeration Institute (''AHRI'') is currently in the process of developing a test procedure for these types of commercial products, but the test procedure has yet to be finalized. MEUS is simply seeking a waiver for the interim period of time until a standard test procedure that can test and rate these commercial multi-split products is developed and codified by DOE.

I. Background

DOE has previously granted waivers and interim waivers from the applicable air conditioner and heat pump test procedures for other models of MEUS's

[4] *Energy Conservation Program for Consumer Products: Test Procedure for Residential Central Air Conditioners and Heat Pumps,* 72 FR 59906 (Oct. 22, 2007) (hereinafter, ''October 2007 Final Rule''). MEUS will test and rate the residential sizes of the S&L Class pursuant to the test procedure outlined in the October 2007 Final Rule. As described below, the S&L Class has the capability of combining outdoor units together to create larger capacity systems, with combined capacities of a commercial-sized unit. We expect to test and rate systems with single outdoor units with capacities of less than 65,000 Btu/h under the residential test procedure to avoid any confusion caused by multiple ratings for the same unit.

CITY MULTI products. On August 27, 2004, DOE granted a waiver from the commercial air conditioner and heat pump test procedures for MEUS's R22 CITY MULTI products.[5] DOE found that the R22 models should be granted a waiver because they have ''one or more design characteristics which * * * prevent testing of the basic model according to the prescribed test procedures.'' [6] In April 2007, the Department granted MEUS's requested waiver for its R410A CITY MULTI models based on an identical finding.[7] DOE found that ''the testing problems described [by MEUS] do prevent testing of the R410A CITY MULTI basic model according to the test procedures prescribed.'' [8] Both the R22 and R410A products cannot be tested according to the prescribed test procedures for two main reasons: (1) The test laboratories cannot test products with so many indoor units; and (2) there are too many possible combinations of indoor and outdoor units (well over 1,000,000 combinations for each outdoor unit), and it is impractical to test so many combinations.

On April 9, 2007, DOE granted an interim waiver for the WR2 and WY models of MEUS's CITY MULTI products.[9] MEUS's WR2 and WY models are similar to the R410A products except that they represent the models of the CITY MULTI product line that are water-source heat pumps. Since DOE found that the testing problems that existed with the R22 and R410A products applied to the WR2 and WY products as well, it was ''likely that MEUS' Petition for Waiver will be granted.'' [10] Thus, DOE granted an interim waiver for the WR2 and WY models.

II. S&L Class Design Characteristics

MEUS's line of CITY MULTI VRFZ products combines advanced technologies and are complete, commercial zoning systems that save energy through the effective use of variable refrigerant control and distribution, zoning diversity, and system intelligence. As highlighted in the previous petitions for waiver for the other CITY MULTI products, the operating characteristics of a VRFZ system allow each indoor unit to have a different mode of operation (*i.e.*, on/off/heat/cool/dry/auto/fan) and a different set temperature allowing great flexibility of operation. The variable speed compressor and the system controls direct refrigerant flow throughout the system to precisely match the performance of the system to the load of the conditioned areas. The CITY MULTI VRFZ systems also have variable frequency inverter driven scroll compressors, and, therefore, have nearly infinite steps of capacity. Additionally, the CITY MULTI VRFZ R2–Series products offer consumers the option of simultaneous heating and cooling. These characteristics allow the CITY MULTI VRFZ systems to offer cost-effective functionality and significant energy savings.

Similar to the other CITY MULTI models, the S&L Class has the capability of connecting a single outdoor unit to up to 30 indoor units.[11] Unlike the other CITY MULTI products, however, the S&L Class has the additional capability of installing the outdoor units individually in a VRFZ system or combining them together to create larger capacity VFRZ system. The Y–Series and R2–Series outdoor units have nominal cooling capacities between 72,000 and 144,000 Btu/h, which may be combined to create systems with nominal cooling capacities up to 240,000 Btu/h for the R2–Series units and 360,000 for the Y–Series units. A three module outdoor unit system may be connected to up to 50 indoor units. The ability to combine smaller outdoor units to create larger outdoor units is a unique feature of the S&L Class that gives these systems tremendous flexibility to meet customers' specific demands. This feature, however, increases the already very large number of potential combinations by several times.

Although the energy saving characteristics of these products are not credited under current rules, they are precisely the types of technological innovations and applications that advance the Congressional intent of promoting energy savings. These CITY MULTI VRFZ systems represent a revolutionary advance in HVAC technology, well positioned to provide new and existing commercial buildings with effective use of energy and an operationally cost-effective source of heating and cooling. Additionally, with some of the innovative capabilities of the CITY MULTI Controls Network, the potential for energy management and energy savings are even greater. The CITY MULTI products' unique design characteristics are clearly consistent with U.S. government's efforts to encourage the availability of high performance products that consume less energy.

III. Test Procedures From Which Waiver Is Requested

MEUS's petition requests waiver from the commercial test procedures for its S&L Class products. As stated above, the S&L Class contains units that fall into both the residential and commercial categories of air conditioners. However, since DOE recently provided a test procedure which allows manufacturers to test and rate their residential multi-split systems that can be combined into multiple potential system combinations, MEUS is only seeking a waiver from the commercial test procedures applicable to these models.

Title III of the Energy Policy and Conservation Act (''EPCA'') sets forth the provisions concerning energy efficiency. Part C of EPCA Title III provides the energy efficiency requirements and test procedures for commercial products.[12] On October 21, 2004, DOE published a direct final rule, effective December 21, 2004, adopting updated test procedures for commercial package air conditioning equipment.[13] These test procedures are outlined in DOE's regulations, at 10 CFR 431.96. For commercial package air conditioning equipment with capacities between 65,000 and 760,000 Btu/h, ARI Standard 340/360–2004 is the applicable test procedure. The capacities of MEUS's S&L Class CITY MULTI products sold for commercial use fall in that range. Therefore, MEUS requests waiver from

[5] *Energy Conservation Program for Consumer Products: Decision and Order Granting a Waiver From the DOE Commercial Package Air Conditioner and Heat Pump Test Procedure to Mitsubishi Electric (Case No. CAC–008),* 69 FR 52660 (Aug. 27, 2004) (hereinafter, ''R22 Waiver'').

[6] R22 Waiver at 52662. *See also* 10 CFR 431.201(a)(1) and (f)(4) (2007) (outlining the standards that must be met for the grant of a waiver).

[7] *Energy Conservation Program for Consumer Products: Decision and Order Granting a Waiver From the Department of Energy (DOE) Residential and Commercial Package Air Conditioner and Heat Pump Test Procedures to Mitsubishi Electric, and Modification of a 2004 Waiver Granted to Mitsubishi Electric From the Same DOE Test Procedures (Case No. CAC–012),* 72 FR 17528 (Apr. 9, 2007) (hereinafter, ''R410A Waiver'').

[8] R410A Waiver at 17531.

[9] *Energy Conservation Program for Consumer Products: Publication of the Petition for Waiver and Granting of the Application for Interim Waiver of Mitsubishi Electric From the DOE Commercial Water Source Heat Pump Test Procedure [Case No. CAC–015],* 72 FR 17533 (Apr. 9, 2007) (hereinafter, ''WR2/WY Interim Waiver'').

[10] WR2/WY Interim Waiver at 17535.

[11] MEUS offers 64 indoor models in its S&L Class CITY MULTI product line. The number of potential combinations of the 64 models in sets of up to 30 is in the millions.

[12] 42 U.S.C. 6311–6317.

[13] *Energy Efficiency Program for Certain Commercial and Industrial Equipment: Test Procedures and Efficiency Standards for Commercial Air Conditioners and Heat Pumps*, Direct Final Rule, 69 FR 61962 (Oct. 21, 2004).

the test procedures for commercial products.

MEUS proposes to test and rate a tested combination for each individual outdoor unit pursuant to an alternate test procedure discussed below. As noted earlier, however, the outdoor units in the S&L Class can be combined to make larger capacity systems. Thus, MEUS is also proposing that it may make representations about the efficiency of systems using combinations of outdoor units based on: (1) The results of testing such combinations pursuant to the alternate test procedure outlined below; or (2) the capacity-weighted average of the efficiency ratings, determined pursuant to the alternate test procedure, of the individual outdoor units that make up the combined system.

IV. Basic Models for Which Waiver Is Requested

MEUS requests a waiver from the test procedures for the basic models consisting of combinations of the following products:

CITY MULTI Variable Refrigerant Flow Zoning System Outdoor Equipment:

- Y–Series (PUHY) 208/230–3–60 and 460–3–60 split-system variable-speed heat pumps with individual model nominal cooling capacities of 72,000, 96,000, 120,000 and 144,000 Btu/h, and associated combined model nominal cooling capacities in the range between 144,000 and 360,000 Btu/h.
- Hyper-heat Y–Series (PUHY–HP) 208/230–3–60 split-system variable-speed heat pumps with hyper-heat technology, with individual model nominal cooling capacities of 72,000 and 96,000 Btu/h, and associated combined model nominal cooling capacities in the range between 144,000 and 192,000 Btu/h.
- R2–Series (PURY) 208/230–3–60 and 460–3–60 split-system variable-speed heat pumps with heat recovery and with individual model nominal cooling capacities of 72,000, 96,000, 120,000 and 144,000 Btu/h, and associated combined model nominal cooling capacities in the range between 144,000 and 240,000 Btu/h.

CITY MULTI Variable Refrigerant Flow Zoning System Indoor Equipment:

P*FY models, ranging from 6,000 to 48,000 Btu/h, 208/230–1–60 and from 72,000 to 120,000 Btu/h, 208/230–3–60 split system variable-capacity air conditioner or heat pump.

- PCFY Series—Ceiling Suspended—with capacities of 12/18/24/30/36 MBtu/h.
- PDFY Series—Ceiling Concealed Ducted—with capacities of 06/08/12/15/18/24/27/30/36/48 MBtu/h.
- PEFY Series—Ceiling Concealed Ducted (Low Profile)—with capacities of 06/08/12/18/24 MBtu/h.
- PEFY Series—Ceiling Concealed Ducted (Alternate High Static Option)—with capacities of 15/18/24/27/30/36/48/54/72/96 MBtu/h.
- PEFY–F Series—Ceiling Concealed Ducted (100% OA Option)—with capacities of 30/54/72/96/120 MBtu/h.
- PFFY Series—Floor Standing (Concealed)—with capacities of 06/08/12/15/18/24 MBtu/h.
- PFFY Series—Floor Standing (Exposed)—with capacities of 06/08/12/15/18/24 MBtu/h.
- PKFY Series—Wall-Mounted—with capacities of 06/08/12/18/24/30 MBtu/h.
- PLFY Series—4-Way Airflow Ceiling Cassette—with capacities of 12/18/24/30/36 MBtu/h.
- PMFY Series—1-Way Airflow Ceiling Cassette—with capacities of 06/08/12/15 MBtu/h.

V. Need for Waiver of Test Procedures

The Department's regulations contain provisions allowing a person to seek a waiver from the test procedure requirements for commercial equipment. These provisions are set forth in 10 CFR 431.401. These waiver provisions allow DOE to temporarily waive test procedures for a particular basic model when a petitioner shows that the 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.[14]

In both the R22 Waiver and R410A Waiver, DOE found that MEUS's CITY MULTI products contained one or more design characteristics which prevent testing of the basic model according to the prescribed test procedures.[15] DOE granted MEUS's request for an interim waiver for the WR2 and WY CITY MULTI products because the testing problems that existed with the R22 and R410A products applied to the WR2 and WY products as well.

The S&L Class has similar operational characteristics as the R22 and R410A models, which have already been granted a waiver, and the WR2 and WY products, which have been granted an interim waiver. Similar to the R22 and R410A models, and the WR2 and WY systems, the S&L Class can connect more indoor units than the test laboratories can physically test at one time. Each of the S&L Class indoor units is designed to be used with up to 50 other indoor units with a three modual outdoor unit system. These connected indoor units need not be the same models—there are 64 different indoor models that can be combined in a multitude of different combinations to address customer needs. The testing laboratories will not physically be able to test many of the S&L Class system combinations because of the inability to test products with so many indoor units.

Additionally, there are millions of potential combinations that can be created with the various S&L Class models. It is not practical to test all of the potentially available combinations, of which there are more than one million. Finally, the S&L Class models have the ability to connect multiple outdoor units together to create larger capacity systems. This unique feature increases the number of potential combinations significantly. Therefore, the same design characteristics that prevent testing of the basic R22, R410A, WR2 and WY CITY MULTI models also prevent testing of the S&L Class CITY MULTI models.

As shown above, the S&L Class products cannot be tested according to the prescribed test procedures. MEUS also believes that the requested waiver is supported on the grounds that the 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.'' [16] In particular, the benefits of variable refrigerant control and distribution, zoning diversity, part load operation and simultaneous heating and cooling, as described above, are not credited under the current test procedures.

The October 2007 Final Rule provides a test procedure to test and rate multi-split residential systems that can be configured in many different potential combinations. No such test procedure exists for multi-split commercial products, however. DOE has not adopted a similar test procedure to test and rate multi-split commercial products. The currently-effective test procedure for commercial products cannot accurately test and rate multi-split commercial products that can be configured into millions of combinations.

[14] 10 CFR 431.401(a)(1) and (f)(4).

[15] R22 Waiver at 52662; R410A Waiver at 17531.

[16] 10 CFR 431.201(a)(1) (2005).

VI. Outdoor Unit Combinations

As described above, one of the unique features of the S&L Class is the ability to combine outdoor units to create larger capacity systems. For example, if three of the Y–Series PUHY 120,000 Btu/h outdoor units are combined, the resulting outdoor unit will have a nominal cooling capacity of 360,000 Btu/h. This unique capability gives these systems tremendous flexibility to meet the customer's specific demands. DOE's test procedures do not provide any direction on how to test and rate products that have the capability to connect outdoor units.

MEUS proposes that, until such a time that test procedures expressly address this issue, MEUS may make representations about the efficiency of systems using combinations of outdoor units based on: (1) The results of testing such combinations pursuant to the alternate test procedure outlined below; or (2) the capacity-weighted average of the efficiency ratings of the individual outdoor units, as determined pursuant to the alternate test procedure, that make up the combined system.

VII. Alternate Test Procedures

Currently, there are no standard test procedures known to MEUS that can accurately evaluate these products. AHRI is currently in the process of developing a test procedure that will be able to accurately test and rate all multi-split systems, including commercial-sized systems, which have the ability to be combined to create numerous potential system combinations. The test procedure, AHRI Draft Standard 1230, will next be submitted for a vote to the members of the Ductless Split-System Production Section. After it is approved by that Section, it will be submitted to the General Standards Committee for final approval by AHRI. After it is approved by AHRI, the test procedure will be submitted to DOE to be incorporated into 10 CFR Part 431. MEUS's requested waiver would only be valid in the interim until AHRI Standard 1230, or another test procedure that will accurately test and rate commercial multi-split air conditioning equipment, is approved and incorporated into DOE's regulations.

While the requested waiver is in effect, MEUS proposes that DOE impose an alternate test procedure that can be applied practicably to these products. In response to MEUS's petition for waiver for the R410A products, DOE adopted an alternate test procedure to provide a conservative basis from which manufacturers covered by a test procedure waiver for commercial VRFZ products can test and make valid energy efficiency representations, for compliance, marketing, or other purposes, regarding these products.[17] DOE adopted a similar test procedure for residential products in the October 2007 Final Rule. MEUS requests that DOE apply the alternate test procedure provided in the R410A Waiver to the S&L Class in order to allow MEUS to test and make energy efficiency representations regarding these products.

Manufacturers face restrictions with respect to making representations about the energy consumption and energy consumption costs of products covered by EPCA.[18] As DOE acknowledged in the R410A Waiver, ''the ability of a manufacturer to make representations about the energy efficiency of its products is important, for instance, to determine compliance with state and local energy codes and regulatory requirements. Energy efficiency representations also provide valuable consumer purchasing information.'' [19] Therefore, MEUS respectfully requests that DOE apply the alternate test procedure outlined in the R410A Waiver to the S&L Class.

The alternate test procedure outlined in the R410A Waiver has two basic components. First, it will permit MEUS to designate a ''tested combination'' for each model of outdoor unit. The indoor units designated as part of the tested combination must meet specific requirements. This tested combination must be tested according to the applicable DOE test procedures. Second, the alternate test procedure will permit MEUS to represent the energy efficiency for a non-tested combination in two ways. MEUS may represent the energy efficiency of a non-tested combination: (1) At an energy efficiency level determined under a DOE-approved alternate rating method; or if that option is not available, then (2) at the efficiency level of the tested combination utilizing the same outdoor unit. Pursuant to the alternate test procedure provided in the R410A Waiver, 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.

According to DOE:

Allowing MEUS to make energy efficiency representations for non-tested combinations as described above is reasonable because the outdoor unit is the principal efficiency driver. The current test procedure tends to rate these products conservatively. This is because the current test procedure does not account for the product's simultaneous heating and cooling capability, which is more efficient than requiring all zones to be either heated or cooled. Further, the multi-zoning feature of these products, which enables them to cool only those portions of the building that require cooling, can 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. 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 products.[20]

MEUS proposes that representations about the efficiency of the S&L Class combinations that have combined individual outdoor units to create larger capacity VFRZ systems would be permitted based on: (1) The results of testing of such combinations pursuant to the alternate test procedure; or (2) the capacity-weighted average of the efficiency ratings of the individual outdoor units that make up the combined system.

Attached to this Application, as Appendix 1, is a proposed alternate test procedure for the S&L Class products. The proposed alternate test procedure is based on the alternate test procedure provided in the R410A Waiver, except for new provisions relating to the treatment of systems that combine individual outdoor units to create larger capacity VFRZ systems.[21]

VIII. Similar Products

To the best of our knowledge, models similar to MEUS's S&L Class products, which have the ability to combine multiple outdoor units to create larger capacity systems, are also offered in the

[17] R410A Waiver at 17530.

[18] *See* 42 U.S.C. 6314(d); 42 U.S.C. 6293(c).

[19] R410A Waiver at 17530.

[20] R410A Waiver at 17530.

[21] MEUS proposes two other minor deviations from the alternate test procedure approved in the R410A Waiver. First, MEUS proposes that the tested combination consist of one outdoor unit that is matched with between 2 and 8 indoor units. In the alternate test procedure provided in the R410A Waiver, a tested combination consisted of one outdoor unit that is matched with between 2 and 5 indoor units. MEUS is proposing to increase the maximum number of indoor units in a tested combination from 5 to 8 to account for the fact that the S&L Class products that have combined outdoor units can accommodate a greater number of indoor units. Second, MEUS is proposing a clarification of the prior language concerning the capacities of the outdoor and indoor units to specify that references to capacities are references to the nominal cooling capacities of the units. Since cooling and heating capacities of units may differ, MEUS would like to clarify these references to avoid any confusion.

United States by Daikin AC (Americas), Inc. and LG Electronics U.S.A., Inc.

IX. Application for Interim Waiver

Pursuant to 10 CFR 431.401(a)(2), MEUS also submits an application for interim waiver of the applicable test procedures for the S&L Class CITY MULTI models listed above. DOE's regulations contain provisions allowing DOE to grant an interim waiver from the test procedure requirements to manufacturers that have petitioned the Department for a waiver of such prescribed test procedures.[22] As DOE has previously stated, ''an Interim Waiver may be granted if it is determined 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 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.'' [23]

MEUS will experience economic hardship if the application for interim waiver is denied. Additionally, precedent indicates that DOE will likely grant MEUS's petition for waiver. Finally, it is in the public interest to grant an interim waiver. Therefore, MEUS respectfully requests DOE to grant the application for interim waiver.

MEUS plans to introduce the new S&L Class products into the U.S. market in September 2008. The procedure for granting a petition for waiver can be a time-consuming process—DOE must publish the petition in the **Federal Register**, allow time for public comment, and then consider any comments before it makes a decision. Thus, the process typically takes a number of months. If an interim waiver is not granted, MEUS will suffer economic hardship because MEUS will be required to delay its introduction of these products to U.S. customers.

In addition, DOE will likely grant MEUS's petition for waiver. As described above, the design characteristics which prevented testing of the basic R22, R410A, WR2 and WY products are present for the new S&L Class models as well. The best evidence that DOE is likely to grant this waiver petition is the fact that it granted similar petitions in the R22 Waiver and R410A Waiver. In addition, DOE granted an interim waiver for the WR2 and WY products based on the fact that the ''identical testing problems [made] it likely that MEUS' Petition for Waiver will be granted.'' [24]

Finally, DOE's regulations state that the Assistant Secretary may grant an interim waiver if he determines that it would be desirable for public policy reasons to grant immediate relief pending a determination for the Petition for Waiver. In response to MEUS's Application for Interim Waiver for its WR2 and WY products, DOE stated that ''in those instances where the likely success of the Petition for Waiver has been demonstrated, based upon DOE having granted a waiver for a similar product design, it is in the public interest to have similar products tested and rated for energy consumption on a comparable basis.'' [25] MEUS's S&L Class CITY MULTI products are similar to the R22, R410A, WR2 and WY CITY MULTI products. Thus, it would be in the public interest to grant the requested interim waiver to allow MEUS to test and rate similar products on a comparable basis.

X. Conclusion

MEUS seeks a waiver of the applicable test procedures for the products listed in Section IV above. Such a waiver is necessary because the basic S&L Class CITY MULTI models ''contain[] one or more design characteristics which * * * prevent testing of the basic model according to the prescribed test procedures.'' [26] MEUS respectfully asks the Department of Energy to grant a waiver from the test procedures until such time as an appropriate test procedure is developed and adopted for this class of commercial products. MEUS expects to continue working with AHRI and DOE to develop appropriate test procedures. MEUS further requests DOE to grant its request for an interim waiver while its Petition for Waiver is pending.

If you have any questions or would like to discuss this request, please contact Paul Doppel at (678) 376–2923 or Douglas Smith at (202) 298–1902. We greatly appreciate your attention to this matter.

Sincerely,

William Rau
Senior Vice President and General Manager
HVAC Advanced Products Division
Mitsubishi Electric & Electronics USA, Inc.
4300 Lawrenceville-Suwanee Road
Suwanee, GA 30024.

CERTIFICATE

I hereby certify that I have this day served the foregoing Petition for Waiver and Application for Interim Waiver upon the following companies known to Mitsubishi Electric & Electronics USA, Inc. to currently market systems in the United States which appear to be similar to the S&L CITY MULTI VRFZ system design. I have notified this manufacturer that the Assistant Secretary for Energy Efficiency and Renewable Energy will receive and consider timely written comments on the Application for Interim Waiver.

Daikin AC (Americas), Inc.
1645 Wallace Drive, Suite 110
Carrollton, TX 75006
Attn: Mike Bregenzer, VP and GM

LG Electronics U.S.A., Inc.
1000 Sylvan Avenue
Englewood Cliffs, NJ 07632
Attn: Mark O'Donnell

Dated this 28th day of March 2008.

William Rau
Senior Vice President and General Manager
HVAC Advanced Products Division
Mitsubishi Electric & Electronics USA, Inc.
3400 Lawrenceville-Suwanee Road
Suwanee, GA 30024

APPENDIX 1—PROPOSED ALTERNATE TEST PROCEDURE

(A) MEUS shall be required to test the S&L Class products listed above according to those test procedures for central air conditioners and heat pumps prescribed by DOE at 10 CFR Part 431, except that:

(i) For each S&L Class outdoor unit, MEUS shall test a tested combination selected in accordance with the provisions of subparagraph (B) of this paragraph.

(ii) For every other system combination using the same outdoor unit as the tested combination, MEUS shall make representations concerning the S&L Class products covered in this waiver according to the provisions of subparagraph (C) below.

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

(i) The basic model of a variable refrigerant flow system used as a tested combination shall consist of one outdoor unit that is matched with between 2 and 8 indoor units.

(ii) The indoor units shall—

[22] 10 CFR 431.401(a)(2).

[23] WR2/WY Interim Waiver at 17535, citing 10 CFR 431.401(e)(3). *See also Energy Conservation Program for Consumer Products: Publication of the Petition for Waiver and Granting of the Application for Interim Waiver of Mitsubishi Electric From the DOE Residential and Commercial Package Air Conditioner and Heat Pump Test Procedures (Case No. CAC–012)*, 71 FR 14858 at 14860 (Mar. 24, 2006); and *Energy Conservation Program for Consumer Products: Publication of the Petition for Waiver and Granting of the Application for Interim Waiver of Samsung Air Conditioning From the DOE Residential and Commercial Package Air Conditioner and Heat Pump Test Procedures (Case No. CAC–009)*, 70 FR 9629 at 9630 (Feb. 28, 2005).

[24] WR2/WY Interim Waiver at 17535.

[25] WR2/WY Interim Waiver at 17535.

[26] 10 CFR 431.201(a)(1).

(a) Represent the highest sales volume type models;

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

(c) Not, individually, have a nominal cooling capacity greater than 50% of the nominal cooling 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. MEUS may make representations about the energy efficiency of the S&L Class, for compliance, marketing, or other purposes, only to the extent that such representations are made consistent with the provisions outlined below:

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

(ii) For S&L Class combinations utilizing a single outdoor unit that has not been tested, MEUS may make representations which are 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.

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

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

(iv) For S&L Class combinations utilizing multiple outdoor units that have not been tested, MEUS may make representations which are consistent with 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.

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

[FR Doc. E8–29335 Filed 12–10–08; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2242]

Eugene Water and Electric Board; Notice of Authorization for Continued Project Operation

December 4, 2008.

On November 24, 2006, Eugene Water and Electric Board, licensee for the Carmen-Smith Hydroelectric Project, filed an Application for a New License pursuant to the Federal Power Act (FPA) and the Commission's regulations thereunder. The Carmen-Smith Hydroelectric Project is located on McKenzie River in Lane and Linn Counties, near McKenzie Bridge, Oregon.

The license for Project No. 2242 was issued for a period ending November 30, 2008. Section 15(a)(1) of the FPA, 16 U.S.C. 808(a)(1), requires the Commission, at the expiration of a license term, to issue from year-to-year an annual license to the then licensee under the terms and conditions of the prior license until a new license is issued, or the project is otherwise disposed of as provided in section 15 or any other applicable section of the FPA. If the project's prior license waived the applicability of section 15 of the FPA, then, based on section 9(b) of the Administrative Procedure Act, 5 U.S.C. 558(c), and as set forth at 18 CFR 16.21(a), if the licensee of such project has filed an application for a subsequent license, the licensee may continue to operate the project in accordance with the terms and conditions of the license after the minor or minor part license expires, until the Commission acts on its application. If the licensee of such a project has not filed an application for a subsequent license, then it may be required, pursuant to 18 CFR 16.21(b), to continue project operations until the Commission issues someone else a license for the project or otherwise orders disposition of the project.

If the project is subject to section 15 of the FPA, notice is hereby given that an annual license for Project No. 2242 is issued to the Eugene Water and Electric Board for a period effective December 1, 2008 through November 30, 2009, or until the issuance of a new license for the project or other disposition under the FPA, whichever comes first. If issuance of a new license (or other disposition) does not take place on or before November 30, 2009, notice is hereby given that, pursuant to 18 CFR 16.18(c), an annual license under section 15(a)(1) of the FPA is renewed automatically without further order or notice by the Commission, unless the Commission orders otherwise. If the project is not subject to section 15 of the FPA, notice is hereby given that the Eugene Water and Electric Board is authorized to continue operation of the Carmen-Smith Hydroelectric Project, until such time as the Commission acts on its application for a subsequent license.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–29353 Filed 12–10–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. P–503–048]

Idaho Power Company; Notice of Application Accepted for Filing and Soliciting Motions To Intervene and Protests

December 5, 2008.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License.

b. *Project No.:* P–503–048.

c. *Date filed:* June 26, 2008.

d. *Applicant:* Idaho Power Company.

e. *Name of Project:* Swan Falls Hydroelectric Project.

f. *Location:* The Swan Falls Hydroelectric Project is located on the Snake River at river mile (RM) 457.7 in Ada and Owyhee counties of southwestern Idaho, about 35 miles southwest of Boise. The project occupies 528.84 acres of lands of the United States within the Snake River Birds of Prey National Conservation Area.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* Mr. Tom Saldin, Senior Vice President and General Counsel, Idaho Power Company, P.O. Box 70, Boise, Idaho 83707 (208) 388–2550.

i. *FERC Contact:* James Puglisi (202) 502–6241 or *james.puglisi@ferc.gov.*

j. Deadline for filing motions to intervene and protests 60 days from the issuance date of this notice.