

enable the system to provide year round heating in very low ambient temperatures. The Daikin VRV-III-C product class will introduce technologies that will increase system efficiency and reduce national energy consumption, and that will also offer a new level of comfort and control to end users.

DACA requests that DOE grant our Application for Interim Waiver so we can bring the new highly energy efficient technology represented by the Daikin VRV-III-C product class to the market as soon as possible, thereby allowing the U.S. consumer to benefit from our high technology and high efficiency product.

#### Confidential Information

DACA makes no request to DOE for confidential treatment of any information contained in this Petition for Waiver and Application for Interim Waiver.

#### • Conclusion

Daikin AC (Americas), Inc. Corporation respectfully requests DOE to grant its Petition for Waiver of the applicable test procedure to DACA for specified models of the VRV-III-C system, and to grant its Application for Interim Waiver. DOE's failure to issue an interim waiver from test standards would cause significant economic hardship to DACA by preventing DACA from marketing these products even though DOE has previously granted waivers to other products that were offered in the market with similar design characteristics.

We would be pleased to respond to any questions you may have regarding this Petition for Waiver and Application for Interim Waiver. Please contact Lee Smith, Director of Product Marketing at 972-245-1510 or by email at [Lee.smith@daikinac.com](mailto:Lee.smith@daikinac.com).

Sincerely,

Akinori Atarashi,  
President

Daikin AC (Americas), Inc.  
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(Submitted in triplicate)  
Encls.

cc:  
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Attn: William Rau, Senior Vice President and  
General Manager

[FR Doc. E9-29795 Filed 12-14-09; 8:45 am]

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## DEPARTMENT OF ENERGY

[Case No. CAC-021]

### Energy Conservation Program for Commercial Equipment: Decision and Order Granting a Waiver to LG Electronics, Inc. (LG) 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-021, which grants a waiver to LG from the existing DOE test procedure applicable to commercial package central air conditioners and heat pumps. The waiver is specific to the LG variable speed and variable refrigerant volume Multi V (commercial) multi-split heat pumps and heat recovery systems. As a condition of this waiver, LG must test and rate its Multi V multi-split products according to the alternate test procedure set forth in this notice.

**DATES:** This Decision and Order is effective December 15, 2009.

**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.

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Francine Pinto or Michael Kido, U.S. Department of Energy, Office of the General Counsel, Mail Stop GC-72, 1000 Independence Avenue, SW., Washington, DC 20585-0103. *Telephone:* (202) 586-9507. *E-mail:* [Francine.Pinto@hq.doe.gov](mailto:Francine.Pinto@hq.doe.gov) or [Michael.Kido@hq.doe.gov](mailto:Michael.Kido@hq.doe.gov).

**SUPPLEMENTARY INFORMATION:** In accordance with 10 CFR 431.401(f)(4), DOE gives notice of the issuance of its Decision and Order as set forth below. In this Decision and Order, DOE grants LG a Waiver from the existing DOE commercial package air conditioner and heat pump test procedures for its Multi V multi-split products, subject to a condition requiring LG to test and rate the specified models from its Multi V multi-split product line pursuant to the alternate test procedure provided in this notice. The current test procedure is the Air-Conditioning and Refrigeration Institute (ARI) Standard 340/360-2004, "Performance Rating of Commercial and Industrial Unitary Air-Conditioning and Heat Pump Equipment" (incorporated

by reference at 10 CFR 431.95(b)(2)). Further, today's decision requires that LG may not make any representations concerning the energy efficiency of these products unless such product has been tested consistent with the provisions and restrictions in the alternate test procedure set forth in the Decision and Order below, and such representations fairly disclose the results of such testing. (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 December 8, 2009.

**Cathy Zoi,**

*Assistant Secretary, Energy Efficiency and Renewable Energy.*

#### Decision and Order

*In the Matter of:* LG Electronics, Inc. (LG) (Case No. CAC-021).

#### 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) 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 large and small commercial air conditioning equipment, package boilers, storage water heaters, and other types of commercial equipment. (42 U.S.C. 6311-6317).

Today's notice involves commercial equipment under Part A-1. The statute specifically includes definitions, test procedures, labeling provisions, energy conservation standards, and provides the Secretary of Energy (the Secretary) with the authority to require information and reports from manufacturers. 42 U.S.C. 6311-6317. With respect to test procedures, the statute generally authorizes the Secretary to prescribe test procedures that are reasonably designed to produce test results which reflect energy efficiency, energy use, and estimated annual operating costs, and that are not unduly burdensome to conduct. (42 U.S.C. 6314(a)(2)).

For commercial package air-conditioning and heating equipment, EPCA provides that "the test procedures shall be those generally accepted industry testing procedures or rating procedures developed or recognized by

the Air-Conditioning and Refrigeration Institute or by the American Society of Heating, Refrigerating and Air-Conditioning Engineers, as referenced in ASHRAE/IES Standard 90.1 and in effect on June 30, 1992.” (42 U.S.C. 6314(a)(4)(A)) Under 42 U.S.C. 6314(a)(4)(B), the Secretary must amend the test procedure for a covered commercial product if the applicable industry test procedure is amended, unless the Secretary determines, 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 Air-Conditioning and Refrigeration Institute (ARI) Standard 210/240–2003 for small commercial package air-cooled air conditioning and heating equipment with capacities <65,000 British thermal units per hour (Btu/h) and ARI Standard 340/360–2004 for large and very large commercial package air-cooled air conditioning and heating equipment with capacities ≥ 65,000 Btu/h and <760,000 Btu/h. *Id.* at 71371. Pursuant to this final rule, DOE’s regulations at 10 CFR 431.95(b)(1)–(2) incorporate by reference the relevant ARI standards, and 10 CFR 431.96 directs manufacturers of commercial package air conditioning and heating equipment to use the appropriate procedure when measuring energy efficiency of those products. The cooling capacities of LG’s Multi V commercial multi-split products, which have capacities between 76,400 Btu/hr and 310,000 Btu/hr, fall in the range covered by ARI Standard 340/360–2004.

In addition, DOE’s regulations contain provisions allowing a person to seek a waiver for a particular basic model from the test procedure requirements for covered commercial equipment if that basic model contains one or more design characteristics which prevent testing according to the prescribed test procedures, or if the prescribed test procedures may evaluate the basic model in a manner so unrepresentative 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 for Energy Efficiency and Renewable Energy 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 will terminate 180 days after issuance or upon the issuance of DOE’s determination on the petition for waiver, whichever occurs first, which may be extended by DOE for an additional 180 days. 10 CFR 431.401(e)(4).

On April 16, 2008, LG filed a Petition for Waiver and an Application for Interim Waiver from the test procedures applicable to small and large commercial package air-cooled air-conditioning and heating equipment. The applicable test procedure is ARI 340/360–2004, specified in Tables 1 and 2 to 10 CFR 431.96. LG 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: (1) Testing laboratories cannot test products with so many indoor units; and (2) 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); and Daikin (74 FR 16373, April 10, 2009). On May 5, 2009, DOE published LG’s Petition for Waiver in the **Federal Register**, seeking public comment pursuant to 431.3401(b)(1)(iv), and granted the Application for Interim Waiver. 74 FR 20688. DOE received no comments on the LG petition.

In a similar case, DOE published a Petition for Waiver from Mitsubishi Electric and Electronics USA, Inc. (MEUS) for products very similar to

LG’s multi-split products. 71 FR 14858 (March 24, 2006). In the March 24, 2006, **Federal Register** notice, DOE also published and requested comment on an alternate test procedure for the MEUS products at issue. DOE stated that if it specified an alternate test procedure for MEUS in the subsequent Decision and Order, DOE would consider applying the same procedure to similar waivers for residential and commercial central air conditioners and heat pumps, including such products for which waivers had previously been granted. *Id.* at 14861. Comments were published along with the MEUS Decision and Order in the **Federal Register** on April 9, 2007. 72 FR 17528 (April 9, 2007). Most of the comments responded favorably to DOE’s proposed alternate test procedure; while one commenter indicated that a waiver was unnecessary, the commenter did not present a satisfactory way to test the products at issue with the DOE test procedure. *Id.* at 17529. Also, there was general agreement that an alternate test procedure is necessary while a final test procedure for these types of products is being developed. *Id.* The MEUS Decision and Order included the alternate test procedure adopted by DOE. *Id.*

#### *Assertions and Determinations*

##### *LG’s Petition for Waiver*

LG seeks a waiver from the DOE test procedures for this product class on the grounds that its Multi V multi-split heat pump and heat recovery systems contain design characteristics that prevent testing according to the current DOE test procedures. As stated above, LG asserts that the two primary factors that prevent testing of multi-split variable speed products, regardless of manufacturer, are the same factors stated in the waivers that DOE granted to MEUS, Fujitsu General Ltd. (Fujitsu), and Samsung Air Conditioning (Samsung) for similar lines of commercial multi-split air-conditioning systems:

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

The Multi V systems have operational characteristics similar to other commercial multi-split products

manufactured by Mitsubishi, Samsung, Sanyo, Fujitsu and Daikin, all of which have already been granted waivers. Each of the Multi V system indoor units is designed to be used with up to 52 other indoor units, which need not be the same models. There are 70 different indoor models. In certain high-capacity applications, LG's Multi V systems have the capability to combine two outdoor units to create a larger capacity system. Accordingly, LG requests that DOE grant a waiver from the applicable test procedures for its Multi V product designs, until a suitable test method can be prescribed. DOE believes that the LG Multi V 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 to LG a Multi V multi-split product waiver similar to the previous multi-split waivers.

Previously, in addressing MEUS's R410A CITY MULTI VRFZ products, which are similar to the LG products at issue here, DOE stated:

To provide a test procedure from which manufacturers can make valid representations, the Department is considering setting an alternate test procedure for MEUS in the subsequent Decision and Order. Furthermore, if DOE specifies an alternate test procedure for MEUS, DOE is considering applying the alternate test procedure to similar waivers for residential and commercial central air conditioners and heat pumps. Such cases include Samsung's petition for its DVM products (70 FR 9629, February 28, 2005), Fujitsu's petition for its Airstage variable refrigerant flow (VRF) products (70 FR 5980, February 4, 2005), and MEUS's petition for its R22 CITY MULTI VRFZ products. (69 FR 52660, August 27, 2004). 71 FR 14861.

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

DOE understands that existing testing facilities have a limited ability to test multiple indoor units at one time, and the number of possible combinations of indoor and outdoor units for some

variable refrigerant flow zoned systems is impractical to test. We further note that subsequent to the waiver that DOE granted for MEUS's R22 multi-split products, ARI formed a committee to discuss the issue and to work on developing an appropriate testing protocol for variable refrigerant flow systems. However, to date, no additional test methodologies have been adopted by the committee or submitted to DOE.

DOE issues today's Decision and Order granting LG a test procedure waiver for its commercial Multi V multi-split heat pumps. As a condition of this waiver, LG 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 MEUS waiver.

#### *Alternate Test Procedure*

The alternate test procedure developed in conjunction with the MEUS waiver permits LG to designate a "tested combination" for each model of outdoor unit. The indoor units designated as part of the tested combination must meet specific requirements. For example, the tested combination must have from two to eight indoor units so that it can be tested in available test facilities. The tested combination was originally defined to consist of one outdoor unit matched with between 2 and 5 indoor units. The maximum number of indoor units in a tested combination is here increased from 5 to 8 to account for the fact that these larger-capacity products can accommodate a greater number of indoor units. 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 LG to represent the energy efficiency of that product. These representations must fairly disclose the results of such testing. The DOE test procedure, as modified by the alternate test procedure set forth in this Decision and Order, provides for efficiency rating of a non-tested combination in one of two ways: (1) At an energy efficiency level determined under a DOE-approved alternative rating method; or (2) at the efficiency level of the tested combination utilizing the same outdoor unit.

As in the MEUS matter, DOE believes that allowing LG to make energy efficiency representations for non-tested combinations by adopting this alternative test procedure as described above is reasonable because the outdoor unit is the principal efficiency driver.

The current DOE test procedure for commercial products tends to rate these products conservatively. The multi-zoning feature of these products, which enables them to cool only those portions of the building that require cooling, would be expected to use less energy than if the unit is operated to cool the entire home or a comparatively larger area of a commercial building in response to a single thermostat. This feature would not be captured by the current test procedure, which requires full-load testing. Full-load testing, under which the entire building would require cooling, disadvantages these products because they are optimized for their highest efficiency when operating with less than full loads. Therefore, the alternate test procedure will provide a conservative basis for assessing the energy efficiency for such products.

With regard to the laboratory testing of commercial products, some of the difficulties associated with the existing test procedure are avoided by the alternate test procedure's requirements for choosing the indoor units to be used in the manufacturer-specified tested combination. For example, in addition to limiting the number of indoor units, another requirement is that all of the indoor units must be subject to meeting the same minimum external static pressure. This requirement allows the test lab to manifold the outlets from each indoor unit into a common plenum that supplies air to a single airflow measuring apparatus and eliminates situations in which some of the indoor units are ducted and some are non-ducted. Without this requirement, the laboratory must evaluate the capacity of a subgroup of indoor coils separately, and then sum the separate capacities to obtain the overall system capacity. This would require that the test laboratory be equipped with multiple airflow measuring apparatuses (which is unlikely), or that the test laboratory connect its one airflow measuring apparatus to one or more common indoor units until the contribution of each indoor unit has been measured.

Furthermore, DOE stated in the notice publishing the MEUS Petition for Waiver that if the Department decided to specify an alternate test procedure for MEUS, it would consider applying the procedure to waivers for similar residential and commercial central air conditioners and heat pumps produced by other manufacturers. 71 FR 14858, 14861 (March 24, 2006). 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.

Based on the discussion above, DOE believes that the testing problems described above would prevent testing of LG's Multi V multi-split products according to the test procedure currently prescribed in 10 CFR 431.96 (ARI Standard 340/360–2004) and incorporated by reference in DOE's regulations at 10 CFR 431.95(b)(2). After careful consideration, DOE has decided to adopt the proposed alternate test procedure for LG's commercial multi-split products, with the clarifications discussed above.

#### *Consultations With Other Agencies*

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

#### *Conclusion*

After careful consideration of all the materials submitted by LG, the absence of any comments, and consultation with the FTC staff, it is ordered that:

(1) The "Petition for Waiver" filed by LG Electronics, Inc., (LG) (Case No. CAC–021) is hereby granted as set forth in the paragraphs below.

(2) LG shall not be required to test or rate its Multi V multi-split air conditioner and heat pump models listed below on the basis of the currently applicable test procedure cited in 10 CFR 431.96, specifically, ARI Standard 340/360–2004 (incorporated by reference in 10 CFR 431.95(b)(2)), but shall be required to test and rate such products according to the alternate test procedure as set forth in paragraph (3).

#### *Multi V Series Outdoor Units*

##### *Plus II 3Ø 460V 60 Hz models:*

ARUN076DT2, ARUN096DT2, ARUN115DT2, ARUN134DT2, ARUN154DT2, ARUN173DT2, ARUN192DT2, ARUN211DT2, ARUN230DT2, ARUN250DT2, ARUN270DT2, ARUN290DT2, and ARUN310DT2 with nominally rated cooling capacities of 76,400, 95,900, 114,700, 133,800, 152,900, 172,000, 191,100, 211,000, 230,000, 250,000, 270,000, 290,000, and 310,000 Btu/h respectively. The maximum number of connectable indoor units is 13, 16, 20, 23, 26, 29, 32, 35, 39, 42, 49, and 52 respectively.

##### *Plus II 3Ø 230/208V 60 Hz models:*

ARUN076BT2, ARUN096BT2, ARUN115BT2, ARUN154BT2, ARUN173BT2, ARUN192BT2,

ARUN211BT2, and ARUN230BT2 with nominally rated cooling capacities of 76,400, 95,900, 114,700, 152,900, 172,000, 191,100, 211,000, and 230,000 Btu/h respectively. The maximum number of connectable indoor units is 13, 16, 20, 26, 29, 32, 35, and 39 respectively.

##### *Sync II 3Ø 230/208V 60 Hz models:*

ARUB076BT2, ARUB096BT2, ARUB115BT2, ARUB154BT2, ARUB173BT2, ARUB192BT2, ARUB211BT2, and ARUB230BT2 with nominally rated cooling capacities of 76,400, 95,900, 114,700, 152,900, 172,000, 191,000, 211,000, and 230,000 Btu/h respectively. The maximum number of connectable indoor units is 13, 16, 20, 26, 29, 32, 35, and 39 respectively.

#### *Compatible Indoor Units for the Above-Listed Outdoor Units:*

*Wall Mounted:* ARNU073SEL2, ARNU093SEL2, ARNU123SEL2, ARNU153SEL2, ARNU183S5L2, and ARNU243S5L2 with nominally rated cooling capacities of 7,500, 9,600, 12,300, 15,400, 19,100, and 24,200 Btu/h respectively.

*Art Cool Gallery:* ARNU073SF\*2, ARNU093SF\*2, and ARNU123SF\*2 with nominally rated cooling capacities of 7,500, 9,600, and 12,300 Btu/h respectively.

*Art Cool Mirror:* ARNU073SE\*2, ARNU093SE\*2, ARNU123SE\*2, ARNU153SE\*2, ARNU183S3\*2, and ARNU243S3\*2 with nominally rated cooling capacities of 7,500, 9,600, 12,300, 15,400, 19,100, and 24,200 Btu/h respectively.

*4 Way Cassette:* ARNU073TEC2, ARNU093TEC2, ARNU123TEC2, ARNU153TEC2, ARNU183TEC2, ARNU243TPC2, ARNU283TPC2, ARNU363TNC2, ARNU423TMC2, and ARNU483TMC2 with nominally rated cooling capacities of 7,500, 9,600, 12,300, 15,400, 19,100, 24,200, 28,000, 36,200, 42,000, and 48,100 Btu/h respectively.

*2 Way Cassette:* ARNU183TLC2 and ARNU243TLC2 with nominally rated capacities of 19,100 and 24,200 Btu/h respectively.

*1 Way Cassette:* ARNU073TJC2, ARNU093TJC2, and ARNU123TJC2 with nominally rated capacities of 7,500, 9,600, and 12,300 Btu/h respectively.

*Ceiling Concealed Duct—Low Static:* ARNU073B1G2, ARNU093B1G2, ARNU123B1G2, ARNU153B1G2, ARNU183B2G2, and ARNU243B2G2 with nominally rated capacities of 7,500, 9,600, 12,300, 15,400, 19,100, and 24,200 Btu/h respectively.

*Ceiling Concealed Duct—Built-in:* ARNU073B3G2, ARNU093B3G2, ARNU123B3G2, ARNU153B3G2, ARNU183B4G2, and ARNU243B4G2 with nominally rated capacities of 7,500, 9,600, 12,300, 15,400, 19,100, and 24,200 Btu/h respectively.

#### *Ceiling Concealed Duct—High Static:*

ARNU073BHA2, ARNU093BHA2, ARNU123BHA2, ARNU153BHA2, ARNU183BHA2, ARNU243BHA2, ARNU283BGA2, ARNU363BGA2, ARNU423BGA2, ARNU483BRA2, ARNU763B8A2, and ARNU963B8A2 with nominally rated capacities of 7,500, 9,600, 12,300, 15,400, 19,100, 24,200, 28,000, 36,200, 42,000, 48,100, 76,400, and 95,500 Btu/h respectively.

*Ceiling & Floor:* ARNU093VEA2 and ARNU123VEA2 with nominally rated capacities of 9,600 and 12,300 Btu/h respectively.

*Ceiling Suspended:* ARNU183VJA2 and ARNU243VJA2 with nominally rated capacities of 19,100 and 24,200 Btu/h respectively.

#### *Floor Standing with Case:*

ARNU073CEA2, ARNU093CEA2, ARNU123CEA2, ARNU153CEA2, ARNU183CFA2, and ARNU243CFA2 with nominally rated capacities of 7,500, 9,600, 12,300, 15,400, 19,100, and 24,200 Btu/h respectively.

#### *Floor Standing without Case:*

ARNU073CEU2, ARNU093CEU2, ARNU123CEU2, ARNU153CEU2, ARNU183CFU2, and ARNU243CFU2 with nominally rated capacities of 7,500, 9,600, 12,300, 15,400, 19,100, and 24,200 Btu/h respectively.

#### *(3) Alternate test procedure.*

(A) LG shall be required to test the products listed in paragraph (2) above according to the test procedure for central air conditioners and heat pumps prescribed by DOE at 10 CFR Part 431 (ARI 340/360–2004, (incorporated by reference in 10 CFR 431.95(b)(2))), except that LG 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, LG shall make representations concerning the Multi V products covered in this waiver according to the provisions of subparagraph (C) below.

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

(i) The basic model of a variable refrigerant flow system used as a tested combination shall consist of an outdoor

unit that is matched with between two and eight indoor units; for multi-split systems, each of these indoor units shall be designed for individual operation.

(ii) The indoor units shall:

- (a) Represent the highest sales model family, or another indoor model family if the highest sales model family does not provide sufficient capacity (see b);
- (b) Together, have a nominal cooling capacity that is between 95 percent and 105 percent of the nominal cooling capacity of the outdoor unit;
- (c) Not, individually, have a nominal cooling capacity greater than 50 percent of the nominal cooling capacity of the outdoor unit;
- (d) Operate at fan speeds that are consistent with the manufacturer's specifications; and
- (e) Be subject to the same minimum external static pressure requirement.

(C) *Representations.* In making representations about the energy efficiency of its Multi V multi-split products, for compliance, marketing, or other purposes, LG 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 Multi V multi-split combinations tested in accordance with this alternate test procedure, LG may make representations based on these test results.

(ii) For Multi V multi-split combinations that are not tested, LG may make representations based on the testing results for the tested combination and which 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 of issuance of this Order consistent with the provisions of 10 CFR 431.401(g).

(5) This waiver is conditioned upon the presumed validity of statements, representations, and documentary materials provided by the petitioner. This waiver may be revoked or modified at any time upon a determination that the factual basis underlying the Petition for Waiver is incorrect, or DOE determines that the results from the alternate test procedure are unrepresentative of the basic models' true energy consumption characteristics.

Issued in Washington, DC, on December 8, 2009.

Cathy Zoi,

*Assistant Secretary, Energy Efficiency and Renewable Energy.*

[FR Doc. E9-29808 Filed 12-14-09; 8:45 am]

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## DEPARTMENT OF ENERGY

[Case No. CD-003]

### Energy Conservation Program for Consumer Products: Decision and Order Granting a Waiver to Whirlpool Corporation From the Department of Energy Residential Clothes Dryer Test Procedure (Case No. CD-003)

**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. CD-003) that grants to the Whirlpool Corporation (Whirlpool) a waiver from the DOE clothes dryer test procedure. The waiver request pertains to Whirlpool's specified single model of condensing residential clothes dryer. The existing test procedure does not apply to condensing clothes dryers. Under today's Decision and Order, Whirlpool shall be not be required to test and rate its specified single model of condensing residential clothes dryer.

**DATES:** This Decision and Order is effective December 15, 2009.

**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](mailto:AS_Waiver_Requests@ee.doe.gov).

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

**SUPPLEMENTARY INFORMATION:** In accordance with Title 10 of the Code of Federal Regulations (10 CFR) 430.27(l), DOE gives notice of the issuance of its Decision and Order as set forth below. The Decision and Order grants Whirlpool a Waiver from the applicable residential clothes dryer test procedure at 10 CFR part 430 subpart B, appendix

D, for its single model of condensing clothes dryer.

Issued in Washington, DC, on December 8, 2009.

Cathy Zoi,

*Assistant Secretary, Energy Efficiency and Renewable Energy.*

## Decision and Order

*In the Matter of:* Whirlpool Corporation. (Case No. CD-003)

### Background

Title III of the Energy Policy and Conservation Act (EPCA) sets forth a variety of provisions concerning energy efficiency. Part A of Title III provides for the "Energy Conservation Program for Consumer Products Other Than Automobiles." (42 U.S.C. 6291-6309) Part A includes definitions, test procedures, labeling provisions, energy conservation standards, and the authority to require information and reports from manufacturers. Further, Part A authorizes the Secretary of Energy to prescribe test procedures that are reasonably designed to produce results which measure energy efficiency, energy use, or estimated operating costs, and that are not unduly burdensome to conduct. (42 U.S.C. 6293(b)(3)).

Today's notice involves residential products under Part A. Relevant to the current Petition for Waiver, the test procedure for residential clothes dryers is contained in 10 CFR Part 430, subpart B, appendix D.

DOE's regulations contain provisions allowing a person to seek a waiver from the test procedure requirements for covered consumer products, when the petitioner's basic model contains one or more design characteristics that prevent testing according to the prescribed test procedure, or when they 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 430.27(a)(1). Petitioners must include in their petition any alternate test procedures known to the petitioner to evaluate the basic model in a manner representative of its energy consumption characteristics. 10 CFR 430.27(b)(1)(iii).

The Assistant Secretary for Energy Efficiency and Renewable Energy (the Assistant Secretary) may grant a waiver subject to conditions, including adherence to alternate test procedures. 10 CFR 430.27(l). Waivers remain in effect pursuant to the provisions of 10 CFR 430.27(m).

The waiver process also allows any interested person who has submitted a petition for waiver to file an application