

Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: [www.federalregister.gov](http://www.federalregister.gov). Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: November 9, 2012.

**John Q. Easton,**

*Director, Institute of Education Sciences.*

[FR Doc. 2012-27845 Filed 11-15-12; 8:45 am]

**BILLING CODE 4000-01-P**

## DEPARTMENT OF ENERGY

### Notice of Intent To Grant Exclusive License Between National Energy Technology Laboratory and Corrosion Solutions

**AGENCY:** National Energy Technology Laboratory, Department of Energy.

**ACTION:** Notice of Intent To Grant Exclusive License.

**SUMMARY:** This notice is issued in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i). The National Energy Technology Laboratory (NETL) hereby gives notice of its intent to grant an exclusive license to practice the inventions described and claimed in U.S. Patent No 7,553,517, issued June 30, 2009, entitled "Method of applying a cerium diffusion coating to a metallic alloy," to Corrosion Solutions having its principal place of business in Eugene, Oregon. The inventions are owned by the United States of America as represented by the Department of Energy (DOE). The prospective exclusive license will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7.

**DATES:** Written comments or nonexclusive license applications are to be received at the address listed below no later than December 3, 2012. Objections submitted in response to this notice will not be made available to the public for inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

**ADDRESSES:** Objections relating to the prospective exclusive license may be submitted to the Office of Chief Counsel, National Energy Technology Laboratory, P.O. Box 10940, Pittsburgh, PA 15236, or via facsimile at (412) 386-5949.

**FOR FURTHER INFORMATION CONTACT:** Jessica Sosenko, Technology Transfer

Program Manager, U.S. Department of Energy, National Energy Technology Laboratory, P.O. Box 10940, Pittsburgh, PA 15236; Telephone (412) 386-7417; Email: [jessica.sosenko@netl.doe.gov](mailto:jessica.sosenko@netl.doe.gov).

**SUPPLEMENTARY INFORMATION:** Section 209(c) gives DOE with authority to grant exclusive or partially exclusive licenses in department-owned inventions, where a determination can be made, among other things, that the desired practical application of the invention has not been achieved, or is not likely expeditiously to be achieved, under a nonexclusive license. The statute and implementing regulations (37 CFR 404) require that the necessary determinations be made after public notice and opportunity for filing written objections.

Corrosion Solutions, a new small business, has applied for an exclusive license to practice the inventions and has a plan for commercialization of the invention. DOE intends to grant the license, upon a final determination in accordance with 35 U.S.C. 209(c), unless, within 15 days of publication of this notice, NETL's Office of Chief Counsel (contact information listed above) receives in writing any of the following, together with the supporting documents:

(i) A statement from any person setting forth reasons why it would not be in the best interest of the United States to grant the proposed license; or

(ii) An application for a nonexclusive license to the invention, in which the applicant states that it already has brought the invention to practical application or is likely to bring the invention to practical application expeditiously.

The proposed license would be exclusive, subject to a license and other rights retained by the U.S. Government, and subject to a negotiated royalty. DOE will review all timely written responses to this notice and will grant the license if, after expiration of the 15-day notice period and after consideration of any written responses to this notice, a determination is made in accordance with Section 209(c) that the license is in the public interest.

Dated: October 26, 2012.

**Anthony V. Cugini,**

*Director, National Energy Technology Laboratory.*

[FR Doc. 2012-27928 Filed 11-15-12; 8:45 am]

**BILLING CODE 6450-01-P**

## DEPARTMENT OF ENERGY

### Office of Energy Efficiency and Renewable Energy

[Case No. CAC-039]

### Decision and Order Granting a Waiver Granted to Fujitsu General Limited 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:** The U.S. Department of Energy (DOE) gives notice of the decision and order (Case No. CAC-039) that grants Fujitsu General Limited (Fujitsu) a waiver from the DOE commercial package air-source central air conditioners and heat pumps test procedures for determining the energy consumption set forth in its petition for waiver. Under today's decision and order, Fujitsu shall be required to test and rate its AIRSTAGE V-II multi-split heat pump with a capacity of 264,000 Btu/h, and specified compatible indoor units using American National Standards Institute (ANSI)/Air-conditioning, Heating and Refrigeration Institute (AHRI) Standard 1230, as adopted in DOE's final rule dated May 16, 2012.

**DATES:** This Decision and Order is effective November 16, 2012 through May 12, 2013.

**FOR FURTHER INFORMATION CONTACT:** Mr. Bryan Berringer, U.S. Department of Energy, Building Technologies Program, Mailstop EE-2J, 1000 Independence Avenue SW., Washington, DC 20585-0121. Telephone: (202) 586-0371. Email: [Bryan.Berringer@ee.doe.gov](mailto:Bryan.Berringer@ee.doe.gov).

Ms. Elizabeth Kohl, U.S. Department of Energy, Office of the General Counsel, Mail Stop GC-71, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585-0103. Telephone: (202) 586-7796. Email: [mailto:Elizabeth.Kohl@hq.doe.gov](mailto:mailto:Elizabeth.Kohl@hq.doe.gov).

**SUPPLEMENTARY INFORMATION:** DOE issues notice of this Decision and Order in accordance with Title 10 of the Code of Federal Regulations (10 CFR) 431.401(f)(4). In this Decision and Order, DOE grants Fujitsu a waiver for the Airstage V-II multi-split equipment specified in its waiver submitted on December 16, 2011. Fujitsu must test and rate this equipment using ANSI/AHRI 1230, as adopted in DOE's final rule dated May 16, 2012 (77 FR 28928), as the alternative test procedure. DOE's

final rule specifies use of ANSI/AHRI 1230, but omits sections 5.1.2 and 6.6.

Today's decision requires Fujitsu to make representations concerning the energy efficiency of this equipment consistent with the provisions and restrictions of the alternate test procedure in the Decision and Order below, and the representations must fairly disclose the test results. (42 U.S.C. 6314(d)) The same standard applies to distributors, retailers, and private labelers when making representations of the energy efficiency of this equipment.

Issued in Washington, DC, on November 9, 2012.

**Kathleen B. Hogan,**

*Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy.*

### Decision and Order

*In the Matter of:* Fujitsu General Limited (Fujitsu) (Case No. CAC-039).

#### I. Background and Authority

Title III, Part C of the Energy Policy and Conservation Act of 1975 (EPCA), Pub. L. 94-163 (42 U.S.C. 6311-6317), established the Energy Conservation Program for certain industrial equipment, which includes commercial air conditioning equipment, the focus of this decision and order.<sup>1</sup> Part C 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, Part C authorizes the Secretary of Energy (the Secretary) to prescribe test procedures that are reasonably designed to produce results that 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)) If the industry test procedure for commercial package air-conditioning and heating equipment is amended, EPCA directs the Secretary to

amend the corresponding DOE test procedure 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). (42 U.S.C. 6314(a)(4)(B))

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. Table 1 to Title 10 of the Code of Federal Regulations (10 CFR) 431.96 directs manufacturers of commercial package air conditioning and heating equipment to use the appropriate procedure when measuring energy efficiency of this equipment. For commercial package air-source equipment with capacities between 65,000 and 760,000 Btu/h, ARI Standard 340/360-2004 is the applicable test procedure.

DOE's regulations for covered products and equipment permit a person to seek a waiver from the test procedure requirements for covered commercial equipment if at least one of the following conditions is met: (1) The petitioner's basic model contains one or more design characteristics that prevent testing according to the prescribed test procedures; or (2) the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption as to provide materially inaccurate comparative data. 10 CFR 431.401(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. 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 according to the provisions of 10 CFR 431.401(g).

On December 16, 2011, Fujitsu submitted a petition for waiver from the DOE test procedure applicable to commercial package air-source and water-source central air conditioners and heat pumps set forth in 10 CFR 431.96. Fujitsu requested the waiver for specified basic model of Fujitsu AIRSTAGE V-II multi-split heat pump with a capacity of 264,000 Btu/h, and specified compatible indoor units. The applicable test procedure for these heat pumps is ARI 340/360-2004. Manufacturers are directed to use these test procedures pursuant to Table 1 of 10 CFR 431.96. Fujitsu seeks a waiver

from the applicable test procedures under 10 CFR 431.96 on the grounds that its AIRSTAGE V-II multi-split heat pumps contain design characteristics that prevent testing according to the current DOE test procedures. Fujitsu requested that DOE allow it to test and rate its Airstage V-II multi-split heat pump with a capacity of 264,000 Btu/h, and specified compatible indoor units according to the American National Standards Institute (ANSI)/Air-conditioning, Heating and Refrigeration Institute (AHRI) Standard 1230-2010: Performance Rating of Variable Refrigerant Flow (VRF) Multi-Split Air-Conditioning and Heat Pump Equipment (AHRI 1230).

On May 16, 2012, DOE published a final rule (77 FR 28928) adopting American Society of Heating, Refrigerating, and Air-Conditioning Engineers (ASHRAE) Standard 90.1-2010 (ASHRAE final rule). The ASHRAE final rule incorporated by reference ANSI/AHRI 1230-2010 but omits sections 5.1.2 and 6.6 for the products addressed in this waiver request. The rule was effective on July 16, 2012 and requires use of the test procedure on or after May 13, 2013. This decision and order (D&O) requires Fujitsu to use ANSI/AHRI 1230-2010 as addressed in the DOE's May 16, 2012 final rule (77 FR 28928) to test and rate specified models in order to be consistent with future test procedure requirements.

#### II. Fujitsu's Petition for Waiver: Assertions and Determinations

In its December 16, 2011 petition, Fujitsu seeks a waiver from the applicable test procedures under 10 CFR 431.96 on the grounds that its AIRSTAGE V-II multi-split heat pumps contain design characteristics that prevent testing according to the current DOE test procedures. Specifically, Fujitsu asserts that the two primary factors that prevent testing of its AIRSTAGE V-II multi-split variable speed products are the same factors stated in the waivers that DOE granted to Mitsubishi Electric & Electronics America USA, Inc. (Mitsubishi) and other manufacturers for similar lines of commercial multi-split air-conditioning systems:

- Testing laboratories cannot test products with so many indoor units; and
- There are too many possible combinations of indoor and outdoor units to test. See, e.g., 72 FR 17528 (April 9, 2007) (Mitsubishi); 76 FR 19069 (April 6, 2011) (Daikin); 76 FR 19078 (April 6, 2011) (Mitsubishi); 76 FR 31951 (June 2, 2011) (Carrier); 76 FR

<sup>1</sup> For editorial reasons, upon codification in the U.S. Code, Part C was re-designated Part A-1.

50204 (August 12, 2011) (Fujitsu General Limited); 76 FR 65710 (October 24, 2011) (Mitsubishi).

The AIRSTAGE V–II systems have operational characteristics similar to the commercial multi-split products manufactured by other manufacturers. As indicated above, DOE has already granted waivers for these products. The AIRSTAGE V–II system consists of multiple indoor units connected to an air-cooled outdoor unit. These multi-splits are used in zoned systems where an outdoor or water-source unit can be connected with up to 45 separate indoor units, which need not be the same models. According to Fujitsu, the various indoor and outdoor models can be connected in a multitude of configurations, with many thousands of possible combinations. Consequently, Fujitsu requested that DOE grant a waiver from the applicable test procedures for its AIRSTAGE V–II product designs until a suitable test method is prescribed.

For the reasons discussed above, and because DOE prescribed ANSI/AHRI 1230 as the alternate test procedure in waivers granted to other manufacturers (including the grant of Fujitsu's interim waiver request (77 FR 13107, Mar. 5, 2012)), DOE determined that the equipment specified in Fujitsu's December 16, 2011 petition contains design characteristics that prevent testing according to the DOE test procedure, and that allowing Fujitsu to use as an alternate test procedure ANSI/AHRI 1230, as adopted in DOE's final rule dated May 16, 2012 (77 FR 28928), addresses these testing difficulties.

#### Consultations With Other Agencies

DOE consulted with the Federal Trade Commission (FTC) staff concerning the Fujitsu petition for waiver. The FTC staff did not have any objections to granting a waiver to Fujitsu.

#### III. Conclusion

After careful consideration of all the material that was submitted by Fujitsu and consultation with the FTC staff, it is ordered that:

(1) The petition for waiver submitted by Fujitsu (Case No. CAC–039) is hereby granted as set forth in the following paragraphs.

(2) Fujitsu shall be required to test and rate the following basic model groups according to the alternate test procedure set forth in paragraph (3) of this section.

Add-on system models	(Module models)
AOUA264RLBVG .....	(AOUA72RLBV + AOUA96RLBV + AOUA96RLBV)
With nominal cooling capacity of 264,000 Btu/h.	
Compatible indoor units for the above listed outdoor units:	
Compact cassette:	
AUUA7RLAV, AUUA9RLAV, AUUA12RLAV, AUUA14RLAV, AUUA18RLAV and AUUA24RLAV with nominal cooling capacities of 7,500, 9,500, 12,000, 14,000, 18,000 and 24,000 Btu/hr respectively	
Cassette:	
AUUB30RLAV and AUUB36RLAV with nominal cooling capacities of 30,000 and 36,000 Btu/hr respectively	
Slim cassette:	
AUUB18RLAV and AUUB24RLAV with nominal cooling capacities of 18,000 and 24,000 Btu/hr respectively	
Compact wall mounted:	
ASUA7RLAV, ASUE7RLAV, ASUA9RLAV, ASUE9RLAV, ASUA12RLAV, ASUE12RLAV, ASUA14RLAV and ASUE14RLAV with nominal cooling capacities of 7,500, 7,500, 9,500, 9,500, 12,000, 12,000, 14,000 and 14,000 Btu/hr respectively	
Wall mounted:	
ASUB18RLAV and ASUB24RLAV with nominal cooling capacities of 18,000 and 24,000 Btu/hr respectively	
Floor/Ceiling (Universal):	
ABUA12RLAV, ABUA14RLAV, ABUA18RLAV and ABUA24RLAV with nominal cooling capacities of 12,000, 14,000, 18,000, 24,000 Btu/hr respectively	
Ceiling:	
ABUA30RLAV and ABUA36RLAV with nominal cooling capacities of 30,000 and 36,000 Btu/hr respectively	
Slim duct:	
ARUL7RLAV, ARUL9RLAV, ARUL12RLAV, ARUL14RLAV and ARUL18RLAV with nominal cooling capacities of 7,500, 9,500, 12,000, 14,000 and 18,000 Btu/hr respectively	
Middle static pressure duct:	
ARUM24RLAV, ARUM30RLAV, ARUM36RLAV, ARUM48RLAV and ARUM54RLAV with nominal cooling capacities of 24,000, 30,000, 36,000, 48,000 and 54,000 Btu/hr respectively	
High static pressure duct:	
ARUH36RLAV, ARUH48RLAV, ARUH54RLAV, ARUH60RLAV, ARUH72RLAV, ARUH90RLAV and ARUH96RLAV with nominal cooling capacities of 36,000, 48,000, 60,000, 72,000, 90,000 and 96,000 Btu/hr respectively	

(3) Fujitsu shall not be required to test the products listed in paragraph (2) of this section according to the test procedure for commercial package air conditioners and heat pumps prescribed by DOE at 10 CFR 431.96 (ARI Standard 340/360–2004 (incorporated by

reference in 10 CFR 431.95(b)(2)–(3)), but instead shall use as the alternate test procedure ANSI/AHRI 1230–2010 as adopted in DOE's final rule dated May 16, 2012 (77 FR 28928).

(4) *Representations.* In making representations about the energy efficiency of its Airstage V–II multi-split equipment, for compliance, marketing, or other purposes, Fujitsu must fairly disclose the results of testing under the DOE test procedure in a manner consistent with the provisions outlined below:

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

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

(a) Rating of non-tested combinations according to an alternative rating method approved by DOE; or

(b) Rating of non-tested combinations having the same outdoor unit and all non-ducted indoor units shall be set equal to the rating of the tested system having all non-ducted indoor units.

(c) Rating of non-tested combinations having the same outdoor unit and all ducted indoor units shall be set equal to the rating of the tested system having all ducted indoor units. To be considered a ducted unit, the indoor unit must be intended to be connected with ductwork and have a rated external static pressure capability greater than zero (0).

(d) Rating of non-tested combinations having the same outdoor unit and a mix of non-ducted and ducted indoor units shall be set equal to the average of the ratings for the two required tested combinations.

(5) This waiver amendment shall remain in effect from the date this Decision and Order is issued, consistent with the provisions of 10 CFR 431.401(g). Compliance with the ASHRAE final rule, (77 FR 28928, May 16, 2012), is required as of May 13, 2013. Therefore, this Decision and Order is valid through May 12, 2013. Beginning on May 13, 2013, all manufacturers must use the ASHRAE procedures to determine the energy use of this type of equipment.

Issued in Washington, DC, on November 9, 2012.

**Kathleen B. Hogan,**

*Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy.*

[FR Doc. 2012–27927 Filed 11–15–12; 8:45 am]

**BILLING CODE 6450–01–P**