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**SUPPLEMENTARY INFORMATION:** The MP/EIS will incorporate science, policy, and experience from a number of sources to develop a comprehensive approach to oyster restoration in Maryland and Virginia. The purpose of the MP is to lay out a road map for a long-term, large-scale restoration of native oysters in the Maryland and Virginia waters of the Chesapeake Bay. All suitable locations and techniques available for native oyster restoration will be identified and explored, and, if restoration is feasible, will be included in the MP.

Previously performed oyster restoration activities by NAB include the: Creation of new oyster bars and rehabilitation of existing non-productive bars; construction of see bars for production and collection of seed oysters or "spat"; planting of hatchery-produced and seed bar spat on new and rehabilitated bars; and monitoring of implemented projects. Previously performed oyster restoration activities by NAO include: Construction of permanent oyster reef sanctuaries; seeding of reefs with disease resistant DEBY™ strain oysters; adaptive management and monitoring; and managed spat-on-shell production areas with oysters moved to other sites in the Bay as part of a genetic rehabilitation stocking effort. This work is being conducted under the authority provided by Section 704(b) of the Water Resources Development Act (WRDA) of 1986, as amended.

**Scoping:** The Corps will conduct a public scoping meeting in Virginia this spring to supplement the scoping meetings previously held in Maryland, and will include interested parties throughout the development of the EIS through informational meetings and website postings and other means. All interested federal, state, and local agencies, interested private and public organizations, affected Indian tribes, and individuals are invited to attend the scoping meeting.

**Other Environmental Review and Consultation Requirements:** To the fullest extent possible, the EIS will be integrated with analyses and consultation required by the Fish and

Wildlife Coordination Act of 1958, as amended; the National Historic Preservation Act of 1966, as amended; the Coastal Zone Management Act of 1972, as amended; the Endangered Species Act of 1973, as amended; the Marine Protection, Research and Sanctuaries Act of 1972, as amended; and the Clean Water Act of 1977, as amended.

**Schedule:** The anticipated date of publication of the draft PEIS is March 2007. The PEIS will be prepared in accordance with (1) the National Environmental Policy Act (NEPA) of 1969, as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), and (3) USACE regulations implementing NEPA (ER–200–2).

Claire O'Neill,  
Project Manager.

[FR Doc. 06–2863 Filed 3–23–06; 8:45 am]

BILLING CODE 3710–41–M

## DEPARTMENT OF DEFENSE

### Department of the Army; Corps of Engineers

#### Coastal Engineering Research Board (CERB)

**AGENCY:** Department of the Army, DoD.

**ACTION:** Notice of open meeting.

**SUMMARY:** In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following committee meeting:

**Name of Committee:** Coastal Engineering Research Board (CERB).

**Date of Meeting:** April 26, 2006.

**Place:** Sheraton Gateway Atlanta Airport Hotel, 1900 Sullivan Road, Atlanta, GA 30337.

**Time:** 8:30 a.m. to 3 p.m.

#### FOR FURTHER INFORMATION CONTACT:

Inquiries and notice of intent to attend the meeting may be addressed to Colonel James R. Rowan, Executive Secretary, U.S. Army Engineer Research and Development Center, Waterways Experiment Station, 3909 Halls Ferry Road, Vicksburg, MS 39180–6199.

#### SUPPLEMENTARY INFORMATION:

**Proposed Agenda:** An Executive session of the Board will meet to discuss action items from past meetings and ongoing initiatives.

This meeting is open to the public, but since seating capacity of the meeting room is limited, advance notice of intent to attend, although not required, is requested in order to assure adequate

arrangements for those wishing to attend.

**Brenda S. Bowen,**

*Army Federal Register Liaison Officer.*

[FR Doc. 06–2859 Filed 3–23–06; 8:45 am]

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## DEPARTMENT OF ENERGY

### Office of Energy Efficiency and Renewable Energy

[Case No. CAC–012]

#### 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

**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:** Today's notice publishes a Petition for Waiver from Mitsubishi Electric and Electronics USA, Inc. (MEUS). This Petition for Waiver (hereafter "MEUS Petition") requests a waiver of the test procedures applicable to residential and commercial package air conditioners and heat pumps. The Department of Energy (hereafter "Department" or "DOE") is soliciting comments, data, and information with respect to the MEUS Petition. Furthermore, today's notice includes an alternate test procedure the Department is considering to include in the Decision and Order and for which it is requesting comments.

Today's notice also grants an Interim Waiver to MEUS from the existing Department test procedures applicable to residential and commercial package air conditioners and heat pumps.

**DATES:** The Department will accept comments, data, and information regarding this Petition for Waiver until, but no later than April 24, 2006.

**ADDRESSES:** Please submit comments, identified by case number [CAC–012], by any of the following methods:

- **Mail:** Ms. Brenda Edwards-Jones, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, Forrestal Building, 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-Jones, U.S. Department of Energy, Building Technologies Program, Room 1J-018, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585.

• *E-mail:*

*Michael.Raymond@ee.doe.gov.* Include either the case number [CAC-012], and/or “MEUS Petition” in the subject line of the message.

• *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

*Instructions:* All submissions received must include the agency name and case number for this proceeding. Submit electronic comments in WordPerfect, Microsoft Word, PDF, or text (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. The Department does not accept telefacsimiles (faxes). Any person submitting written comments must also send a copy of such comments to the petitioner. (10 CFR 430.27(b)(1)(iv), 431.201(d)(2))<sup>1</sup> The name and address of the petitioner of today’s notice is: 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. The Department 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 read the background documents

relevant to this matter, go to the U.S. Department of Energy, Forrestal Building, Room 1J-018 (Resource Room of the Building Technologies Program), 1000 Independence Avenue, SW., Washington, DC, (202) 586-2945, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Available documents include the following items: this notice; public comments received; the Petition for Waiver and Application for Interim Waiver; prior Department rulemakings regarding commercial central air conditioners and heat pumps; and the prior MEUS Petition for Waiver, the Department’s notice of the prior MEUS Petition for Waiver and the subsequent Department Decision and Order. Please call Ms. Brenda Edwards-Jones at the above telephone number for additional information regarding visiting the Resource Room. Please note: The Department’s Freedom of Information Reading Room (formerly Room 1E-190 at the Forrestal Building) is no longer housing rulemaking materials.

**FOR FURTHER INFORMATION CONTACT:** Dr. Michael G. Raymond, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, Mail Stop EE-2], Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585-0121, (202) 586-9611; e-mail:

*Michael.Raymond@ee.doe.gov*; or

Francine Pinto, Esq., U.S. Department of Energy, Office of General Counsel, Mail Stop GC-72, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585-0103, (202) 586-9507; e-mail:

*Francine.Pinto@hq.doe.gov*.

**SUPPLEMENTARY INFORMATION:**

- I. Background and Authority
- II. Petition for Waiver
- III. Application for Interim Waiver
- IV. Alternate Test Procedure
- V. Summary and Request for Comments

**I. Background and Authority**

Title III of the Energy Policy and Conservation Act (EPCA) sets forth a variety of provisions concerning energy efficiency. Part B of Title III (42 U.S.C. 6291-6309) provides for the “Energy Conservation Program for Consumer Products other than Automobiles.” Part C of Title III (42 U.S.C. 6311-6317) provides for an energy efficiency program entitled “Certain Industrial Equipment,” which is similar to the program in Part B, and which includes commercial air conditioning equipment, packaged boilers, water heaters, and other types of commercial equipment.

Today’s notice involves residential products under Part B, and commercial

equipment under Part C. Both parts specifically provide for definitions, test procedures, labeling provisions, energy conservation standards, and the authority to require information and reports from manufacturers. With respect to test procedures, both parts generally authorize the Secretary of Energy to prescribe test procedures that are reasonably designed to produce results which reflect energy efficiency, energy use and estimated operating costs, and that are not unduly burdensome to conduct. (42 U.S.C. 6293(b)(3), 6314(a)(2)).

MEUS’s petition requests a waiver from both the residential and commercial test procedures for its R410A models of its CITY MULTI Variable Refrigerant Flow Zoning (VRFZ) product line, which are sold for commercial use. The test procedures for residential products appear at 10 CFR part 430, subpart B, Appendix M. EPCA provides that the Secretary of Energy may amend test procedures for consumer products if the Secretary determines that amended test procedures would more accurately reflect energy efficiency, energy use or estimated annual operating costs, and are not unduly burdensome to conduct. (42 U.S.C. 6293(b)(1)(A), and 42 U.S.C. 6293(b)(3)).

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)) This section also provides for the Secretary of Energy to amend the test procedure for a product if the industry test procedure is amended, unless the Secretary determines that such a modified test procedure does not meet the statutory criteria. (42 U.S.C. 6314(a)(4)(B)). On October 21, 2004, the Department published a direct final rule adopting test procedures for commercial package air conditioning and heating equipment, effective December 20, 2004. DOE adopted ARI Standard 210/240-2003 for small commercial package air conditioning and heating equipment with capacities <65,000 Btu/h and ARI Standard 340/360-2000 for large commercial package air conditioning and heating equipment with capacities ≥ 135,000 Btu/h and <240,000 Btu/h and small commercial package air conditioning and heating equipment

<sup>1</sup> On October 18, 2005, DOE published a technical amendment which re-designates Subpart L (sections 431.201 through 431.207) of the Code of Federal Regulations (CFR) as Subpart V (sections 431.401 through 431.407). (70 FR 60407, October 18, 2005) DOE published the technical amendment to place in the CFR the energy conservation standards and related definitions that Congress prescribed in the Energy Policy Act of 2005 for certain consumer products and commercial and industrial equipment. The amendment does not change the test procedure waiver provisions for commercial equipment, but moves them from 10 CFR 431.201 to 431.401. The residential test procedure waiver provisions remain at 10 CFR 430.27.

with capacities  $\geq 65,000$  Btu/h and  $< 135,000$  Btu/h. (69 FR 61962, October 21, 2004) The capacities of MEUS's MULTI CITY VRFZ products sold for commercial use fall in the ranges covered by both the commercial standards, ARI Standard 340/360–2000 and the ARI Standard 210/240–2003, and the test procedures for residential products cited above.

The Department's regulations contain provisions allowing a person to seek a waiver from the test procedure requirements for covered consumer products. These provisions are set forth in 10 CFR 430.27. The waiver provisions for commercial equipment are substantively identical to those for covered consumer products and are found at 10 CFR 431.401 (formerly, 10 CFR 431.201).

The waiver provisions allow the Assistant Secretary for Energy Efficiency and Renewable Energy (hereafter "Assistant Secretary") 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. (10 CFR 430.27(a)(1), 10 CFR 431.201(a)(1)) The Assistant Secretary may grant the waiver subject to conditions, including adherence to alternate test procedures. Petitioners are to include in their petition any alternate test procedures known to evaluate the basic model in a manner representative of its energy consumption. (10 CFR 430.27(b)(1)(iii), 10 CFR 431.201(b)(1)(iii)) Waivers generally remain in effect until final test procedure amendments become effective, thereby resolving the problem that is the subject of the waiver.

The waiver process also allows the Assistant Secretary to grant an Interim Waiver from test procedure requirements to manufacturers that have petitioned the Department for a waiver of such prescribed test procedures. (10 CFR 430.27(a)(2), 10 CFR 431.201(a)(2)) An Interim Waiver remains in effect for a period of 180 days or until the Department issues its determination on the Petition for Waiver, whichever is sooner, and may be extended for an additional 180 days, if necessary. (10 CFR 430.27(h), 10 CFR 431.201(e)(4)).

## II. Petition for Waiver

On November 7, 2005, MEUS filed an Application for Interim Waiver and a Petition for Waiver from the test

procedures applicable to its residential and commercial package air conditioning and heating equipment. In particular, MEUS requested a waiver from the residential test procedures contained in 10 CFR part 430, subpart B, Appendix M, and a waiver from the commercial test procedures contained in ARI Standard 210/240–2003 and in ARI Standard 340/360–2000. The Department previously granted MEUS a waiver from test procedures in 2004 for similar models which use R22 as a refrigerant. (69 FR 52660, August 27, 2004) Given product adjustments to accommodate the new R410A refrigerant, MEUS requests a waiver from the test procedures for its new MULTI CITY models.

MEUS seeks a waiver from the applicable test procedures because, MEUS asserts, design characteristics of the R410A CITY MULTI VRFZ systems prevent testing according to the currently prescribed test procedures. MEUS claims that its R410A models cannot be tested pursuant to the existing test procedures for the same reasons that its R22 models were previously granted a waiver by the Department. In particular, the R410A CITY MULTI systems can connect more indoor units than the test laboratories can physically test at one time. Because of the inability to test products with so many indoor units, testing laboratories will not be able to test many of the R410A system combinations. Furthermore, MEUS asserts that the current test procedures do not provide direction for determining what combinations of outdoor and indoor units should be tested in the circumstance where a multitude of different combinations are possible. Also, the test procedures provide no mechanism for sampling component combinations. In addition, MEUS asserts that it is not practical to test all of the potentially available combinations of indoor and outdoor units, which numbers in the billions.

MEUS states that the R410A CITY MULTI system is designed to be flexible, with numerous combinations possible. According to MEUS, each of the indoor units is designed to be used with up to 18 other indoor units with the 108,000 Btu/h outdoor units and potentially 31 other indoor units with the 234,000 Btu/h outdoor units. Also, MEUS offers 58 different indoor models that can be used in the different combinations. Given the above, MEUS asserts the current test procedures cannot practically be applied to the CITY MULTI VRFZ systems.

In addition, MEUS asserts, the current test procedures evaluate CITY MULTI VRFZ system products in a manner not

representative of their true energy efficiency. MEUS claims that many benefits of its system characteristics, including variable refrigerant control and distribution, zoning diversity, part-load operation and simultaneous heating and cooling, are not credited under the current test procedures.

The MEUS petition requests that the Department grant a waiver from existing test procedures until such time as a representative test procedure is developed and adopted for this class of products. MEUS did not include an alternate test procedure in its petition and noted that it knows of no alternative test procedure that could evaluate its products in a representative manner. However, MEUS is actively working with ARI to develop test procedures that accurately reflects the operation and energy consumption of these types of units.

## III. Application for Interim Waiver

MEUS also requested an Interim Waiver to allow it to introduce its new R410A products in the U.S. market while the Department evaluates the Petition for Waiver. 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 of the Petition for Waiver. (10 CFR 431.201(e)(3), 430.27(g)).

MEUS's Application for Interim Waiver does not provide sufficient information to evaluate what, if any, economic hardship MEU 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 the Department 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. For MEUS's new R410A CITY MULTI VRFZ products, it appears likely that the Petition for Waiver will be granted. The products currently under consideration, MEUS's new R410A CITY MULTI VRFZ products, are quite similar to the MEUS products previously granted a waiver, MEUS's R22 CITY MULTI VRFZ products. (69 FR 52660, August 27, 2004) The previous MEUS waiver was granted because MEUS's R22 products cannot be tested according to the prescribed test procedures, for two reasons: (1) Test laboratories cannot test

products with so many indoor units (at the time of the ruling, R22 CITY MULTI VRFZ outdoor systems could connect an outdoor unit with up to sixteen indoor units); and (2) there are too many possible combinations of indoor and outdoor units (at the time of the ruling, MEUS offered 58 R22 indoor unit models, allowing for well over 1,000,000 combinations for each outdoor unit), and it is impractical to test so many combinations. As discussed above, the new MEUS CITY MULTI VRFZ systems will likely suffer the same testing problems that prompted the Department to grant MEUS the waiver for its R22 products. Thus, it is likely that MEUS's Petition for Waiver will be granted for the new R410A models.

Therefore, MEUS's Application for an Interim Waiver from the Department test procedure for its new R410A CITY MULTI VRFZ systems is granted. Hence, it is ordered that:

The Application for Interim Waiver filed by MEUS is hereby granted for MEUS's new R410A CITY MULTI VRFZ central air conditioners and central air conditioning heat pumps. MEUS shall not be required to test or rate its CITY MULTI VRFZ products listed below on the basis of the currently applicable test procedures, which are the test procedures contained in 10 CFR part 430, subpart B, Appendix M, for the PUMY-P48TGMU-\* model, listed last, and ARI 340/360-2000 and ARI 210/240-2003, for the other listed models:

CITY MULTI Variable Refrigerant Flow Zoning System R-2 Series Outdoor Equipment:<sup>2</sup>

- PURY-P72TGMU-\*, 72,000 Btu/h, 208/230-3-60 split-system variable-speed heat pump
- PURY-P96TGMU-\*, 96,000 Btu/h, 208/230-3-60 split-system variable-speed heat pump
- PURY-P108TGMU-\*, 108,000 Btu/h, 208/230-3-60 split-system variable-speed heat pump
- PURY-P126TGMU-\*, 126,000 Btu/h, 208/230-3-60 split-system variable-speed heat pump
- PURY-P144TGMU-\*, 144,000 Btu/h, 208/230-3-60 split-system variable-speed heat pump
- PURY-P168TGMU-\*, 168,000 Btu/h, 208/230-3-60 split-system variable-speed heat pump
- PURY-P192TGMU-\*, 192,000 Btu/h, 208/230-3-60 split-system variable-speed heat pump
- PURY-P204TGMU-\*, 204,000 Btu/h, 208/230-3-60 split-system variable-speed heat pump

- PURY-P216TGMU-\*, 216,000 Btu/h, 208/230-3-60 split-system variable-speed heat pump

- PURY-P234TGMU-\*, 234,000 Btu/h, 208/230-3-60 split-system variable-speed heat pump

CITY MULTI Variable Refrigerant Flow Zoning System Y-Series Outdoor Equipment:

- PUHY-P72TGMU-\*, 72,000 Btu/h, 208/230-3-60 split-system variable-speed heat pump

- PUHY-P96TGMU-\*, 96,000 Btu/h, 208/230-3-60 split-system variable-speed heat pump

- PUHY-P108TGMU-\*, 108,000 Btu/h, 208/230-3-60 split-system variable-speed heat pump

- PUHY-P126TGMU-\*, 126,000 Btu/h, 208/230-3-60 split-system variable-speed heat pump

- PUHY-P144TGMU-\*, 144,000 Btu/h, 208/230-3-60 split-system variable-speed heat pump

- PUHY-P168TGMU-\*, 168,000 Btu/h, 208/230-3-60 split-system variable-speed heat pump

- PUHY-P192TGMU-\*, 192,000 Btu/h, 208/230-3-60 split-system variable-speed heat pump

- PUHY-P204TGMU-\*, 204,000 Btu/h, 208/230-3-60 split-system variable-speed heat pump

- PUHY-P216TGMU-\*, 216,000 Btu/h, 208/230-3-60 split-system variable-speed heat pump

- PUHY-P234TGMU-\*, 234,000 Btu/h, 208/230-3-60 split-system variable-speed heat pump

CITY MULTI Variable Refrigerant Flow Zoning System Indoor Equipment:

P\*FY models, ranging from 6,000 to 96,000 Btu/h, 208/230-1-60 split-system variable-capacity air conditioner or heat pump.

- PCFY Series—Ceiling Suspended—PCFY-P12/18/24/30/36\*\*\*-\*

- PDFY Series—Ceiling Concealed Ducted—PDFY-P06/08/12/15/18/24/30/36/48\*\*\*-\*

- PEFY Series—Ceiling Concealed Ducted (Low Profile)—PEFY-P06/08/12\*\*\*-\*

- PEFY Series—Ceiling Concealed Ducted (Alternate High Static Option)—PEFY-P15/18/24/27/30/36/48/54/72/96\*\*\*-\*

- PEFY-F Series—Ceiling Concealed Ducted (100% OA Option)—PEFY-P30/54/72/96\*\*\*-\*\*\*-\*

- PFFY Series—Floor Standing (Concealed)—PEFY-P06/08/12/15/18/24\*\*\*-\*

- PFFY Series—Floor Standing (Exposed)—PEFY-P06/08/12/15/18/24\*\*\*-\*

- PKFY Series—Wall-Mounted—PKFY-P06/08/12/18/24/30\*\*\*-\*

- PLFY Series—4-Way Airflow Ceiling Cassette—PEFY-P12/18/24/30/36\*\*\*-\*

- PMFY Series—1-Way Airflow Ceiling Cassette—PEFY-P06/08/12/15\*\*\*-\*

CITY MULTI Variable Refrigerant Flow Zoning System S-Series Outdoor Equipment:

- PUMY-P48TGMU-\*, 48,000 Btu/h, 208/230-1-60 split-system variable-speed heat pump.<sup>3</sup>

This Interim Waiver is based upon the presumed validity of statements and allegations submitted by the company. This Interim Waiver may be removed or modified at any time upon a determination that the factual basis underlying the Application is incorrect. The Interim Waiver shall remain in effect for a period of 180 days or until the Department acts on the Petition for Waiver, whichever is sooner, and may be extended for an additional 180-day period, if necessary.

#### IV. Alternate Test Procedure

Manufacturers face restrictions with respect to making representations about the energy consumption and energy consumption costs of products covered by EPCA. (42 U.S.C. 6314(d), 42 U.S.C. 6293(c)). Consistent representations are important for manufacturers to make claims about the energy efficiency of their products. For example, they are necessary to determine compliance with state and local energy codes and regulatory requirements, and can provide valuable consumer purchasing information. 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).

As noted above, existing testing facilities have a limited ability to test multiple indoor units at one time, and the number of possible combination of

<sup>2</sup> The \* denotes engineering differences in the models.

<sup>3</sup> Though Mitsubishi sells the PUMY-P48TGMU-\* model as a commercial product, it is tested according to the residential test procedures prescribed by DOE, at 10 CFR part 430, subpart B, Appendix M.

indoor and outdoor units for some variable refrigerant zoning systems is impractical to test. Subsequent to the waiver that DOE granted for MEUS's R22 models, ARI developed a committee to discuss the issue and work on developing an appropriate test protocol for variable refrigerant zoning systems. However, to date, no additional test methodologies have been adopted by the committee or put forth to the Department. Furthermore, the Department is aware that the time required for drafting and approving such standards may be months or even years.

DOE is considering amending the waiver issued to MEUS on August 27, 2004. DOE has been aware that MEUS has made efficiency representations for its City Multi products on its Web site for several years. The efficiency representations are currently listed under the headings "System Efficiency" for cooling, and "System COP" for heating. DOE is considering prohibiting the making of efficiency representations for the products granted a waiver on August 27, 2004, because these products were granted a waiver for the reason that the products could not be tested, which implies that representations cannot be made on the basis of testing.

DOE is considering what energy efficiency representations it will allow for these products. If DOE grants this waiver, MEUS could sell products with energy efficiency representations under one of three methods outlined in (3)(B) below. An alternate test procedure is needed in order that manufacturers can make representations for their products. Even though MEUS did not include an alternate test procedure in their petition, and DOE did not specify one in the previous MEUS waiver, DOE is considering including in the Decision and Order the following waiver language:

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

(2) MEUS shall be not be required to test or rate the CITY MULTI Variable Refrigerant Flow Zoning System (VRFZ) products covered in this waiver on the basis of the currently applicable test procedure, but shall be required to test and rate its CITY MULTI VRFZ products covered in this waiver according to the alternate test procedure as set forth in paragraph (3).

(3) Alternate test procedure. MEUS shall be required to test according to those test procedures for central air conditioners and heat pumps prescribed by DOE at 10 CFR parts 430 and 431, except for the first sentence in 10 CFR

430.24(m)(2), which refers to "that combination manufactured by the condensing unit manufacturer likely to have the highest volume of retail sales." Instead of testing the combinations likely to have the highest volume of retail sales, which may be difficult to identify, MEUS may test a "tested combination" selected in accordance with the provisions of subparagraph (A) of this section. MEUS may make representations of the MULTI CITY products covered in this waiver, according to the provisions of subparagraph (B).

(A) 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 ("VRF system") used as a tested combination shall consist of an outdoor unit that is matched with between 2 and 5 indoor units.

(ii) The indoor units shall—

(a) Represent the highest sales volume type models;

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

(c) Not, individually, have a capacity greater than 50% of the 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.

(B) Representations. MEUS may make representations about the Energy Efficiency Rating ("EER") or Coefficient of Performance ("COP") of products covered by this test procedure waiver only to the extent that such representations are made consistent with the provisions outlined below:

(i) If MEUS chooses to test retail combinations of its MULTI CITY VRFZ products, MEUS may make representations about these retail combinations according to those test procedures for central air conditioners and heat pumps prescribed at 10 CFR parts 430 and 431.

(ii) In the case where MEUS does not test retail combinations, MEUS may make representations which are based on the testing results from the tested combination and which are consistent with any of the three following methods:

(a) Representation of non-tested combinations according to an Alternative Rating Method (ARM)

approved by DOE and described in 10 CFR 430.24(m).

(b) Representation of non-tested combinations with the representation given the tested combination.<sup>4</sup>

(c) Representation of non-tested combinations at the DOE prescribed minimum efficiency level for the product class.

Method (a) is already allowed for all central air conditioners. It is not, at this time, possible for products such as MEUS' multi-splits, because an ARM has not been developed for this type of product.

Method (b) is a reduction of method (a). In method (a), with an ARM, the efficiency of non-tested combinations is calculated based on a tested combination that has the same outdoor unit as the non-tested combinations. The calculation is based on physical parameters of the indoor unit such as face area, number of rows, refrigerant circuitry, etc. In general, the efficiency calculated in this way will be either higher or lower than the efficiency of the tested combination. However, no ARM has been developed for these products, so the Department is proposing to allow MEUS to represent temporarily that all combinations using a particular outdoor unit have the efficiency of the combination that has been tested with that outdoor unit. That is equivalent to characterizing the indoor unit as having no effect on the efficiency. The Department believes this is reasonable because the outdoor unit is the principal efficiency driver, and the required test procedure does not exactly fit these products, but tends to rate them very conservatively. This is because the products are capable of simultaneous heating and cooling, which is more efficient than requiring all zones to be either heated or cooled, and because the test procedure requires full load testing, which disadvantages these products, which are optimized for best efficiency when operating with less than full loads.

<sup>4</sup> Currently, no alternate rating method exists by which MEUS can rate its CITY MULTI VRFZ products. Given a waiver from applicable DOE test procedures and no alternate rating method, MEUS faces limitations in making representations with its CITY MULTI VRFZ products. As such, to comply with California state building codes, the California Energy Commission is requiring the MEUS represent its CITY MULTI VRFZ products as minimal efficiency commercial package air conditioner and heat pumps. (G. William Pennington, Manager Buildings Appliances Office, California Energy Commission, Letter to William Rau, Senior Vice President, General Manager, Mitsubishi Electric & Electronics USA, Inc, 16 June 2005) DOE believes that making a representation according to a tested combination would permit MEUS to make more accurate representations of its CITY MULTI VRFZ products.

Method (c) allows rating at the minimum standard level without testing because the Department believes the products' efficiency in actual use would be at least as great as conventional products with efficiencies at the minimum standard level, because the required efficiency descriptor rates the products at full load. The products have higher efficiency when operating at part-load conditions, and the products, in fact, normally operate at part-load conditions. Further, the multi-zoning feature of these products, which enables them to cool only those portions of the building which require cooling, uses less energy than if the whole building must be cooled when cooling is required.

#### V. Summary and Request for Comments

Today's notice announces a MEUS Petition for Waiver and grants MEUS an Interim Waiver from the test procedures applicable to MEUS's R410A MULTI CITY package air conditioner and heat pump units. The Department is publishing the MEUS Petition for Waiver in its entirety. The Petition contains no confidential information. Furthermore, today's notice includes an alternate test procedure that the Department is considering to include in the subsequent Decision and Order. In this alternate test procedure, the Department proposes defining a "tested combination" which MEUS could test in lieu of testing all retail combinations of its VRFZ MULTI CITY products. Furthermore, should a manufacturer not be able to test all retail combinations, DOE proposes allowing manufacturers

to rate waived products according to an alternate rating method approved by DOE, to rate waived products as the same as that for the specified tested combination, or to rate at the minimum efficiency level without testing.

The Department is also considering amending the waiver previously issued to MEUS on August 27, 2004, because MEUS is making energy efficiency representations even though it previously had represented to the Department that such units could not be tested. Thus, MEUS sold untested units with energy efficiency ratings that had not been properly verified.

The Department is interested in receiving comments on all aspects of this notice. The Department is particularly interested in receiving comments and views of interested parties concerning the proposed alternate test procedure and the representations under consideration for the upcoming Decision and Order for the MEUS Petition, as well as for other similar air conditioner and heat pump cases. Specifically, the Department would like to receive comment on the following questions:

- Is it appropriate for MEUS to use the proposed test procedure for ratings, representations and compliance with state and local energy codes and regulatory requirements?
- What should the Department prescribe for manufacturers in situations where the defined tested combination is not testable or practical to test?
- Would it be appropriate for DOE to create a separate class for multi-split, zoned central air conditioner and heat

pumps, as an alternative to prescribing an alternate test procedure or modifying existing central air conditioner and heat pump test procedures? In this case, such central air conditioner and heat pump models would not be subject to an energy standard until an appropriate test procedure is developed and prescribed.

- Should the Department allow energy efficiency representations for non-tested combinations of these products at the level of the tested combination?
- Should the Department allow energy efficiency representations for non-tested combinations at the DOE prescribed minimum efficiency level for the product class?
- Is the Department's proposed definition of "tested combination" useful and workable?
- Are there possible modifications to any test procedures or alternative rating methods which the Department could use to fairly represent the energy efficiency of MEUS R410A CITY MULTI products, as well as similar multi-split products from other manufacturers?

Any person submitting written comments must also send a copy of such comments to the petitioner, whose contact information is cited above. (10 CFR 431.201(d)(2), 10 CFR 430.27(b)(1)(iv)).

Issued in Washington, DC, on March 15, 2006.

**Douglas L. Faulkner,**

*Acting Assistant Secretary, Energy Efficiency and Renewable Energy.*

**BILLING CODE 6450-01-P**



Mitsubishi Electric & Electronics USA, Inc.

HVAC Advanced Products Division

3400 Lawrenceville-Suwanee Road, Suwanee, GA 30024

November 7, 2005

The Honorable Douglas Faulkner  
Acting Assistant Secretary for Energy Efficiency and Renewable Energy  
U.S. Department of Energy  
1000 Independence Ave, SW  
Washington, DC 20585-0121

**Re: Petition for Waiver of Test Procedure and Application for Interim Waiver**

Dear Assistant Secretary Faulkner:

Mitsubishi Electric & Electronics USA, Inc. (MEUS) respectfully submits this petition for waiver, and application for interim waiver, of the test procedures applicable to the new R410A models of MEUS's CITY MULTI Variable Refrigerant Flow Zoning (VRFZ) product line pursuant to the provisions of 10 C.F.R. § 431.201 (2005). On August 27, 2004, the Department of Energy (DOE) granted a waiver from the commercial air conditioner and heat pump test procedures for MEUS's CITY MULTI products.<sup>1</sup> The CITY MULTI products covered by the 2004 waiver use R22 as the refrigerant. The products covered by this petition represent the version of the CITY MULTI product line that uses the new eco-friendly refrigerant R410A. Like the R22 version, the R410A CITY MULTI products cannot be tested according to the prescribed test procedures, and, therefore, should be granted a waiver from the applicable test procedures. MEUS simultaneously requests an interim waiver covering these new R410A CITY MULTI products.

**I. Background**

In the 2004 CITY MULTI Waiver, DOE found that the waiver should be granted because the CITY MULTI products have "one or more design characteristics which ... prevent testing of the basic model according to the prescribed test procedures."<sup>2</sup> Pursuant to the 2004 CITY MULTI Waiver, MEUS is not required to test or rate its CITY MULTI Variable Refrigerant Flow Zoning system products listed on the basis of the currently applicable test procedures.<sup>3</sup>

The refrigerant used by MEUS for its CITY MULTI line at the time of the 2004 CITY MULTI Waiver was R22. Before the end of 2005, MEUS plans to introduce new models in its CITY MULTI line of products that use R410A as a refrigerant. This change in refrigerant is driven by the mandates of the Montreal Protocol, and reflects a decision by MEUS's parent company to change all of its products, worldwide, from R22 to R410A during the course of the

<sup>1</sup> *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 Fed. Reg. 52660 (Aug. 27, 2004) (copy attached) (hereinafter, 2004 CITY MULTI Waiver).

<sup>2</sup> *Id.* at 52662. See also 10 C.F.R. § 431.201(a)(1) (2005).

<sup>3</sup> 2004 CITY MULTI Waiver at 52662.

current year.<sup>4</sup> MEUS has established new model numbers for the R410A CITY MULTI products.

## II. R410A Model Design Characteristics

MEUS's line of CITY MULTI VRFZ system 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. These systems have the capability of connecting a single outdoor unit to up to 32 indoor units. This capability gives these systems tremendous installation flexibility with billions of potential system combinations.<sup>5</sup>

The operating characteristics of a VRFZ system allow each indoor unit to have a different mode of operation (i.e., on/off/heat/cool/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 compressor is capable of reducing its operating capacity to as little as 16% of its rated capacity. The outdoor fan motor also has a variable speed drive to properly match the outdoor coil to indoor loads. Zone diversity enables VRFZ systems to have a total connected indoor unit capacity of up to 150% of the capacity of the outdoor unit.

The CITY MULTI VRFZ systems have variable frequency inverter driven scroll compressors, and, therefore, have nearly infinite steps of capacity. While other system compressors run at full load as their normal state, the CITY MULTI VRFZ systems run at part load as their normal state. Additionally, the CITY MULTI VRFZ R2-Series products offer consumers the option of simultaneous heating and cooling. These simultaneous heating and cooling systems achieve energy benefits by transferring heat recovered from one zone and discharging it into another zone needing heat.

MEUS's CITY MULTI VRFZ systems were designed to take into account the customers' specific needs for flexibility, variable conditioning, and operating energy savings. Through the use of highly advanced technology, CITY MULTI VRFZ systems offer cost-effective functionality and significant energy savings. The unique design and intelligence provided by the sophisticated direct digital control system allow the systems to use less energy than conventional systems to condition a given area, thus costing the customer less to operate. These systems have been well received in Asia, Europe, Latin America, and the United States because of their highly effective energy saving features. Since these products were first

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<sup>4</sup> Assuming this petition for waiver is granted, MEUS expects to shift from the R22 to R410A products. MEUS requests that the 2004 CITY MULTI Waiver continue in effect for at least six months after the grant of the waiver requested in this petition to provide MEUS sufficient time to sell the remaining inventory of its R22 CITY MULTI models.

<sup>5</sup> MEUS offers 58 indoor models in its R410A CITY MULTI product line. The number of potential combinations of the 58 models in sets of up to 32 is an astronomical figure. (Note, for instance, that there are over one billion possible combinations of 40 models in sets of 12.)

introduced in US markets, the CITY MULTI systems have become an important part of MEUS sales.

Although these energy saving characteristics 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 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 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 applicable test procedures for its new R410A CITY MULTI products. On October 21, 2004, DOE published a direct final rule, effective December 21, 2004, adopting the test procedures in ARI Standard 210/240-2003 for commercial package air conditioning equipment with capacities between 65,000 and 135,000 Btu/h and the test procedures in ARI Standard 340/360-2000 for commercial package air conditioning and heating equipment with capacities between 135,000 and 240,000 Btu/h.<sup>6</sup> The capacities of MEUS's R410A CITY MULTI products sold for commercial use fall in the range for both standards; both ARI 210/240-2003 and 340/360-2000 are applicable. Therefore, MEUS requests waiver from both ARI Standard 210/240-2003 and 340/360-2000.

MEUS also offers one outdoor unit model, the PUMY-P48TGMU-\*, which has a capacity of 48,000 Btu/h.<sup>7</sup> While the test procedures for consumer products (10 C.F.R. Part 430, Subpart B, Appendix M) technically apply to this unit, MEUS markets and sells this unit with the rest of its CITY MULTI line of products, which are commercial products. The PUMY-P48TGMU-\* is a member of the CITY MULTI family – it uses all of the same indoor units and controllers as those of the other CITY MULTI products. Therefore, MEUS has included this unit in this petition for waiver from the applicable test procedures.

### IV. Basic Models for which Waiver is Requested

MEUS requests a waiver from the test procedures for the following basic product models<sup>8</sup>:

#### CITY MULTI Variable Refrigerant Flow Zoning System R-2 Series Outdoor Equipment:

- PURY-P72TGMU-\*, 72,000 Btu/h 208/230-3-60 split-system variable-speed heat pump

<sup>6</sup> *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 Fed. Reg. 61962 (Oct. 21, 2004).

<sup>7</sup> The \* denotes engineering differences in the models.

<sup>8</sup> The \* denotes engineering differences in the models.

- PURY-P96TGMU-\*, 96,000 Btu/h 208/230-3-60 split-system variable-speed heat pump
- PURY-P108TGMU-\*, 108,000 Btu/h 208/230-3-60 split-system variable-speed heat pump
- PURY-P126TGMU-\*, 126,000 Btu/h, 208/230-3-60 split-system variable-speed heat pump
- PURY-P144TGMU-\*, 144,000 Btu/h, 208/230-3-60 split-system variable-speed heat pump
- PURY-P168TGMU-\*, 168,000 Btu/h, 208/230-3-60 split-system variable-speed heat pump
- PURY-P192TGMU-\*, 192,000 Btu/h, 208/230-3-60 split-system variable-speed heat pump
- PURY-P204TGMU-\*, 204,000 Btu/h, 208/230-3-60 split-system variable-speed heat pump
- PURY-P216TGMU-\*, 216,000 Btu/h, 208/230-3-60 split-system variable-speed heat pump
- PURY-P234TGMU-\*, 234,000 Btu/h, 208/230-3-60 split-system variable-speed heat pump

CITY MULTI Variable Refrigerant Flow Zoning System Y-Series Outdoor Equipment:

- PUHY-P72TGMU-\*, 72,000 Btu/h 208/230-3-60 split-system variable-speed heat pump
- PUHY-P96TGMU-\*, 96,000 Btu/h 208/230-3-60 split-system variable-speed heat pump
- PUHY-P108TGMU-\*, 108,000 Btu/h 208/230-3-60 split-system variable-speed heat pump
- PUHY-P126TGMU-\*, 126,000 Btu/h, 208/230-3-60 split-system variable-speed heat pump
- PUHY-P144TGMU-\*, 144,000 Btu/h, 208/230-3-60 split-system variable-speed heat pump
- PUHY-P168TGMU-\*, 168,000 Btu/h, 208/230-3-60 split-system variable-speed heat pump
- PUHY-P192TGMU-\*, 192,000 Btu/h, 208/230-3-60 split-system variable-speed heat pump
- PUHY-P204TGMU-\*, 204,000 Btu/h, 208/230-3-60 split-system variable-speed heat pump
- PUHY-P216TGMU-\*, 216,000 Btu/h, 208/230-3-60 split-system variable-speed heat pump
- PUHY-P234TGMU-\*, 234,000 Btu/h, 208/230-3-60 split-system variable-speed heat pump

CITY MULTI Variable Refrigerant Flow Zoning System S-Series Outdoor Equipment:

- PUMY-P48TGMU-\*, 48,000 Btu/h, 208/230-1-60 split-system variable-speed heat pump

CITY MULTI Variable Refrigerant Flow Zoning System Indoor Equipment:

- P\*FY models, ranging from 6,000 to 96,000 Btu/h, 208/230-1-60 split-system variable-capacity air conditioner or heat pump
  - PCFY Series – Ceiling Suspended – PCFY-P12/18/24/30/36\*\*\*-\*
  - PDFY Series – Ceiling Concealed Ducted - PDFY-P06/08/12/15/18/24/30/36/48\*\*\*-\*
  - PEFY Series – Ceiling Concealed Ducted (Low Profile) - PEFY-P06/08/12\*\*\*-\*
  - PEFY Series – Ceiling Concealed Ducted (Alternate High Static Option) - PEFY-P15/18/24/27/30/36/48/54/72/96\*\*\*-\*
  - PEFY-F Series – Ceiling Concealed Ducted (100% OA Option) - PEFY-P30/54/72/96\*\*\*-\*
  - PFFY Series – Floor Standing (Concealed) - PEFY-P06/08/12/15/18/24\*\*\*-\*
  - PFFY Series – Floor Standing (Exposed) - PEFY-P06/08/12/15/18/24\*\*\*-\*
  - PKFY Series – Wall-Mounted - PKFY-P06/08/12/18/24/30\*\*\*-\*
  - PLFY Series – 4-Way Airflow Ceiling Cassette - PEFY-P12/18/24/30/36\*\*\*-\*
  - PMFY Series – 1-Way Airflow Ceiling Cassette - PEFY-P06/08/12/15\*\*\*-\*

## V. Need for Waiver of Test Procedure

In the 2004 CITY MULTI 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."<sup>9</sup> Except for the use of a different refrigerant and associated design changes, the new series has essentially the same operational characteristics as the R22 CITY MULTI products listed in the 2004 CITY MULTI Waiver. The R410A CITY MULTI systems can connect more indoor units than the test laboratories can physically test at one time, and it is not practical to test all of the potentially available combinations, of which there are more than one billion. Therefore, the same design characteristics which prevented testing of the basic R22 CITY MULTI models listed in the 2004 CITY MULTI Waiver also prevent testing of the R410A CITY MULTI models.

In the 2004 CITY MULTI Waiver, DOE found that:

The current test procedure can be used to test all current commercial systems in the laboratory, but many VFRZ systems cannot be tested in the laboratory. Each VFRZ outdoor unit can be connected with up to sixteen separate indoor units in a zoned system. Existing test laboratories cannot test more than five indoor units at a time, and even that number is difficult.

A second difficulty is that MEUS offers 58 indoor unit models. Each of these indoor unit models is designed to be used with up to 15 other indoor units, which need not be the same models, in combination with a single outdoor unit. For each of the CITY MULTI VRFZ outdoor coils, there are well over 1,000,000 combinations of indoor coils that can be matched up in a system configuration, and it is highly impractical to test so many combinations.

There are therefore two major testing problems: (1) Test laboratories cannot test products with so many indoor units; and (2) there are too many possible combinations of indoor and outdoor units--only a small fraction of the combinations could be tested. These problems ... support the ... waiver criterion, that "the basic model contains one or more design characteristics which \* \* \* prevent testing of the basic model according to the prescribed test procedures. \* \* \*"<sup>10</sup>

For the same reasons, the R410A models cannot be tested pursuant to the existing test procedures. Each of the R410A CITY MULTI indoor units is designed to be used with up to 18 other indoor units with the 108,000 Btu/h outdoor units and potentially 31 other indoor units with the 234,000 Btu/h outdoor units. These connected indoor units need not be the same models -- there are 58 different indoor models that can be combined in a multitude of different combinations to address customer needs. The current test procedures provide no direction for determining what combination or combinations of outdoor and indoor units should be tested in these circumstances. The testing laboratories will not physically be able to test many of the R410A system combinations because of the inability to test products with so many indoor units.

<sup>9</sup> 2004 CITY MULTI Waiver at 52662.

<sup>10</sup> *Id.* at 52661-61.

In addition, it is not practical to test each possible combination. With the capability of potentially connecting a single outdoor unit to up to 32 indoor units, the R410A units are designed to be combined in literally billions of different system configurations.<sup>11</sup> The test procedure provides no mechanism for sampling component combinations. Thus, the test procedure does not contemplate, and cannot practicably be applied to, the CITY MULTI VRFZ systems consisting of multiple assemblies that are intended to be used in a very large number of different combinations.

As shown above, the R410A 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 procedure “may evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics ... as to provide materially inaccurate comparative data.”<sup>12</sup> In particular, the benefits of variable refrigerant control and distribution, zoning diversity, part load operation and simultaneous heating and cooling, as described in Section II above, are not credited under the current test procedure.

In any case, it should be noted that these CITY MULTI products employ advanced technologies and their marketing will advance EPCA’s goal of promoting energy efficiency. Testing procedures should not inhibit the commercial success of these products in the United States. Without a waiver of the test procedure, MEUS will be at a competitive disadvantage in the market. Consumers have come to expect the availability of the CITY MULTI products in the U.S. marketplace, and a significant number of engineers and contractors are currently designing projects using these products. The CITY MULTI products represent a significant share of MEUS product sales, which is fully expected to grow over the next several years. Thus, MEUS respectfully requests that DOE grant a waiver from the applicable test procedures to the products listed in Section IV.<sup>13</sup> MEUS plans to introduce these units into the U.S. market before the end of 2005, and, therefore, requests that DOE act on this request in a timely fashion.

## VI. Alternative Test Procedures

Currently, there are no alternative test procedures known to MEUS that could evaluate these products in a representative manner. We note that the grant of this waiver will not be permanent, and will only remain in effect until DOE prescribes appropriate test procedures for these models. The Air-Conditioning and Refrigeration Institute (ARI), with leadership from MEUS, is actively pursuing efforts to develop an appropriate test protocol that could be presented to DOE. We are glad to report that good progress is being made in these efforts.

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<sup>11</sup> Even for systems with 4 or fewer indoor units, which can technically be tested in the laboratories, there are far too many possible combinations to make testing practicable because there are 58 different indoor models that can be used in combination. For instance, selecting four indoor units from among 40 indoor model choices produces over one hundred thousand possible combinations.

<sup>12</sup> 10 C.F.R. § 431.201(a)(1) (2005).

<sup>13</sup> Pursuant to EPCA, MEUS will not make representations regarding the energy efficiency of the products covered by a waiver except as may be specifically authorized by DOE.

## VII. Similar Products

To the best of our knowledge, VRFZ products are also offered in the United States by Samsung Electronics Company, Ltd., Sanyo Fisher (USA) Corp., Daikin U.S. Corporation, Fujitsu General America, and LG Electronics U.S.A., Inc. Each of the manufacturers has incorporated a different technology to achieve variable refrigerant flow.

## VIII. Application for Interim Waiver

Pursuant to 10 C.F.R. § 431.201(a)(2), MEUS also submits an application for interim waiver of the applicable test procedures for the R410A CITY MULTI models listed above. As DOE has previously stated, “an Interim Waiver will 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 for the Petition for Waiver.”<sup>14</sup> 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 R410A products into the U.S. market before the end of 2005. The procedure for granting a petition for waiver is 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.<sup>15</sup>

In addition, DOE will likely grant MEUS’s petition for waiver. As described above, the design characteristics which prevented testing of the basic model of the products listed in the 2004 CITY MULTI Waiver are present for the new R410A models as well. The best evidence that DOE is likely to grant this waiver petition is the fact that it granted essentially the same petition in the 2004 CITY MULTI Waiver. DOE also granted an interim waiver to Samsung Air Conditioning earlier this year stating that Samsung’s petition would likely be granted because Samsung’s products are quite similar to the MEUS’s CITY MULTI products, for which DOE already granted a waiver.<sup>16</sup>

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

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<sup>14</sup> *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 Fed. Reg. 9629, at 9630 (Feb. 28, 2005). See 10 C.F.R. § 431.201(e)(3) (2005).

<sup>15</sup> MEUS has been in discussion with DOE staff for several months regarding this issue. Only recently did it become apparent that a new petition for waiver would be required.

<sup>16</sup> 70 Fed. Reg. at 9630.

relief pending a determination for the Petition for Waiver. In response to a previous application for interim waiver, 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."<sup>17</sup> MEUS's R410A CITY MULTI products are essentially the same as the products that were granted a waiver in the 2004 CITY MULTI Waiver, and are similar to the products for which Samsung Air Conditioning was granted an interim waiver in February 2005.<sup>18</sup> Therefore, since it is in the public interest to have similar products tested and rated on a comparable basis, DOE should grant MEUS's Application for Interim Waiver.

## IX. 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 R410A CITY MULTI models "contain[] one or more design characteristics which ... prevent testing of the basic model according to the prescribed test procedures."<sup>19</sup> MEUS respectfully asks the Department of Energy to grant a waiver from existing test standards until such time as an appropriate test procedure is developed and adopted for this class of products. MEUS expects to continue working with ARI to develop appropriate test procedures for consideration by DOE.

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) 298-1800. 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

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<sup>17</sup> 70 Fed. Reg. at 9630.

<sup>18</sup> *Id.*

<sup>19</sup> 10 C.F.R. § 431.201(a)(1) (2005).



Mitsubishi Electric & Electronics USA, Inc.  
HVAC Advanced Products Division  
3400 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 R410A CITY MULTI VRFZ system design. I have notified these manufacturers that the Assistant Secretary for Energy Efficiency and Renewable Energy will receive and consider timely written comments on the Application for Interim Waiver.

Samsung Air Conditioning  
Samsung Electronics Company, LTD.  
2865 Pellissier Pl.  
Whittier, CA 90601  
Attn: John Miles, Director, Engineering & Technical Support

Sanyo Fisher (USA) Corp.  
1165 Allgood Road  
Suite 22  
Marietta, GA 30062  
Attn: Tetsushi Yamashita, Engineering Manager, HVAC

Daikin U.S. Corporation  
375 Park Ave.  
Suite 3308  
New York, NY 10152  
Attn: Gary Nettinger, Director of Product Support

Fujitsu General America  
353 Route 46 West  
Fairfield, NJ 07004  
Attn: Mr. Roy Kuezera, Vice President of Sales, HVAC Products

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

Dated this 7th day of November 2005.

A handwritten signature in black ink, appearing to read "William Rau", with a large, stylized flourish at the end.

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

[FR Doc. 06-2842 Filed 3-23-06; 8:45 am]

BILLING CODE 6450-01-C

**DEPARTMENT OF ENERGY****Federal Energy Regulatory Commission****Notice of Application for Amendment of Shoreline Management Plan and Soliciting Comments, Motions To Intervene, and Protests**

March 16, 2006.

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

- a. *Application Type*: Amendment of Shoreline Management Plan.
- b. *Project No*: 2210-131.
- c. *Dates Filed*: March 16, 2006.
- d. *Applicant*: Appalachian Power Company (APC).
- e. *Name of Project*: Smith Mountain Pumped Storage Project.
- f. *Location*: The project is located on the Roanoke River, in Bedford, Pittsylvania, Franklin, and Roanoke Counties, Virginia.
- g. *Filed Pursuant to*: Federal Power Act, 16 U.S.C. 791(a)-825(r) and 799 and 801.
- h. *Applicant Contact*: Frank M. Simms, Hydro Generation Department, American Electric Power, P.O. Box 2021, Roanoke, VA 24022-2121, (540) 985-2875.
- i. *FERC Contact*: Any questions on this notice should be addressed to Mrs. Heather Campbell at (202) 502-6182, or e-mail address: [heather.campbell@ferc.gov](mailto:heather.campbell@ferc.gov) or Mr. Bob Fletcher at (202) 502-8901, or e-mail address: [robert.fletcher@ferc.gov](mailto:robert.fletcher@ferc.gov).
- j. *Deadline for filing comments and or motions*: April 14, 2006.

All documents (original and eight copies) should be filed with: Ms. Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426. Please include the project number (P-2210-131) on any comments or motions filed. Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at <http://www.ferc.gov> under the e-Filing link. The Commission strongly encourages e-filings.

k. *Description of Request*: The licensee requests to amend the July 5, 2005 Order Modifying and Approving Shoreline Management Plan (112 FERC ¶ 61,026) to revise ordering paragraph (D) from: "All in-water construction,

except pile driving and associated above water dock construction activities, is prohibited from February 15 through June 15. Pile driving and associated in-water dock construction activities are prohibited from April 15 to June 15. Installation or maintenance of navigational markers is exempt from these time-of-year restrictions." To "All in-water construction, except pile driving and associated above water dock construction activities, is prohibited from February 15 through June 15. Pile driving shall include the removal of existing piles necessary for construction of the associated facility and be limited to only piling installed utilizing impact equipment."

1. *Location of the Application*: This filing is available for review at the Commission in the Public Reference Room 888 First Street, NE., Room 2A, Washington, DC 20426 or may be viewed on the Commission's Web site at <http://www.ferc.gov> using the "e-library" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1-866-208-3676 or e-mail [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov). For TTY, call (202) 502-8659. A copy is also available for inspection and reproduction at the address in item h. above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments*—Federal, state, and local agencies are invited to file comments on the described applications. Copies of the applications may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. E6-4253 Filed 3-23-06; 8:45 am]

BILLING CODE 6717-01-P

**DEPARTMENT OF ENERGY****Federal Energy Regulatory Commission**

[Docket No. CP06-85-000]

**CenterPoint Energy Gas Transmission Company; Notice of Application**

March 17, 2006.

On March 10, 2006, in Docket No. CP06-85-000, CenterPoint Energy Gas Transmission Company (CEGT), pursuant to section 7(c) of the Natural Gas Act, as amended, and section 157 subpart A of the Federal Energy Regulatory Commission's (Commission) regulations requests authorization to construct, own, and operate the Carthage to Perryville Project designed to receive and transport 1.237 billion cubic feet per day of natural gas. The project would consist of: 171.9 miles of 42-inch diameter pipeline; compression totaling 41,240 hp at two compressor stations; meter and regulator stations at receipt points with 3 Texas intrastate pipelines; interconnections with 4 interstate pipelines; and, appurtenant facilities. The facilities will operate separately from CEGT's existing pipeline system, and CEGT is seeking implementation of a fixed charge for Fuel Use and Lost and Unaccounted For Gas (LUFUG) applicable to transportation on the new facilities, all as more fully described in the application. CEGT seeks waiver of the Commission's regulations such that the 30-day comment period for the Final Environmental Impact Statement may coincide with the 30-day requested certificate order's rehearing period and that notational voting be used to extent this approach would expedite the order's issuance. CEGT requests that the Commission issue requested authorizations by October 30, 2006 so that facilities may be operable in time