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and n_2 units of the combined first and second samples as follows:

$$\bar{X}_2 = \frac{1}{n_1 + n_2} \sum_{i=1}^{n_1+n_2} X_i \quad (6)$$

Step 9. Compute the standard error (SE(\bar{X}_2)) of the mean full-load efficiency of the n_1 and n_2 units in the combined first and second samples as follows:

$$SE(\bar{X}_2) = \frac{S_1}{\sqrt{n_1 + n_2}} \quad (7)$$

(Note that S_1 is the value obtained above in Step 3.)

Step 10. Set the lower control limit (LCL₂) to,

$$LCL_2 = RE - tSE(\bar{X}_2) \quad (8) \sqrt{b^2 - 4ac}$$

where t has the value obtained in Step 5, and compare the combined sample mean (\bar{X}_2) to the lower control limit (LCL₂) to find one of the following:

(i) If the mean of the combined sample (\bar{X}_2) is less than the lower control limit (LCL₂), the basic model is in non-compliance and testing is at an end.

(ii) If the mean of the combined sample (\bar{X}_2) is equal to or greater than the lower control limit (LCL₂), the basic model is in compliance and testing is at an end.

MANUFACTURER-OPTION TESTING

If a determination of non-compliance is made in Steps 6, 7 or 10, of this appendix A, the manufacturer may request that additional testing be conducted, in accordance with the following procedures.

Step A. The manufacturer requests that an additional number, n_3 , of units be tested, with n_3 chosen such that $n_1 + n_2 + n_3$ does not exceed 20.

Step B. Compute the mean full-load efficiency, standard error, and lower control limit of the new combined sample in accordance with the procedures prescribed in Steps 8, 9, and 10, of this appendix A.

Step C. Compare the mean performance of the new combined sample to the lower control limit (LCL₂) to determine one of the following:

(a) If the new combined sample mean is equal to or greater than the lower control limit, the basic model is in compliance and testing is at an end.

(b) If the new combined sample mean is less than the lower control limit and the value of $n_1 + n_2 + n_3$ is less than 20, the manufacturer may request that additional units be tested. The total of all units tested may not exceed 20. Steps A, B, and C are then repeated.

(c) Otherwise, the basic model is determined to be in non-compliance.

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Subpart V—General Provisions

SOURCE: 69 FR 61941, Oct. 21, 2004, unless otherwise noted. Redesignated at 70 FR 60417, Oct. 18, 2005.

§ 431.401 Petitions for waiver, and applications for interim waiver, of test procedure.

(a) *General criteria.* (1) Any interested person may submit a petition to waive for a particular basic model any requirements of §§ 431.16, 431.76, 431.86, 431.96, and 431.106 of this part, upon the grounds that either the basic model contains one or more design characteristics which prevent testing of the basic model according to the prescribed test procedures, or the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inaccurate comparative data.

(2) Any person who has submitted a Petition for Waiver as provided in this subpart, may also file an Application for Interim Waiver of the applicable test procedure requirements.

(b) *Submission, content, and publication.* (1) You must submit your Petition for Waiver in triplicate, to the Assistant Secretary for Energy Efficiency and Renewable Energy, U.S. Department of Energy. Each Petition for Waiver must:

(i) Identify the particular basic model(s) for which a waiver is requested, the design characteristic(s) constituting the grounds for the petition, and the specific requirements sought to be waived, and must discuss in detail the need for the requested waiver;

(ii) Identify manufacturers of all other basic models marketed in the United States and known to the petitioner to incorporate similar design characteristic(s);

(iii) Include any alternate test procedures known to the petitioner to evaluate the characteristics of the basic model in a manner representative of its energy consumption; and

(iv) Be signed by you or by an authorized representative. In accordance with the provisions set forth in 10 CFR 1004.11, any request for confidential

treatment of any information contained in a Petition for Waiver or in supporting documentation must be accompanied by a copy of the petition, application or supporting documentation from which the information claimed to be confidential has been deleted. DOE will publish in the FEDERAL REGISTER the petition and supporting documents from which confidential information, as determined by DOE, has been deleted in accordance with 10 CFR 1004.11 and will solicit comments, data and information with respect to the determination of the petition.

(2) You must submit any Application for Interim Waiver in triplicate, with the required three copies of the Petition for Waiver, to the Assistant Secretary for Energy Efficiency and Renewable Energy, U.S. Department of Energy. Each Application for Interim Waiver must reference the Petition for Waiver by identifying the particular basic model(s) for which you seek a waiver and temporary exception. Each Application for Interim Waiver must demonstrate likely success of the Petition for Waiver and address what economic hardship and/or competitive disadvantage is likely to result absent a favorable determination on the Application for Interim Waiver. You or an authorized representative must sign the Application for Interim Waiver.

(c) *Notification to other manufacturers.*

(1) After filing a Petition for Waiver with DOE, and after DOE has published the Petition for Waiver in the FEDERAL REGISTER, you must, within five working days of such publication, notify in writing all known manufacturers of domestically marketed units of the same product type (as defined in Section 340(1) of the Act) and must include in the notice a statement that DOE has published in the FEDERAL REGISTER on a certain date the Petition for Waiver and supporting documents from which confidential information, if any, as determined by DOE, has been deleted in accordance with 10 CFR 1004.11. In complying with the requirements of this paragraph, you must file with DOE a statement certifying the names and addresses of each person to whom you have sent a notice of the Petition for Waiver.

(2) If you apply for Interim Waiver, whether filing jointly with or subsequent to your Petition for Waiver with DOE, you must concurrently notify in writing all known manufacturers of domestically marketed units of the same product type (as defined in Section 340(1) of the Act), and must include in the notice a copy of the Petition for Waiver and a copy of the Application for Interim Waiver. In complying with this section, you must in the written notification include a statement that the Assistant Secretary for Energy Efficiency and Renewable Energy will receive and consider timely written comments on the Application for Interim Waiver. Upon filing an Application for Interim Waiver, you must in complying with the requirements of this paragraph certify to DOE that a copy of these documents has been sent to all known manufacturers of domestically marketed units of the same product type (as listed in Section 340(1) of the Act). Such certification must include the names and addresses of such persons. You must comply with the provisions of paragraph (c)(1) of this Section with respect to the petition for waiver.

(d) *Comments; responses to comments.*

(1) Any person submitting written comments to DOE with respect to an Application for Interim Waiver must also send a copy of the comments to the applicant.

(2) Any person submitting written comments to DOE with the respect to a Petition for Waiver must also send a copy of such comments to the petitioner. In accordance with paragraph (b)(1) of this section, a petitioner may submit a rebuttal statement to the Assistant Secretary for Energy Efficiency and Renewable Energy.

(e) *Provisions specific to interim waivers—(1) Disposition of application.* If administratively feasible, DOE will notify the applicant in writing of the disposition of the Application for Interim Waiver within 15 business days of receipt of the application. Notice of DOE's determination on the Application for Interim Waiver will be published in the FEDERAL REGISTER.

(2) *Consequences of filing application.* The filing of an Application for Interim Waiver will not constitute grounds for noncompliance with any requirements

of this subpart, until an Interim Waiver has been granted.

(3) *Criteria for granting.* The Assistant Secretary for Energy Efficiency and Renewable Energy will grant an Interim Waiver from test procedure requirements if he or she determines that the applicant will experience economic hardship if the Application for Interim Waiver is denied, if it appears likely that the Petition for Waiver will be granted, and/or if the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the Petition for Waiver.

(4) *Duration.* An interim waiver will terminate 180 days after issuance or upon the determination on the Petition for Waiver, whichever occurs first. DOE may extend an interim waiver for up to 180 days or modify its terms based on relevant information contained in the record and any comments received subsequent to issuance of the interim waiver. DOE will publish in the FEDERAL REGISTER notice of such extension and/or any modification of the terms or duration of the interim waiver.

(f) *Provisions specific to waivers—(1) Rebuttal by petitioner.* Following publication of the Petition for Waiver in the FEDERAL REGISTER, a petitioner may, within 10 working days of receipt of a copy of any comments submitted in accordance with paragraph (b)(1) of this section, submit a rebuttal statement to the Assistant Secretary for Energy Efficiency and Renewable Energy. A petitioner may rebut more than one response in a single rebuttal statement.

(2) *Disposition of petition.* DOE will notify the petitioner in writing as soon as practicable of the disposition of each Petition for Waiver. The Assistant Secretary for Energy Efficiency and Renewable Energy will issue a decision on the petition as soon as is practicable following receipt and review of the Petition for Waiver and other applicable documents, including, but not limited to, comments and rebuttal statements.

(3) *Consequence of filing petition.* The filing of a Petition for Waiver will not constitute grounds for noncompliance with any requirements of this subpart, until a waiver or interim waiver has been granted.

(4) *Granting: criteria, conditions, and publication.* The Assistant Secretary for Energy Efficiency and Renewable Energy will grant a waiver if he or she determines that either the basic model for which the waiver was requested contains a design characteristic which prevents testing of the basic model according to the prescribed test procedures, or the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inaccurate comparative data. The Assistant Secretary for Energy Efficiency and Renewable Energy may grant a waiver subject to conditions, which may include adherence to alternate test procedures. DOE will promptly publish in the FEDERAL REGISTER notice of each waiver granted or denied, and any limiting conditions of each waiver granted.

(g) *Revision of regulation.* Within one year of the granting of any waiver, the Department will publish in the FEDERAL REGISTER a notice of proposed rulemaking to amend our regulations so as to eliminate any need for the continuation of such waiver. As soon thereafter as practicable, the Department will publish in the FEDERAL REGISTER a final rule. Such waiver will terminate on the effective date of such final rule.

(h) *Exhaustion of remedies.* In order to exhaust administrative remedies, any person aggrieved by an action under this Section must file an appeal with the DOE's Office of Hearings and Appeals as provided in 10 CFR Part 1003, subpart C.

§ 431.402 Preemption of State regulations for commercial HVAC & WH products.

Beginning on the effective date of such standard, an energy conservation standard set forth in this part for a commercial HVAC & WH product supersedes any State or local regulation concerning the energy efficiency or energy use of that product, except as provided for in Section 345(b)(2)(B)–(D) of the Act.

§ 431.403 Maintenance of records.

(a) If you are the manufacturer of any covered equipment, you must establish, maintain and retain records of the following:

(1) The test data for all testing conducted pursuant to this part;

(2) For electric motors, the development, substantiation, application, and subsequent verification of any AEDM used under this part;

(3) For electric motors, any written certification received from a certification program, including a certificate of conformity, relied on under the provisions of this part;

(4) For commercial HVAC and WH products, the test data for all testing conducted pursuant to 10 CFR part 431, including any testing conducted by a VICEP; and

(5) For commercial HVAC and WH products, the development, substantiation, application, and subsequent verification of any AEDM.

(b) You must organize such records and index them so that they are readily accessible for review. The records must include the supporting test data associated with tests performed on any test units to satisfy the requirements of this part (except tests performed by us directly).

(c) For each basic model, you must retain all such records for a period of two years from the date that production of all units of that basic model has ceased. You must retain records in a form allowing ready access to DOE, upon request.

[69 FR 61941, Oct. 21, 2004. Redesignated at 70 FR 60417, Oct. 18, 2005, as amended at 75 FR 675, Jan. 5, 2010]

§ 431.404 Imported equipment.

(a) Under sections 331 and 345 of the Act, any person importing any covered equipment into the United States must comply with the provisions of the Act and of this part, and is subject to the remedies of this part.

(b) Any covered equipment offered for importation in violation of the Act and of this part will be refused admission into the customs territory of the United States under rules issued by the Secretary of the Treasury, except that the Secretary of the Treasury may, by

such rules, authorize the importation of such covered equipment upon such terms and conditions (including the furnishing of a bond) as may appear to the Secretary of Treasury appropriate to ensure that such covered equipment will not violate the Act and this part, or will be exported or abandoned to the United States.

§ 431.405 Exported equipment.

Under Sections 330 and 345 of the Act, this Part does not apply to any covered equipment if:

(a) Such equipment is manufactured, sold, or held for sale for export from the United States (or such equipment was imported for export), unless such equipment is, in fact, distributed in commerce for use in the United States; and,

(b) Such equipment, when distributed in commerce, or any container in which it is enclosed when so distributed, bears a stamp or label stating that such covered equipment is intended for export.

§ 431.406 Subpoena.

Pursuant to sections 329(a) and 345 of the Act, for purposes of carrying out this part, the Secretary or the Secretary's designee, may sign and issue subpoenas for the attendance and testimony of witnesses and the production of relevant books, records, papers, and other documents, and administer the oaths. Witnesses summoned under the provisions of this section shall be paid the same fees and mileage as are paid to witnesses in the courts of the United States. In case of contumacy by, or refusal to obey a subpoena served upon any persons subject to this part, the Secretary may seek an order from the District Court of the United States for any District in which such person is found or resides or transacts business requiring such person to appear and give testimony, or to appear and produce documents. Failure to obey such order is punishable by such court as a contempt thereof.

§ 431.407 Confidentiality.

Pursuant to the provisions of 10 CFR 1004.11, any person submitting information or data which the person believes to be confidential and exempt from

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public disclosure should submit one complete copy, and 15 copies from which the information believed to be confidential has been deleted. In accordance with the procedures established at 10 CFR 1004.11, the Department shall make its own determination with regard to any claim that information submitted be exempt from public disclosure.

§ 431.408 Preemption of State regulations for covered equipment other than electric motors and commercial heating, ventilating, air-conditioning and water heating products.

This section concerns State regulations providing for any energy conservation standard, or water conservation standard (in the case of commercial prerinse spray valves or commercial clothes washers), or other requirement with respect to the energy efficiency, energy use, or water use (in the case of commercial prerinse spray valves or commercial clothes washers), for any covered equipment other than an electric motor or commercial HVAC and WH product. Any such regulation that contains a standard or requirement that is not identical to a Federal standard in effect under this subpart is preempted by that standard, except as provided for in sections 327(b) and (c) and 345(e), (f) and (g) of the Act.

[75 FR 675, Jan. 5, 2010]

Subpart W—Petitions To Exempt State Regulation From Preemption; Petitions To Withdraw Exemption of State Regulation

SOURCE: 69 FR 61941, Oct. 21, 2004, unless otherwise noted. Redesignated at 70 FR 60417, Oct. 18, 2005.

§ 431.421 Purpose and scope.

(a) The regulations in this subpart prescribe the procedures to be followed in connection with petitions requesting a rule that a State regulation prescribing an energy conservation standard or other requirement respecting energy use or energy efficiency of a type (or class) of covered equipment not be preempted.

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(b) The regulations in this subpart also prescribe the procedures to be followed in connection with petitions to withdraw a rule exempting a State regulation prescribing an energy conservation standard or other requirement respecting energy use or energy efficiency of a type (or class) of covered equipment.

§ 431.422 Prescriptions of a rule.

(a) *Criteria for exemption from preemption.* Upon petition by a State which has prescribed an energy conservation standard or other requirement for a type or class of covered equipment for which a Federal energy conservation standard is applicable, the Secretary shall prescribe a rule that such standard not be preempted if he/she determines that the State has established by a preponderance of evidence that such requirement is needed to meet unusual and compelling State or local energy interests. For the purposes of this regulation, the term “unusual and compelling State or local energy interests” means interests which are substantially different in nature or magnitude from those prevailing in the U.S. generally, and are such that when evaluated within the context of the State’s energy plan and forecast, the costs, benefits, burdens, and reliability of energy savings resulting from the State regulation make such regulation preferable or necessary when measured against the costs, benefits, burdens, and reliability of alternative approaches to energy savings or production, including reliance on reasonably predictable market-induced improvements in efficiency of all equipment subject to the State regulation. The Secretary may not prescribe such a rule if he finds that interested persons have established, by a preponderance of the evidence, that the State’s regulation will significantly burden manufacturing, marketing, distribution, sale or servicing of the covered equipment on a national basis. In determining whether to make such a finding, the Secretary shall evaluate all relevant factors including: The extent to which the State regulation will increase manufacturing or distribution costs of manufacturers, distributors, and others;