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 n₁ + n₂ + n₃ 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.

Subpart V—General Provisions


§ 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) A Petition for Waiver shall be submitted either electronically to AS Waiver Requests@ee.doe.gov or by mail, in triplicate, to U.S. Department of Energy, Building Technologies Program, Test Procedure Waiver, 1000 Independence Avenue, SW., Mailstop EE–2J, Washington, DC 20585–0121. Each Petition for Waiver shall:

1. 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;
2. Identify manufacturers of all other basic models marketed in the United States and known to the petitioner to incorporate similar design characteristic(s);
3. 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
4. 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.
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 marked 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 (e)(1) of this Section with respect to 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.

(5) 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
§ 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 for electric motors.

(a) Manufacturers of electric motors must establish, maintain and retain records of the following:
   (1) The test data for all testing conducted pursuant to this part;
   (2) The development, substantiation, application, and subsequent verification of any AEDM used under this part;
   (3) Any written certification received from a certification program, including a certificate or conformity, relied on under the provisions of this part;
(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 DOE).
(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.

§ 431.404 Imported electric motors.

(a) Under sections 331 and 345 of the Act, any person importing an electric motor into the United States must comply with the provisions of the Act.