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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 (LCL_2), 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 (LCL_2) 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.

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 interim waiver.

(a) *General information.* This section provides a means for seeking waivers of the test procedure requirements of this part for basic models that meet the requirements of paragraph (a)(1) of this section. In granting a waiver or interim waiver, DOE will not change the energy use or efficiency metric that the manufacturer must use to certify compliance with the applicable energy conservation standard and to make representations about the energy use or efficiency of the covered equipment. The granting of a waiver or interim waiver by DOE does not exempt such

basic models from any other regulatory requirement contained in this part or the certification and compliance requirements of 10 CFR part 429 and specifies an alternative method for testing the basic model(s) addressed in the waiver.

(1) Any interested person may submit a petition to waive for a particular basic model the requirements of any uniform test method contained in this part, upon the grounds that either the basic model contains one or more design characteristics that prevent testing of the basic model according to the prescribed test procedures or cause the prescribed test procedures to evaluate the basic model in a manner so unrepresentative of its true energy or water consumption characteristics as to provide materially inaccurate comparative data.

(2) Manufacturers of basic model(s) subject to a waiver or interim waiver are responsible for complying with the other requirements of this part and with the requirements of 10 CFR part 429 regardless of the person that originally submitted the petition for waiver and/or interim waiver. The filing of a petition for waiver and/or interim waiver shall not constitute grounds for noncompliance with any requirements of this part.

(3) All correspondence regarding waivers and interim waivers must be submitted to DOE either electronically to AS_Waiver_Requests@ee.doe.gov (preferred method of transmittal) or by mail to U.S. Department of Energy, Building Technologies Program, Test Procedure Waiver, 1000 Independence Avenue SW., Mailstop EE-5B, Washington, DC 20585-0121.

(b) *Petition content and publication.* (1) Each petition for interim waiver and waiver must:

(i) Identify the particular basic model(s) for which a waiver is requested, each brand name under which the identified basic model(s) will be distributed in commerce, 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 distributed in commerce in the United States and known to the petitioner to incorporate design characteristic(s) similar to those found in the basic model that is the subject of the petition;

(iii) Include any alternate test procedures known to the petitioner to evaluate the performance of the equipment type in a manner representative of the energy and/or water consumption characteristics of the basic model; and

(iv) Be signed by the petitioner or 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 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) In addition to the requirements in paragraph (b)(1) of this section, each petition for interim waiver must reference the related petition for waiver, 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 petition for interim waiver.

(c) *Notification to other manufacturers.*

(1) Each petitioner for interim waiver must, upon publication of a grant of an interim waiver in the FEDERAL REGISTER, notify in writing all known manufacturers of domestically marketed basic models of the same equipment class (as specified in the relevant subpart of 10 CFR part 431), and of other equipment classes known to the petitioner to use the technology or have the characteristic at issue in the waiver. The notice must include a statement that DOE has published the interim waiver and petition for waiver in the FEDERAL REGISTER and the date the petition for waiver was published. The

notice must also include a statement that DOE will receive and consider timely written comments on the petition for waiver. Within five working days, each petitioner must file with DOE a statement certifying the names and addresses of each person to whom a notice of the petition for waiver has been sent.

(2) If a petitioner does not request an interim waiver and notification has not been provided pursuant to paragraph (c)(1) of this section, each petitioner, after filing a petition for waiver with DOE, and after the petition for waiver has been published in the FEDERAL REGISTER, must, within five working days of such publication, notify in writing all known manufacturers of domestically marketed basic models of the same equipment class (as listed in the relevant subpart of 10 CFR part 431), and of other equipment classes known to the petitioner to use the technology or have the characteristic at issue in the waiver. The notice must include a statement that DOE has published the petition in the FEDERAL REGISTER and the date the petition for waiver was published. Within five working days of the publication of the petition in the FEDERAL REGISTER, each petitioner must file with DOE a statement certifying the names and addresses of each person to whom a notice of the petition for waiver has been sent.

(d) *Public comment and rebuttal.* (1) Any person submitting written comments to DOE with respect to an interim waiver must also send a copy of the comments to the petitioner by the deadline specified in the notice.

(2) Any person submitting written comments to DOE with respect to a petition for waiver must also send a copy of such comments to the petitioner.

(3) A petitioner may, within 10 working days of the close of the comment period specified in the FEDERAL REGISTER, submit a rebuttal statement to DOE. A petitioner may rebut more than one comment in a single rebuttal statement.

(e) *Provisions specific to interim waivers.* (1) DOE will post a petition for interim waiver on its website within 5 business days of receipt of a complete petition. DOE will make best efforts to

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review a petition for interim waiver within 90 business days of receipt of a complete petition.

(2) A petition for interim waiver that does not meet the content requirements of paragraph (b) of this section will be considered incomplete. DOE will notify the petitioner of an incomplete petition via email.

(3) DOE will grant an interim waiver from the test procedure requirements if it appears likely that the petition for waiver will be granted and/or if DOE determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the petition for waiver. Notice of DOE's determination on the petition for interim waiver will be published in the FEDERAL REGISTER.

(f) *Provisions specific to waivers*—(1) Disposition of application. The petitioner shall be notified in writing as soon as practicable of the disposition of each petition for waiver. DOE shall 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.

(2) Criteria for granting. DOE will grant a waiver from the test procedure requirements if DOE determines either that the basic model(s) for which the waiver was requested contains a design characteristic that prevents testing of the basic model according to the prescribed test procedures, or that the prescribed test procedures evaluate the basic model in a manner so unrepresentative of its true energy or water consumption characteristics as to provide materially inaccurate comparative data. DOE may grant a waiver subject to conditions, which may include adherence to alternate test procedures specified by DOE. DOE will promptly publish in the FEDERAL REGISTER notice of each waiver granted or denied, and any limiting conditions of each waiver granted.

(g) *Extension to additional basic models*. A petitioner may request that DOE extend the scope of a waiver or an interim waiver to include additional basic models employing the same technology as the basic model(s) set forth in the original petition. The petition

for extension must identify the particular basic model(s) for which a waiver extension is requested, each brand name under which the identified basic model(s) will be distributed in commerce, and documentation supporting the claim that the additional basic models employ the same technology as the basic model(s) set forth in the original petition. DOE will publish any such extension in the FEDERAL REGISTER.

(h) *Duration*. (1) Within one year of issuance of an interim waiver, DOE will either:

(i) Publish in the FEDERAL REGISTER a final determination on the petition for waiver; or

(ii) Publish in the FEDERAL REGISTER a new or amended test procedure that addresses the issues presented in the waiver.

(2) When DOE publishes a decision and order on a petition for waiver in the FEDERAL REGISTER pursuant to paragraph (f) of this section, the interim waiver will terminate upon the date specified in the decision and order, in accordance with paragraph (i) of this section.

(3) When DOE amends the test procedure to address the issues presented in a waiver, the waiver or interim waiver will automatically terminate on the date on which use of that test procedure is required to demonstrate compliance.

(4) When DOE publishes a decision and order in the FEDERAL REGISTER to modify a waiver pursuant to paragraph (k) of this section, the existing waiver will terminate upon the date specified in the decision and order, in accordance with paragraph (i) of this section.

(i) *Compliance certification and representations*. (1) If the interim waiver test procedure methodology is different than the decision and order test procedure methodology, certification reports to DOE required under 10 CFR 429.12 and any representations must be based on either of the two methodologies until 180–360 days after the publication date of the decision and order, as specified by DOE in the decision and order. Thereafter, certification reports and any representations must be based on the decision and order test procedure methodology, unless otherwise

specified by DOE. Once a manufacturer uses the decision and order test procedure methodology in a certification report or any representation, all subsequent certification reports and any representations must be made using the decision and order test procedure methodology while the waiver is valid.

(2) When DOE publishes a new or amended test procedure, certification reports to DOE required under 10 CFR 429.12 and any representations must be based on the testing methodology of an applicable waiver or interim waiver, or the new or amended test procedure until the date on which use of such test procedure is required to demonstrate compliance, unless otherwise specified by DOE in the test procedure final rule. Thereafter, certification reports and any representations must be based on the test procedure final rule methodology. Once a manufacturer uses the test procedure final rule methodology in a certification report or any representation, all subsequent certification reports and any representations must be made using the test procedure final rule methodology.

(3) If DOE publishes a decision and order modifying an existing waiver, certification reports to DOE required under 10 CFR 429.12 and any representations must be based on either of the two methodologies until 180–360 days after the publication date of the decision and order modifying the waiver, as specified by DOE in the decision and order. Thereafter, certification reports and any representations must be based on the modified test procedure methodology unless otherwise specified by DOE. Once a manufacturer uses the modified test procedure methodology in a certification report or any representation, all subsequent certification reports and any representations must be made using the modified test procedure methodology while the modified waiver is valid.

(j) *Petition for waiver required of other manufactures.* Any manufacturer of a basic model employing a technology or characteristic for which a waiver was granted for another basic model and that results in the need for a waiver (as specified by DOE in a published decision and order in the FEDERAL REGISTER) must petition for and be granted

a waiver for that basic model. Manufacturers may also submit a request for interim waiver pursuant to the requirements of this section.

(k) *Rescission or modification.* (1) DOE may rescind or modify a waiver or interim waiver at any time upon DOE's determination that the factual basis underlying the petition for waiver or interim waiver is incorrect, upon a determination that the results from the alternate test procedure are unrepresentative of the basic model(s)' true energy consumption characteristics, or for other appropriate reason. Waivers and interim waivers are conditioned upon the validity of statements, representations, and documents provided by the requestor; any evidence that the original grant of a waiver or interim waiver was based upon inaccurate information will weigh against continuation of the waiver. DOE's decision will specify the basis for its determination and, in the case of a modification, will also specify the change to the authorized test procedure.

(2) A person may request that DOE rescind or modify a waiver or interim waiver issued to that person if the person discovers an error in the information provided to DOE as part of its petition, determines that the waiver is no longer needed, or for other appropriate reasons. In a request for rescission, the requestor must provide a statement explaining why it is requesting rescission. In a request for modification, the requestor must explain the need for modification to the authorized test procedure and detail the modifications needed and the corresponding impact on measured energy consumption.

(3) DOE will publish a proposed rescission or modification (DOE-initiated or at the request of the original requestor) in the FEDERAL REGISTER for public comment. A requestor may, within 10 working days of the close of the comment period specified in the proposed rescission or modification published in the FEDERAL REGISTER, submit a rebuttal statement to DOE. A requestor may rebut more than one comment in a single rebuttal statement.

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(4) DOE will publish its decision in the FEDERAL REGISTER. DOE's determination will be based on relevant information contained in the record and any comments received.

(5) After the effective date of a rescission, any basic model(s) previously subject to a waiver must be tested and certified using the applicable DOE test procedure in 10 CFR part 431.

(l) *Revision of regulation.* As soon as practicable after the granting of any waiver, DOE will publish in the FEDERAL REGISTER a notice of proposed rulemaking to amend its regulations so as to eliminate any need for the continuation of such waiver. As soon thereafter as practicable, DOE will publish in the FEDERAL REGISTER a final rule.

(m) 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.

[79 FR 26601, May 9, 2014, as amended at 85 FR 79820, Dec. 11, 2020; 86 FR 70960, Dec. 14, 2021]

§ 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.

[76 FR 12505, Mar. 7, 2011]

§ 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 and of this part, and is subject to the remedies of this part.

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

[76 FR 12505, Mar. 7, 2011]

§ 431.405 Exported electric motors.

Under Sections 330 and 345 of the Act, this part does not apply to any electric motor if:

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

(b) Such electric motor, when distributed in commerce, or any container in which it is enclosed when so distributed, bears a stamp or label stating