

This final document represents the definitive view of the agency on the questions addressed and may be relied upon by the regulated industry and members of the public.

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Q: Should an amended test procedure be used to rate and certify products prior to the compliance date?

A: In response to numerous inquiries the Department of Energy (DOE) is issuing this guidance to make clear that, while manufacturers need not comply with a new or amended test procedure prior to the compliance date established when that test procedure is issued, manufacturers may, as described in this guidance, voluntarily use newly amended test procedures to rate and certify their products prior to the compliance date requiring the use of that amended test procedure.

Compliance with the energy conservation standards must be based on the test procedure that DOE has prescribed pursuant to 42 U.S.C. § 6293. *See* 42 U.S.C. § 6295(s). In addition, under 42 U.S.C. §§ 6293(c) and 6314(d), a manufacturer may not make written representations or broadcast advertisements regarding the energy use or efficiency of a regulated product unless that product has been tested using the DOE test procedure and the results of that testing are fairly disclosed by those representations or advertisements. Once DOE promulgates a new or amended test procedure, manufacturers must use the new or amended procedure to certify compliance by no later than the date specified in the test procedure final rule notice. Manufacturers must use the new or amended test procedure for representations as set forth in 42 U.S.C. §§ 6293 and 6314.

Typically, when DOE amends an existing test procedure or develops a new test procedure and finds that the measured energy consumption or energy efficiency ratings would be altered, DOE also conducts an energy conservation standards rulemaking and specifies that use of the new or amended test procedure is required for certification on the compliance date of any final standards. For a variety of reasons, a lag time may exist between when an amended test procedure is adopted and the compliance date. During this interim period, manufacturers may wish to gain additional experience with the new or amended test procedure or voluntarily use it prior to the compliance date on which they are required to do so.

DOE does not object to the use of a new or amended test procedure prior to the compliance date to (1) certify compliance with energy conservation standards and (2) make representations of energy efficiency or energy use so long as those representations fairly disclose the results of that testing. *See*

42 U.S.C. § 6293(c)(1).¹ Manufacturers who choose this early adoption path should ensure that their products or equipment satisfy the applicable new or amended standards. (If a new or amended standard has not yet been established, manufacturers should ensure that their products or equipment satisfy the existing standard.) DOE will make available certification templates for products certified using any new or amended test procedure.

DOE notes that many basic models incorporating new features or designs may benefit from the use of the new or amended test procedure, as amended test procedures often address new technologies. In some instances, a manufacturer may not wish to use the new or amended test procedure until its use is required, but the existing test procedure may not adequately address the new technology. For example, a current test procedure may require certain changes in order for a manufacturer to apply it to a product but the manufacturer may prefer not to apply the new (and not yet required) procedure, even though the product could be readily tested under that new procedure. In that situation, a manufacturer should seek a waiver pursuant to 10 CFR 430.27 or 10 CFR 431.401, as appropriate to obtain permission to use an alternate test procedure.

DOE notes that manufacturers of some covered products must comply with FTC labeling rules (16 CFR Part 305), which generally require manufacturers to base label disclosures on mandatory test procedures and related provisions in the Code of Federal Regulations. *See, e.g.* 10 CFR Part 430, Appendices A through Z. To do otherwise could subject the manufacturer to civil penalties. Manufacturers of labeled products should contact the FTC for guidance about label disclosures during these test procedure transitions.

¹ Manufacturers are required pursuant to 42 U.S.C. 6293(c)(2) to use the new or amended test procedure to make representations 180 days after it is prescribed or established. Use of the new or amended test procedure for certification would reduce testing burden by allowing manufacturers to test each new basic model using only the new or amended procedure.