

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: When may an amended test procedure be used to test, rate and certify products prior to the compliance date for new standards?

A: In any final rule amending a test procedure, the Department of Energy (DOE) makes a determination regarding whether amendments to the test procedure will or will not impact the measured efficiency or consumption. This guidance applies to situations where DOE has determined the amended test procedure will impact the measured efficiency (or consumption) and compliance with standards is currently required. Thus, the efficiency (or consumption) measurements under the prior test procedure are not comparable to the efficiency (or consumption) measurements under the amended test procedure. In these instances, DOE typically requires use of the amended test procedure when compliance with amended standards is required.

In response to numerous inquiries, DOE is issuing this guidance to make clear that manufacturers may voluntarily test and rate a basic model using an amended test procedure prior to the compliance date established when that test procedure is issued, only if the application of the amended test procedure and the sampling provisions demonstrate compliance with the amended standards. DOE will make available certification templates for products certified using any new or amended test procedure in advance of the compliance date of the amended standards.

For a variety of reasons, a lag time may exist between when an amended test procedure is adopted and the compliance date for amended standards that were set based on the use of the amended test procedure. 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. Because measured values are not comparable between the prior and amended test procedures, a manufacturer cannot use the amended test procedure to demonstrate compliance with the current standards. Accordingly, manufacturers may only use the amended test procedure after DOE has adopted amended standards; manufacturers may not begin using the amended test procedure during the period between the issuance of an amended test procedure final rule and the issuance of amended standards.

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 that will generate a result that is comparable to the results under the current test procedure and which would expire when compliance with the amended test procedure is required.

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. To do otherwise could subject the manufacturer to civil penalties. Manufacturers of labeled products should contact the FTC for guidance about label disclosures and early use of amended test procedures.