

## **Appliance Standards Program and Test Procedures Small Entity General Compliance Guide**

### **Introduction**

This Small Entity Compliance Guide seeks to help small entities comply with energy and water conservation standards and test procedures promulgated by the United States Department of Energy (DOE). This guidance document was prepared pursuant to Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) (Pub. L. 104-121 as amended by [Pub. L. 110-28](#)). This document is neither binding nor exhaustive. It is ultimately the responsibility of the regulated entity/manufacturer, including importers, to determine if and how it must comply with the provisions and the implementing regulations of the relevant energy and/or water conservation standard and/or test procedure. DOE may decide to revise this guide without public notice to reflect changes in DOE's approach to regulating the provisions established through rulemaking .

The Energy Policy and Conservation Act (EPCA)<sup>1</sup> authorizes DOE to regulate the energy and water efficiency of a number of consumer products and certain industrial equipment. 42 U.S.C. 6291–6317. Title III of EPCA sets forth a variety of provisions designed to improve energy and water efficiency. EPCA prescribes conservation standards for various consumer equipment and certain commercial and industrial equipment and test procedures to determine compliance with said standards. EPCA also requires DOE to review conservation standards and test procedures on a regular basis.<sup>2</sup> Additionally, EPCA contains what is known as an “anti-backsliding” provision, which prevents DOE from amending any conservation standards to either (1) increase the maximum allowable energy or water use or (2) decrease the minimum required energy or water efficiency of a covered product.

### **What is the Appliance and Equipment Standards Program?**

Through the Building Technologies Office, DOE sets minimum energy and water efficiency standards—as required by existing law—for over 60 categories of appliances and equipment used in homes, businesses, and other applications. Such standards significantly reduce United States energy and water demand, lower emissions of greenhouse gases and other pollutants, and save consumers billions of dollars every year, without compromising the vital services provided by these products and equipment. More information about the program in general can be found [here](#), along with the appliance standards [fact sheet](#).

### **What is the purpose of DOE appliance standards and test procedures? Why am I required to do this?**

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<sup>1</sup> All references to EPCA in this document are to the statute as amended through the Infrastructure Investment and Jobs Act, Pub. L. 117-58 (Nov. 15, 2021).

<sup>2</sup> In general, DOE must review energy and water conservation standards for each class of covered products and equipment every 6 years and must review test procedures for all covered products at least once every 7 years. 42 U.S.C. 6291, 6293, 6313, and 6314.

## *Appliance Standards*

Beginning in the 1970s, Congress enacted a [series of laws](#) that established or directed DOE to establish energy and water efficiency standards for certain appliances and commercial equipment. Additionally, DOE is required to review existing standards for covered products and equipment at least once every six years and to set standards at levels that achieve the maximum improvement in energy efficiency that is "technically feasible and economically justified." (42 U.S.C. 6295(o), 6313 (a)(6)(B), 6316(a)).

Appliance and equipment efficiency standards have served as one of the nation's most effective policies for improving efficiency and saving consumers money. Today, DOE's Appliance and Equipment Standards Program covers more than 60 products, representing about 90% of home energy use, 60% of commercial building energy use, and 30% of industrial energy use.

Each DOE rulemaking on appliance standards takes about three years to complete and usually consists of four phases: (1) Framework Phase, (2) Preliminary Analysis Phase, (3) Notice of Proposed Rulemaking (NOPR) Phase, and (4) Final Rule Phase. At each phase, a notice is published in the *Federal Register*, and all supporting documents and comments are made available in the rulemaking docket in [regulations.gov](https://www.regulations.gov). After each of the first three notices, there is a public comment period, and during that period, there is usually a public meeting (or webinar). Once a final rule is issued, manufacturers/importers typically have 3 to 5 years to comply with the new standards.

## *Test Procedures*

Most DOE standards rulemakings are accompanied by a concurrent test procedure rulemaking. Test procedures detail how manufacturers/importers must test their products and equipment to certify that they comply with the applicable conservation standards. ([42 U.S.C. 6293](#); 6314) DOE also uses the test procedures to determine compliance with the applicable standards. (42 U.S.C. 6295(s))

The EPCA sets forth the criteria and procedures DOE must follow when prescribing or amending test procedures for covered products and equipment. The EPCA sets two requirements for any test procedure prescribed or amended. First, it must be reasonably designed to produce test results which measure energy/water efficiency, energy/water use or estimated annual operating cost of a covered product or equipment during a representative average use cycle (as determined by the Secretary) or period of use. Second, it must not be unduly burdensome to conduct. (42 U.S.C. 6293(b)(3); 42 U.S.C. 6314(a)(2))

The EPCA also requires that, at least once every 7 years, DOE evaluate test procedures for each type of covered product and equipment to determine whether amended test procedures would more accurately or fully comply with the requirements for the test procedures to not be unduly burdensome to conduct and be reasonably designed to produce test results that reflect energy efficiency, energy use, and estimated operating costs during a representative average use cycle or period of use. (42 U.S.C. 6293(b)(1)(A) and 42 U.S.C. 6314(a)(1))

DOE uses test procedures to evaluate and issue updated energy and/or water conservation standards. Manufacturers/importers, and DOE also use test procedures to determine compliance with the current standards.

More detailed information on DOE's regulatory process to establish efficiency standards and associated test procedures may be found [here](#).

### **Who must comply with DOE standards and test procedures?**

Under federal law, manufacturers/importers of covered products in commerce in the United States must comply with DOE energy and water conservation standards and test procedures. (42 U.S.C. 6291, 6302) Some retailers and distributors must also comply with water and energy conservation standards.

### **Must I comply if I own a small business that makes or imports covered products or equipment? How do I determine if my business is "small"?**

Yes, federal law requires small businesses to comply with applicable DOE final rules establishing energy and water conservation standards and test procedures. There are some exceptions to DOE's regulations, including for small businesses. Those exceptions are discussed below.

Importantly, the Regulatory Flexibility Act (RFA), as amended by the SBREFA, provides small businesses with an expanded opportunity to participate in the development of certain regulations.

The Small Business Administration (SBA) defines "small business" by regulation. The small business size standard is usually stated in number of employees or average annual receipts and represents the largest size that a business may be to remain classified as a small business. The definition of "small" varies by industry. Up-to-date SBA size standards are available [here](#).

For more information about how small businesses are affected by and can participate in DOE's energy conservation standard and test procedure rulemakings, or other Federal agency rulemakings, please visit the [Small Business Administration's Office of Advocacy website](#).

### **What products are subject to DOE standards and test procedures?**

DOE has established standards for certain appliances and equipment, currently including more than 60 different types. These include consumer products, commercial and industrial equipment. A list of specific appliances currently subject to DOE regulations is available [here](#).

### **What are the current standards and test procedures my product must satisfy?**

Please refer to the Code of Federal Regulations (CFR) or final rules that apply to your appliance for specific compliance requirements. A list of appliances currently subject to DOE regulations is available [here](#); information on how to access DOE rulemaking documents and dockets on

appliance standards and test procedures is available [here](#); and additional information on current and past rulemakings is available [here](#).

### **My products are subject to DOE standards and test procedures. What's next?**

Refer to the relevant section(s) of the CFR for your product's requirements. Part 429 of Title 10 includes certification and enforcement requirements for most appliances. Part 430 includes requirements such as standards and test procedures for most consumer products, with effective dates. Part 431 includes requirements such as standards and test procedures for commercial and industrial equipment, and some consumer products, with effective dates.

After a final rule is issued, manufacturers/importers typically have a certain amount of time, specified by the rule, to comply with new standards. The final rules that apply to your product will list the effective date of the rule and the date on and after which compliance is required. Information on how to access DOE rulemaking documents and dockets on appliance and equipment standards and test procedures is available [here](#), and additional information on current and past rulemakings is available [here](#).

### **How do I determine and show my product complies with the standards and test procedures?**

Manufacturers/importers must demonstrate compliance with DOE energy and water conservation standards using the test procedures as described in the applicable DOE final rule.

#### *Regulations*

DOE publishes final certification, compliance, and enforcement regulations for regulated appliances and equipment in the [CFR](#). More information about certification, enforcement, testing, and current and past rulemakings can be found [here](#).

#### *Certification Obligations*

After obtaining the test data described above, but before distributing the model, each manufacturer/importer must apply the appropriate product-specific statistics in 49 CFR Part 429, Subpart B, and submit a certification report using DOE's online certification tool, the [Compliance Certification Management System](#) (CCMS). Each manufacturer/importer also must submit annual reports by the deadlines in 10 C.F.R. 429.12(d). The online system allows manufacturers/importers to create, submit, and manage certification reports using product- or equipment-specific templates. The ready-to-use templates and accompanying instructions can be downloaded [here](#). Annual certification date deadlines may vary for different products; upcoming annual certification date deadlines for certain regulated products can be found [here](#).

#### *Obligations for Representations and Labels*

If DOE issues or amends a test procedure, manufacturers/importers must make all representations of energy efficiency and energy use for products subject to the test procedure in accordance with results obtained using that amended test procedure beginning 180 days after publication of the

final rule in the **Federal Register**. ([42 U.S.C. 6314\(d\)\(1\)](#)). This includes representations on marketing materials and product labels. Representations, such as those made on packaging and in marketing materials, must reflect results obtained using the DOE test procedure. The representation requirements apply to all covered products and equipment for which there is an applicable DOE test procedure, even for products and equipment not currently subject to a conservation standard. Note that, issuance or amendment of a test procedure does not obligate manufacturers to make representations where they have not done so before. However, once a conservation standard or labeling requirement is established for the product, manufacturers would be required to use the DOE test procedure to test such products to confirm compliance with a labeling or conservation standard requirement, regardless of whether they previously made any representations subject to the DOE test procedure. ([42 U.S.C. 6315\(b\)](#); [42 U.S.C. 6316\(a\)](#); [42 U.S.C. 6295\(s\)](#)).

An individual manufacturer/importer may petition DOE for an extension of the 180-day period if the manufacturer/importer can show undue hardship in meeting the deadline. To receive such an extension, the manufacturer/importer must file a petition with DOE no later than 60 days before the end of the 180-day period and must detail how the manufacturer/importer will experience undue hardship. ([42 U.S.C. 6293\(c\)\(3\)](#), [6314\(d\)\(2\)](#))

DOE and the Federal Trade Commission (FTC) share responsibility for promulgation and enforcement of labeling requirements. Generally, the FTC prescribes labeling requirements for consumer products, and DOE prescribes labeling requirements for commercial and industrial equipment. (42 U.S.C. 6294; 6315) Labeling requirements for residential products are regulated by the FTC. (16 CFR part 305). The Energy Labeling Rule (52 FR 46894) requires manufacturers/importers to disclose a product's annual energy cost or efficiency information—based on DOE test procedures—on EnergyGuide labels, and to report their findings to the FTC. More information and FAQs regarding the FTC's regulation of product labeling is available [here](#).

For commercial and industrial equipment, EPCA requires that, at a minimum, labels must include the energy efficiency of the equipment for which the label is required, as determined by testing in accordance with the prescribed DOE test procedure. DOE may also require labels to disclose information likely to assist purchasers in making purchasing decisions. This may include estimated annual operating costs and energy use determined in accordance with the prescribed DOE test procedure as well as other specifications DOE determines is likely to assist purchasers in making purchasing decisions (e.g., directions for label display; instructions for energy-related maintenance and repair). ([42 U.S.C. 6315\(b\)](#), (c)). The EPCA also establishes specific labeling requirements for certain equipment, such as electric motors, commercial HVAC equipment, and certain commercial refrigeration and freezer products. 42 U.S.C. 6315(d)–(e). Labeling requirements for specific products can be found with the respective conservation standards and/or certification requirements for the relevant product.

### **Are there penalties if I do not comply?**

EPCA authorizes DOE to enforce compliance with energy and water conservation standards for consumer products and commercial and industrial equipment. (42 U.S.C. 6291-6317). DOE enforces these regulations to, among other things, reduce energy and water consumption and

pollution, encourage technological innovation to increase the efficiency of covered products and equipment, and save money for consumers.

DOE's enforcement program also helps to ensure a level playing field in the marketplace by creating a disincentive for the distribution in commerce of noncompliant products and equipment. EPCA authorizes DOE to assess civil penalties against any manufacturer/importer or private labeler and some retailers for knowingly distributing in commerce covered products or equipment that do not conform to applicable standards. DOE adjusts civil monetary penalties for inflation as mandated by the Federal Civil Penalties Inflation Adjustment Act.

DOE may adjust penalties as appropriate to the mitigating and aggravating factors impacting cases. DOE considers a number of factors including, but not limited to the nature and scope of the violation; a history of noncompliance; whether the entity is a small business; demonstrated inability to pay; the type of product at issue; whether the entity timely self-reported the potential violation; and the entity's self-initiated corrective action, if any. More information on DOE's policy regarding civil penalties for Energy Conservation Standards Program violations is available [here](#).

### **Are there any alternatives or exceptions to these rules?**

DOE regulations permit a person to seek a waiver or an interim waiver from the test procedure requirements for covered appliances if certain criteria are satisfied. Regulations applicable to test procedure waivers for consumer products can be found at [10 CFR 430.27](#), and those applicable to test procedure waivers for commercial and industrial equipment are at [10 CFR 431.401](#).

A manufacturer/importer whose annual gross revenue from all its operations does not exceed \$8 million also may apply for an exemption from all or part of any conservation standard for a period not longer than 24 months after the effective date of a final rule establishing the standard. 42 U.S.C. 6295(t).

Additionally, the DOE Organization Act empowers the Secretary of Energy to adjust a rule issued under the EPCA to prevent "special hardship, inequity, or unfair distribution of burdens" that may be imposed on a manufacturer/importer as a result of such a rule. 42 USC 7194. DOE's Office of Hearings and Appeals decides whether to grant requests for exceptions to DOE conservation standards. Regulations related to exceptions are at 10 CFR part 1003, and more information on applications for such exceptions may be found [here](#).

### **What resources are available to help me if I have questions?**

Resource Type	Title	Information
Website & FAQ	EERE Guidance Portal	<a href="#">Appliance Standards Guidance and Frequently Asked Questions (energy.gov)</a>
Program Contact Information	Appliance & Equipment Standards Program staff	<a href="mailto:ApplianceStandardsQuestions@ee.doe.gov">ApplianceStandardsQuestions@ee.doe.gov</a> (202) 586-6636

	DOE Office of Small & Disadvantaged Business Utilization	<a href="mailto:SmallBusiness@hq.doe.gov">SmallBusiness@hq.doe.gov</a>
Enforcement and Compliance Information	DOE Office of the Assistant General Counsel for Enforcement	<a href="#">Office of the Assistant General Counsel for Enforcement   Department of Energy</a>