

Enforcement Policy Statement – Certain consumer water heaters

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On December 12, 2016, DOE issued an enforcement policy for certain consumer water heaters that has been extended multiple times over the past two years. DOE has received requests to extend and modify that policy. DOE has extended that policy through March 31, 2019. DOE expects that it would further extend that policy through June 1, 2019, as part of a revised policy (draft below), which would become effective upon issuance. DOE enforcement policies may be modified at any time.

THE FOLLOWING POLICY IS NOT CURRENTLY IN EFFECT

- I. *Continuation of current policy.* In an exercise of its enforcement discretion, DOE will not seek civil penalties for the failure to properly certify covered products or for the distribution in commerce by a manufacturer or private labeler of covered products that are not in compliance with an applicable energy conservation standard, if the violation occurs on or after December 12, 2016, and before June 1, 2019, with respect to individual models of water heater that:
1. meet the statutory definition of consumer “water heater” (42 U.S.C. § 6291(27); 10 C.F.R. § 430.2);
 2. have a rated storage capacity greater than 120 gallons and/or are designed to heat and store water at a thermostatically controlled temperature greater than 180 °F;
 3. are compliant with the energy conservation standards in 10 C.F.R. § 431.110; and
 4. as of October 20, 2016, were certified to DOE as compliant with the energy conservation standards in 10 C.F.R. § 431.110.
- II. *Prospective policy for >55 gallon.* In an exercise of its enforcement discretion, DOE will not seek civil penalties for failure to properly certify or the distribution in commerce by a manufacturer or private labeler of certain water heaters that are not in compliance with an

applicable energy conservation standard, if the violation occurs after [date of issuance], provided the following requirements are met:

1. The water heater meets the statutory definition of consumer “water heater” (42 U.S.C. § 6291(27));
2. The water heater is manufactured before December 31, 2021;
3. The water heater is reported to DOE as a consumer water heater subject to this enforcement policy along with representations of efficiency using the UEF test procedure (10 C.F.R. § 430.23(e)(2), 10 C.F.R. Part 430, Subpart B, Appendix E, and 10 C.F.R. § 429.17);
4. The water heater has a rated storage volume greater than 55 gallons, as determined pursuant to 10 C.F.R. § 429.17; and
5. The water heater meets the following Uniform Energy Factor performance levels for the specified volume and draw pattern:

Product	Draw Pattern	Uniform energy factor
Gas-fired Storage Water Heater	Very Small	$0.3371 - (0.0018 \times V_r)$
	Low	$0.6211 - (0.0023 \times V_r)$
	Medium	$0.6740 - (0.0021 \times V_r)$
	High	$0.7141 - (0.0016 \times V_r)$
Electric Storage Water Heater	Very Small	$1.10394 - (0.00335 \times V_r)$
	Low	$1.02177 - (0.00143 \times V_r)$
	Medium	$1.00055 - (0.00104 \times V_r)$
	High	$0.98116 - (0.00069 \times V_r)$
* V_r is the Rated Storage Volume (in gallons), as determined pursuant to 10 C.F.R. § 429.17.		

III. ≤ 55 gallon. In an exercise of its enforcement discretion, DOE will not seek civil penalties for failure to properly certify or the distribution in commerce by a manufacturer or private labeler of certain water heaters that are not in compliance with an applicable energy conservation standard, if the violation occurs on or after [date of issuance], and before December 31, 2021, with respect to individual models of water heater that:

1. meet the statutory definition of consumer “water heater” (42 U.S.C. § 6291(27)) and the regulatory definition of electric storage water heater (10 C.F.R. § 430.2);

2. have a rated storage capacity less than or equal to 55 gallons and are designed to heat and store water at a thermostatically controlled temperature greater than 180 °F;
3. are compliant with the relevant energy conservation standards in 10 C.F.R. § 431.110;
4. as of May 1, 2015, were certified to DOE as compliant with the energy conservation standards in 10 C.F.R. § 431.110; and
5. is reported to DOE as a consumer water heater subject to this enforcement policy along with representations of efficiency using the UEF test procedure (10 C.F.R. § 430.23(e)(2), 10 C.F.R. Part 430, Subpart B, Appendix E, and 10 C.F.R. § 429.17).

This policy does not create or remove any rights or duties and does not affect any other aspect of EPCA or DOE regulations. This policy explains how DOE intends to focus its resources with respect to enforcement of the water heater energy conservation standards. This policy does not alter the applicable energy conservation standards. This policy statement is not a final agency action, has no legally binding effect on persons or entities outside the federal government, and may be rescinded or modified in the Department's complete discretion. Accordingly, it is not intended to, does not, and may not be relied upon to, create any rights, substantive or procedural, enforceable at law by any party in any matter.

DOE welcomes comments or thoughts regarding this draft policy. Comments may be sent to EEEnforcementPolicy@doe.gov. Because DOE anticipates issuing a revised policy by March 31, 2019 (when the current policy ends), comments should be received by **March 22, 2019**, for consideration in the revised policy.