

Enforcement Policy Statement – Certain consumer water heaters

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DOE expects to extend the current policy (see <http://www.energy.gov/gc/enforcement>) through October 1, 2019, as part of a revised policy (draft below), which would become effective upon issuance; however, DOE does not anticipate extending the current policy beyond October 1, 2019. Manufacturers should begin taking appropriate actions to ensure their products either comply with the applicable standards or are likely to qualify for any revised enforcement policy. DOE enforcement policies may be modified at any time.

DOE welcomes comments or thoughts regarding the draft policy presented below. Comments may be sent to EEEnforcementPolicy@doe.gov. DOE seeks to issue a final policy by May 31, 2019 (ideally to provide some transition time), but not later than October 1, 2019. To permit time for additional drafts to be provided for comment (if needed), comments on this draft should be received by **April 18, 2019**, for consideration in the revised policy.

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 October 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 certify properly or for 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 October 1, 2019, and before December 31, 2021, with respect to an individual model of water heater:

1. That meets 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. That has a rated storage volume less than or equal to 55 gallons and is designed to heat and store water at a thermostatically controlled temperature greater than 180 °F;
3. That is compliant with the relevant energy conservation standards in 10 C.F.R. § 431.110;
4. That, as of May 1, 2015, was certified to DOE as compliant with the energy conservation standards in 10 C.F.R. § 431.110;
5. That is reported to DOE as a consumer water heater subject to this enforcement policy along with representations of the water heater’s standby losses using the relevant DOE test procedure at 10 C.F.R. Part 431, Subpart G, and 10 C.F.R. § 429.44; and
6. For which the energy consumption is represented (e.g., in reports to DOE, marketing materials, sales materials) solely using standby losses.

III. *Prospective policy for >55 gallon.* In an exercise of its enforcement discretion, DOE will not seek civil penalties for failure to certify properly or for 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 October 1, 2019, and before December 31, 2021, provided the following requirements are met:

1. The water heater meets 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. The water heater is reported to DOE as a consumer water heater subject to this enforcement policy along with representations of the water heater's efficiency as determined using a relevant DOE test procedure;
3. The water heater has a rated storage volume (V_r) greater than 55 gallons, as determined pursuant to 10 C.F.R. § 429.17(a); and
4. EITHER
 - a. The water heater meets the following Uniform Energy Factor performance levels for the specified volume and draw pattern:

Draw Pattern	Uniform energy factor
Very Small	$1.0136 - (0.0028 \times V_r)$
Low	$0.9984 - (0.0014 \times V_r)$
Medium	$0.9853 - (0.0010 \times V_r)$
High	$0.9720 - (0.0007 \times V_r)$

OR

- b. The water heater meets the energy conservation standards in 10 C.F.R. § 431.110.
- c. HOWEVER: Water heaters distributed under paragraph III.4.a of this enforcement policy (i.e., rated using UEF) may not also be rated standby losses. Water heaters distributed under paragraph III.4.b of this enforcement policy (i.e., rated using standby losses) may not also be rated using the UEF (or EF) metric.

IV. This policy will not apply to any water heaters distributed in commerce on or after January 1, 2022. This policy will not be extended.

Background: 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 extended that policy through August 16, 2019. DOE has received requests to further extend and/or to modify that policy. In response to a draft policy posted February 8, 2019, DOE notes that some manufacturers' comments suggested that the March 4, 2019 draft enforcement policy would impose burdens. Manufacturers should be mindful that current law requires consumer water heaters to test using the UEF test procedure, to meet the standards in 10 C.F.R. 430.32, and to certify compliance with those standards. Any exercise of DOE's enforcement discretion reduces

the burdens a manufacturer may face to comply with those requirements. Further, in response to commenters who suggested that the draft enforcement policy would constitute “backsliding” (i.e., a reduction in efficiency in the energy conservation standard), DOE also notes that (as many of those same commenters noted), notwithstanding DOE’s determination not to seek civil penalties under the conditions specified in this policy, under EPCA section 335, “any person may commence a civil action against any manufacturer or private labeler who is alleged to be in violation of any provision of this part or any rule under this part.” The standards remain unchanged by this enforcement policy; this policy reflects DOE’s efforts (1) to address definitional issues acknowledged by nearly all commenters that could result in the unavailability of certain water heaters intended for a commercial market; (2) within one product class, to focus DOE enforcement resources on the most egregious violations; and (3) to eliminate inequities between manufacturers created by the current policy.

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.