

## **Enforcement Policy Statement Regarding Testing, Compliance with the Applicable Energy Conservation Standards, and Certification for Certain Consumer Water Heaters**

Issued: December 12, 2016

Revised: July 16, 2019

In an exercise of its enforcement discretion, DOE will not seek civil penalties for the failure to properly certify covered products or 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 was 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.

Background: On November 10, 2016, DOE issued a Final Rule that amended definitions for certain consumer water heaters and commercial water heating equipment. These amendments addressed, among other things, issues regarding the proper categorization of water heaters as either consumer or commercial, and DOE reaffirmed in the rule that any water heater meeting the definition of water heater at 42 U.S.C. § 6291(27) and 10 C.F.R. § 430.2 is properly regarded as a consumer water heater, notwithstanding any changes to definitions of any class of consumer water heater for purposes of the consumer water heater test procedure at Appendix E to Subpart B of 10 C.F.R. Part 430. 81 FR 79261, 79283.

Several stakeholders have indicated that they have models of consumer water heaters that do not meet the applicable standards and requested DOE exercise its enforcement discretion. Although DOE believes that the water heaters identified by stakeholders were always subject to the consumer water heater standards found at 10 C.F.R. § 430.32 (see discussion at 81 FR at 79283), DOE understands the practical implications of manufacturers making this transition, and issued this enforcement policy on December 12, 2016, with an expiration date of December 31, 2017.

DOE published a revised policy on October 20, 2017, with an expectation that the policy would take effect on January 1, 2018; however, after receiving feedback from the Air-Conditioning, Heating and Refrigeration Institute (AHRI) and various manufacturers, DOE is extending its original policy until September 30, 2019. A new policy takes effect on October 1, 2019.

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 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.