

Enforcement Policy Statement – Certain consumer water heaters with commercial applications

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DOE issued an enforcement policy for certain consumer water heaters that expires December 31, 2017. DOE has received requests to extend and modify that policy. DOE expects the policy below to become effective January 1, 2018; however, this policy may be modified at any time based on information DOE obtains before that date.

In an exercise of its enforcement discretion, DOE will not seek civil penalties 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 after December 31, 2017, provided the following requirements are met:

1. The water heater meets the statutory definition of consumer “water heater” (42 U.S.C. § 6291(27); 10 C.F.R. § 430.2); and
2. The water heater meets the energy conservation standards that apply to commercial water heaters with corresponding features (e.g., size factor) and
3. The water heater has at least one of the following features:
 - a. A rated storage capacity greater than 120 gallons;
 - b. Operates on 3-phase electrical power supply only; or
 - c. Has a tank certified to ASME construction standards.

Further, DOE will not seek civil penalties 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 after December 31, 2017, 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); and
2. Meet the energy conservation standards that apply to commercial water heaters with corresponding features (e.g., size, fuel); and
3. Are designed to provide outlet water at a thermostatically controlled temperature greater than 180 °F; and
4. As of May 1, 2015, were certified to DOE as compliant with the energy conservation standards in 10 C.F.R. § 431.110.

Further, DOE notes that it will exercise its enforcement discretion with respect to models of water heaters that meet the statutory definition of consumer “water heater” (42 U.S.C. § 6291(27); 10 C.F.R. § 430.2); meet the energy conservation standards that apply to commercial water heaters with corresponding features (e.g., size, fuel); and, in fact, not designed, marketed, or distributed in commerce for consumer use.

This policy does not create or remove any rights or duties and does not affect any other aspect of EPCA or DOE regulations.

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 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 indicated its belief 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 recognized the practical implications of manufacturers making this transition, and therefore issued an enforcement policy on December 12, 2016, with an expiration date of December 31, 2017.

As that transition period is ending, DOE recognizes that the statutory definitions of consumer and commercial water heaters do not align well with the practical realities of water heater designs and features. Accordingly, DOE is issuing this policy to ensure that commercial customers continue to have appropriate products available in the market.

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