Enforcement Policy Statement – Circulating water heaters

Issued: September 5, 2019

DOE has become aware of an issue with respect to certain consumer instantaneous water heaters commonly referred to by industry as "circulating water heaters." These "circulating water heaters" operate differently than either the storage water heaters or the instantaneous water heaters that DOE considered in its previous rulemakings for consumer water heaters. DOE has found that several manufacturers produce consumer gas-fired instantaneous water heaters that are designed to be used with a volume of stored water (usually in a tank, but sometimes in a recirculating hot water system of sufficient volume) where the water heater does not directly provide hot water to fixtures, but rather replenishes heat lost from the tank or system through hot water draws or standby losses by circulating water to and from the tank or other system. These recirculating consumer gas-fired instantaneous water heaters are typically activated by an aquastat[1] installed in a separately sold storage tank or an inlet water temperature sensor.

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 before December 31, 2021, with respect to an individual model of water heater that:

1. Meets the statutory definition of an instantaneous type of consumer water heater per 42 U.S.C. § 6291(27);
2. Does not have an operational scheme in which the burner or heating element initiates and terminates heating based on sensing flow;
3. Has a water temperature sensor located at the inlet of the water heater or in a separate storage tank that is the primary operating temperature means of initiating and terminating heating;
4. Must be used in combination with a recirculating pump and either a separate storage tank or water circulation loop in order to achieve the water flow and temperature conditions recommended in the manufacturer's installation and operation instructions;
5. Is designed to provide outlet hot water at a thermostatically controlled temperature greater than 180 °F; and
6. Meets the corresponding energy conservation standards in 10 C.F.R. § 431.110.

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.

[1] An aquastat is a temperature measuring device typically used to control the water temperature in a separate hot water storage tank.