

Enforcement Policy Statement – Certain consumer water heaters

Published: July 16, 2019

Effective: October 1, 2019

- I. *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 was certified with 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.
- II. *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; and
3. EITHER
 - a. 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 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 has a measured storage volume (V_m) greater than 55 gallons, as determined pursuant to 10 C.F.R. §§ 429.44 & 431.106, and the water heater meets the energy conservation standards in 10 C.F.R. § 431.110(a);
- c. HOWEVER: Water heaters distributed under paragraph II.3.a of this enforcement policy (i.e., rated using UEF) may not also be rated standby losses. Water heaters distributed under paragraph II.3.b of this enforcement policy (i.e., rated using standby losses) may not also be rated using the UEF (or EF) metric. That is, this policy cannot be used in concert with the water heater enforcement statement issued February 8, 2019, regarding water heater efficiency representations.

III. These policies will not apply to any water heaters distributed in commerce on or after January 1, 2022. These policies 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 September 30, 2019. DOE established these policies after multiple revisions and consideration of public comment.

These policies do not create or remove any rights or duties and do not affect any other aspect of EPCA or DOE regulations. These policies explain 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.