

Enforcement Policy Statement
Consumer Water Heaters and Certain Commercial Water Heating Equipment
Issued: October 2, 2015

As required by 42 U.S.C. § 6295(e)(5)(B), the U.S. Department of Energy (DOE) published in the Federal Register a final rule that amended the test procedures for consumer water heaters and certain commercial water heating equipment. 79 FR 40541 (July 11, 2014). That test procedure final rule established a methodology to measure the efficiency of consumer water heaters and residential-duty commercial water heaters using a new metric – the uniform energy factor (UEF). *See* 42 U.S.C. § 6295(e)(5)(C) (directing DOE to replace the then-existing metrics with a “uniform energy descriptor”). Pursuant to 42 U.S.C. § 6295(e)(5)(D), that test procedure became mandatory for use as of July 13, 2015.

As directed by 42 U.S.C. § 6295(e)(5)(E), DOE began developing, using that new test procedure, a method to convert existing representations and the energy conservation standards expressed in the then-existing metrics (EF for consumer water heaters and thermal efficiency/standby loss for residential-duty commercial water heating equipment – hereinafter “old metrics”) to the new UEF metric. On April 14, 2015, DOE published a Notice of Proposed Rulemaking detailing its proposed conversion method; these conversion factors would convert the standards that were established in terms of the old metrics to standards expressed in terms of the new UEF metric. This conversion factor would also provide a method for manufacturers to convert their existing representations for basic models distributed in commerce

prior to July 13, 2015, into the UEF metric; these converted representations would only be permitted for use for 1 year following the publication of the conversion factor final rule (*see* 42 U.S.C. § 6293(e)(5)(E)(v)). After that date, all representations must be based on testing conducted in accordance with the UEF test method and sampling plan. *See* 42 U.S.C. § 6295(e)(5)(D)(i), 6295(e)(5)(E)(v).

Because the current Federal energy conservation standards and the certification requirements do not yet reflect the UEF metric, DOE currently is not seeking civil penalties for failure to submit a certification report for basic models that were not distributed in commerce prior to July 13, 2015.

DOE notes that consumer water heaters and residential-duty commercial water heating equipment were subject to energy conservation standards prior to July 13, 2015, and continue to be subject to standards, notwithstanding the metric change. EPCA both specifically (42 U.S.C. § 6295(e)(5)(E)) and generally (42 U.S.C. § 6293(o)(1)) prohibits DOE from lowering the standard as part of the conversion factor rulemaking.

The following provisions regarding penalties for standards violations for consumer water heaters use these terms:

- “EF basic model” means a basic model first distributed in commerce prior to July 13, 2015.

- “Interim basic model” means a basic model first distributed in commerce on or after July 13, 2015, and before the date of publication of the conversion factor final rule.
- “UEF basic model” means a basic model first distributed in commerce on or after the date of publication of the conversion factor final rule.

For an EF basic model, DOE may seek civil penalties for failure to conform to the applicable EF standard (based on the date of manufacture) if testing demonstrates noncompliance using the EF test procedure.

For a UEF basic model, DOE may seek civil penalties for failure to conform to the applicable UEF standard, once DOE publishes the conversion factor final rule, if testing demonstrates noncompliance using the UEF test procedure.

For an interim basic model, DOE will not seek civil penalties for the distribution in commerce of individual units manufactured on or after July 13, 2015, and before publication of the conversion factor final rule, provided that the interim basic model passes testing using either the EF or the UEF test procedure (once DOE publishes the conversion factor final rule). For an interim basic model, DOE may seek civil penalties for any units manufactured after the publication date of the conversion factor final rule if testing demonstrates noncompliance using the UEF test procedure.

The following provisions regarding penalties for standards violations for gas-fired storage and oil-fired storage commercial water heating equipment use these terms:

- “Old commercial basic model” means a basic model first distributed in commerce prior to July 13, 2015, that is now subject to the UEF test procedure.
- “Interim res-duty basic model” means a basic model first distributed in commerce on or after July 13, 2015, and before the date of publication of the conversion factor final rule.
- “Res-duty basic model” means a basic model first distributed in commerce on or after the date of publication of the conversion factor final rule.

For an old commercial basic model, DOE may seek civil penalties for failure to conform to the applicable thermal efficiency and/or standby loss standard (based on the date of manufacture) if testing demonstrates noncompliance using the corresponding test procedure.

For a res-duty basic model, DOE may seek civil penalties for failure to conform to the applicable UEF standard, once DOE publishes the conversion factor final rule, if testing demonstrates noncompliance using the UEF test procedure.

For an interim res-duty basic model, DOE will not seek civil penalties for the distribution in commerce of individual units manufactured on or after July 13, 2015, and before publication of the conversion factor final rule, provided that the interim basic model passes using either the UEF test procedure (once the conversion factor final rule is published) or both the thermal efficiency and standby loss test procedures. For an interim res-duty basic model, DOE may seek civil penalties for any units manufactured after the publication date of the conversion factor final rule if testing demonstrates noncompliance using the UEF test procedure.

This policy reflects DOE's interpretation of 42 U.S.C. § 6295(e)(5). It does not create or remove any rights or duties and does not affect any other aspect of EPCA or DOE regulations. Furthermore, the Department expects to update this policy statement as the regulations are modified.