



HPBA FAQ for Retailers on the EPA's NSPS Requirements for New Residential Wood Heating Products

The new rule that US EPA issued in 2015 covers all new residential wood and pellet stoves and inserts, hydronic heaters, and forced-air furnaces. As we are now past the Step 2 deadline of May 15, 2020, it is imperative that retailers and distributors focus on the details of what is now required.

The purpose of this FAQ is to clarify the **current** deadlines and requirements that all dealers and distributors must meet on or after May 15, 2020 or be in violation of federal law.

What can be offered for sale on or after May 15, 2020?

Wood and pellet stoves and inserts that:

- Were tested on or after March 16, 2015 with crib wood (the traditional EPA test method fuel) certified to meet Step 2 (i.e., at or below 2.0 g/hr)
- Were tested on or after March 16, 2015 with cord wood and certified to meet Step 2 (i.e., at or below 2.5 g/hr)

Residential hydronic heaters that:

- If tested using crib wood EPA method, must be Step 2-certified at 0.10 lb/mmBtu or less per test run.
- If tested using cordwood alternative method, must be Step 2-certified at 0.15 lb/mmBtu or less per test run.
- **NOTE:** If a hydronic heater was tested using the European standard to meet Step 1, it cannot be sold on or after May 15, 2020 unless it is retested and certified using the EPA or ASTM methods specified in the rule.

Residential forced-air furnaces that:

- Are Step 2-certified at 0.15 lb/mmBtu or less per test run.

What do and don't these requirements apply to?

- **Applies to** all new residential cordwood and pellet stoves and inserts, hydronic heaters, and forced-air furnaces
- **Does not** apply to covered appliances that underwent a transfer of ownership to a non-commercial owner before May 15, 2020
- **Does not** apply to fireplaces

- **Does not** apply to used products (“used” means they were used by a non-commercial owner)

Did EPA provide any sell-through of products past the 2020 effective date?

- No, EPA will not be allowing any sell-through!

If a customer purchased a Step 1 appliance before May 15, 2020, but the retailer hadn't ordered it yet from the distributor/manufacturer, can the retailer still fulfill the order with the distributor/manufacturer after May 15, 2020?

- **No**, the retailer is not able to order a Step 1 appliance. It comes back to the transfer of ownership language. No one can manufacture or sell a non-Step 2 unit after May 15. If the product isn't already in the hands of the retailer or isn't owned by the retailer before May 15, this scenario is not legal. Transfer of ownership to the end user, non-commercial owner, either via down payment or invoiced, must have happened before May 15. **AND** the retailer must have had the Step 1 appliance in their possession by May 15 because they and the distributor/manufacturer are commercial owners. Especially if the product hasn't been manufactured yet and it isn't “owned” by the retailer (who would act as an illegal middleman in this scenario), this is not legal.

What work is HPBA doing that, if successful, would affect the standards as written?

- HPBA's legal challenge to parts of the NSPS could impact requirements of the rule.
- Also, HPBA-supported legislation in the U.S. House (H.R. 453) and U.S. Senate (S. 1857) would extend the effective date of Step 2 by three years, from May 15, 2020 to May 15, 2023. However, this legislation was not signed into law in time.

What should retailers and distributors be focused on now, given these uncertainties?

- The only thing certain is what is on the books today. Retailers and distributors **must** comply with the current law as it stands, and not any potential changes that may not come to fruition.
- Many wood and pellet stoves that were certified below 2.0 g/hr with crib wood before March 16, 2015 will need to be retested and certified as Step 2-compliant to be sold after May 15, 2020 because EPA made changes to the method.

How active is EPA in enforcing the NSPS?

- EPA has demonstrated that they are enforcing the rules currently in effect and will continue to do so.

- EPA has alerted retailers who still have uncertified pellet stoves on their floor or in their warehouse.
- Retailers should assume that EPA and state personnel could be actively enforcing Step 2 of the rule beginning in May of 2020.

In states that passed state laws preventing state agencies from enforcing the NSPS, what does/will enforcement look like?

- Even though state agencies in certain states that we know of (VA, MI, MO) are unable to directly enforce the rule, that doesn't stop the federal EPA from enforcing the rule.

How much could I as a retailer be fined by the EPA for violating the NSPS?

- The basic penalty for each retail violation is \$5,000 (this is NOT a maximum). The \$5,000 figure is then upward adjusted based on the size of the violator (the larger the violator's revenues, the higher the penalty) and how much time has passed since the effective date. EPA will then add whatever the economic benefit component of the penalty is (a calculation that looks at investment, costs, and annual expenses). Finally, EPA can further increase the total penalty amount by a flat percentage (e.g., 25%) if EPA thinks the retailer is not being cooperative, is not doing enough to correct the violation, or is otherwise a bad actor.
- Here is [a link to the EPA policy](#) on this matter.

Can retailers resell used appliances under the NSPS?

- **Yes.** The NSPS is a "new source performance standard," which means it does not set standards for existing sources. There are no sales prohibitions on truly used appliances. However, retailers should verify whether there are any local and/or state regulations that may restrict sale of used stoves.

It is important to keep in mind that "used" stoves/heaters must have been owned and operated by a non-commercial owner, meaning a private party, such as a homeowner.

It is not enough to simply burn an appliance in a showroom or at a trade show. All provisions of the NSPS continue to apply to stoves used only by a commercial owner, including a dealer.

EPA defines "commercial owner" very broadly to mean "any person who owns or controls a wood heater in the course of the business of the manufacture, importation, distribution (including shipping and storage) or sale of the wood heater."

Can a retailer sell a Step 1 stove before May 15, 2020, even if it can't be installed until after the Step 2 effective date?

- **Yes**, you can sell a Step 1 stove before May 15, 2020 and yes, you can install it after the effective date. The rule defines “sale” as “the transfer of ownership or control.” This is key because it does not say “transfer of ownership and control.” However, it must be a transfer of ownership or control to the end-user/consumer, not to a middleman like a contractor or distributor.
- Be sure to document the sale. The appliance doesn't necessarily need to be in the physical hands of the owner, but there does need to be a clear sale (transfer of ownership).

Can retailers still display models that aren't 2020 certified after the May 15, 2020 effective date?

- If a retailer has a display model that does not meet the Step 2 (May 15, 2020) standards, we strongly recommend that you sell that display before the May 15, 2020 deadline. Even if nothing changed with the design of the model and the model passed Step 2 and you have the Step 2 models for sale, you really should still sell the Step 1 certified model.
- Why? You cannot sell or even give away a non-Step 2 model after May 15, 2020. If you keep the non-Step 2 display model past the effective date, you will never be able to sell or even give it away; it would have to be thrown away in the trash or recycled.

Have Questions?

If you have any additional questions about the current regulations, please feel free to contact Rachel Feinstein (HPBA's Senior Manager – Government Affairs) at feinstein@hpba.org.