H. R. 7962

To amend the Energy Policy and Conservation Act to modify the definition of water heater under energy conservation standards, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JUNE 7, 2022

Mrs. Dingell (for herself, Ms. Blunt Rochester, Ms. Moore of Wisconsin, Mr. Cooper, Mr. Rose, Mr. Tonko, Mr. Welch, Mr. Walberg, Ms. Escobar, Mr. Mullin, Mr. Kind, and Mrs. Harshbarger) introduced the following bill; which was referred to the Committee on Energy and Commerce

A BILL

To amend the Energy Policy and Conservation Act to modify the definition of water heater under energy conservation standards, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. WATER HEATERS.

(a) Definition of Water Heater.—Section 321 of the Energy Policy and Conservation Act (42 U.S.C. 6291) is amended by striking paragraph (27) and inserting the following:

“(27) Water heater.—
“(A) IN GENERAL.—The term ‘water heater’ means a product that utilizes oil, gas, or electricity to heat potable water for use outside the heater on demand, including—

“(i) storage type units that heat and store water at a thermostatically controlled temperature, including—

“(I) gas storage water heaters with an input of 75,000 Btu per hour or less, including heat pump type units that meet the current and voltage limits described in clause (iii);

“(II) oil storage water heaters with an input of 105,000 Btu per hour or less; and

“(III) electric storage water heaters with an input of 12 kilowatts or less, including heat pump type units that meet the current and voltage limits described in clause (iii);

“(ii)(I) instantaneous type units that heat water but contain not more than 1 gallon of water per 4,000 Btu per hour of input; and

“(II) in the case of—
“(aa) gas instantaneous water heaters, have an input of 200,000 Btu per hour or less and are designed and marketed to provide outlet hot water at a thermostatically controlled temperature of less than 180 degrees Fahrenheit;

“(bb) oil instantaneous water heaters, have an input of 210,000 Btu per hour or less; and

“(cc) electric instantaneous water heaters, have an input of 12 kilowatts or less;

“(iii) heat pump type units (including add-on heat pumps, integrated heat pumps with storage, split-system heat pumps that consist of a separate heat pump and storage tank that are designed and marketed to operate together, and all ancillary equipment, such as fans, storage tanks, pumps, electric resistance heating elements, or controls necessary for the device to perform its function) that—
“(I) have a maximum current rating of 24 amperes at a voltage not greater than 250 volts; and

“(II) are designed to transfer thermal energy from 1 temperature level to a different temperature level for the purpose of heating water;

“(iv) solar thermal-assisted electric storage units; and

“(v) solar thermal-assisted fossil fuel storage units.

“(B) EXCLUSIONS.—Except as provided by the Secretary in accordance with section 325(e)(7)(B), the term ‘water heater’ does not include—

“(i) electric storage type units described in subparagraph (A)(i)(III) that—

“(I) are designed and marketed exclusively for commercial building applications; and

“(II)(aa) are designed, constructed, inspected, tested, and stamped in accordance with the most current Section IV, Part HLW, or Section X of the Boiler and Pressure...
Vessel Code promulgated by the American Society of Mechanical Engineers;

“(bb) exclusively use 3-phase electricity, are designed and marketed to provide outlet hot water at a thermostatically controlled temperature of 180 degrees Fahrenheit or greater, and operate only at rated voltages of not less than 208 volts; or

“(cc) exclusively use single-phase electricity, are designed and marketed to provide outlet hot water at a thermostatically controlled temperature of 180 degrees Fahrenheit or greater, and operate only at a rated voltage of 277 volts; or

“(ii) gas storage type units described in subparagraph (A)(i)(I) that—

“(I) are designed and marketed exclusively for commercial building applications; and

“(II) are designed, constructed, inspected, tested, and stamped in accordance with the most current Sec-
tion IV, Part HLW, of the Boiler and Pressure Vessel Code promulgated by the American Society of Mechanical Engineers.

“(C) Multi-input Electric Storage Water Heater.—The term ‘multi-input electric storage water heater’ means a product that—

“(i) is not a heat pump type unit described in subparagraph (A)(iii); and

“(ii) is designed, marketed, or shipped from the manufacturer with a capability of operating or being configured to operate at inputs greater than, equal to, or below 12 kilowatts.

“(D) Solar Thermal-Assisted Electric Storage Unit.—The term ‘solar thermal-assisted electric storage unit’ means a unit that—

“(i) has an input of 12 kilowatts or less;

“(ii) has at least 2 dedicated ports in addition to the ports used for introduction and delivery of potable water for the supply and return of water or a heat transfer
fluid heated externally by solar collector or
solar thermal collector;

“(iii) does not have electric resistance
heating elements located in the lower half
of the storage tank;

“(iv) has the temperature sensing de-
vice that controls the auxiliary electric heat
source located in the upper half of the
storage tank; and

“(v) has a ratio of less than 0.70 for
the proportion that the certified first hour
rating bears to the nominal volume of the
storage tank tested without solar energy
input.”.

(b) TEST PROCEDURES.—Section 323(b)(3) of the
Energy Policy and Conservation Act (42 U.S.C.
6293(b)(3)) is amended—

(1) by striking “(3) Any test” and inserting the
following:

“(3) DESIGN OF TEST PROCEDURES.—

“(A) IN GENERAL.—Any test”; and

(2) by adding at the end the following:

“(B) ELECTRIC STORAGE WATER HEATERS
DEMAND RESPONSE CAPABILITIES REQUIRE-
MENTS.—Any test procedures prescribed or
amended under this section for electric storage water heaters for which the Secretary has established requirements for demand response capabilities under section 325A shall be designed to assess compliance with those requirements in addition to producing the test results described in subparagraph (A).”.

(c) Standards for Water Heaters.—Section 325(e) of the Energy Policy and Conservation Act (42 U.S.C. 6295(e)) is amended by adding at the end the following:

“(7) Exempted water heaters.—

“(A) Definition of exempted water heater.—In this paragraph, the term ‘exempted water heater’ means a water heater described in section 321(27)(B).

“(B) Monitoring of shipments.—

“(i) Submission of data.—Not later than 90 days after the date of enactment of this paragraph, and not later than May 1 of each year thereafter, the Secretary shall require each manufacturer of water heaters to report to the Secretary the quantity of exempted water heaters, in each category of exempted water heaters,
that the manufacturer shipped in the pre-
ceeding calendar year.

“(ii) Confidentiality require-
ments.—The Secretary shall treat ship-
ment data reported by manufacturers
under clause (i) as confidential business in-
formation subject to appropriate confiden-
tial data safeguards.

“(iii) Publication.—

“(I) Baseline shipment
data.—Not later than 120 days after
the date of enactment of this para-
graph, the Secretary shall publish an
analysis of the data collected under
clause (i) for public comment, subject
to applicable confidentiality safe-
guards, which shall serve as the base-
line data for the analysis described in
subclause (II)(bb).

“(II) Percentage growth
from baseline.—Not later than
June 1 of each year after the year in
which the Secretary publishes data
under subclause (I), the Secretary
shall publish—
“(aa) an analysis of the data collected under clause (i) for public comment, subject to applicable confidentiality safeguards;

“(bb) the percentage growth in the number of shipments within each category of exempted water heater relative to the baseline data described in subclause (I); and

“(cc) the determination of the Secretary as to whether the number of shipments for any category of exempted water heater have increased by more than 25 percent compared to the baseline data for that category.

“(C) INCLUSION OF EXEMPTED WATER HEATERS.—

“(i) IN GENERAL.—If the Secretary makes an affirmative determination under subparagraph (B)(iii)(II)(cc) for a category of exempted water heater—

“(I) the Secretary, by regulation, shall provide that, for purposes of this
part, the term ‘water heater’ includes that category of exempted water heater; and

“(II) beginning on the effective date of the regulation described in subclause (I), the exclusion described in section 321(27)(B) shall not apply to that category of exempted water heater.

“(ii) Energy Conservation Standards.—Any category of exempted water heater included in the definition of water heater under clause (i) shall be required to meet the energy conservation standards applicable to an electric or gas storage type water heater under this part.

“(iii) Effective Date.—For any category of exempted water heater, the Secretary shall carry out clause (i), and require compliance under clause (ii), not later than 1 year after the date on which the Secretary makes the affirmative determination described in clause (i) for that category.
“(8) STANDARDS FOR MULTI-INPUT ELECTRIC STORAGE WATER HEATERS.—A multi-input electric storage water heater shall be subject to the test procedures, energy conservation standards, labeling (if applicable), and certification requirements—

“(A) for electric storage water heaters under this part; and

“(B) for storage water heaters under part C.”.

(d) WATER HEATER DEMAND RESPONSE CAPABILITIES REQUIREMENTS.—

(1) IN GENERAL.—Part B of title III of the Energy Policy and Conservation Act (42 U.S.C. 6291 et seq.) is amended by inserting after section 325 the following:

“SEC. 325A. WATER HEATER DEMAND RESPONSE CAPABILITIES REQUIREMENTS.

“(a) DEFINITIONS.—In this section:

“(1) DEMAND RESPONSE.—The term ‘demand response’ means changes in electricity usage by demand-side resources from the normal consumption patterns of those demand-side resources in response to—

“(A) changes in the price of electricity over time; or

“(B)”.
“(B) incentive payments designed to induce lower electricity use—

“(i) at times of high wholesale market prices; or

“(ii) during periods in which system reliability is jeopardized.

“(2) DEMAND RESPONSE CAPABILITIES.—The term ‘demand response capabilities’ means the hardware or software, including any combination of hardware and software, that is necessary to participate in a demand response program, as determined by the Secretary.

“(b) REQUIREMENTS.—

“(1) INITIAL REQUIREMENTS.—

“(A) IN GENERAL.—The Secretary shall—

“(i) determine, in accordance with subparagraph (D), whether to require that electric storage water heaters possess demand response capabilities; and

“(ii) not later than December 31, 2024—

“(I) promulgate a final rule with the requirement described in clause (i); or
“(II) issue a public notice of a negative determination under that clause.

“(B) STORAGE CAPACITIES.—The Secretary may make separate determinations under subparagraph (A) for water heaters of different storage capacities.

“(C) EFFECT OF NEGATIVE DETERMINATION.—If the Secretary makes a negative determination under subparagraph (A)(i), nothing in this paragraph shall prohibit the Secretary from completing the rulemaking described in sub-clause (I) of subparagraph (A)(ii) after the date described in that subparagraph if the Secretary later determines that such rulemaking is necessary.

“(D) DETERMINATION.—

“(i) IN GENERAL.—In carrying out subparagraph (A)(i), the Secretary shall make an affirmative determination under that subparagraph if the Secretary determines that—

“(I) the requirement is needed to promote participation in demand response programs; and
“(II) the demand response capabilities are—

“(aa) technologically feasible; and

“(bb) economically justified.

“(ii) ECONOMICALLY JUSTIFIED.—In considering whether demand response capabilities are economically justified under clause (i)(II)(bb), the Secretary shall consider—

“(I) the factors described in subclauses (I), (II), (IV), (V), (VI), and (VII) of section 325(o)(2)(B)(i); and

“(II) in the case of the factor described in subclause (II) of that section, the projected financial impact on consumers participating in demand response programs.

“(E) REQUIREMENT.—Any rule promulgated by the Secretary under subparagraph (A)(ii)(I) shall not be used to justify a higher or lower energy conservation standard than would otherwise have been selected.

“(F) INDUSTRY STANDARDS.—In establishing requirements for demand response capa-
ilities under a rule promulgated under sub-
paragraph (A)(ii)(I), the Secretary shall con-
sider industry consensus standards developed or
recognized by the Air-Conditioning, Heating,
and Refrigeration Institute.

“(2) Revisions.—

“(A) In general.—The Secretary may re-

vise any requirements established under a rule
promulgated under paragraph (1)(A)(ii)(I) if, in
the determination of the Secretary—

“(i) a revision is needed to promote
participation in demand response pro-
grams; and

“(ii) the demand response capabilities
to be required under the revised require-
ments are—

“(I) technologically feasible; and

“(II) economically justified.

“(B) Requirement.—Any revision under
this paragraph shall be subject to the require-
ments of subparagraphs (C) through (E) of

paragraph (1).

“(c) Preemption.—

“(1) In general.—Except as provided in para-

graph (2), effective on the date on which a final rule
is issued by the Secretary under subsection (b)(1)(A)(ii)(I), no law or regulation of a State or political subdivision of a State requiring electric storage water heater demand response capabilities for water heaters subject to requirements established by the Secretary shall be effective.

“(2) EXCEPTION.—

“(A) IN GENERAL.—Paragraph (1) shall not apply to a law or regulation of a State or political subdivision of a State if the law was in effect, or the regulation was finalized, before the date on which the final rule described in that paragraph is issued.

“(B) AMENDMENT OF STATE OR LOCAL LAW.—

“(i) IN GENERAL.—Subject to clause (ii), paragraph (1) shall not apply to the amendment of a law or regulation described in subparagraph (A) if the amendment is made—

“(I) in the case of the first amendment, not less than 5 years after the date on which the law or regulation became effective or was finalized, respectively; or
“(II) in the case of any subsequent amendment, not less than 5 years after the date of any previous amendment to that law or regulation.

“(ii) CONSENSUS STANDARDS.—An amendment to a law or regulation described in subparagraph (A) solely to incorporate a more recent version of a voluntary consensus standard (as defined in the document of the Office of Management and Budget entitled ‘Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities’ (OMB Circular A–119)) shall not be considered to be an amendment to that law or regulation for the purposes of this subparagraph.

“(d) ENFORCEMENT.—A failure to comply with any requirements established by the Secretary under this section shall be—

“(1) considered to be a violation of section 332; and

“(2) subject to the enforcement provisions of sections 333 and 334.
“(e) SAVINGS PROVISION.—Nothing in this section alters the authority of the Secretary to establish product classes for electric storage water heaters designed to participate in demand response programs.”.

(2) CLERICAL AMENDMENT.—The table of contents of the Energy Policy and Conservation Act (Public Law 94–163; 89 Stat. 872) is amended by inserting after the item relating to section 325 the following:

“Sec. 325A. Water heater demand response capabilities requirements.”.

(3) CONFORMING AMENDMENTS.—

(A) Section 326 of the Energy Policy and Conservation Act (42 U.S.C. 6296) is amended—

(i) in subsection (b)—

(I) in paragraph (3)(A)—

(aa) by inserting “or a requirement established under section 325A” after “section 325”; and

(bb) by inserting “or requirement” after “that standard”; and

(II) in paragraph (5), by striking “or 325” and inserting “325, or 325A”; and
(ii) in subsection (d)(1)—

(I) in the second sentence, by striking “In making” and inserting the following:

“(C) REQUIREMENT.—In making”;

(II) in the first sentence—

(aa) by striking “energy efficiency” and all that follows through “standard, as” and inserting “the matters described in subparagraph (B), as”; and

(bb) by striking “and energy conservation standards” and inserting “energy conservation standards, and requirements for water heater demand response capabilities (as defined in section 325A(a))”;

(III) by striking “(1) For purposes” and inserting the following:

“(1) INFORMATION AND REPORTS.—

“(A) IN GENERAL.—For purposes”; and

(IV) by inserting after subparagraph (A) (as so designated) the following:
“(B) MATTERS DESCRIBED.—The matters referred to in subparagraph (A) are, with respect to a covered product described in that subparagraph—

“(i) energy efficiency;

“(ii) energy use;

“(iii) in the case of showerheads, faucets, water closets, and urinals, the water use of that covered product;

“(iv) the economic impact of any proposed energy conservation standard; and

“(v) in the case of electric storage water heaters—

“(I) water heater demand response capabilities (as defined in section 325A(a)); and

“(II) the economic impact of any proposed requirement for water heater demand response capabilities (as defined in that section).”.

(B) Section 335 of the Energy Policy and Conservation Act (42 U.S.C. 6305) is amended by inserting “or 325A” after “section 325” each place it appears.
(C) Section 336 of the Energy Policy and Conservation Act (42 U.S.C. 6306) is amended—

(i) in subsection (a)—

(I) in paragraph (1), by inserting "325A," after "325,"; and

(II) in paragraph (2), by inserting "or 325A" after "325"; and

(ii) in subsection (b) by striking "or 325" each place it appears and inserting "325, or 325A".

(e) Definition of Commercial Water Heater.—

Section 340 of the Energy Policy and Conservation Act (42 U.S.C. 6311) is amended by striking paragraph (12) and inserting the following:

"(12)(A) Storage water heater.—

"(i) In general.—The term 'storage water heater’ means a water heater that—

"(I) heats and stores water within an appliance at a thermostatically controlled temperature for delivery on demand; and

"(II) is not a water heater described in section 321(27)(A).

"(ii) Exclusion.—The term ‘storage water heater’ does not include a unit with an
input rating of 4,000 Btu per hour or more per gallon of stored water.

“(B) INSTANTANEOUS WATER HEATER.—The term ‘instantaneous water heater’ means a water heater that—

“(i) has an input rating of at least 4,000 Btu per hour per gallon of stored water; and

“(ii) is not a water heater described in section 321(27)(A).

“(C) UNFIRED HOT WATER STORAGE TANK.—The term ‘unfired hot water storage tank’ means a tank used to store water that is heated externally.”.

(f) LABELING REQUIREMENTS.—Section 344 of the Energy Policy and Conservation Act (42 U.S.C. 6315) is amended by adding at the end the following:

“(l) LABELS FOR CERTAIN COMMERCIAL WATER HEATERS.—

“(1) IN GENERAL.—Notwithstanding any other provision of this section, water heaters described in section 321(27)(B) shall be required to bear a permanent label, applied at the point of manufacture, that, subject to paragraph (3), satisfies the requirements described in paragraph (2).

“(2) REQUIREMENTS.—A label required under paragraph (1) shall—
“(A) be made of material not adversely affected by water;

“(B) be attached by means of nonwater-soluble adhesive; and

“(C) bear the following notice printed in 16.5 point Arial Narrow Bold font: ‘IMPORTANT INFORMATION: Exclusively intended for commercial installations. This model is not certified by the manufacturer to the U.S. Department of Energy as a residential water heater. This model does not have a certified First Hour or UEF rating.’.

“(3) REVISION UPON PETITION.—On receipt of a petition by an interested party, the Secretary may conduct a rulemaking to revise the scope and requirements of the label required under paragraph (1).”.

(g) EFFECTIVE DATE.—This section and the amendments made by this section shall take effect on the date that is 180 days after the date of enactment of this Act.