

Testimony of Joshua C. Greene
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Good morning, Chairman Rush, Ranking Member Upton, and members of the Subcommittee. My name is Josh Greene, and I serve as Corporate Vice President for Government and Industry Affairs for the A. O. Smith Corporation, and through that capacity, I am also representing the water heating manufacturing community under the umbrella of its main trade association, the Air-Conditioning, Heating and Refrigeration Institute (AHRI), of which A. O. Smith Corporation is a member. I'd like to thank you for the opportunity to testify today.

By way of brief background, A. O. Smith is one of the world's largest manufacturers of residential and commercial water heaters, boilers, and pool heaters, as well as a leading global manufacturer of water treatment and air filtration products. Publicly traded on the New York Stock Exchange and a member of the S&P 500, we have been globally headquartered in Milwaukee, Wisconsin since 1874, and currently employ 14,000 employees around the world at thirty-six facilities and do business in over 60 countries. At A. O. Smith our Guiding Principles and Values, handed down by the Smith family over five generations, are the North Star by which we conduct our business affairs and hold ourselves and our vendors to those high standards. One of those values is being a good corporate citizen, which includes being a resource to policy makers and regulators regarding our products and industry.

AHRI has 320 member companies that manufacture quality, safe, efficient, and innovative residential, commercial, and industrial air conditioning, space heating, water heating, and commercial refrigeration equipment and components for sale in North America and in export markets around the world. It is an internationally recognized advocate for the heating, ventilation, air conditioning, and refrigeration (HVACR) industry and certifies the performance of many of the products manufactured by its members. In North America, the annual economic activity resulting from the HVACR industry is approximately \$256 billion. In the United States alone, AHRI's members, along with distributors, contractors, and technicians, employ more than 1.3 million people.

My remarks specifically address H.R. 7962, bipartisan legislation that provides important updates and clarifications to the definitions of water heating products in the Energy Policy Conservation Act (or EPCA). The legislation, which I will address shortly, responds to technology evolutions in the water heating industry, and will provide business certainty for manufacturers, their customers, as well as consumers, and stakeholders across the ecosystem that use our industry's equipment on a daily basis.

To further ground the Subcommittee to the importance of H.R. 7962, the water heating manufacturing industry employs thousands of people across the United States that produce, on average, approximately 8 million units of water heating equipment annually. Hence, it is of paramount importance to manufacturers to have products available to meet their customers'

needs, while at the same time ensuring that those products are being regulated based on their intended application and thus meet the appropriate energy efficiency standards.

To that end, let me provide the Subcommittee with important background regarding the specific needs that H.R. 7962 addresses, and why the legislation enjoys broad stakeholder support.

As the Subcommittee knows, EPCA authorizes the Department of Energy (DOE) to regulate the energy efficiency of certain consumer (aka residential) and commercial and industrial equipment. This authority extends to residential and commercial water heaters, which include a wide range of equipment that heats potable water for purposes other than space heating. Businesses with commercial water heating applications range from office buildings, hotels, schools, car washes, spas and salons, highway rest stops, and light commercial facilities. Congress established the first national standards for commercial water heaters as part of the Energy Policy Act of 1992.

The statutory definitions under EPCA for water heating products remained largely the same from that point forward, though the DOE updated its regulatory definitions periodically either by direction from Congress or by relying on its delegated authority. This structure generally provides regulatory and market certainty for the benefit of consumers, manufacturers and other stakeholders.

This regulatory framework remained in place until October 2016, when the DOE revised its criteria used to distinguish commercial from residential water heaters in a final rule meant to address consensus changes to the test procedures used for commercial water heating equipment. This change resulted in reversion to the original statutory definitions that are decades old and well known by manufacturers. The change repealed the DOE's previous criteria that if a water heater, regardless of its energy input, is designed to deliver hot water above 180 degrees Fahrenheit (180°F), that product could be certified and regulated as a commercial product and thus meet the applicable commercial energy efficiency standard. As a result of DOE's action, commercial water heating equipment certifications became singularly dependent on EPCA's binary commercial definitions, which are based solely on rated energy inputs greater than 12 kW for electric, 75,000 BTU/h for gas-fired storage, 105,000 BTU/h for oil-fired storage, and 200,000 BTU/h for gas-instantaneous (or tankless) and circulating water heaters.

We realize this sounds like an arcane regulatory decision. However, the impact of reverting solely to statutory definitions that are 30 years old was significant and led to dramatic implications for our industry and consumers, as reliance on the outdated EPCA definitions to distinguish residential and commercial water heaters continues to create disruptions and inject regulatory uncertainty throughout our industry. Water heater manufacturers were then faced with the decision to either transition commercial water heaters to residential standards or leave the market and stop producing certain commercial waters that customers relied on for decades. As a result, the availability of certain commercial water heaters decreased, customers had to potentially purchase products that did not meet their needs, planned capital investments with job expansion across the industry stalled, and manufacturers were left scrambling; attempting to figure out what to do with potentially stranded or underutilized assets in costly plant equipment.

In 2017, however, the DOE, in recognition of the market turmoil that its decision caused, issued a non-enforcement policy that afforded the industry a brief reprieve from having to convert, recertify, or take certain commercial water heaters off the market. The non-enforcement policy was welcomed by the industry. However, it was a discretionary action that could be rescinded at any time, and unfortunately the DOE allowed the policy to expire at the end of last year. Hence, with direction from the DOE that true business certainty would only come if EPCA was amended to reflect the current marketplace of commercial water heating equipment, our industry, along with a broad set of stakeholders, endeavored to come to a consensus on legislation that would update EPCA, and finally provide manufacturers business certainty they were seeking, while also promoting energy-efficiency.

H.R. 7962 addresses these issues by updating EPCA's definition framework for water heating equipment, while at the same time providing the DOE authority to address a nascent, but rapidly evolving marketplace of grid-interactive water heating equipment. These updates reflect important technology needs for manufacturers and consumers. In relevant part, the legislation:

- Amends EPCA to clarify the definitions of residential and commercial water heaters, thereby modernizing EPCA to address innovative product development throughout the water heater industry.
- Clarifies that gas instantaneous and circulating water heaters are to be regulated as commercial products if they have an input rating of 4,000 BTU/h per gallon of stored water and provide outlet water above 180°F.
- And, importantly, establishes criteria for a subset of electric storage water heaters that are used in commercial buildings that have energy inputs that fall below EPCA's current 12 kW energy input line.

These statutory improvements are not new to this Committee. Core components of the bill were first introduced in H.R. 8267, bipartisan legislation introduced on September 16, 2020 to address the concerns enumerated above, and ultimately passed in the House as a part of H.R. 4447.

H.R. 7962 does, however, include one refinement not addressed in previous versions. The bill authorizes the Department to issue a final rule by December 31, 2024 requiring certain residential electric storage water heaters to have the capability to participate in utility demand response programs, but only if the Secretary finds the requirement is technologically feasible and economically justified.

This provision represents an opportunity to establish a national standard for a narrow product class of innovative water heating technology that is, unfortunately, becoming the subject of state-by-state regulation, and a growing compliance quagmire for manufacturers.

Simply told, technology and innovation in our industry have outpaced statutory definitions for our products. These definitions are no longer up to date when applied to the commercial water industry, or more broadly. H.R. 7962 offers a bipartisan and broad stakeholder solution to update EPCA and bring much needed business certainty for manufacturers and their customers.

Once again, on behalf of A. O. Smith, AHRI, and the water heating industry, I appreciate the opportunity to testify in support of this important, bipartisan legislation. I especially would like to thank Representatives Dingell and Walberg for the leadership in introducing the bill, as well as their Committee colleagues Messers Tonko, Welch, Mullin, and Mrs. Blunt Rochester for their support, and I look forward to addressing your questions.