

OFFICE OF THE SECRETARY OF STATE
SHEMIA FAGAN
SECRETARY OF STATE

CHERYL MYERS
DEPUTY SECRETARY OF STATE



ARCHIVES DIVISION
STEPHANIE CLARK
DIRECTOR

800 SUMMER STREET NE
SALEM, OR 97310
503-373-0701

NOTICE OF PROPOSED RULEMAKING INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 330
DEPARTMENT OF ENERGY

FILED

04/26/2022 3:36 PM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Extend effective date for efficiency standard for electric storage water heaters.

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 06/08/2022 5:00 PM

The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.

CONTACT: Wendy Simons
971-707-0044
wendy.simons@energy.oregon.gov

550 NE Capitol St First Floor
Salem, OR 97301

Filed By:
Wendy Simons
Rules Coordinator

HEARING(S)

Auxiliary aids for persons with disabilities are available upon advance request. Notify the contact listed above.

DATE: 06/08/2022

TIME: 10:00 AM

OFFICER: Wendy Simons

ADDRESS: Oregon Department of Energy
550 NE Capitol St First Floor
Salem, OR 97301

SPECIAL INSTRUCTIONS:

This public hearing will be conducted remotely via teleconference. ODOE will provide information on its website on how to connect to the public hearing by internet and telephone:

<https://www.oregon.gov/energy/GetInvolved/Pages/EE-StandardsRulemaking.aspx>

NEED FOR THE RULE(S)

The proposed rule change would delay an effective date for a standard that was adopted by the department in administrative rules implementing House Bill 2062 (2021). These rules and legislation included a standard for demand response-ready electric storage water heaters. The standard requires electric storage water heaters to comply with communications interface standard, CTA-2045-A, and was originally set to become effective for equipment (both heat pump water heaters and electric resistance water heaters) manufactured on or after January 1, 2022. This date was set during 2020 rulemaking and confirmed in HB 2062 in the 2021 Legislative Session as required under ORS 469.261.

In October of 2021, after communication with other states, manufacturers, and industry partners, ODOE became aware of potential supply chain constraints related to electronics components of the communications port that is needed to comply with the CTA-2045-A standard. ODOE included a request in an October 5, 2021, Public Hearing Notice to prompt stakeholders to provide formal comments on the effective date for the demand response water heater standard.

ODOE held a public rulemaking hearing on October 27, 2021. Through the public comment process, ODOE received

comments on the effective date of the demand response-ready water heater standard, with all comments supportive of a delay to the effective date. ODOE responded to valid industry supply chain constraints and filed rules on November 23, 2021, to delay the effective date by 6 months to July 1, 2022. ODOE established a 6-month delay in anticipation of a resolution of supply chain issues by July 2022, but also with the expectation to review market conditions as this July 2022 effective date approached.

In 2022, ODOE has been in communication with Washington state and industry partners to evaluate the potential need for additional delay of this standard. Industry feedback to-date indicates that supply chain issues remain a valid concern that continues to impact manufacturing capabilities, planning, and schedules. Through this rulemaking ODOE proposes to further postpone the demand response-ready standard for electric storage water heaters for an additional year to July 1, 2023. Under ORS 469.261(1)(c), ODOE has the authority to postpone a standard up to two times, each time for up to one year, if either of two criteria are met:

- 1) Adjoining states with similar minimum energy efficiency standards have postponed the operative date of their corresponding minimum energy efficiency standards; or
- 2) Failure to modify the operative date of any of the minimum energy efficiency standards would impose a substantial hardship on manufacturers, retailers, or the public.

Given that Washington state has postponed the operative date of their corresponding similar standard (and is in process for additional postponement) and that supply chain issues would cause an effective standard to impose a substantial hardship on manufacturers, retailers, and the public, ODOE has determined that both the criteria in ORS 469.261(1)(c) are met in this case. This delay would represent the final postponement that ODOE could provide administratively by rule under its statutory authority.

House Bill 2062 history: The passage of House Bill 2062 and the adoption of corresponding rules were the final steps in a multi-year process to adopt specific standards as directed in Executive Order 20-04, issued by Governor Kate Brown in March 2020, which in turn built upon a 2018 Oregon Department of Energy report. In response to EO 20-04, ODOE conducted a rulemaking process in the summer of 2020 to adopt new energy efficiency standards for nine products and update standards for two additional products. As required by Oregon statute ORS 469.261, the Governor introduced legislation on behalf of the Department during the 2021 Legislative session to conform standards in statute to the rules adopted by ODOE. This legislation, House Bill 2062, was adopted by the Oregon Legislature and signed by the Governor on June 1, 2021.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE

Oregon Revised Statutes, Chapter 469: https://www.oregonlegislature.gov/bills_laws/ors/ors469.html

Oregon Administrative Rules, Chapter 330, Division 92:

<https://secure.sos.state.or.us/oard/displayDivisionRules.action?selectedDivision=1103>

Oregon Laws 2021, chapter 108 (House Bill 2062):

<https://olis.oregonlegislature.gov/liz/2021R1/Downloads/MeasureDocument/HB2062>

STATEMENT IDENTIFYING HOW ADOPTION OF RULE(S) WILL AFFECT RACIAL EQUITY IN THIS STATE

The department anticipates the proposed rule changes will have no impacts on racial equity in Oregon.

FISCAL AND ECONOMIC IMPACT:

The department anticipates minimal fiscal impact due to the proposed rule changes.

COST OF COMPLIANCE:

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). The department expects that the only affected parties for these proposed rule changes will be manufacturers of electric storage water heaters, who will have an additional year to comply with the new standard to allow supply chain issues related to the COVID-19 pandemic to resolve.

(2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); The department estimates that no small businesses will be subject to the rules, which affect the manufacturers of electric storage water heaters. The department anticipates that this rulemaking will ease the burden on all sizes of retailers, distributors, and installers of electric storage water heaters by responding to current supply chain issues through postponement of the standard.

(b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s);

The department expects that manufacturers whose products are subject to the efficiency standards will incur minimal, if any, additional reporting, recordkeeping and administrative activities related to the proposed rule change. This rulemaking specifically moves the effective date for the standards from July 1, 2022, to July 1, 2023, to allow for supply chain issues related to the COVID-19 pandemic to resolve.

(c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

The department estimates minimal, if any, costs would be incurred due to the proposed rule change by manufacturers who are subject to the efficiency standards for electric storage water heaters. The extension of the effective date is intended to make compliance easier for manufacturers who have experienced difficulties obtaining components due to supply chain issues.

DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):

The rule change will affect manufacturers of electric storage water heaters, none of which meet the definition of a small business. Some retailers selling these products may be small businesses; however, the rule change will not affect their ability to sell any inventory they have in stock.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? NO IF NOT, WHY NOT?

The only change that this rulemaking would make to current administrative rules is to extend an effective date for the efficiency standard for one product. The new standard in question which affects electric storage water heaters was first adopted by the department in rule in 2020, and subsequently confirmed through a legislative process during the 2021 Oregon Legislative session. ODOE conducted an extensive stakeholder outreach process during the 2020 rulemaking process and stakeholders were actively involved in the legislative process for House Bill 2062 and the subsequent rulemaking process to implement the bill.

HOUSING IMPACT STATEMENT:

As required under ORS 183.530 and 183.534, the Department has considered the potential impact of these rules and believes these rules will cause no impact to the following costs for developing a typical 1,200 square foot detached single-family dwelling on a 6,000 square foot parcel of land:

- (1) materials and labor costs
- (2) administrative construction or other costs
- (3) land costs, or
- (4) other costs

AMEND: 330-092-0015

RULE SUMMARY: The proposed rule change would extend the effective date for electric storage water heaters from July 1, 2022, to July 1, 2023.

CHANGES TO RULE:

330-092-0015

Effective Dates for Regulated Equipment ¶¶

The following list specifies the effective dates for equipment standards, test procedures, listing, and labeling requirements which have been adopted in these rules.¶¶

- (1) Bottle-type water dispensers, as defined in OAR 330-092-0010(1): The standards in OAR 330-092-0020(1) are effective for bottle-type water dispensers that are manufactured on or after January 1, 2022.¶¶
- (2) Commercial hot food holding cabinets, as defined in ORS 469.229(13): The standards in ORS 469.233(2) are effective September 1, 2009 for sale of equipment in Oregon and September 1, 2010 for installation.¶¶
- (3) Compact audio products, as defined in ORS 469.229(15): The standards in ORS 469.233(3) are effective September 1, 2009 for sale of equipment in Oregon and September 1, 2010 for installation.¶¶
- (4) Digital versatile disc players and digital versatile disc recorders, as defined in ORS 469.229(21): The standards in ORS 469.233(4) are effective September 1, 2009 for sale of equipment in Oregon and September 1, 2010 for installation.¶¶
- (5) Portable electric spas, as defined in OAR 330-092-0010(14): The standards in OAR 330-092-0020(5) are effective for portable electric spas that are manufactured on or after January 1, 2022.¶¶
- (6) Televisions, as defined in ORS 469.229(44): The standards in ORS 469.233(6) are effective for televisions that are manufactured on or after January 1, 2014.¶¶
- (7) Battery charger systems, as defined in ORS 469.229(6): The standards in ORS 469.233(7) are effective for:¶¶
 - (a) Large battery charger systems manufactured on or after January 1, 2014. Federally regulated large battery charger systems that are manufactured on or after June 13, 2018 are pre-empted from further state regulation.¶¶
 - (b) Small battery charger systems for sale at retail that are not USB charger systems with a battery capacity of 20 watt- hours or more and that are manufactured on or after January 1, 2014. Federally regulated small battery charger systems that are manufactured on or after June 13, 2018 are pre-empted from further state regulation.¶¶
 - (c) Small battery charger systems for sale at retail that are USB charger systems with a battery capacity of 20 watt- hours or more and that are manufactured on or after January 1, 2014. Federally regulated small battery charger systems that are manufactured on or after June 13, 2018 are pre-empted from further state regulation.¶¶
 - (d) Small battery charger systems that are not sold at retail that are manufactured on or after January 1, 2017. Federally regulated small battery charger systems that are manufactured on or after June 13, 2018 are pre-empted from further state regulation.¶¶
 - (e) Inductive charger systems manufactured on or after January 1, 2014, unless the inductive charger system uses less than one watt in battery maintenance mode, less than one watt in no battery mode and an average of one watt or less over the duration of the charge and battery maintenance mode test. Federally regulated inductive charger systems that are manufactured on or after June 13, 2018 are pre-empted from further state regulation.¶¶
 - (f) Battery backups and uninterruptible power supplies, manufactured on or after January 1, 2014, for small battery charger systems for sale at retail, which may not consume more than $0.8 + (0.0021 \times E_b)$ watts in battery maintenance mode, where (E_b) is the battery capacity in watt-hours. Federally regulated uninterruptible power supplies that are manufactured on or after June 13, 2018 are pre-empted from further state regulation.¶¶
 - (g) Battery backups and uninterruptible power supplies, manufactured on or after January 1, 2017, for small battery charger systems not sold at retail, which may not consume more than $0.8 + (0.0021 \times E_b)$ watts in battery maintenance mode, where (E_b) is the battery capacity in watt-hours. Federally regulated uninterruptible power supplies that are manufactured on or after June 13, 2018 are pre-empted from further state regulation.¶¶
- (8) High light output double-ended quartz halogen lamps, as defined in ORS 469.229(27): The standards in ORS 469.233(8), are effective January 1, 2016, for sale of equipment and installation.¶¶
- (9) High CRI fluorescent lamps: The standards in OAR 330-092-0020(9) are effective for high CRI fluorescent lamps that are manufactured on or after January 1, 2023.¶¶

(10) Computers and computer monitors: The standards in OAR 330-092-0020(10) are effective for computers and computer monitors that are manufactured on or after January 1, 2022.¶

(11) Plumbing fittings: ¶

(a) Lavatory faucets and lavatory replacement aerators: The standards in OAR 330-092-0020(11) are effective for lavatory faucets and lavatory replacement aerators that are manufactured on or after January 1, 2022; and¶

(b) Kitchen faucets and kitchen replacement aerators: The standards in OAR 330-092-0020(11) are effective for kitchen faucets and kitchen replacement aerators that are manufactured on or after January 1, 2022; and¶

(c) Public lavatory faucets: The standards in OAR 330-092-0020(11) are effective for public lavatory faucets that are manufactured on or after January 1, 2022; and¶

(d) Showerheads: The standards in OAR 330-092-0020(11) are effective for showerheads that are manufactured on or after January 1, 2022.¶

(12) Commercial fryers: The standards in OAR 330-092-0020(12) are effective for commercial fryers that are manufactured on or after January 1, 2022.¶

(13) Commercial dishwashers: The standards in OAR 330-092-0020(13) are effective for commercial dishwashers that are manufactured on or after January 1, 2022.¶

(14) Commercial steam cookers: The standards in OAR 330-092-0020(14) rules are effective for commercial steam cookers that are manufactured on or after January 1, 2022.¶

(15) Residential ventilating fans: The standards in OAR 330-092-0020(15) are effective for residential ventilating fans that are manufactured on or after January 1, 2022.¶

(16) Electric storage water heaters: The standards in OAR 330-092-0020(16) are effective for electric storage water heaters that are manufactured on or after July 1, 2022.

Statutory/Other Authority: ORS 469.040, ORS 469.255, ORS 469.261

Statutes/Other Implemented: ORS 469.229-469.261, OL 2021, chapter 108 (House Bill 2062)