ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 64–71

Title 40 CFR Parts 64–71; Republication

CFR Correction

Title 40 CFR parts 64 to 71, revised as of July 1, 1998, is being republished in its entirety. The earlier issuance inadvertently omitted the last two lines of text from § 70.5 (c)(1) through the first five lines of (c)(8)(iii)(B). The omitted text should replace the text on page 98.

BILLING CODE 1505–01–D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[AD–FRL–6192–9]

RIN 2060–AG30

Standards of Performance for New Stationary Sources: Residential Wood Heaters

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; amendments.

SUMMARY: On September 11, 1996, EPA proposed amendments to the Standards of Performance for New Residential Wood Heaters, 40 CFR part 60, subpart AAA, as part of a larger proposal to reduce recordkeeping and reporting burden of numerous EPA regulations. The proposed wood heater amendments were intended to make needed corrections and clarifications to the wood heater rule. Some of the proposed clarifications are being promulgated under the final action for the recordkeeping and reporting burden reduction. This action announces the EPA's final decisions on one aspect of those proposed amendments.

The wood heater rule is being revised to expand the conditions under which EPA can initiate a ''recall'' of wood heaters from distributors and retailers by prohibiting sales other than sales back to the manufacturer. The rule as originally promulgated specifically authorized EPA to initiate such a ''recall'' due to the knowing submission of false or inaccurate information or other fraudulent acts. This action amends the rule to allow EPA to initiate a recall, not only in cases of fraud, but also if it is found that the original certification test was invalid, irrespective of fraud. This action is being taken to ensure that further sales to consumers of wood heaters that should not have been originally certified are prohibited. This action does not affect wood heaters already sold to consumers.

EFFECTIVE DATE: November 24, 1998. See the Supplementary Information section concerning judicial review.

ADDRESSES: *Docket.* Docket No. A–95–50, containing information considered by the EPA in development of the promulgated amendment, is available for public inspection between 8 a.m. and 5:30 p.m., Monday through Friday at the following address in room M–1500, Waterside Mall (ground floor): U. S. Environmental Protection Agency, Air and Radiation Docket and Information Center (MC–6102), 401 M Street SW., Washington, DC 20460; telephone: (202) 260–7549. A reasonable fee may be charged for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Mr. Robert C. Marshall; Wood Heater Program; Manufacturing, Energy and Transportation Division (2223A); U.S. EPA, 401 M Street, S.W., Washington, D.C. 20460; telephone number (202) 564–7021.

SUPPLEMENTARY INFORMATION:

I. Regulated Entities

The regulated category and entities potentially affected by this action include:

Category	Examples of regulated entities
Industry	Residential wood heater manufacturers and commerical dealers

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your business is regulated by this action, you should carefully examine the applicability criteria in § 60.530 of title 40 of the Code of Federal Regulations. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

II. Background

A. Federal Register Proposal

On September 11, 1996 (61 FR 47840), EPA proposed amendments to the Standards of Performance for New Residential Wood Heaters, 40 CFR part 60, subpart AAA (variously referred to as the ''wood heater'' or ''woodstove'' rule or NSPS), as part of a larger proposal to reduce recordkeeping and reporting burden of numerous EPA regulations. Some of the proposed provisions pertaining to residential wood heaters dealt with clarifications to definitions and labeling of wood heaters. These changes will be addresed in the recordkeeping and reporting burden reduction final action.

Today's final rule addresses another proposed change to the wood heater rule, deletion of the ''Prohibitions'' section, § 60.538. This proposed change prompted significant comments that the Agency felt should be dealt with separately from the clarifications to the definitions and labeling provisions.

B. Public Participation

One comment letter, from the Hearth Products Association, was received on the wood heaters proposal. The EPA's responses to the comments received on the proposed deletion of the ''Prohibitions'' section can be found in this preamble under IV, ''Summary of Comments and Responses on the Proposal.''

III. Summary of Rule Amendments

The final amendments revise the ''recall'' provision of § 60.538(e). The original provision prohibited the sale of wood heaters to anyone except back to the manufacturer (hence the use of the word ''recall'') in the situation where the certificate was revoked for the knowing submission of false or inaccurate information or for other fraudulent acts. The amended rule prohibits sales except back to the manufacturer in the case where the certificate was revoked because the original certification test was determined to be invalid, as well as in the case of fraud, as previously described. In each case, the sales prohibition takes effect on the date that the ''commercial owner'' (e.g., the distributor or dealer) receives notice of the revocation.

IV. Summary of Comments and Responses on the Proposal

A. Was There Sufficient Notice and Comment Regarding the Proposed Changes?

Comment: The proposal did not provide sufficient notice and time for comment. The woodstove amendments were proposed within a package published in the **Federal Register** to ''reduce unnecessary recordkeeping and reporting burdens,'' entitled ''Recordkeeping and Reporting Burden Reduction''. The public was not alerted

to the fact that this rule contained substantive revisions to the woodstoves NSPS. The industry only became aware of these proposed revisions near the end of the comment period.

Response: The amendments were proposed September 11, 1996 in the **Federal Register** (61 FR 47840). There are no additional notification requirements under the Administrative Procedures Act. Table 1, which appeared on the second page of the preamble, listed the NSPS for New Residential Wood Heaters as one of the rules to be amended. The deletion of § 60.538 was discussed in the preamble and was included in the portion of the notice that set forth the proposed changes to the regulations. To ensure that the industry was aware of the proposed amendments, EPA contacted the Hearth Products Association (HPA) (formerly known as the Wood Heating Alliance, a major trade group for wood heater manufacturers which represented many manufacturers during the regulatory negotiation of the original rule) before the end of the comment period and gave the HPA additional time to comment on the proposal. EPA also contacted representatives of environmental organizations that had previously expressed interest in the wood heater NSPS rule to ensure that they were aware of the proposed changes. Sufficient opportunity to comment was extended to all interested parties. In addition, several meetings were held with HPA representatives to discuss and clarify their comments prior to EPA developing the final rule.

B. Can EPA Unilaterally Revise a Rule Developed Through Formal Regulatory Negotiation?

Comment: A rule developed through a consensus process by way of regulatory negotiation should not be unilaterally changed by EPA. Not consulting with the original stakeholders is an indefensible breach of the negotiated understanding.

Response: Developing a rule through a formal negotiation process does not forever tie EPA's hands when changes to the rule are warranted. The Clean Air Act (CAA) requires EPA to review and, if appropriate, revise NSPS every 8 years (CAA section 111(b)(1)(B)). Indeed, the Agency has chosen not to revise the woodstoves emissions limits since the rule was promulgated in 1988. The Agency still believes that the current limits remain appropriate and anticipates no revisions to these limits in the foreseeable future.

However, EPA believes it is appropriate to revise the rule when it identifies problems that may interfere with proper enforcement and compliance. On June 29, 1995 (60 FR 33915), EPA removed numerous provisions from the rule that were obsolete; thus, eliminating potentially confusing provisions for manufacturers in meeting the requirements. Likewise, EPA believes that today's revisions are necessary improvements that will enhance compliance and correct deficiencies in the rule that inhibit the Agency's ability to properly enforce the rule. From time to time, necessary rule changes become apparent and the EPA has the authority to make such changes through the normal rulemaking process, regardless of how the rule was originally developed. By the same token, EPA recognizes that a rule developed through a regulatory negotiation balances the diverse needs of the negotiators, and consultation with all the various stakeholders affected by the changes is important. As mentioned previously, EPA notified the commenter, as well as various environmental groups, to seek their input on the proposed changes. In addition, EPA has met several times with the commenter.

C. Is a Regulatory Flexibility Analysis Required in Accordance With the Small Business Regulatory Enforcement Fairness Act (SBREFA)?

Comment: Because of the impact on small businesses (manufacturers, wholesalers, and retailers), EPA must assess the impacts in accordance with the SBREFA requirements.

Response: Many, if not most, wood heater manufacturers, distributors, and dealers are considered to be ''small entities'' under SBREFA. EPA has determined that the amendment will not have a significant economic impact on a substantial number of small entities (wood heater manufacturers, distributors, and dealers). Accordingly, it is not necessary to prepare a regulatory flexibility analysis in connection with these amendments.

In analyzing the costs and potential impacts of the amendments on small entities, EPA presumes that the small entities comply with all existing statutory or regulatory requirements that are applicable to them. Furthermore, if a rule is being amended, EPA assesses only the incremental cost of the amendment. The wood heaters NSPS requires manufacturers to submit ''documentation pertaining to a valid certification test'' as part of the application for a certificate of compliance (40 CFR 60.533(b)(4)). Thus, assuming that woodstove manufacturers are complying with this requirement, there is no cost as a result of the amendment, which establishes enforcement consequences of a subsequently discovered invalid certification test. Therefore, there is no significant adverse economic impact on any small entity.

Even if one were to regard the consequences of the discovery of an invalid certification test as an impact resulting from today's amendments, there would still be no significant adverse economic impact on a substantial number of small entities. ''Recalls'' of model lines have been rare in the 10 years since the woodstoves rule was first issued. Over the past 10 years, EPA has certified over 460 model lines. Currently, there are over 200 certified model lines produced by 67 manufacturers. In 10 years, only 2 model lines (each from a different company) have ever been recalled from commercial owners (e.g., dealers or distributors) by the manufacturers.

As originally promulgated, § 60.538(e) prohibits the sale (other than to the manufacturer) by commercial owners (e.g., distributors or dealers) of woodstoves for which EPA has revoked the certificate of compliance due to fraud, once the Agency has given notice of the revocation. The proposed deletion of § 60.538(e) would have meant that commercial owners selling model lines for which the certification had been revoked could not have continued to sell with the assurance that their inventory was in compliance with the standard, regardless of the reason for the revocation. In this final rule, rather than deleting § 60.538(e), EPA is choosing instead to amend the existing language to focus more directly on sale of model lines for which the original certification test is discovered to be invalid. The Agency believes that this will provide greater clarity than the proposed deletion.

Under the amendments, the sales prohibition in § 60.538(e) is being expanded to include model lines for which the certificate is revoked based on a finding that the original certification test was invalid, regardless of fraud. The Agency believes that if the original certification test was invalid, continued sale of the model lines would be inconsistent with the intent of the standard. Based on our previous experience, it is expected that such sales prohibitions at the commercial owner level will remain relatively rare, if any at all occur. The only suspension or revocations that have occurred to date are those associated with fraudulent acts. There have been no certification suspensions or revocations either as a result of random compliance audits or selective enforcement audits conducted

under § 60.533(p)(1), or as the result of invalid original certification tests that have not involved fraud.

Potential economic impacts of any recall that might occur due to today's amendment were considered for both manufacturers and commercial owners. No significant impacts were identified. In assessing the potential economic impact of a recall, EPA considered the impact on the manufacturers of the 2 model lines recalled due to fraud. One of the manufacturers had revenues in excess of $15 million per year. Only 34 wood heaters were recalled, representing far less than 1 percent of sales. The other manufacturer had sales significantly more than the first manufacturer, and the recall involved 107 wood heaters, still less than 1 percent of sales. The EPA does not consider an economic impact of less than 1 percent of sales as significant, and consequently, EPA does not expect a recall to have a significant adverse economic impact on such manufacturers. In addition, most manufacturers produce more than one model line, and most commercial owners carry no more inventory than a heating season's worth (about 3 months) of woodstoves, further minimizing the impact on the manufacturer of a recall of a single model line. Furthermore, many manufacturers sell other products besides woodstoves; EPA's Regulatory Flexibility Analysis in 1986 (Docket No. A–84–49, item No. II–A–14) for the original regulation indicated that less than half of the total revenues for most manufacturers were from woodstoves sales.

The impact on commercial owners, too, is also expected to be minimal, affecting only about 3 months inventory of a single model line. Most commercial owners carry more than one model line and sell other products. Also, many manufacturers have ''swap out'' arrangements with their customers to substitute the recalled stoves with certified stoves.

Even if EPA assumed the impact on small entities was economically significant (not borne out by past experience), a substantial number of small businesses would not be affected, if any. As stated above, only 2 out of 67 manufacturers have been affected in the last 10 years by the original recall provision. The Agency does not consider 2 out of 67 manufacturers to be a substantial number. There is no reason to expect a sudden increase in the number of invalid certification tests discovered subsequent to certification that do not involve fraud, where none have been discovered before. Consequently, the EPA can determine that there will be no significant adverse economic impact on a substantial number of small entities as a result of this amendment.

Moreover, in exercising its recall authority, EPA will consider the potential economic harm resulting from a recall, as well as the potential environmental problem the recall would address. The Agency would consider, for example, the number of wood heaters in the channels of trade, and the extent to which the model line in question exceeds applicable emission limits.

D. What Changes Are Being Made to the Rule?

Comment: The commenter objected to the deletion of § 60.538 (''Prohibitions'') from the rule for several reasons. The commenter's primary concern was that manufacturers, distributors, and retailers would be affected by ''recalls'' where fraud was not the reason for revocation of the compliance certification. Another concern was that the deletion of paragraphs (f), (g), (h), and (i) of § 60.538 would expand the liability exposure to homeowners owning a stove that did not meet emissions limits; the existing rule's prohibitions limited homeowners' liability to improper installation or operation, catalyst deactivation or removal, physical alteration of the woodstove, and altering or removing the permanent label.

The commenter did not agree with the reasons provided by the Agency for deleting the ''Prohibitions'' section. In response to the statement in the proposal preamble that the prohibitions section would not allow a claim of violation of the removable label requirement unless the wood heater in question also had a permanent label, the commenter stated that if the wood heater had no permanent label, EPA could bring a claim of violation of the requirement to have a permanent label. In response to the statement that the prohibitions section does not make complying with the quality assurance provisions unlawful, the commenter stated that shipping stoves while out of compliance with the quality assurance provisions runs afoul of the labeling requirements and is grounds for certificate revocation. Finally, the commenter disagreed that eliminating other paragraphs would clarify and simplify the rule, and that these other paragraphs were duplicative or otherwise unnecessary.

Response: The Agency agrees with the commenter on some of these points and accordingly has decided to retain most of § 60.538 in its original form. Although the Agency disagrees that homeowners would be exposed to greater liability if paragraphs (f), (g), (h), and (i) of § 60.538 were removed, retaining these paragraphs is helpful in clarifying homeowners' compliance obligations.

The Agency also agrees with the commenter that every wood heater that has a removable label must also have a permanent label (§ 60.536(a), (i), (j)). Sale of wood heaters not bearing a permanent label is prohibited in § 60.538 (b) and (c). Accordingly, if a wood heater has neither a removable label nor a permanent label, a claim of violation can be based on sale of the heater without a permanent label. Therefore, the dependence of § 60.538(d) on the existence of a permanent label does not preclude enforcement actions where stoves are sold with neither a temporary nor a permanent label. Accordingly, the provisions of § 60.538 regarding labeling are being retained.

The Agency agrees that the lack of a specific provision regarding the quality assurance requirements in the ''Prohibitions'' section does not affect the enforceability of the quality assurance procedures. Section 60.533(o) clearly lays out the requirements and procedures for conducting a quality assurance program. These requirements and procedures are enforceable and failure to comply with them would be a violation. Failure to meet the tolerances or emission limits during the quality assurance program would not be a violation of the rule, but failure to take remedial measures would be (§ 60.533(o)(4)). No amendment to the rule is necessary to enforce these provisions. Furthermore, as the commenter points out, compliance with the quality assurance requirements is required by other aspects of the regulation. For example, a labeling statement under § 60.536 (b) or (c) constitutes a representation by the manufacturer that the manufacturer was, at the time the label was affixed, conducting a conforming quality assurance program. In addition, EPA may use a manufacturer's failure to conduct a conforming quality assurance program as a ground to revoke certification under § 60.533(l). Furthermore, in applying to EPA for a certificate of compliance, a manufacturer must include a statement that it will conduct a conforming quality assurance program for the model line in question (§ 60.533(b)(6)). Because the lack of a specific provision regarding the quality assurance requirements in the ''Prohibitions'' section does not affect the enforceability of the quality

assurance requirements, the Agency has decided not to alter the ''Prohibitions'' section in this regard.

Although some simplification and removal of duplication could be achieved in § 60.538, EPA has decided not to amend the provisions of this section, except as discussed below with regard to § 60.538(e), in order to avoid any confusion that might arise from their deletion.

Section 60.538(e), as originally promulgated, provides that the Agency may prohibit ''commercial owners'' (e.g., dealers and distributors) from selling, other than to the manufacturer, wood heaters in a model line whose certificate has been revoked ''* * * for the knowing submission of false or inaccurate information or other fraudulent acts.'' The prohibition takes effect on the date that the commercial owner receives notice of the revocation. By prohibiting sales of such appliances other than to the manufacturer, the provision in effect authorizes EPA to require a recall of wood heaters that are still in the distribution chain. It has no impact on wood heaters that have already been sold to consumers.

During 1996, a serious incident involving fraudulent conduct by an accredited testing laboratory had to be addressed by the Agency. The laboratory in question was found to have falsified 11 certification test reports that were submitted to the Agency, upon which certificates were granted. The laboratory director was prosecuted criminally, plead guilty, was sentenced to a lengthy period of probation, and was ordered to perform substantial community service. The manufacturers in question cooperated with the Agency in attempting to rectify this situation, ultimately conducting a number of new certification tests and, in the case of 2 model lines, voluntarily agreeing to recall appliances in the channels of trade.

The Agency conducted a review of its response to this situation, and decided that it needed to expand its recall authority, so that it was clear that it covered situations where a certification had been issued based on an invalid certification test, irrespective of the presence of fraud. The Hearth Products Association (HPA) has acknowledged in meetings with the Agency that the hearth industry (which includes wood heater manufacturers) has an important interest in assuring the integrity of its products, and that clarifying EPA's recall authority could play an important role in this regard.

The rule has always required a finding that a valid certification test has shown that a wood heater representative of the model line complies with the emission limits before a certification can be issued (§ 60.533(e)(1)(i)). Section 60.533(f)(4) of the rule defines a valid certification test as one conducted according to the prescribed test methods and procedures, among other requirements. Under today's promulgated amendments, the Agency is establishing its authority to prohibit sales to consumers if a certification was revoked based on a finding that the original certification test was not valid.

The basis for such a finding would be problems or irregularities with the certification test or its documentation. Other information could be used to supplement the finding. The finding could be based on incorrect calculations or typographical errors, for example, that if corrected would not have enabled a model line to be certified. Other examples include anomalies with the methods and procedures, such as incorrect emission sample gathering or improper wood load. However, the Agency would not consider minor infractions of the original certification test that would have little or no influence on emissions as the basis for a finding that the certification test was not valid. Historically, the Agency has used its judgment on insignificant problems or resolved them through discussions with the accredited laboratory or the manufacturer, recognizing the expense of retesting and the fact that many manufacturers are small businesses with limited resources.

V. Judicial Review

Under section 307(b)(1) of the Clean Air Act (CAA), judicial review of the actions taken by this final amendment is available only on the filing of a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit within 60 days of today's publication of this action. Under section 307(b)(2) of the CAA, the requirements that are subject to today's notice may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

VI. Administrative Requirements

A. Docket

The docket is an organized and complete file of information considered by the EPA in the development of a rulemaking. The docket is a dynamic file because information is added throughout the rulemaking development process. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can effectively participate in the rulemaking process. Along with the proposed and promulgated standards and their preambles, the contents of the docket (except for interagency review materials) will serve as the record in case of judicial review. [See section 307(d)(7)(A) of the Act.] The official rulemaking record, including all public comments received on the proposed amendments, is located at the address in the **ADDRESSES** section at the beginning of this document. The docket number for this rulemaking is A–95–50.

B. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the EPA must determine whether the regulatory action is ''significant'' and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. The Executive Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligation of recipients thereof; or

(4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined by OMB and EPA that today's action is not a ''significant regulatory action'' within the meaning of the Executive Order.

C. Executive Order 12875: Enhancing the Intergovernmental Partnership

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments,

and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.''

Today's rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandate Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, the EPA generally must prepare a written statement, including a cost-benefit analysis, for the proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires the EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows the EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before the EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of the EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements. Finally, section 204 of the UMRA requires the Agency to develop a process to allow elected state, local, and tribal government officials to provide input in the development of any proposal containing a significant Federal intergovernmental mandate.

The EPA has determined that these amendments do not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate or the private sector in any one year. Thus, today's amendments are not subject to the requirements of sections 202, 204, and 205 of the UMRA.

The EPA has determined that these amendments contain no regulatory requirements that might significantly or uniquely affect small governments. No small government entities have been identified that are affected by these amendments. Therefore, today's amendments are not subject to the requirements of section 203 of the UMRA.

E. Regulatory Flexibility

EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this final rule. EPA has also determined that this rule will not have a significant economic impact on a substantial number of small entities. As explained previously in the response to comments section, the Agency looks only at the incremental impact of the amendments and assumes that regulated entities are in compliance with previously promulgated requirements. Assuming that manufacturers are in compliance with the requirement to submit ''documentation pertaining to a valid certification test'' as part of their application for a certificate of compliance (40 CFR 60.533(b)(4)), there will be no impact on any small manufacturer. Even if one were to regard the consequences of the discovery of an invalid certification test as an impact resulting from today's amendments, there would still be no significant adverse economic impact on a substantial number of small entities. Only 2 out of 67 manufacturers have had to recall model lines due to inappropriate certification in the past 10 years. EPA has not identified any inappropriate certifications that have not involved fraud and hence does not expect these amendments to lead to an increase in the number of recalls. In addition, the economic impact of the recalls has been minimal, affecting less than one percent of sales for each of the manufacturers that has recalled a model line.

F. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

G. Paperwork Reduction Act

Today's action does not impose any new information collection burden. The Office of Management and Budget (OMB) has previously approved the information collection requirements contained in these regulations under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060–0161 (ICR no. 1176.05).

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15.

H. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Pub. L. No. 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary

consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

Today's final amendment does not involve any technical standards; therefore, EPA did not consider the use of any voluntary consensus standards.

I. Executive Order 13045

Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks,'' (62 FR 19885, April 23, 1997) applies to any rule that (1) is ''economically significant'' as defined under Executive Order 12866, and (2) EPA determines addresses an environmental health or safety risk that has a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This final rule is not subject to Executive Order 13045 because it does not involve decisions on environmental health risks or safety risks that may disproportionately affect children.

J. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

Today's amendment does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

List of Subjects in 40 CFR Part 60

Environmental protection, Air pollution control, Heaters.

Dated: November 18, 1998.

Carol M. Browner,

Administrator.

For reasons set out in the preamble, title 40, chapter I, of the Code of Federal Regulations is amended as follows:

PART 60—[AMENDED]

1. The authority citation for part 60 continues to read as follows:

Authority: 42 U.S.C. 7401, 7411, 7413, 7414, 7416, 7429, 7601 and 7602.

2. Amend § 60.533 to revise paragraph (l)(1)(ii) to read as follows:

§ 60.533 Compliance and certification.

* * * * *

(l) * * *

(1) * * *

(ii) A finding that the certification test was not valid. The finding must be based on problems or irregularities with the certification test or its documentation, but may be supplemented by other information.

* * * * *

3. Amend § 60.538 to revise paragraph (e) to read as follows:

§ 60.538 Prohibitions.

* * * * *

(e)(1) In any case in which the Administrator revokes a certificate of compliance either for the knowing submission of false or inaccurate information or other fraudulent acts, or based on a finding under § 60.533(l)(1)(ii) that the certification test was not valid, he may give notice of that revocation and the grounds for it to all commercial owners.

(2) From and after the date of receipt of the notice given under paragraph (e)(1) of this section, no commercial owner may sell any wood heater covered by the revoked certificate (other than to the manufacturer) unless

(i) The wood heater has been tested as required by § 60.533(n) and labeled as required by § 60.536(g) or

(ii) The model line has been recertified in accordance with this subpart.

* * * * *

[FR Doc. 98–31397 Filed 11–23–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 721

[OPPTS–50633A; FRL–6044–6]

RIN 2070–AB27

Revocation of Significant New Use Rules for Certain Chemical Substances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is revoking significant new use rules (SNURs) for 6 substances promulgated under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for certain chemical substances based on new data. Based on the new data the Agency no longer finds that activities not described in the corresponding TSCA section 5(e) consent order or the premanufacture notice (PMN) for these chemical substances may result in significant changes in human or environmental exposure.

DATES: This rule is effective December 24, 1998.

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SUPPLEMENTARY INFORMATION:

Electronic Availability: Electronic copies of this document are available from the EPA Home Page at the **Federal Register**-Environmental Documents entry for this document under ''Laws and Regulations'' (http://www.epa.gov/fedrgstr/).

In the **Federal Register** referenced for each substance, OPPTS–50569A, September 18, l989 (54 FR 38381); OPPTS–50582, August 15, 1990 (55 FR 33296); OPPTS–50613, October 4, 1993 (58 FR 51694); OPPTS–50623, December 2, 1996 (61 FR 63726) (FRL–4964–3); and OPPTS–50628, January 22, l998 (63 FR 3393) (FRL–5720–3), EPA issued a SNUR establishing significant new uses for the substances. Because of additional