



**WEST VIRGINIA SECRETARY OF STATE**

**MAC WARNER**

**ADMINISTRATIVE LAW DIVISION**

**eFILED**

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Office of West Virginia  
Secretary Of State

**NOTICE OF PUBLIC COMMENT PERIOD**

AGENCY: Air Quality TITLE-SERIES: 45-16  
RULE TYPE: Legislative Amendment to Existing Rule: Yes Repeal of existing rule: No

RULE NAME: Standards of Performance for New Stationary Sources

CITE STATUTORY AUTHORITY: W. Va. Code § 22-5-4

COMMENTS LIMITED TO:

Oral and Written

DATE OF PUBLIC HEARING: 07/28/2020 6:00 PM

LOCATION OF PUBLIC HEARING:

Virtual. Details in Public Notice

DATE WRITTEN COMMENT PERIOD ENDS: 07/28/2020 6:00 PM

COMMENTS MAY BE MAILED OR EMAILED TO:

NAME: SANDRA ADKINS

ADDRESS: WVDEP - DIVISION OF AIR QUALITY  
601 57TH STREET SE CHARLESTON WV 25304

EMAIL: dep.comments@wv.gov

PLEASE INDICATE IF THIS FILING INCLUDES:

RELEVANT FEDERAL STATUTES OR REGULATIONS: Yes

(IF YES, PLEASE UPLOAD IN THE SUPPORTING DOCUMENTS FIELD)

INCORPORATED BY REFERENCE: Yes

(IF YES, PLEASE UPLOAD IN THE SUPPORTING DOCUMENTS FIELD)

**PROVIDE A BRIEF SUMMARY OF THE CONTENT OF THE RULE:**

The rule incorporates by reference the federal new standards of performance for new stationary sources and other regulatory requirements promulgated by the United States Environmental Protection Agency (EPA) pursuant to §111(b) of the federal Clean Air Act, as amended (CAA). This rule codifies general procedures and criteria to implement standards of performance for new stationary sources set forth in 40 C.F.R. Part 60. The rule also adopts associated reference methods, performance specifications and other test methods which are appended to such standards.

**SUMMARIZE IN A CLEAR AND CONCISE MANNER CONTENTS OF CHANGES IN THE RULE AND A STATEMENT OF CIRCUMSTANCES REQUIRING THE RULE:**

**Summary of changes in the rule:**

Revisions to the rule include updating the annual incorporation by reference (IBR) of the New Source Performance Standards (NSPS) promulgated by the EPA under 40 C.F.R. Part 60 as of June 1, 2020 and extending the exclusion to the entire subpart AAA (Standards of Performance for New Residential Wood Heaters) rather than only the 2015 amendment to this subpart. The annual IBR update includes Standards of Performance for Stationary Compression Ignition Internal Combustion Engines (84FR61563, November 13, 2019; final rule).

Subsection 1.6 - revised the date the standards being incorporated by reference from June 1, 2019 to June 1, 2020. The Adoption of standards subsection 4.1 was revised to change the date the standards are being incorporated from June 1, 2019 to June 1, 2020. Paragraph 4.1.c.1 revised to strike the 2015 amendment to in reference to Subpart AAA.

**Statement of circumstances requiring the rule:**

This rule is exempt from the Regulatory Moratorium of Executive Order 2-18 under condition 3(g), updating state rules to comply with federal law requirements.

As set forth in 40 C.F.R. § 60.4(b), section 111(c) of the CAA directs the EPA Administrator to delegate to each State the authority to implement and enforce standards of performance for new stationary sources. Promulgation of this rule will enable West Virginia to continue to be the primary enforcement authority for the NSPS promulgated by the EPA. Revisions to this rule are necessary to maintain consistency with current federal regulations, and to fulfill West Virginia's responsibilities under the CAA. Revisions to the rule include annual incorporation by reference updates. Upon authorization and promulgation, 45CSR16 will be submitted to the EPA to fulfill federal obligations under the CAA, including delegations and authorizations.

**Determination of Stringency:**

A federal counterpart to this proposed rule exists. In accordance with the Secretary's recommendation, the Division of Air Quality proposes that the rule incorporate by reference the federal counterparts. The proposed rule incorporates by reference the federal counterpart; therefore, no determination of stringency is required.

**Consultation with the Environmental Protection Advisory Council:**

The Environmental Protection Advisory Council received a copy of this proposed rule in advance of the June 23 meeting to discuss this rule.

**SUMMARIZE IN A CLEAR AND CONCISE MANNER THE OVERALL ECONOMIC IMPACT OF THE PROPOSED RULE:**

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

The proposed revisions to this rule should not impact revenues of state government.

B. ECONOMIC IMPACT ON SPECIAL REVENUE ACCOUNTS:

The proposed revisions to this rule should not impact special revenue accounts.

C. ECONOMIC IMPACT OF THE RULE ON THE STATE OR ITS RESIDENTS:

The proposed revisions to this rule should not impact costs of state government, nor should it have an economic impact on the state or its residents. The proposed revisions to this rule should have no additional impact on the cost of state government beyond that resulting from currently applicable federal requirements.

D. FISCAL NOTE DETAIL:

Effect of Proposal	Fiscal Year		
	2020 Increase/Decrease (use "-")	2021 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	0	0	0
Personal Services	0	0	0
Current Expenses	0	0	0
Repairs and Alterations	0	0	0
Assets	0	0	0
Other	0	0	0
2. Estimated Total Revenues	0	0	0

**E. EXPLANATION OF ABOVE ESTIMATES (INCLUDING LONG-RANGE EFFECT):**

Costs anticipated to be incurred for the implementation of federal rules promulgated under 40 C.F.R. Part 60 as of June 1, 2020 are included in prior cost estimates prepared for state implementation of Title V of the Clean Air Act, as amended, under 45CSR30.

In accordance with W. Va. Code §22-1A 3(c), the Secretary has determined that this rule will not result in a taking of private property within the meaning of the Constitutions of West Virginia and the United States of America.

**BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.**

**Yes**

**Jason E Wandling -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.**

45CSR16

TITLE 45  
LEGISLATIVE RULE  
DEPARTMENT OF ENVIRONMENTAL PROTECTION  
AIR QUALITY

SERIES 16  
STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

§45-16-1. General.

1.1. Scope. — This rule establishes and adopts standards of performance for new stationary sources promulgated by the United States Environmental Protection Agency pursuant to section 111(h) of the federal Clean Air Act, as amended. This rule codifies general procedures and criteria to implement the standards of performance for new stationary sources set forth in 40 C.F.R. part 60. The Secretary hereby adopts these standards by reference. The Secretary also adopts associated reference methods, performance specifications and other test methods which are appended to these standards.

1.2. Authority. — W.Va. Code § 22-5-4.

1.3. Filing date. — ~~June 1, 2020.~~

1.4. Effective date. — ~~June 1, 2020.~~

1.5. Sunset provision. — Does not apply.

1.6. Incorporation by reference. — Federal counterpart regulation. The Secretary has determined that a federal counterpart rule exists, and in accordance with the Secretary's recommendation, with limited exception, this rule incorporates by reference 40 C.F.R. parts 60 and 65, to the extent referenced in 40 C.F.R. part 60, effective ~~June 1, 2019~~ June 1, 2020.

§45-16-2. Definitions.

2.1. "Administrator" means the Administrator of the United States Environmental Protection Agency or his or her authorized representative.

2.2. "Clean Air Act" ("CAA") means the federal Clean Air Act, ~~found at~~ as amended, 42 U.S.C. § 7401, et seq.

2.3. "Secretary" means the Secretary of the Department of Environmental Protection or other person to whom the Secretary has delegated authority or duties pursuant to W.Va. Code §§ 22-1-6 or 22-1-8.

2.4. Other words and phrases used in this rule, unless otherwise indicated, shall have the meaning ascribed to them in 40 C.F.R. part 60. Words and phrases not defined therein shall have the meaning given to them in the federal Clean Air Act.

§45-16-3. Requirements.

3.I. No person may construct, reconstruct, modify, or operate or cause to be constructed, reconstructed, modified, or operated any source subject to the provisions of 40 C.F.R. part 60 which results or will result in a violation of this rule.

**§45-16-4. Adoption of standards.**

4.I. Standards -- The Secretary hereby adopts and incorporates by reference the provisions of 40 C.F.R. parts 60 and 65, to the extent referenced in 40 C.F.R. part 60, including any reference methods, performance specifications and other test methods which are appended to these standards and contained in 40 C.F.R. parts 60 and 65, effective ~~June 1, 2019~~ June 1, 2020, for the purposes of implementing a program for standards of performance for new stationary sources, except as follows:

4.I.a. 40 C.F.R. § 60.9 is amended to provide that information shall be available to the public in accordance with W Va. Code §§ 22-5-1 et seq., 29B-1-1 et seq., and 45CSR31; and

4.I.b. Subparts B, C, Ca, Cb, Cc, Cd, Ce, Cf, Ea, Eb, Ec, WWW, XXX, AAAA, BBBB, CCCC, DDDD, EEEE, FFFF, I.I.I.I. and M.M.M.M of 40 C.F.R. part 60 shall be excluded.

4.I.c. The following subparts of 40 C.F.R. part 60 relating to wood-burning heaters and appliances are expressly excluded and are not adopted or incorporated by reference in this rule.

4.I.c.1. ~~The 2015 amendments to~~ Subpart AAA; and

4.I.c.2. Subpart QQQQ.

**§45-16-5. Secretary.**

5.I. Any and all references in 40 C.F.R. parts 60 and 65 to the "Administrator" are amended to be the "Secretary" except as follows:

5.I.a. Where the federal regulations specifically provide that the Administrator shall retain authority and not transfer authority to the Secretary;

5.I.b. Where provisions occur which refer to

5.I.b.1. Alternate means of emission limitations;

5.I.b.2. Alternate control technologies;

5.I.b.3. Innovative technology waivers;

5.I.b.4. Alternate test methods;

5.I.b.5. Alternate monitoring methods;

5.I.b.6. Waivers/adjustments to recordkeeping and reporting;

5.I.b.7. Emissions averaging;

5.I.b.8. Applicability determinations; or

5.1.b.9. The authority to require testing under Section 114 of the Clean Air Act, as amended.

5.1.c. Where the context of the regulation clearly requires otherwise.

**§45-16-6. Permits.**

6.1. Nothing contained in this adoption by reference shall be construed or inferred to mean that permit requirements in accordance with applicable rules shall be in any way be limited or inapplicable.

**§45-16-7. Inconsistency between rules.**

7.1. In the event of any inconsistency between this rule and any other rule of the Division of Air Quality, the inconsistency shall be resolved by the determination of the Secretary and the determination shall be based upon the application of the more stringent provision, term, condition, method or rule.

MASSACHUSETTS NON REGULATORY

Name of non regulatory SIP provision	Applicable geographic or nonattainment area	State submittal date/ effective date	EPA approved date <sup>3</sup>	Explanations
Certification of Adequacy of Massachusetts 2010 Sulfur Dioxide NAAQS Infrastructure SIP to Address the Good Neighbor Requirements of Clean Air Act 110(a)(2)(D)(i)(I).	Statewide .....	2/9/2018	10/13/2019 [Insert Federal Register citation].	<b>Federal</b>

<sup>3</sup>To determine the EPA effective date for a specific provision listed in this table, consult the **Federal Register** notice cited in this column for the particular provision.

[FR Doc. 2019-24323 Filed 11-12-19; 8:45 am]  
 BILLING CODE 6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 60**

[EPA-HQ-OAR-2018-0851; FRL-10001-93-OAR]

RIN 2060-AU27

**Standards of Performance for Stationary Compression Ignition Internal Combustion Engines**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The U.S. Environmental Protection Agency (EPA) is finalizing amendments to the Standards of Performance for Stationary Compression Ignition Internal Combustion Engines. This final action revises the emission standards for particulate matter (PM) for new stationary compression ignition (CI) engines located in remote areas of Alaska.

**DATES:** The final rule is effective on November 13, 2019.

**ADDRESSES:** The EPA has established a docket for this rulemaking under Docket ID No. EPA-HQ-OAR-2018-0851. All documents in the docket are listed in on the <https://www.regulations.gov/> website. Although listed, some information is not publicly available,

e.g., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in <https://www.regulations.gov/> or in hard copy at the EPA Docket Center, Room 3334, WJC West Building, 1301 Constitution Avenue NW, Washington, DC 20004. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the EPA Docket Center is (202) 566-1742.

**FOR FURTHER INFORMATION CONTACT:** For questions about this action, contact Melanie King, Sector Policies and Programs Division (D243-01), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541-2469; fax number: (919) 541-4991; and email address: [king.melanie@epa.gov](mailto:king.melanie@epa.gov).

**SUPPLEMENTARY INFORMATION:**

*Organization of this document.* The information in this preamble is organized as follows:

- I. General Information
  - A. Does this action apply to me?
  - B. Where can I get a copy of this document and other related information?

- C. Judicial Review and Administrative Reconsideration
- II. Background and Final Amendments
- III. Public Comments and Responses
- IV. Impacts of the Final Rule
- V. Statutory and Executive Order Reviews
  - A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review
  - B. Executive Order 13771: Reducing Regulation and Controlling Regulatory Costs
  - C. Paperwork Reduction Act (PRA)
  - D. Regulatory Flexibility Act (RFA)
  - E. Unfunded Mandates Reform Act (UMRA)
  - F. Executive Order 13132: Federalism
  - G. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
  - H. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks
  - I. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
  - J. National Technology Transfer and Advancement Act (NTTAA)
  - K. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations
  - L. Congressional Review Act (CRA)

**I. General Information**

*A. Does this action apply to me?*

*Regulated entities.* Categories and entities potentially regulated by this action include:

Category	NAICS <sup>1</sup> code	Examples of regulated entities
Industries using stationary CI internal combustion engines .....	2211	Electric power generation, transmission, or distribution.

<sup>1</sup> North American Industry Classification System.

This table is not intended to be exhaustive, but rather to provide a guide for readers regarding entities likely to be affected by the final action for the source category listed. To determine whether your facility is affected, you should examine the applicability criteria in the rule. If you have any

questions regarding the applicability of any aspect of this action, please contact the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section of this preamble.

*B. Where can I get a copy of this document and other related information?*

In addition to being available in the docket, an electronic copy of this final action will also be available on the internet. Following signature by the EPA Administrator, the EPA will post a

copy of this final action at: <https://www.epa.gov/stationary-engines/new-source-performance-standards-stationary-compression-ignition-internal-0>. Following publication in the **Federal Register**, the EPA will post the **Federal Register** version and key technical documents at this same website.

### C. Judicial Review and Administrative Reconsideration

Under Clean Air Act (CAA) section 307(b)(1), judicial review of this final action is available only by filing a petition for review in the United States Court of Appeals for the District of Columbia Circuit by January 13, 2020. Under CAA section 307(b)(2), the requirements established by this final rule may not be challenged separately in any civil or criminal proceedings brought by the EPA to enforce the requirements.

Section 307(d)(7)(B) of the CAA further provides that only an objection to a rule or procedure which was raised with reasonable specificity during the period for public comment (including any public hearing) may be raised during judicial review. That section of the CAA also provides a mechanism for the EPA to reconsider the rule if the person raising an objection can demonstrate to the Administrator that it was impracticable to raise such objection within the period for public comment or if the grounds for such objection arose after the period for public comment (but within the time specified for judicial review) and if such objection is of central relevance to the outcome of the rule. Any person seeking to make such a demonstration should submit a Petition for Reconsideration to the Office of the Administrator, U.S. EPA, Room 3000, WJC South Building, 1200 Pennsylvania Ave. NW, Washington, DC 20460, with a copy to both the person(s) listed in the preceding **FOR FURTHER INFORMATION CONTACT** section, and the Associate General Counsel for the Air and Radiation Law Office, Office of General Counsel (Mail Code 2344A), U.S. EPA, 1200 Pennsylvania Ave. NW, Washington, DC 20460.

## II. Background and Final Amendments

On July 11, 2006, the EPA promulgated Standards of Performance for Stationary CI Internal Combustion Engines (71 FR 39154). These standards, known as new source performance standards (NSPS), implement section 111(b) of the CAA. The standards apply to new stationary sources of emissions, *i.e.*, sources whose construction, reconstruction, or modification begins

after a standard for those sources is proposed. The NSPS for Stationary CI Engines established limits on emissions of PM, nitrogen oxides (NO<sub>x</sub>), carbon monoxide (CO), and non-methane hydrocarbons (NMHC). The emission standards for these stationary CI engines are generally modeled after the EPA's standards for nonroad CI engines (including standards for land-based nonroad CI engines and marine CI engines), which are types of mobile engines regulated under 40 CFR parts 89, 94, 1039, 1042, and 1068. In general, the NSPS for Stationary CI Engines, like the nonroad engine standards, are phased in over several years and have Tiers with increasing levels of stringency, with Tier 4 as the most stringent level. The engine model year in which the Tiers take effect varies for different size ranges of engines. The Tier 4 final standards for both new stationary non-emergency CI engines and nonroad CI engines generally began with either the 2014 or 2015 model year. The NSPS for Stationary CI Engines are codified at 40 CFR part 60, subpart III.

In 2011, the EPA finalized revisions to the NSPS for Stationary CI Engines (the "2011 Amendments") that amended the standards for engines located in remote areas of Alaska (76 FR 37954, June 28, 2011). As discussed in the 2011 rulemaking, the remote communities in Alaska rely almost exclusively on diesel engines for electricity and heat, and these engines need to be in working condition, particularly in the winter. These communities are scattered over long distances in remote areas and are not connected to population centers by road and/or power grid. Most of these communities are located in the most severe arctic environments in the United States. The 2011 Amendments allowed owners and operators of stationary CI engines located in remote areas of Alaska to use engines certified to marine CI engine standards, rather than land-based nonroad engine standards. The remote communities prefer to use marine CI engines because their design facilitates the use of heat recovery systems to provide heat to community facilities. The 2011 Amendments also removed the requirements to meet Tier 4 emission standards for NO<sub>x</sub>, CO, and NMHC that would necessitate the use of selective catalytic reduction aftertreatment devices in light of issues associated with supply, storage, and use of the necessary chemical reductant (usually urea) in remote Alaska.<sup>1</sup> For PM, the 2011

<sup>1</sup> Remote areas of Alaska are defined in the Stationary CI Engine NSPS as those that either are not accessible by the Federal Aid Highway System

Amendments specified that stationary CI engines located in remote areas of Alaska would not have to meet emission standards that would necessitate the use of aftertreatment devices until the 2014 model year. The aftertreatment technology that was expected to be used to meet the PM standards is a diesel particulate filter (DPF). The EPA expected that providing additional time to gain experience with use of DPFs would alleviate some of the concerns associated with feasibility and costs of installing and operating DPFs in remote villages.

In a letter to the EPA Administrator dated December 20, 2017, Governor Bill Walker of Alaska requested that the EPA rescind the PM emission standards based on aftertreatment for 2014 model year and later stationary CI engines in remote areas of Alaska. The letter stated that it is difficult to operate and maintain PM aftertreatment controls on stationary CI engines in remote areas of Alaska because of cost, complexity, and unreliability. According to the letter, utilities in remote areas have been installing used, remanufactured, and rebuilt pre-2014 model year engines in the remote areas to avoid the requirement to use PM aftertreatment, instead of installing new engines that meet the Tier 3 marine CI engine standards. The EPA's expectation that experience with use of DPFs would alleviate feasibility and cost concerns was not realized and the requirement that 2014 model year and later engines use DPFs had, in fact, resulted in use of older engines. The letter indicated that new engines certified to the Tier 3 marine CI engine standards are notably cleaner than the non-certified engines currently in use in remote areas of Alaska, due to advances in diesel engine electronic fuel injection and electronic governors.

After receiving the letter from Governor Walker, the EPA contacted the Alaska Department of Environmental Conservation and the Alaska Energy Authority (AEA) to obtain more information about the issues described in the letter. In particular, the EPA asked for information regarding the state's concerns about the cost, complexity, and reliability of DPFs, as

(FAHS), or meet all of the following criteria: (1) The only connection to the FAHS is through the Alaska Marine Highway System, or the stationary CI engine operation is within an isolated grid in Alaska that is not connected to the statewide electrical grid referred to as the Alaska Railbelt Grid; (2) at least 10 percent of the power generated by the stationary CI engine on an annual basis is used for residential purposes; and (3) the generating capacity of the source is less than 12 megawatts, or the stationary CI engine is used exclusively for backup power for renewable energy.

expressed in Governor Walker's letter. The EPA also asked for information on the number of stationary CI engines that are installed in remote areas of Alaska each year and whether any stationary CI engines with DPFs were currently operating in the remote areas. The AEA indicated that owners and operators of engines in rural communities have been delaying replacement of older engines because of the cost and concerns about having to install new engines with DPFs. As stated in Governor Walker's letter, the communities are using rebuilt older engines rather than installing new Tier 3 marine CI engines that would be lower-emitting and more efficient.

As noted previously, the communities in remote areas of Alaska are not accessible by the FAHS and/or not connected to the statewide electrical grid referred to as the Alaska Railbelt Grid. They are isolated, and most are located in the most severe arctic environments in the United States. It is critical for the engines in these communities to remain in working order because they are used for electricity and heating. Information provided by the AEA and engine dealers indicates that the costs for engine and control device maintenance and repair are much higher than for engines located elsewhere in the United States due to the remote location and severe arctic climate. Technicians must travel to the remote areas for service and repairs, and travel costs for technicians and shipping costs for parts are much higher than in other areas. Information provided by the AEA indicated that travel costs can include chartering aircraft and can be approximately \$3,000–\$4,000 per trip, in addition to daily labor costs.<sup>2</sup> According to the information provided by AEA, a typical DPF service interval is 2,000 hours of operation, so approximately two service trips per year will be needed.<sup>3</sup> The travel time can range from 25 to 99 percent of the total labor invested in a job.<sup>4</sup> In addition to increased maintenance costs, a control device vendor indicated that costs for DPF installation on an engine in remote areas of Alaska can be more than double

the costs for an engine in Texas.<sup>5</sup> The remote communities also have a shortage of operators who are trained for the DPF equipment. Typically, the filter element must be periodically removed, and the accumulated ash must be cleaned from the filter and captured. The AEA indicates that few communities have the technical capacity to perform the necessary cleaning procedures for DPFs. Technicians would have to travel to the communities to perform DPF maintenance, resulting in additional DPF maintenance costs from more frequent travel.

According to the AEA, experience with the use of DPFs in remote areas of Alaska is very limited. The AEA was aware of only one remote community that had installed DPFs on two engines in a power plant. The DPFs were installed in April 2018, so there has not been experience with the long-term operation of the engines and DPFs. The AEA noted that, rather than having the emission controls integrated with the certified engine, as is typical for Tier 4 CI engines, the remote communities will have to purchase Tier 3 marine CI engines and equip them with DPFs that may come from third parties. The DPFs would not be integrated into the engine's computer system, which may increase the likelihood of problems occurring that could cause the engine to shut down. As stated previously, the engines are generally used for heating in the villages, so unexpected engine shutdowns could cause life safety issues. Providers of engines and emission controls in Alaska noted that they have experienced operational issues with Tier 4 nonroad and stationary CI engines with DPFs in other areas of Alaska, even when the controls were integrated with the engine by the original equipment manufacturer. For example, one provider noted that he serviced two Tier 4 stationary CI engines that required numerous service calls and the addition of a parasitic load bank to maintain exhaust temperatures high enough for DPF regeneration, which increased fuel consumption and operating costs.<sup>6</sup> Another provider stated that it sold a number of Tier 4 nonroad CI engines equipped with DPFs that met extensive factory tests for reliability and durability, but experienced numerous problems with

regeneration of the DPF once they were in-use by operators.<sup>7</sup>

After considering all of the information provided, including information provided on the lack of experience with and higher costs associated with the use of DPFs on engines in remote areas of Alaska, the potential for operational issues, and emission reductions expected if the disincentive to replacing old engines is eliminated, the EPA has determined that the use of DPFs is not adequately demonstrated in remote areas of Alaska. On July 5, 2019, the EPA issued a direct final rule (84 FR 32084) and a parallel proposed rule (84 FR 32114) to revise the provision in 40 CFR 60.4216 for 2014 model year and later stationary CI engines in remote areas of Alaska. After considering the public comments received, the EPA is finalizing the amendment that was proposed. The EPA is amending the provision in 40 CFR 60.4216 to specify that 2014 model year and later stationary CI engines in remote areas of Alaska must be certified to Tier 3 PM standards. The EPA has determined that the Tier 3 PM standards reflect the best system of emission reduction (BSER) that has been adequately demonstrated. The Tier 3 PM standards will limit emissions of PM to levels significantly below those of the older uncertified engines currently in use in many of the remote communities.

This final action revising the NSPS for Stationary CI Engines also satisfies EPA's obligation under the recently enacted Alaska Remote Generator Reliability and Protection Act, Public Law 116–62 (October 4, 2019), to remove the requirement in 40 CFR 60.4216(c) that stationary CI engines in remote areas of Alaska meet the Tier 4 PM standard and replace it with a requirement that those engines meet the Tier 3 PM standard.

### III. Public Comments and Responses

This section presents a summary of the public comments received on the proposed amendments and the responses developed. The EPA received two public comments on the proposed rule. The comments can be obtained online from the Federal Docket Management System at <https://www.regulations.gov/>.

*Comment:* One commenter stated that there was no need to relax air quality standards and no need for diesel generation anywhere in Alaska.

<sup>7</sup> Letter from Bill Mossey, President, Pacific Power Group to Janet Reiser, Executive Director, AEA. August 10, 2018. Available in the rulemaking docket.

<sup>2</sup> Letter from Ben Hopkins, General Manager Kaktovik Enterprises LLC to Janet Reiser, Executive Director, AEA, June 11, 2018. Available in the rulemaking docket.

<sup>3</sup> Email from David Lockard, AEA to Robert Klepp *et al.* FW: *Estimated DPF Capital and Operating Costs*. October 26, 2018. Available in the rulemaking docket.

<sup>4</sup> Letter from Bill Mossey, President, Pacific Power Group to Janet Reiser, Executive Director, AEA. August 10, 2018. Available in the rulemaking docket.

<sup>5</sup> Email from Marc Rost, Johnson Matthey to Melanie King, U.S. EPA. *Estimated DPF Capital and Operating Costs*. November 19, 2018.

<sup>6</sup> Summary of April 17, 2018, meeting between the EPA and the AEA to discuss Governor Walker's request for regulatory relief. Available in the rulemaking docket.

According to the commenter, there are opportunities for generation using hydropower in combination with transmission, and the commenter has a low-head hydroelectric generation design. The commenter indicated that a demonstration site has been operating in Ontario since 1988.

*Response:* The commenter did not provide any support for the assertion that replacing diesel generation with hydropower generation in remote areas of Alaska would be feasible on either a technical or economic basis and could provide continuous power for the remote areas. The commenter did not provide information to demonstrate that the communities in remote areas of Alaska are near potential sources of hydropower or that transmission to such communities from any potential sources of hydropower would be feasible. The commenter conceded that some transmission would be required, but did not provide any information regarding the cost or feasibility of installing the transmission infrastructure from a theoretical source of hydropower to a community in remote Alaska. In addition, as noted in the 2011 Amendments, heat recovery systems are used with diesel engines in remote Alaskan communities to provide heat to community facilities and schools. The commenter did not provide information to show how that heat would be generated if the diesel engines are replaced by hydropower generation. Further, the commenter does not explain how the potential for hydroelectric power in remote Alaska is relevant to the EPA's determination that Tier 3 CI engines are the BSER that has been adequately demonstrated. In doing the analysis of the BSER for new stationary CI engines in remote areas of Alaska, we considered adequately demonstrated controls that can be applied to the source, not complete replacement of the source with a different means of generating power and heat.

*Comment:* One commenter stated that the EPA should not repeal the DPF requirements for remote areas of Alaska. The commenter recommended that the EPA provide the remote areas of Alaska with an extension to allow further time for those areas to gain experience with DPFs and provide training to people in the communities. The commenter indicated that the EPA should formally designate the remote areas on a map or in a list so that communities know what requirements are necessary. The commenter recommended that the EPA use the grant process specified in section 105 of the CAA to provide Alaska with funding for pilot programs

to help communities gain experience in installing and operating DPFs and to allow them to install DPFs if the costs are too high.

The commenter disagreed that Tier 4 CI engines will require greater costs due to service and repair trips to remote locations. According to the commenter, any engine, including a Tier 4 CI engine, will require the same costs for trips for maintenance, service, and repairs. Regarding concerns over proper disposal of DPF ash and used filters, the commenter said that the engines without DPFs will emit the hazardous metallics into the atmosphere, and the EPA should compare the health consequences of these emissions with the benefits of capturing and properly disposing of the ash and the filter. The commenter stated that the EPA should promote innovation and environmental and health protection for remote areas of Alaska, which are typically home to lower income individuals and minorities according to the commenter.

*Response:* Regarding the comment that the EPA should provide an extension to provide more time for remote communities to gain experience with the use of DPF, the EPA already provided an extension for that purpose in the 2011 rulemaking, and as explained above, the EPA's expectation that experience with the use of DPFs would alleviate feasibility and cost concerns was not realized. Instead, the requirement that model year 2014 and later engines use DPFs has, in fact, resulted in the use of older engines. Further, in light of the information the EPA received from Governor Walker, the Alaska Department of Environmental Conservation and the AEA, as explained above, the EPA has determined that Tier 3 CI engines are the BSER and does not believe it is appropriate to retain a requirement that would necessitate the use of a DPF even if additional time is provided to meet that requirement. If more experience is gained with the use of DPFs in remote areas of Alaska, the EPA will consider that information when it next reviews the standards under section 111(b)(1)(B) of the CAA.

Regarding the comment that the EPA should formally designate the areas that are remote on a map or list them somewhere so that communities know what requirements are necessary, the criteria for qualifying as a remote area of Alaska in the regulation is not always based solely on geographical location. In some cases, the criteria include other factors such as the generating capacity of the source, so a map would not be sufficient for determining applicability. Furthermore, it is the responsibility of

the owner or operator of stationary CI engines subject to the regulation to determine applicability for specific engines.

In response to the comment that the EPA should use a grant process to help communities gain experience with implementing the Tier 4 standards, although the EPA supports the idea of communities becoming proficient in operating and maintaining DPFs, the potential availability of grants does not change our determination that the use of DPFs is not currently BSER in remote areas of Alaska.

Information on the higher costs in remote areas of Alaska for engine and control device maintenance and repair provided by engine and catalyst dealers is included in the docket for this rulemaking and summarized earlier in this preamble. The commenter asserted that this information was false and that the cost of traveling to the engine location for service and repairs will be the same for any engine. It is true that the cost of engine technician travel per trip would be the same regardless of the type of engine. However, there would likely be increased frequency of travel associated with engines equipped with DPFs to allow engine technicians to perform the maintenance required for the DPFs, since the communities reportedly do not have the capability of performing the maintenance on their own. Therefore, the overall maintenance costs could be higher than for an engine not equipped with a DPF.

Regarding the comment concerning the health consequences of air emissions and the benefits of capturing and properly disposing of the ash collected by the DPF, the EPA has considered the health impacts associated with this final action. As stated previously in this preamble, utilities in the remote areas have been installing used, remanufactured, and rebuilt pre-model year 2014 engines, instead of installing new engines that meet the Tier 3 CI engine standards. According to the AEA, if these amendments are not finalized, higher emitting engines will likely continue to operate in the remote communities. Replacing the higher emitting engines with engines meeting the Tier 3 CI engine standards and that use ultra low sulfur diesel fuel will result in health and environmental protections for the remote communities.

#### IV. Impacts of the Final Rule

A detailed discussion of the impacts of these amendments can be found in the *Impacts of the Amendments to the NSPS for Stationary Compression Ignition Internal Combustion Engines*

memorandum, which is available in the docket for this action. That memorandum was written for the proposed rule and direct final rule, and the estimates of the impacts did not change for the final rule.

In the original 2006 rulemaking, the EPA assumed that, even in the absence of the NSPS, emissions from stationary CI engines would be reduced to the same emission levels as nonroad CI engines through Tier 3, because engine manufacturers frequently use the same engine in both nonroad and stationary applications. Emission reductions and costs were only estimated for the difference between compliance with the Tier 3 standard and compliance with the Tier 4 standard in the original rulemaking.<sup>8</sup> Using a similar assumption, the foregone PM reductions and costs from these amendments are calculated based on the difference in emissions between the engines that are expected to be used once these amendments are finalized, which are Tier 3 marine CI engines because of heat recovery abilities of marine engines, and the engines currently required by the regulations (known as the baseline), which are Tier 3 nonroad CI engines (either land-nonroad or marine) with a DPF. If the baseline is assumed to be a Tier 3 land-based nonroad CI engine with a DPF, then the foregone PM reductions, based on the difference between a Tier 3 marine CI engine and a Tier 3 land-based nonroad CI engine with a DPF, are 5.3 tons per year in the first year after the amendments. In the fifth year after the amendments, the foregone PM reductions would be 27 tons of PM per year, assuming the number of new engines installed each year remains constant. If the baseline is assumed to be a Tier 3 marine CI engine with a DPF, foregone PM reductions are 6.6 tons of PM per year in the first year and 33 tons of PM in the fifth year. The cost savings in the fifth year after the amendments are estimated to be approximately \$8.0 million (2017 dollars). The cost savings are the same for either baseline (Tier 3 land-based nonroad or Tier 3 marine). We also show the cost savings using a present value (PV) in adherence to Executive Order 13771. The PV of the cost savings is estimated in 2016 dollars as \$322.9 million at a discount rate of 3 percent and \$111.2 million at a discount rate of 7 percent. Finally, the annualized cost savings over time can be shown as an

equivalent annualized value (EAV), a value calculated consistent with the PV. The EAV of the cost savings is estimated in 2016 dollars as \$9.7 million at a discount rate of 3 percent and \$7.8 million at a discount rate of 7 percent. All of these PV and EAV estimates are discounted to 2016 and assume an indefinite time period after promulgation for their calculation.

Note that the AEA has indicated that owners and operators of engines in remote communities have been delaying replacement of older engines because of the cost and concerns about having to install new engines with DPFs. Thus, the costs and additional PM emission reductions from engines installed in 2014 and later have not been occurring as expected when the rule was originally issued in 2006. According to the AEA, if these amendments are not finalized, the remote communities will likely continue delaying replacement of older engines and will not receive the benefits of the reduced PM emissions that will occur if the older engines are replaced by new Tier 3 CI engines. Replacing an older engine with an engine meeting the Tier 3 CI engine emission standard results in a significant reduction in PM emissions compared to the older engine's emissions. For example, for a 238 horsepower (HP) engine, PM emissions from a Tier 3 marine CI engine are reduced by 80 percent from a Tier 0<sup>9</sup> engine.

#### V. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at <https://www.epa.gov/laws-regulations/laws-and-executive-orders>.

##### A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a significant regulatory action and was, therefore, not submitted to the Office of Management and Budget (OMB) for review.

##### B. Executive Order 13771: Reducing Regulation and Controlling Regulatory Costs

This action is considered an Executive Order 13771 deregulatory action. Details on the estimated cost savings of this final rule can be found in the EPA's analysis of the potential

costs and benefits associated with this action.

##### C. Paperwork Reduction Act (PRA)

This action does not impose any new information collection burden under the PRA. OMB has previously approved the information collection activities contained in the existing regulations and has assigned OMB control number 2060-0590. This action does not impose an information collection burden because the EPA is not making any changes to the information collection requirements.

##### D. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. In making this determination, the impact of concern is any significant adverse economic impact on small entities. An agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, has no net burden, or otherwise has a positive economic effect on the small entities subject to the rule. This action reduces the impact of the rule on owners and operators of stationary CI engines located in remote areas of Alaska. We have, therefore, concluded that this action will relieve regulatory burden for all directly regulated small entities.

##### E. Unfunded Mandates Reform Act (UMRA)

This action does not contain an unfunded mandate of \$100 million or more as described in UMRA, 2 U.S.C. 1531-1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local, or tribal governments or the private sector.

##### F. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

##### G. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications as specified in Executive Order 13175. While some Native Alaskan tribes and villages could be impacted by this amendment, this rule would reduce the compliance costs for

<sup>8</sup> Emission Reduction Associated with NSPS for Stationary CI ICE. Memorandum from Tanya Parise, Alpha-Gamma Technologies, Inc. to Jaime Pagán, EPA Energy Strategies Group. May 19, 2006. Document EPA-HQ-OAR-2005-0029-0288.

<sup>9</sup> Tier 0 signifies an engine built between 1988 and the first model year in which the Tier 1 standards took effect, which is 1996 for a 238 HP engine. See *Exhaust and Crankcase Emission Factors for Nonroad Compression-Ignition Engines in MOVES2014b*, EPA-420-R-18-009, July 2018.

owners and operators of stationary CI engines in remote areas of Alaska. Thus, Executive Order 13175 does not apply to this action.

*H. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks*

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of “covered regulatory action” in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk.

*I. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use*

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

*J. National Technology Transfer and Advancement Act (NTTAA)*

This rulemaking does not involve technical standards.

*K. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations*

While some Native Alaskan tribes and villages could be impacted by this amendment, the EPA believes that this action does not have disproportionately high and adverse human health or environmental effects on minority populations, low-income populations, and/or indigenous peoples, as specified in Executive Order 12898 (59 FR 7629, February 16, 1994). The amendments will not have a significant effect on emissions and will likely remove barriers to the installation of new, lower emission engines in remote communities.

*L. Congressional Review Act (CRA)*

This action is subject to the CRA, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

**List of Subjects in 40 CFR Part 60**

Environmental protection, Administrative practice and procedure, Air pollution control, Reporting and recordkeeping requirements.

Dated: October 30, 2019.

**Andrew R. Wheeler,**  
*Administrator.*

For the reasons set forth in the preamble, 40 CFR part 60 is amended as follows:

**PART 60—STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES**

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

**Authority:** 42 U.S.C. 7401 *et seq.*

**Subpart III—Standards of Performance for Stationary Compression Ignition Internal Combustion Engines**

■ 2. Section 60.4216 is amended by revising paragraph (c) to read as follows:

**§ 60.4216 What requirements must I meet for engines used in Alaska?**

\* \* \* \* \*

(c) Manufacturers, owners, and operators of stationary CI ICE that are located in remote areas of Alaska may choose to meet the applicable emission standards for emergency engines in §§ 60.4202 and 60.4205, and not those for non-emergency engines in §§ 60.4201 and 60.4204, except that for 2014 model year and later non-emergency CI ICE, the owner or operator of any such engine must have that engine certified as meeting at least the Tier 3 PM standards in 40 CFR 89.112 or 40 CFR 1042.101.

\* \* \* \* \*

[FR Doc. 2019–24335 Filed 11–12–19; 8:45 am]

**BILLING CODE 6560–50–P**

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 622**

[Docket No. 160426363–7275–02]

**RIN 0648–XS008**

**Coastal Migratory Pelagic Resources of the Gulf of Mexico and Atlantic Region; 2019–2020 Commercial Quota Reduction for King Mackerel Run-Around Gillnet Fishery**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Temporary rule; commercial quota reduction.

**SUMMARY:** NMFS implements an accountability measure (AM) through

this temporary rule for commercial harvest of king mackerel in the southern zone of the Gulf of Mexico (Gulf exclusive economic zone (EEZ) using run-around gillnet gear. NMFS has determined that the commercial annual catch limit (equivalent to the commercial quota) for king mackerel using run-around gillnet gear in the southern zone of the Gulf EEZ was exceeded in the 2018–2019 fishing year. Therefore, NMFS reduces the southern zone commercial annual catch limit (ACL) for king mackerel fishing using run-around gillnet gear in the Gulf EEZ during the 2019–2020 fishing year. This commercial ACL reduction is necessary to protect the Gulf king mackerel resource.

**DATES:** The temporary rule is effective from 6 a.m. on January 21, 2020, through June 30, 2020.

**FOR FURTHER INFORMATION CONTACT:** Kelli O’Donnell, NMFS Southeast Regional Office, telephone: 727–824–5305, email: *kelli.odonnell@noaa.gov*.

**SUPPLEMENTARY INFORMATION:** The fishery for coastal migratory pelagic fish in the Gulf includes king mackerel, Spanish mackerel, and cobia, and is managed under the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and Atlantic Region (FMP). The FMP was prepared by the Gulf of Mexico and South Atlantic Fishery Management Councils, and is implemented by NMFS under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622. All weights for Gulf migratory group king mackerel (Gulf king mackerel) below apply as either round or gutted weight.

The king mackerel commercial ACL in the Gulf is divided into separate ACLs for hook-and-line and run-around gillnet gear. The use of run-around gillnets for king mackerel is restricted to the Gulf southern zone. The Gulf southern zone, which includes the EEZ off Collier and Monroe Counties in south Florida, encompasses an area of the EEZ south of a line extending due west from the boundary of Lee and Collier Counties on the Florida west coast, and south of a line extending due east from the boundary of Monroe and Miami-Dade Counties on the Florida east coast (50 CFR 622.369(a)(1)(iii)).

For the 2018–2019 fishing season, the commercial gillnet quota for Gulf king mackerel was 585,900 lb (265,760 kg). Regulations at 50 CFR 622.8(b) and 622.388(a)(1) require NMFS to close any component of the king mackerel commercial sector when its respective

## ELECTRONIC CODE OF FEDERAL REGULATIONS

**e-CFR data is current as of April 30, 2020**

Title 40 → Chapter I → Subchapter C → Part 60 → Subpart AAA

Title 40: Protection of Environment

PART 60—STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES (CONTINUED)

**Subpart AAA—Standards of Performance for New Residential Wood Heaters****Contents**

§60.530 Am I subject to this subpart?

§60.531 What definitions must I know?

§60.532 What standards and associated requirements must I meet and by when?

§60.533 What compliance and certification requirements must I meet and by when?

[§60.534 What test methods and procedures must I use to determine compliance with the standards and requirements for certification?](#)

§60.535 What procedures must I use for EPA approval of a test laboratory or EPA approval of a third-party certifier?

§60.536 What requirements must I meet for permanent labels, temporary labels (hangtags), and owner's manuals?

§60.537 What records must I keep and what reports must I submit?

§60.538 What activities are prohibited under this subpart?

§60.539 What hearing and appeal procedures apply to me?

§60.539a Who implements and enforces this subpart?

§60.539b What parts of the General Provisions do not apply to me?

SOURCE: 80 FR 13702, Mar. 16, 2015, unless otherwise noted.

[↑ Back to Top](#)**§60.530 Am I subject to this subpart?**

(a) You are subject to this subpart if you manufacture, sell, offer for sale, import for sale, distribute, offer to distribute, introduce or deliver for introduction into commerce in the United States, or install or operate an affected wood heater specified in paragraphs (a)(1) or (a)(2) of this section, except as provided in paragraph (c) of this section.

(1) Each adjustable burn rate wood heater, single burn rate wood heater and pellet stove manufactured on or after July 1, 1988, with a current EPA certificate of compliance issued prior to May 15, 2015 according to the certification procedures in effect in this subpart at the time of certification is an affected wood heater.

(2) All other residential wood heaters as defined in §60.531 manufactured or sold on or after May 15, 2015 are affected wood heaters, except as provided in paragraph (c) of this section.

(b) Each affected wood heater must comply with the provisions of this subpart unless exempted under paragraphs (b)(1) through (b)(6) of this section. These exemptions are determined by rule applicability and do not require EPA notification or public notice.

(1) Affected wood heaters manufactured in the United States for export are exempt from the applicable emission limits of §60.532 and the requirements of §60.533.

(2) Affected wood heaters used for research and development purposes that are never offered for sale or sold and that are not used for the purpose of providing heat are exempt from the applicable emission limits of §60.532 and the requirements of §60.533. No more than 50 wood heaters manufactured per model line can be exempted for this purpose.

(3) Appliances that do not burn wood or wood pellets (such as coal-only heaters that meet the definition in §60.531 or corn-only pellet stoves) are exempt from the applicable emission limits of §60.532 and the requirements of §60.533 provided that all advertising and warranties exclude wood burning.

(4) Cook stoves as defined in §60.531 are exempt from the applicable emission limits of §60.532 and the requirements of §60.533.

(5) Camp stoves as defined in §60.531 are exempt from the applicable emission limits of §60.532 and the requirements of §60.533.

(6) Modification or reconstruction, as defined in §§60.14 and 60.15 of subpart A of this part does not, by itself, make a wood heater an affected facility under this subpart.

(c) The following are not affected wood heaters and are not subject to this subpart:

(1) Residential hydronic heaters and residential forced-air furnaces subject to subpart QQQQ of this part.

(2) Residential masonry heaters that meet the definition in §60.531.

(3) Appliances that are not residential heating devices (for example, manufactured or site-built masonry fireplaces).

(4) Traditional Native American bake ovens that meet the definition in §60.531.

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### **§60.531 What definitions must I know?**

As used in this subpart, all terms not defined herein have the meaning given them in the Clean Air Act and subpart A of this part.

*Adjustable burn rate wood heater* means a wood heater that is equipped with or installed with a damper or other mechanism to allow the operator to vary burn rate conditions, regardless of whether it is internal or external to the appliance. This definition does not distinguish between heaters that are free standing, built-in or fireplace inserts.

*Approved test laboratory* means a test laboratory that is approved for wood heater certification testing under §60.535 or is an independent third-party test laboratory that is accredited under ISO-IEC Standard 17025 to perform testing using the test methods specified in §60.534 by an accreditation body that is a full member signatory to the International Laboratory Accreditation Cooperation Mutual Recognition Arrangement and approved by the EPA for conducting testing under this subpart.

*Camp stove* (sometimes also called cylinder stove or wall tent stove) means a portable stove equipped with a pipe or chimney exhaust capable of burning wood or coal intended for use in a tent or other temporary structure used for hunting, camping, fishing or other outdoor recreation. The primary purpose of the stove is to provide space heating, although cooking and heating water may be additional functions.

*Catalytic combustor* means a device coated with a noble metal used in a wood heater to lower the temperature required for combustion.

*Chip wood fuel* means wood chipped into small pieces that are uniform in size, shape, moisture, density and energy content.

*Coal-only heater* means an enclosed, coal-burning appliance capable of space heating or space heating and domestic water heating, which is marketed and warranted solely as a coal-only heater and has all of the following characteristics:

(1) An opening for emptying ash that is located near the bottom or the side of the appliance;

(2) A system that admits air primarily up and through the fuel bed;

(3) A grate or other similar device for shaking or disturbing the fuel bed or a power-driven or mechanical stoker;

(4) Installation instructions, owner's manual and marketing information that state that the use of wood in the stove, except for coal ignition purposes, is prohibited by law; and

(5) A safety listing as a coal-only heater, except for coal ignition purposes, under accepted American or Canadian safety codes, as documented by a permanent label from a nationally recognized certification body.

*Commercial owner* means 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.

*Cook stove* means a wood-fired appliance that is designed, marketed and warranted primarily for cooking food and that has the following characteristics:

(1) An oven, with volume of 0.028 cubic meters (1 cubic foot) or greater, and an oven rack;

- (2) A device for measuring oven temperatures;
- (3) A flame path that is routed around the oven;
- (4) An ash pan;
- (5) An ash clean-out door below the oven;
- (6) The absence of a fan or heat channels to dissipate heat from the appliance;

(7) A cooking surface with an area measured in square inches or square feet that is at least 1.5 times greater than the volume of firebox measured in cubic inches or cubic feet. Example: A cook stove with a firebox of 2 cubic feet must have a cooking surface of at least 3 square feet;

(8) A portion of at least four sides of the oven (which may include the bottom and/or top) is exposed to the flame path during the heating cycle of the oven. A flue gas bypass may exist for temperature control.

*Fireplace* means a wood-burning appliance intended to be used primarily for aesthetic enjoyment and not as a space heater. An appliance is a fireplace if it is in a model line that satisfies the requirements in paragraphs (1), (2) or (3) of this definition.

(1) The model line includes a safety listing under recognized American or Canadian safety standards, as documented by a permanent label from a nationally recognized certification body affixed on each unit sold, and that said safety listing only allows operation of the fireplace with doors fully open. Operation with any required safety screen satisfies this requirement.

(2) The model line has a safety listing that allows operation with doors closed, has no user-operated controls other than flue or outside air dampers that can only be adjusted to either a fully closed or fully opened position, and the requirements in either paragraph (2)(i) or (2)(ii) of this definition are satisfied.

(i) Appliances are sold with tempered glass panel doors only (either as standard or optional equipment), or

(ii) The fire viewing area is equal to or greater than 500 square inches.

(3)(i) A model line that is clearly positioned in the marketplace as intended to be used primarily for aesthetic enjoyment and not as a room heater, as demonstrated by product literature (including owner's manuals), advertising targeted at the trade or public (including web-based promotional materials) or training materials is presumptively a fireplace model line.

(ii) The presumption in paragraph (3)(i) of this definition can be rebutted by test data from an EPA-approved test laboratory reviewed by an EPA-approved third-party certifier that were generated when operating the appliance with the door(s) closed, and that demonstrate an average stack gas carbon dioxide (CO<sub>2</sub>) concentration over the duration of the test run equal to or less than 5.00 percent and a ratio of the average stack gas CO<sub>2</sub> to the average stack gas carbon monoxide (CO) equal to or greater than 15:1. The stack gas average CO<sub>2</sub> and CO concentrations for the test run shall be determined in accordance with the requirements in CSA B415.1-10 (IBR, see §60.17), clause 6.3, using a sampling interval no greater than 1 minute. The average stack gas CO<sub>2</sub> and CO concentrations for purposes of this determination shall be the average of the stack gas concentrations from all sampling intervals over the full test run.

*Manufactured* means completed and ready for shipment (whether or not assembled or packaged) for purposes of determining the date of manufacture.

*Manufacturer* means any entity that constructs or imports into the United States a wood heater.

*Model line* means all wood heaters offered for sale by a single manufacturer that are similar in all material respects that would affect emissions as defined in this section.

*Particulate matter (PM)* means total particulate matter including coarse particulate (PM<sub>10</sub>) and fine particulate (PM<sub>2.5</sub>).

*Pellet fuel* means refined and densified fuel shaped into small pellets or briquettes that are uniform in size, shape, moisture, density and energy content.

*Pellet stove* (sometimes called pellet heater or pellet space heater) means an enclosed, pellet or chip fuel-burning device capable of and intended for residential space heating or space heating and domestic water heating. Pellet stoves include a fuel storage hopper or bin and a fuel feed system. Pellet stoves include, but are not limited to:

(1) Free-standing pellet stoves—pellet stoves that are installed on legs or on a pedestal or other supporting base. These stoves generally are safety listed under ASTM E1509, UL-1482, ULC S627 or ULC-ORD C1482.

(2) Pellet stove fireplace inserts—pellet stoves intended to be installed in masonry fireplace cavities or in other enclosures. These stoves generally are safety listed under ASTM E1509, UL-1482, ULC-S628 or ULC-ORD C1482.

(3) Built-in pellet stoves—pellet stoves intended to be recessed into the wall. These stoves generally are safety listed under ASTM E1509, UL-127, ULC-S610 or ULC-ORD C1482.

*Representative affected wood heater* means an individual wood heater that is similar in all material respects that would affect emissions to other wood heaters within the model line it represents.

*Residential masonry heater* means a factory-built or site-built wood-burning device in which the heat from intermittent fires burned rapidly in the firebox is stored in the refractory mass for slow release to building spaces. Masonry heaters are site-built (using local materials or a combination of local materials and manufactured components) or site-assembled (using factory-built components), solid fuel-burning heating appliances constructed mainly of refractory materials (e.g., masonry materials or soapstone). They typically have an interior construction consisting of a firebox and heat exchange channels built from refractory components, through which flue gases are routed. ASTM E-1602 "Standard Guide for Construction of Solid Fuel Burning Masonry Heaters" provides design and construction information for the range of masonry heaters most commonly built in the United States. The site-assembled models are generally listed to UL-1482.

*Sale* means the transfer of ownership or control, except that a transfer of control of an affected wood heater for research and development purposes within the scope of §60.530(b)(2) is not a sale.

*Similar in all material respects that would affect emissions* means that the construction materials, exhaust and inlet air systems and other design features are within the allowed tolerances for components identified in §60.533(k)(2), (3) and (4).

*Single burn rate wood heater* means a wood heater that is not equipped with or installed with a burn control device to allow the operator to vary burn rate conditions. Burn rate control devices include stack dampers that control the outflow of flue gases from the heater to the chimney, whether built into the appliance, sold with it, or recommended for use with the heater by the manufacturer, retailer or installer; and air control slides, gates or any other type of mechanisms that control combustion air flow into the heater.

*Sold at retail* means the sale by a commercial owner of a wood heater to the ultimate purchaser/user or noncommercial purchaser.

*Third-party certifier* (sometimes called *third-party certifying body* or *product certifying body*) means an independent third party that is accredited under ISO-IEC Standards 17025 and 17065 to perform certifications, inspections and audits by an accreditation body that is a full member signatory to the International Laboratory Accreditation Cooperation Mutual Recognition Arrangement and approved by the EPA for conducting certifications, inspections and audits under this subpart.

*Traditional Native American bake oven* means a wood or other solid fuel burning appliance that is designed primarily for use by Native Americans for food preparation, cooking, warming or for instructional, recreational, cultural or ceremonial purposes.

*Unseasoned wood* means wood with an average moisture content of 20 percent or more.

*Valid certification test* means a test that meets the following criteria:

- (1) The Administrator was notified about the test in accordance with §60.534(g);
- (2) The test was conducted by an approved test laboratory as defined in this section;
- (3) The test was conducted on a wood heater similar in all material respects that would affect emissions to other wood heaters of the model line that is to be certified; and
- (4) The test was conducted in accordance with the test methods and procedures specified in §60.534.

*Wood heater* means an enclosed, wood burning-appliance capable of and intended for residential space heating or space heating and domestic water heating. These devices include, but are not limited to, adjustable burn rate wood heaters, single burn rate wood heaters and pellet stoves. Wood heaters may or may not include air ducts to deliver some portion of the heat produced to areas other than the space where the wood heater is located. Wood heaters include, but are not limited to:

(1) Free-standing wood heaters—Wood heaters that are installed on legs, on a pedestal or suspended from the ceiling. These products generally are safety listed under UL-1482, UL-737 or ULC-S627.

(2) Fireplace insert wood heaters—Wood heaters intended to be installed in masonry fireplace cavities or in other enclosures. These appliances generally are safety listed under UL-1482, UL-737 or ULC-S628.

(3) Built-in wood heaters—Wood heaters that are intended to be recessed into the wall. These appliances generally are safety listed under UL-1482, UL-737, UL-127 or ULC-S610.

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### **§60.532 What standards and associated requirements must I meet and by when?**

(a) *2015 particulate matter emission standards.* Unless exempted under §60.530(b), each affected wood heater manufactured, imported into the United States, and/or sold at retail on or after May 15, 2015 must be certified to not discharge into the atmosphere any gases that contain particulate matter in excess of a weighted average of 4.5 g/hr (0.010 lb/hr), except that a wood heater manufactured before May 15, 2015 may be imported into the United States and/or sold at retail on or before December 31, 2015. Compliance for all heaters must be determined by the test methods and procedures in §60.534.

(b) *2020 particulate matter emission standards.* Unless exempted under §60.530(b) or electing to use the cord wood alternative means of compliance option in paragraph (c) of the section, each affected wood heater manufactured or sold at retail for use in the United States on or after May 15, 2020 must not discharge into the atmosphere any gases that contain particulate matter in excess of a weighted average of 2.0 g/hr (0.0044 lb/hr). Compliance for all heaters must be determined by the test methods and procedures in §60.534.

(c) *2020 cord wood alternative compliance option.* Each affected wood heater manufactured or sold at retail for use in the United States on or after May 15, 2020 must not discharge into the atmosphere any gases that contain particulate matter in excess of a weighted average of 2.5 g/hr (0.0055 lb/hr). Compliance must be determined by a cord wood test method approved by the Administrator and the procedures in §60.534.

(d) *Chip wood fuel requirements.* Operators of wood heaters that are certified to burn chip wood fuels must only burn chip wood fuels that have been specified in the owner's manual. The chip wood fuel must meet the following minimum requirements:

- (1) Moisture content: less than 35 percent;
- (2) Inorganic fines: less than or equal to 1 percent;
- (3) Chlorides: less than or equal to 300 parts per million by weight;
- (4) Ash content: no more than 2 percent;
- (5) No demolition or construction waste; and
- (6) Trace metals: less than 100 mg/kg.

(e) *Pellet fuel requirements.* Operators of wood heaters that are certified to burn pellet fuels may burn only pellets that have been specified in the owner's manual and graded under a licensing agreement with a third-party organization approved by the EPA (including a certification by the third-party organization that the pellets do not contain, and are not manufactured from, any of the prohibited fuels in paragraph (f) of this section). The Pellet Fuels Institute, ENplus, and CANplus are initially deemed to be approved third-party organizations for this purpose, and additional organizations may apply to the Administrator for approval.

(f) *Prohibited fuel types.* No person is permitted to burn any of the following materials in an affected wood heater:

- (1) Residential or commercial garbage;
- (2) Lawn clippings or yard waste;
- (3) Materials containing rubber, including tires;
- (4) Materials containing plastic;
- (5) Waste petroleum products, paints or paint thinners, or asphalt products;
- (6) Materials containing asbestos;
- (7) Construction or demolition debris;

(8) Paper products, cardboard, plywood, or particleboard. The prohibition against burning these materials does not prohibit the use of fire starters made from paper, cardboard, sawdust, wax and similar substances for the purpose of starting a fire in an affected wood heater;

- (9) Railroad ties, pressure-treated wood or pallets;

- (10) Manure or animal remains;
- (11) Salt water driftwood or other previously salt water saturated materials;
- (12) Unseasoned wood;
- (13) Any materials that are not included in the warranty and owner's manual for the subject wood heater; or
- (14) Any materials that were not included in the certification tests for the subject wood heater.

(g) *Operation of affected wood heaters.* The user of an affected residential wood heater must operate the heater in a manner consistent with the owner's manual. The owner's manual must clearly specify that operation in a manner inconsistent with the owner's manual would void the warranty.

(h) *Temperature sensor requirement.* An affected wood heater equipped with a catalytic combustor must be equipped with a temperature sensor that can monitor combustor gas stream temperatures within or immediately downstream [within 2.54 centimeters (1 inch)] of the catalytic combustor surface.

[80 FR 13702, Mar. 16, 2015, as amended at 85 FR 18455, Apr. 2, 2020]

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### **§60.533 What compliance and certification requirements must I meet and by when?**

(a) *Certification requirement.* Each affected wood heater must be certified to be in compliance with the applicable emission standards and other requirements of this subpart. For each model line manufactured or sold by a single entity (e.g., company or manufacturer), compliance with applicable emission standards of §60.532 must be determined based on testing of representative affected wood heaters within the model line. If one entity licenses a model line to another entity, each entity's model line must be certified. If an entity intends to change the name of the entity or the name of the model, the manufacturer must apply for a new certification 60 days before the intended name change.

(1) Except for model lines meeting the requirements of paragraph (h)(1) of this section, on or after May 15, 2015, the manufacturer must submit to the Administrator the information required in paragraph (b) of this section and follow either the certification process in paragraphs (c) through (e) of this section or the third-party certifier-based application process specified in paragraph (f) of this section.

(2) On or after May 16, 2016, the manufacturer must submit the information required in paragraph (b) of this section and follow the third-party certifier-based application process specified in paragraph (f) of this section.

(b) *Application for a certificate of compliance.* Any manufacturer of an affected wood heater must apply to the Administrator for a certificate of compliance for each model line. The application must be submitted to: [WoodHeaterReports@epa.gov](mailto:WoodHeaterReports@epa.gov). The application must be signed by a responsible representative of the manufacturer or an authorized representative and must contain the following:

(1) The model name and design number. The model name and design number must clearly distinguish one model from another. The name and design number cannot include the EPA symbol or logo or name or derivatives such as "EPA."

(2) Engineering drawings and specifications of components that may affect emissions (including specifications for each component listed in paragraph (k)(2), (3) and (4) of this section). Manufacturers may use assembly or design drawings that have been prepared for other purposes, but must designate on the drawings the dimensions of each component listed in paragraph (k) of this section. Manufacturers must identify tolerances of components listed in paragraph (k)(2) of this section that are different from those specified in that paragraph, and show that such tolerances cannot reasonably be anticipated to cause wood heaters in the model line to exceed the applicable emission limits. The drawings must identify how the emission-critical parts, such as air tubes and catalyts, can be readily inspected and replaced.

(3) A statement whether the firebox or any firebox component (including the materials listed in paragraph (k)(3) of this section) will be composed of material different from the material used for the firebox or firebox component in the wood heater on which certification testing was performed, a description of any such differences and demonstration that any such differences may not reasonably be anticipated to adversely affect emissions or efficiency.

(4) Clear identification of any claimed confidential business information (CBI). Submit such information under separate cover to the EPA CBI Office; Attn: Residential Wood Heater Compliance Program Lead, 1200 Pennsylvania Ave. NW., Washington, DC 20004. Note that all emissions data, including all information necessary to determine emission rates in the format of the standard, cannot be claimed as CBI.

(5) All documentation pertaining to a valid certification test, including the complete test report and, for all test runs: Raw data sheets, laboratory technician notes, calculations and test results. Documentation must include the items specified in the applicable test methods. Documentation must include discussion of each test run and its appropriateness and validity, and must include detailed discussion of all anomalies, whether all burn rate categories were achieved, any data not used in the calculations and, for any test runs not completed, the data collected during the test run and the reason(s) that the test run was not completed and why. The burn rate for the low burn rate category must be no greater than the rate that an operator can achieve in home use and no greater than is advertised by the manufacturer or retailer. The test report must include a summary table that clearly presents the individual and overall emission rates, efficiencies and heat outputs. Submit the test report and all associated required information, according to the procedures for electronic reporting specified in §60.537(f).

(6) A copy of the warranties for the model line, which must include a statement that the warranties are void if the unit is used to burn materials for which the unit is not certified by the EPA and void if not operated according to the owner's manual.

(7) A statement that the manufacturer will conduct a quality assurance program for the model line that satisfies the requirements of paragraph (m) of this section.

(8) A statement describing how the tested unit was sealed by the laboratory after the completion of certification testing and asserting that such unit will be stored by the manufacturer in the sealed state until 5 years after the certification test.

(9) Statements that the wood heaters manufactured under this certificate will be—

(i) Similar in all material respects that would affect emissions as defined in §60.531 to the wood heater submitted for certification testing, and

(ii) Labeled as prescribed in §60.536.

(iii) Accompanied by an owner's manual that meets the requirements in §60.536. In addition, a copy of the owner's manual must be submitted to the Administrator and be available to the public on the manufacturer's Web site.

(10) A statement that the manufacturer has entered into contracts with an approved laboratory and an approved third-party certifier that satisfy the requirements of paragraph (f) of this section.

(11) A statement that the approved laboratory and approved third-party certifier are allowed to submit information on behalf of the manufacturer, including any claimed to be CBI.

(12) A statement that the manufacturer will place a copy of the certification test report and summary on the manufacturer's Web site available to the public within 30 days after the Administrator issues a certificate of compliance.

(13) A statement of acknowledgment that the certificate of compliance cannot be transferred to another manufacturer or model line without written approval by the Administrator.

(14) A statement acknowledging that it is unlawful to sell, distribute or offer to sell or distribute an affected wood heater without a valid certificate of compliance.

(15) Contact information for the responsible representative of the manufacturer and all authorized representatives, including name, affiliation, physical address, telephone number and email address.

(c) *Administrator approval process.* (1) The Administrator may issue a certificate of compliance for a model line if the Administrator determines, based on all information submitted by the applicant and any other relevant information available, that:

(i) A valid certification test demonstrates that the representative affected wood heater complies with the applicable emission standards in §60.532;

(ii) Any tolerances or materials for components listed in paragraph (k)(2) or (3) of this section that are different from those specified in those paragraphs may not reasonably be anticipated to cause wood heaters in the model line to exceed the applicable emission limits; and

(iii) The requirements of paragraph (b) of this section have been met.

(2) The Administrator will deny certification if the Administrator determines that the criteria in paragraph (c)(1) of this section have not been satisfied. Upon denying certification under this paragraph, the Administrator will give written notice to the manufacturer setting forth the basis for this determination.

(d) *Level of compliance certification.* The Administrator will issue the certificate of compliance for the most stringent particulate matter emission standard that the tested representative wood heater meets under §60.532.

(e) *Conditional, temporary certificate of compliance.* A conditional, temporary certificate of compliance may be granted by the Administrator until May 16, 2016 based on the manufacturer's submittal of a complete certification application meeting all the requirements in §60.533(b). The application must include the full test report by an EPA-approved laboratory and all required compliance statements by the manufacturer with the exception of a certificate of conformity by an EPA-approved third-party certifier. The conditional, temporary certificate of compliance would allow manufacture and sales of the affected wood heater model line until May 16, 2016 or until the Administrator completes the review of the application, whichever is earlier. By May 16, 2016, the manufacturer must submit a certificate of conformity by an EPA-approved third-party certifier.

(f) *Third-party certifier-based application process.* (1) Any manufacturer of an affected wood heater must apply to the Administrator for a certificate of compliance for each model line. The manufacturer must meet the following requirements:

(i) The manufacturer must contract with a third-party certifier for certification services. The contract must include regular (at least annual) unannounced audits under ISO-IEC Standard 17065 to ensure that the manufacturer's quality assurance plan is being implemented. The contract must also include a report for each audit under ISO-IEC Standard 17065 that fully documents the results of the audit. The contract must include authorization and requirement for the third-party certifier to submit all such reports to the Administrator and the manufacturer within 30 days of the audit. The audit report must identify deviations from the manufacturer's quality assurance plan and specify the corrective actions that need to be taken to address each identified deficiency.

(ii) The manufacturer must submit the materials specified in paragraph (b) of this section and a quality assurance plan that meets the requirements of paragraph (m) of this section to the third-party certifier. The quality assurance plan must ensure that units within a model line will be similar in all material respects that would affect emissions to the wood heater submitted for certification testing, and it must include design drawings for the model line.

(iii) The manufacturer must apply to the third-party certifier for a certification of conformity with the applicable requirements of this subpart for the model line.

(A) After testing by an approved test laboratory is complete, certification of conformity with the emission standards in §60.532 must be performed by the manufacturer's contracted third-party certifier.

(B) The third-party certifier may certify conformity if the emission tests have been conducted per the appropriate guidelines; the test report is complete and accurate; the instrumentation used for the test was properly calibrated; the test report shows that the representative affected wood heater meets the applicable emission limits specified in §60.532; the quality assurance plan is adequate to ensure that units within the model line will be similar in all material respects that would affect emissions to the wood heater submitted for certification testing; and that the affected heaters would meet all applicable requirements of this subpart.

(iv) The manufacturer must then submit to the Administrator an application for a certificate of compliance that includes the certification of conformity, quality assurance plan, test report and all supporting documentation specified in paragraph (b) of this section.

(v) The submission also must include a statement signed by a responsible official of the manufacturer or authorized representative that the manufacturer has complied with and will continue to comply with all requirements of this subpart for certificate of compliance and that the manufacturer remains responsible for compliance regardless of any error by the test laboratory or third-party certifier.

(2) The Administrator will issue to the manufacturer a certificate of compliance for a model line if it is determined, based on all of the information submitted in the application for certification and any other relevant information, that:

(i) A valid certification of conformity has demonstrated that the representative affected wood heater complies with the applicable emission standards in §60.532;

(ii) Any tolerances or materials for components listed in paragraph (k)(2) or (3) of this section that are different from those specified in those paragraphs may not be reasonably anticipated to cause wood heaters in the model line to exceed the applicable emission limits;

(iii) The requirements of paragraph (b) of this section have been met; and

(iv) A valid certificate of conformity for the model line has been prepared and submitted.

(3) The Administrator will deny certification if the Administrator determines that the criteria in paragraph (f)(2) of this section have not been satisfied. Upon denying certification under this paragraph, the Administrator will give written notice to the manufacturer setting forth the basis for the determination.

(g) *Waiver from submitting test results.* An applicant for certification may apply for a potential waiver of the requirement to submit the results of a certification test pursuant to paragraph (b)(5) of this section, if the wood heater meets either of the

following conditions:

(1) The wood heaters of the model line are similar in all material respects that would affect emissions, as defined in §60.531, to another model line that has already been issued a certificate of compliance. A manufacturer that seeks a waiver of certification testing must identify the model line that has been certified, and must submit a copy of an agreement with the owner of the design permitting the applicant to produce wood heaters of that design.

(2) The manufacturer has previously conducted a valid certification test to demonstrate that the wood heaters of the model line meet the applicable standard specified in §60.532.

(h) *Certification period.* Unless revoked sooner by the Administrator, a certificate of compliance will be valid for the following periods as applicable:

(1) For a model line that was previously certified as meeting the 1990 Phase II emission standards under the 1988 NSPS, in effect prior to May 15, 2015, at an emission level equal to or less than the 2015 emission standards in §60.532(a), the model line is deemed to have a certificate of compliance for the 2015 emission standards in §60.532(a), which is valid until the effective date for the 2020 standards in §60.532(b) (*i.e.*, until May 15, 2020).

(2) For a model line certified as meeting emission standards in §60.532, a certificate of compliance will be valid for 5 years from the date of issuance or until a more stringent standard comes into effect, whichever is sooner.

(i) *Renewal of certification.* (1) The manufacturer must request renewal of a model line's certificate of compliance or recertify the model line every 5 years, or the manufacturer may choose to no longer manufacture or sell that model line after the expiration date. If the manufacturer chooses to no longer manufacture that model line, then the manufacturer must submit a statement to the Administrator to that effect.

(2) A manufacturer of an affected wood heater model line may apply to the Administrator for potential renewal of its certificate of compliance by submitting the material specified in paragraph (b) and following the procedures specified in paragraph (f) of this section, or by affirming in writing that the wood heaters in the model line continue to be similar in all material respects that would affect emissions to the representative wood heater submitted for testing on which the original certificate of compliance was based and requesting a potential waiver from certification testing. The application must include a copy of the review of the draft application and approval by the third-party certifier.

(3) If the Administrator grants a renewal of certification, the Administrator will give written notice to the manufacturer setting forth the basis for the determination and issue a certification renewal.

(4) If the Administrator denies the request for a renewal of certification, the Administrator will give written notice to the manufacturer setting forth the basis for the determination.

(5) If the Administrator denies the request for a renewal of certification, the manufacturer and retailer must not manufacture or sell the previously-certified wood heaters after the expiration date of the certificate of compliance.

(j) [Reserved]

(k) *Recertification.* (1) The manufacturer must recertify a model line whenever any change is made in the design submitted pursuant to paragraph (b)(2) of this section that affects or is presumed to affect the particulate matter emission rate for that model line. The manufacturer of an affected wood heater must apply to the Administrator for potential recertification by submitting the material specified in paragraph (b) and following the procedures specified in paragraph (f) of this section, or by affirming in writing that the change will not cause wood heaters in the model line to exceed applicable emission limits and requesting a potential waiver from certification testing. The application for recertification must be reviewed and approved by the contracted third-party certifier and a copy of the review and approval must be included. The Administrator may waive this requirement upon written request by the manufacturer, if the manufacturer presents adequate rationale and the Administrator determines that the change may not reasonably be anticipated to cause wood heaters in the model line to exceed the applicable emission limits. The granting of such a waiver does not relieve the manufacturer of any compliance obligations under this subpart.

(2) Any change in the design tolerances or actual dimensions of any of the following components (where such components are applicable) is presumed to affect particulate matter and carbon monoxide emissions and efficiency if that change exceeds  $\pm 0.64$  cm ( $\pm \frac{1}{4}$  inch) for any linear dimension and  $\pm 5$  percent for any cross-sectional area relating to air introduction systems and catalyst bypass gaps unless other dimensions and cross-sectional areas are previously approved by the Administrator under paragraph (c)(1)(ii) of this section:

(i) Firebox: Dimensions;

(ii) Air introduction systems: Cross-sectional area of restrictive air inlets and outlets, location and method of control;

- (iii) Baffles: Dimensions and locations;
- (iv) Refractory/insulation: Dimensions and location;
- (v) Catalyst: Dimensions and location;
- (vi) Catalyst bypass mechanism and catalyst bypass gap tolerances (when bypass mechanism is in closed position): Dimensions, cross-sectional area, and location;
- (vii) Flue gas exit: Dimensions and location;
- (viii) Door and catalyst bypass gaskets: Dimensions and fit;
- (ix) Outer thermal shielding and thermal coverings: Dimensions and location;
- (x) Fuel feed system: For wood heaters that are designed primarily to burn pellet fuel or wood chips and other wood heaters equipped with a fuel feed system, the fuel feed rate, auger motor design and power rating, and the angle of the auger to the firebox; and
- (xi) Forced-air combustion system: For wood heaters so equipped, the location and horsepower of blower motors and the fan blade size.

(3) Any change in the materials used for the following components is presumed to affect particulate matter emissions and efficiency:

- (i) Refractory/insulation; or
- (ii) Door and catalyst bypass gaskets.

(4) A change in the make, model or composition of a catalyst is presumed to affect particulate matter and carbon monoxide emissions and efficiency, unless the change has been requested by the heater manufacturer and has been approved in advance by the Administrator, based on test data that demonstrate that the replacement catalyst is equivalent to or better than the original catalyst in terms of particulate matter emission reduction.

(l) *Criteria for revocation of certification.* (1) The Administrator may revoke certification if it is determined that the wood heaters being manufactured or sold in that model line do not comply with the requirements of this subpart. Such a determination will be based on all available evidence, including but not limited to:

- (i) Test data from a retesting of the original unit on which the certification test was conducted or a unit that is similar in all material respects that would affect emissions;
- (ii) A finding that the certification test was not valid. The finding will be based on problems or irregularities with the certification test or its documentation, but may be supplemented by other information;
- (iii) A finding that the labeling of the wood heater model line, the owner's manual or the associated marketing information does not comply with the requirements of §60.536;

(iv) Failure by the manufacturer to comply with reporting and recordkeeping requirements under §60.537;

(v) Physical examination showing that a significant percentage (as defined in the quality assurance plan approved pursuant to paragraph (m) of this section, but no larger than 1 percent) of production units inspected is not similar in all material respects that would affect emissions to the representative affected wood heater submitted for certification testing;

(vi) Failure of the manufacturer to conduct a quality assurance program in conformity with paragraph (m) of this section; or

(vii) Failure of the approved laboratory to test the wood heater using the methods specified in §60.534.

(2) Revocation of certification under this paragraph (l) will not take effect until the manufacturer concerned has been given written notice by the Administrator setting forth the basis for the proposed determination and an opportunity to request a hearing under §60.539.

(m) *Quality assurance program.* On or after May 16, 2016, for each certified model line, the manufacturer must conduct a quality assurance program that satisfies the requirements of paragraphs (m)(1) through (5) of this section. The quality assurance program requirements of this paragraph (m) supersede the quality assurance plan requirements previously specified in §60.533(o) that was in effect prior to May 15, 2015. The manufacturer of a model line with a compliance certification under

paragraph (h)(1) of this section must conduct a quality assurance program that satisfies the requirements of this paragraph (m) by May 16, 2016.

(1) The manufacturer must prepare and operate according to a quality assurance plan for each certified model line that includes specific inspection and testing requirements for ensuring that all units within a model line are similar in all material respects that would affect emissions to the wood heater submitted for certification testing and meet the emissions standards in §60.532.

(2) The quality assurance plan must be approved by the third-party certifier as part of the certification of conformity process specified in paragraph (f) of this section.

(3) The quality assurance plan must include regular (at least annual) unannounced audits by the third-party certifier under ISO-IEC Standard 17065 to ensure that the manufacturer's quality assurance plan is being implemented.

(4) The quality assurance plan must include a report for each audit under ISO-IEC Standard 17065 that fully documents the results of the audit. The third-party certifier must be authorized and required to submit all such reports to the Administrator and the manufacturer within 30 days of the audit. The audit report must identify deviations from the manufacturer's quality assurance plan and specify the corrective actions that need to be taken to address each identified deficiency.

(5) Within 30 days after receiving each audit report, the manufacturer must report to the third-party certifier and to the Administrator its corrective actions and responses to any deficiencies identified in the audit report. No such report is required if an audit report did not identify any deficiencies.

(n) *EPA compliance audit testing.* (1)(i) The Administrator may select by written notice wood heaters or model lines for compliance audit testing to determine compliance with the emission standards in §60.532.

(ii) The Administrator will transmit a written notification of the selected wood heaters or model line(s) to the manufacturer, which will include the name and address of the laboratory selected to perform the audit test and the model name and serial number of the wood heater(s) or model line(s) selected to undergo audit testing.

(2)(i) The Administrator may test, or direct the manufacturer to have tested, a wood heater or a wood heater from the model line(s) selected under paragraph (n)(1)(i) of this section in a laboratory approved under §60.535. The Administrator may select any approved test laboratory or federal laboratory for this audit testing.

(ii) The expense of the compliance audit test is the responsibility of the wood heater manufacturer.

(iii) The test must be conducted using the same test method used to obtain certification. If the certification test consisted of more than one particulate matter sampling test method, the Administrator may direct the manufacturer and test laboratory as to which of these methods to use for the purpose of audit testing. The Administrator will notify the manufacturer at least 30 days prior to any test under this paragraph, and allow the manufacturer and/or his authorized representatives to observe the test.

(3) *Revocation of certification.* (i) If emissions from a wood heater tested under paragraph (n)(2) of this section exceed the applicable emission standard by more than 50 percent using the same test method used to obtain certification, the Administrator will notify the manufacturer that certification for that model line is suspended effective 72 hours from the receipt of the notice, unless the suspension notice is withdrawn by the Administrator. The suspension will remain in effect until withdrawn by the Administrator, or the date 30 days from its effective date if a revocation notice under paragraph (n)(3)(ii) of this section is not issued within that period, or the date of final agency action on revocation, whichever occurs earliest.

(ii)(A) If emissions from a wood heater tested under paragraph (n)(2) of this section exceed the applicable emission limit, the Administrator will notify the manufacturer that certification is revoked for that model line.

(B) A revocation notice under paragraph (n)(3)(ii)(A) of this section will become final and effective 60 days after the date of written notification to the manufacturer, unless it is withdrawn, a hearing is requested under §60.539(a)(2), or the deadline for requesting a hearing is extended.

(C) The Administrator may extend the deadline for requesting a hearing for up to 60 days for good cause.

(D) A manufacturer may extend the deadline for requesting a hearing for up to 6 months, by agreeing to a voluntary suspension of certification.

(iii) Any notification under paragraph (n)(3)(i) or (n)(3)(ii) of this section will include a copy of a preliminary test report from the approved test laboratory or federal test laboratory. The test laboratory must provide a preliminary test report to the Administrator within 14 days of the completion of testing, if a wood heater exceeds the applicable emission limit in §60.532. The test laboratory must provide the Administrator and the manufacturer, within 30 days of the completion of testing, all

documentation pertaining to the test, including the complete test report and raw data sheets, laboratory technician notes, and test results for all test runs.

(iv) Upon receiving notification of a test failure under paragraph (n)(3)(ii) of this section, the manufacturer may request that up to four additional wood heaters from the same model line be tested at the manufacturer's expense, at the test laboratory that performed the emissions test for the Administrator.

(v) Whether or not the manufacturer proceeds under paragraph (n)(3)(iv) of this section, the manufacturer may submit any relevant information to the Administrator, including any other test data generated pursuant to this subpart. The manufacturer must bear the expense of any additional testing.

(vi) The Administrator will withdraw any notice issued under paragraph (n)(3)(ii) of this section if tests under paragraph (n)(3)(iv) of this section show either—

(A) That exactly four additional wood heaters were tested for the manufacturer and all four met the applicable emission limits; or

(B) That exactly two additional wood heaters were tested for the manufacturer and each of them met the applicable emission limits and the average emissions of all three tested heaters (the original audit heater and the two additional heaters) met the applicable emission limits.

(vii) If the Administrator withdraws a notice pursuant to paragraph (n)(3)(vi) of this section, the Administrator will revise the certification values for the model line based on the test data and other relevant information. The manufacturer must then revise the model line's labels and marketing information accordingly.

(viii) The Administrator may withdraw any proposed revocation, if the Administrator finds that an audit test failure has been rebutted by information submitted by the manufacturer under paragraph (n)(3)(iv) of this section and/or (n)(3)(v) of this section or by any other relevant information available to the Administrator.

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#### **§60.534 What test methods and procedures must I use to determine compliance with the standards and requirements for certification?**

Test methods and procedures specified in this section or in appendices of this part, except as provided under §60.8(b), must be used to determine compliance with the standards and requirements for certification under §§60.532 and 60.533 and for reporting carbon monoxide emissions and efficiency as follows:

(a)(1) For affected wood heaters subject to the 2015 and 2020 particulate matter emission standards of §§60.532(a) and (b), the manufacturer must have an EPA-approved test laboratory conduct testing according to paragraphs (a)(1)(i) or (ii) of this section. The manufacturer or manufacturer's authorized representative must submit a summary and the full test reports with all supporting information, including detailed discussion of all anomalies, whether all burn rate categories were properly achieved, any data not used in the calculations and, for any test runs not completed, the data that were collected and the reason that the test run was not completed. The burn rate for the low burn rate category must be no greater than the rate that an operator can achieve in home use and no greater than is advertised by the manufacturer or retailer. The manufacturer has the option of submitting test results obtained pursuant to either paragraph (a)(1)(i) or (ii) of this section to the Administrator as specified under §60.537 as part of a request for a certification of compliance.

(i) Conduct testing with crib wood using EPA Method 28R of appendix A-8 of this part or an alternative crib wood test method approved by the Administrator or the ASTM E2779-10 (IBR, see §60.17) pellet heater test method to establish the certification test conditions and the particulate matter emission values.

(ii) Conduct testing with cord wood using an alternative cord wood test method approved by the Administrator to establish the certification test conditions and the particulate matter emission values.

(2) For the 2020 cord wood alternative means of compliance option specified in §60.532(c), the manufacturer must have an EPA-approved test laboratory conduct testing with cord wood using an alternative cord wood test method approved by the Administrator to establish the certification test conditions and the particulate matter emission values.

(b) [Reserved]

(c) For affected wood heaters subject to the 2015 and 2020 particulate matter emission standards specified in §60.532(a), (b) and (c), particulate matter emission concentrations must be measured with ASTM E2515-11 (IBR, see §60.17). Four-inch filters and Teflon membrane filters or Teflon-coated glass fiber filters may be used in ASTM E2515-11.

(d) For all tests conducted using ASTM E2515-11 (IBR, see §60.17) pursuant to this section, the manufacturer and approved test laboratory must also measure the first hour of particulate matter emissions for each test run using a separate filter in one of the two parallel trains. The manufacturer and approved test laboratory must report the test results for the first hour separately and also include them in the total particulate matter emissions per run.

(e) The manufacturer must have the approved test laboratory measure the efficiency, heat output and carbon monoxide emissions of the tested wood heater using Canadian Standards Administration (CSA) Method B415.1-10 (IBR, see §60.17), section 13.7.

(f) Douglas fir may be used in ASTM E2779-10, ASTM E2780-10 and CSA B415.1-10 (IBR, see §60.17).

(g) The manufacturer of an affected wood heater model line must notify the Administrator of the date that certification testing is scheduled to begin by email to [WoodHeaterReports@epa.gov](mailto:WoodHeaterReports@epa.gov). This notice must be received by the EPA at least 30 days before the start of testing. The notification of testing must include the manufacturer's name and physical and email addresses, the approved test laboratory's name and physical and email addresses, the third-party certifier name, the model name and number (or, if unavailable, some other way to distinguish between models), and the dates of testing. The laboratory may substitute certification testing of another affected wood heater on the original date in order to ensure regular laboratory testing operations.

(h) The approved test laboratory must allow the manufacturer, the manufacturer's approved third-party certifier, the EPA and delegated state regulatory agencies to observe certification testing. However, manufacturers must not involve themselves in the conduct of the test after the pretest burn has begun. Communications between the manufacturer and laboratory or third-party certifier personnel regarding operation of the wood heater must be limited to written communications transmitted prior to the first pretest burn of the certification test series. During certification tests, the manufacturer may communicate with laboratory personnel only in writing and only to notify them that the manufacturer has observed a deviation from proper test procedures. All communications must be included in the test documentation required to be submitted pursuant to §60.533(b)(5) and must be consistent with instructions provided in the owner's manual required under §60.536(g), except to the extent that they address details of the certification tests that would not be relevant to owners or regulators.

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### **§60.535 What procedures must I use for EPA approval of a test laboratory or EPA approval of a third-party certifier?**

(a) *Test laboratory approval.* (1) A laboratory must apply to the Administrator for approval to test under this rule by submitting documentation that the laboratory is accredited by a nationally recognized accrediting entity under ISO-IEC Standard 17025 to perform testing using the test methods specified under §60.534. Laboratories accredited by EPA prior to May 15, 2015 may have until March 16, 2018 to submit documentation that they have accreditation under ISO-IEC Standard 17025 to perform testing using the test methods specified under §60.534. ISO accreditation is required for all other laboratories performing testing beginning on November 16, 2015.

(2) As part of the application, the test laboratory must:

(i) Agree to participate biennially in an independently operated proficiency testing program with no direct ties to the participating laboratories;

(ii) Agree to allow the Administrator, regulatory agencies and third-party certifiers access to observe certification testing;

(iii) Agree to comply with calibration, reporting and recordkeeping requirements that affect testing laboratories; and

(iv) Agree to perform a compliance audit test at the manufacturer's expense at the testing cost normally charged to such manufacturer if the laboratory is selected by the Administrator to conduct the compliance audit test of the manufacturer's model line. The test laboratory must provide a preliminary audit test report to the Administrator within 14 days of the completion of testing, if the tested wood heater exceeds the applicable emission limit in §60.532. The test laboratory must provide the Administrator and the manufacturer, within 30 days of the completion of audit testing, all documentation pertaining to the test, including the complete test report and raw data sheets, laboratory technician notes, and test results for all test runs.

(v) Have no conflict of interest and receive no financial benefit from the outcome of certification testing conducted pursuant to §60.533.

(vi) Agree to not perform initial certification tests on any models manufactured by a manufacturer for which the laboratory has conducted research and development design services within the last 5 years.

(vii) Agree to seal any wood heater on which it performed certification tests, immediately upon completion or suspension of certification testing, by using a laboratory-specific seal.

(viii) Agree to immediately notify the Administrator of any suspended tests through email and in writing, giving the date suspended, the reason(s) why, and the projected date for restarting. The laboratory must submit the operation and test data obtained, even if the test is not completed.

(3) If the EPA approves the laboratory, the Administrator will provide the test laboratory with a certificate of approval for testing under this rule. If the EPA does not approve the laboratory, the Administrator will give written notice to the laboratory setting forth the basis for the determination.

(b) *Revocation of test laboratory approval.* (1) The Administrator may revoke the EPA laboratory approval if it is determined that the laboratory:

(i) Is no longer accredited by the accreditation body;

(ii) Does not follow required procedures or practices;

(iii) Has falsified data or otherwise misrepresented emission data;

(iv) Has failed to participate in a proficiency testing program, in accordance with its commitment under paragraph (a)(2)(i) of this section; or

(v) Has failed to seal a wood heater in accordance with paragraph (a)(2)(vii) of this section.

(2) Revocation of approval under this paragraph (b) will not take effect until the laboratory concerned has been given written notice by the Administrator setting forth the basis for the proposed determination and an opportunity for a hearing under §60.539. However, if revocation is ultimately upheld, all tests conducted by the laboratory after written notice was given will, at the discretion of the Administrator, be declared invalid.

(c) *Period of test laboratory approval* (1) With the exception of laboratories meeting the provisions of paragraph (c)(2) of this section, and unless revoked sooner, a certificate of approval for testing under this rule is valid for 5 years from the date of issuance.

(2) Laboratories accredited by the EPA by May 15, 2015, under the provisions of §60.535 as in effect prior to that date may continue to be EPA accredited and deemed EPA approved for testing under this subpart until May 15, 2018, at which time the EPA accreditation and approval ends unless the laboratory has obtained accreditation under §60.535 as in effect on that date.

(d) *Third-party certifier approval.* (1) A third-party certifier may apply to the Administrator for approval to be an EPA-approved third-party certifier by submitting credentials demonstrating that it has been accredited by a nationally recognized accrediting entity to perform certifications and inspections under ISO-IEC Standard 17025, ISO-IEC Standard 17065 and ISO-IEC Standard 17020.

(2) As part of the application, the third-party certifier must:

(i) Agree to offer to contract with wood heater manufacturers to perform third-party certification activities according to the requirements of this subpart;

(ii) Agree to periodically conduct audits as described in §60.533(m) and the manufacturer's quality assurance program;

(iii) Agree to comply with reporting and recordkeeping requirements that affect approved wood heater testing laboratories and third-party certifiers;

(iv) Have no conflict of interest and receive no financial benefit from the outcome of certification testing conducted pursuant to §60.533;

(v) Agree to make available to the Administrator supporting documentation for each wood heater certification and audit; and

(vi) Agree to not perform initial certification reviews on any models manufactured by a manufacturer for which the third-party certifier has conducted research and development design services within the last 5 years.

(3) If approved, the Administrator will provide the third-party certifier with a certificate of approval. The approval will expire 5 years after being issued unless renewed by the third-party certifier. If the EPA denies the approval, the Administrator will give written notice to the third-party certifier for the basis for the determination.

(e) *Revocation of third-party certifier approval.* (1) The Administrator will revoke a third-party certifier's EPA approval if it is determined that the certifier:

- (i) Is no longer accredited by the accreditation body;
- (ii) Does not follow required procedures or practices; or
- (iii) Has falsified certification data or otherwise misrepresented emission data.

(2) Revocation of approval under this paragraph (e) will not take effect until the certifier concerned is given written notice by the Administrator setting forth the basis for the proposed determination and an opportunity for a hearing under §60.539. However, if revocation is upheld, all certifications by the certifier after written notice was given will, at the discretion of the Administrator, be declared invalid.

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### **§60.536 What requirements must I meet for permanent labels, temporary labels (hangtags), and owner's manuals?**

(a) *General permanent label requirements.* (1) Each affected wood heater manufactured on or after the date the applicable standards come into effect as specified in §60.532, must have a permanent label affixed to it that meets the requirements of this section.

(2) Except for wood heaters subject to §60.530(b)(1) through (5), the permanent label must contain the following information:

- (i) Month and year of manufacture of the individual unit;
- (ii) Model name or number;
- (iii) Certification test emission value, test method and standard met (*e.g.*, 2015, 2020 crib wood, or 2020 cord wood); and
- (iv) Serial number.

(3) The permanent label must:

(i) Be affixed in a readily visible or readily accessible location in such a manner that it can be easily viewed before and after the appliance is installed (an easily-removable facade may be used for aesthetic purposes, however the bottom of a free-standing heater is not considered to be readily visible or readily accessible);

(ii) Be at least 8.9 cm long and 5.1 cm wide (3½ inches long and 2 inches wide);

(iii) Be made of a material expected to last the lifetime of the wood heater;

(iv) Present the required information in a manner so that it is likely to remain legible for the lifetime of the wood heater; and

(v) Be affixed in such a manner that it cannot be removed from the appliance without damage to the label.

(4) The permanent label may be combined with any other label, as long as the required information is displayed, the integrity of the permanent label is not compromised, and the permanent label meets the requirements in §60.536(a)(3).

(5) Any label statement under paragraph (b) or (c) of this section constitutes a representation by the manufacturer as to any wood heater that bears it:

(i) That a certification of compliance was in effect at the time the wood heater left the possession of the manufacturer;

(ii) That the manufacturer was, at the time the label was affixed, conducting a quality assurance program in conformity with §60.533(m); and

(iii) That all wood heaters individually tested for emissions by the manufacturer under its quality assurance program pursuant to §60.533(m) met the applicable emissions limits.

(b) *Permanent label requirements for adjustable burn rate wood heaters and pellet stoves.* If an adjustable burn rate wood heater or pellet stove belongs to a model line certified under §60.533, and no wood heater in the model line has been found to exceed the applicable emission limits or tolerances through quality assurance testing, one of the following statements, as appropriate, must appear on the permanent label:

"U.S. ENVIRONMENTAL PROTECTION AGENCY Certified to comply with 2015 particulate emission standards. Not approved for sale after May 15, 2020." or

"U.S. ENVIRONMENTAL PROTECTION AGENCY Certified to comply with 2020 particulate emission standards using crib wood." or

"U.S. ENVIRONMENTAL PROTECTION AGENCY Certified to comply with 2020 particulate emission standards using cord wood."

(c) *Permanent label requirements for single burn rate wood heaters.* If the single burn rate wood heater belongs to a model line certified under §60.533, and no heater in the model line has been found to exceed the applicable emission limits or tolerances through quality assurance testing, one of the following statements, as appropriate, must appear on the permanent label:

"U.S. ENVIRONMENTAL PROTECTION AGENCY Certified to comply with 2015 particulate emission standards for single burn rate heaters. Not approved for sale after May 15, 2020. This single burn rate wood heater is not approved for use with a flue damper." or

"U.S. ENVIRONMENTAL PROTECTION AGENCY Certified to comply with 2020 particulate emission standards for single burn rate heaters. This single burn rate wood heater is not approved for use with a flue damper."

(d) *Additional permanent label content.* The permanent label for all certified wood heaters must also contain the following statement:

"This wood heater needs periodic inspection and repair for proper operation. Consult the owner's manual for further information. It is against federal regulations to operate this wood heater in a manner inconsistent with the operating instructions in the owner's manual."

(e) *Permanent label requirements for affected wood heaters with exemptions under §60.530(b).* (1) If an affected wood heater is manufactured in the United States for export as provided in §60.530(b)(1), the following statement must appear on the permanent label:

"U.S. ENVIRONMENTAL PROTECTION AGENCY Export stove. May not be sold or operated within the United States."

(2) If an affected wood heater is manufactured for use for research and development purposes as provided in §60.530(b)(2), the following statement must appear on the permanent label:

"U.S. ENVIRONMENTAL PROTECTION AGENCY Not certified. Research Stove. Not approved for sale or for operation other than for research."

(3) If a wood heater is exclusively a non-wood-burning heater as provided §60.530(b)(3), the following statement must appear on the permanent label:

"U.S. ENVIRONMENTAL PROTECTION AGENCY This heater is not certified for wood burning. Use of any wood fuel is a violation of federal regulations."

(4) If an affected wood heater is a cook stove that meets the definition in §60.531, the following statement must appear on the permanent label:

"U.S. ENVIRONMENTAL PROTECTION AGENCY This unit is not a certified residential wood heater. The primary use for this unit is for cooking or baking."

(5) If an affected wood heater is a camp stove that meets the definition in §60.531, the following statement must appear on the permanent label:

"U.S. ENVIRONMENTAL PROTECTION AGENCY This unit is not a certified residential wood heater. For portable and temporary use only."

(f) *Temporary label (hangtag) voluntary option.* (1) Each model certified to meet the 2020 particulate matter emission standards of §60.532(b) prior May 15, 2020 may display the temporary labels (hangtags) specified in section 3 of appendix I of this part. The electronic template will be provided by the Administrator upon approval of the certification.

(2) The hangtags in paragraph (f)(1) of this section end on May 15, 2020.

(3) Each model certified to meet the 2020 Cord Wood Alternative Compliance Option of §60.532(c) may display the cord wood temporary label specified in section 3 of appendix I of this part. The electronic template will be provided by the Administrator upon approval of the certification.

(g) *Owner's manual requirements.* (1) Each affected wood heater offered for sale by a commercial owner must be accompanied by an owner's manual that must contain the information listed in paragraph (g)(2) of this section (pertaining to installation) and paragraph (g)(3) of this section (pertaining to operation and maintenance). Such information must be adequate to enable consumers to achieve optimal emissions performance. Such information must be consistent with the operating instructions provided by the manufacturer to the approved test laboratory for operating the wood heater during certification testing, except for details of the certification test that would not be relevant to the user. The commercial owner must also make current and historical owner's manuals available on the company Web site and upon request to the EPA.

(2) Guidance on proper installation, include stack height, location and achieving proper draft.

(3) Proper operation and maintenance information, including minimizing visible emissions:

(i) Fuel loading and re-loading procedures; recommendations on fuel selection and warnings on what fuels not to use, such as unseasoned wood, treated wood, colored paper, cardboard, solvents, trash and garbage;

(ii) Fire starting procedures;

(iii) Proper use of air controls, including how to establish good combustion and how to ensure good combustion at the lowest burn rate for which the heater is warranted;

(iv) Ash removal procedures;

(v) Instructions for replacement of gaskets, air tubes and other parts that are critical to the emissions performance of the unit, and other maintenance and repair instructions;

(vi) For catalytic or hybrid models, information on the following pertaining to the catalytic combustor: Procedures for achieving and maintaining catalyst activity, maintenance procedures, procedures for determining deterioration or failure, procedures for replacement and information on how to exercise warranty rights;

(vii) For catalytic or hybrid models, the following statement—

"This wood heater contains a catalytic combustor, which needs periodic inspection and replacement for proper operation. It is against federal regulations to operate this wood heater in a manner inconsistent with operating instructions in this manual, or if the catalytic element is deactivated or removed."

(viii) For noncatalytic models, the following statement—

"This wood heater needs periodic inspection and repair for proper operation. It is against federal regulations to operate this wood heater in a manner inconsistent with operating instructions in this manual."

(4) Any manufacturer using the EPA-recommended language contained in appendix I of this part to satisfy any requirement of this paragraph (g) will be considered to be in compliance with that requirement, provided that the particular language is printed in full, with only such changes as are necessary to ensure accuracy for the particular wood heater model line.

(h) Wood heaters that are affected by this subpart, but that have been owned and operated by a noncommercial owner, are not subject to paragraphs (f) and (g) of this section when offered for resale.

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### **§60.537 What records must I keep and what reports must I submit?**

(a)(1) Each manufacturer who holds a certificate of compliance pursuant to §60.533(c), (e) or (f) for a model line must maintain records containing the information required by paragraph (a)(2) through (4) of this section with respect to that model line for at least 5 years.

(2) All documentation pertaining to the certification test used to obtain certification, including the full test report and raw data sheets, laboratory technician notes, calculations, the test results for all test runs, and discussions of the appropriateness and validity of all test runs, including runs attempted but not completed. The retained certification test documentation must include, as applicable, detailed discussion of all anomalies, whether all burn rate categories were properly achieved, any data not used in the calculations and, for any test runs not completed, the data that were collected and the reason that the test run was not completed. The retained certification test also must include documentation that the burn rate for the low burn rate category was no greater than the rate that an operator can achieve in home use and no greater than is advertised by the manufacturer or retailer.

(3) Results of the quality assurance program inspections pursuant to §60.533(m).

(4) For emissions tests conducted pursuant to the quality assurance program required by §60.533(m), all test reports, data sheets, laboratory technician notes, calculations, and test results for all test runs, the corrective actions taken, if any, and any follow-up actions such as additional testing.

(b) Each approved test laboratory and third-party certifier must maintain records consisting of all documentation pertaining to each certification test, quality assurance program inspection and audit test, including the full test report and raw data sheets, technician notes, calculations, and the test results for all test runs. Each approved test laboratory must submit accreditation credentials and all proficiency test results to the Administrator. Each third-party certifier must submit each certification test, quality assurance program inspection report and ISO IEC accreditation credentials to the Administrator.

(c) Each manufacturer must retain each wood heater upon which certification tests were performed based upon which certification was granted under §60.533(c) or (f) at the manufacturer's facility for a minimum of 5 years after the certification test.

Each wood heater must remain sealed and unaltered. Any such wood heater must be made available to the Administrator upon request for inspection and testing.

(d) Each manufacturer of an affected wood heater model line certified under §60.533(c) or (f) must submit a report to the Administrator every 2 years following issuance of a certificate of compliance for each model line. This report must include the sales for each model by state and certify that no changes in the design or manufacture of this model line have been made that require recertification under §60.533(k).

(e)(1) Unless otherwise specified, all records required under this section must be maintained by the manufacturer, commercial owner of the affected wood heater, approved test laboratory or third-party certifier for a period of no less than 5 years.

(2) Unless otherwise specified, all reports to the Administrator required under this subpart must be made to: *WoodHeaterReports@epa.gov*.

(f) Within 60 days after the date of completing each performance test, e.g., initial certification test, tests conducted for quality assurance, and tests for renewal or recertification, each manufacturer must submit the performance test data electronically to *WoodHeaterReports@epa.gov*. Owners or operators who claim that some of the information being submitted is CBI (e.g., design drawings) must submit a complete file, including the information claimed to be CBI, on a compact disk or other commonly used electronic storage media (including, but not limited to, flash drives) by mail, and the same file, with the CBI omitted, electronically. The compact disk must be clearly marked as CBI and mailed to U.S. EPA, OECA CBI Office, Attention: Residential Wood Heater Compliance Program Lead, 1200 Pennsylvania Avenue NW., Washington, DC 20004. Emission data, including all information necessary to determine compliance, except sensitive engineering drawings and sensitive detailed material specifications, may not be claimed as CBI.

(g) Within 30 days of receiving a certification of compliance for a model line, the manufacturer must make the full non-CBI test report and the summary of the test report available to the public on the manufacturer's Web site.

(h) Each manufacturer who uses the exemption for R&D heaters under §60.530(b)(2) must maintain records for at least 5 years documenting where the heaters were located, that the heaters were never offered for sale or sold and that the heaters were not used for the purpose of heating.

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### **§60.538 What activities are prohibited under this subpart?**

(a) No person is permitted to advertise for sale, offer for sale, sell or operate an affected wood heater that does not have affixed to it a permanent label pursuant to §60.536 (b) through (e), as applicable.

(b) No person is permitted to advertise for sale, offer for sale, or sell an affected wood heater labeled under §60.536(e)(1) except for export. No person is permitted to operate an affected wood heater in the United States if it is labeled under §60.536(e)(1).

(c)(1) No commercial owner is permitted to advertise for sale, offer for sale or sell an affected wood heater permanently labeled under §60.536 (b) through (d), as applicable, unless:

(i) The affected wood heater has been certified to comply with the 2015 or 2020 particulate matter emission standards pursuant to §60.532, as applicable. This prohibition does not apply to wood heaters affected by this subpart that have been previously owned and operated by a noncommercial owner; and

(ii) The commercial owner provides any purchaser or transferee with an owner's manual that meets the requirements of §60.536(g) and a copy of the warranty.

(2) No commercial owner is permitted to advertise for sale, offer for sale, or sell an affected wood heater permanently labeled under §60.536(b) and (c), unless the affected wood heater has been certified to comply with the 2015 or 2020 particulate matter emission standards of §60.532, as applicable.

(3) A commercial owner other than a manufacturer complies with the requirements of paragraph (c)(1) of this section if the commercial owner—

(i) Receives the required documentation from the manufacturer or a previous commercial owner; and

(ii) Provides that documentation unaltered to any person to whom the wood heater that it covers is sold or transferred.

(d)(1) In any case in which the Administrator revokes a certificate of compliance either for the 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, the Administrator may give notice of that revocation and the grounds for it to all commercial owners.

(2) On and after the date of receipt of the notice given under paragraph (d)(1) of this section, no commercial owner is permitted to sell any wood heater covered by the revoked certificate (other than to the manufacturer) unless the model line has been recertified in accordance with this subpart.

(e) No person is permitted to install or operate an affected wood heater except in a manner consistent with the instructions on its permanent label and in the owner's manual pursuant to §60.536(g), including only using fuels for which the unit is certified.

(f) No person is permitted to operate, sell or offer for sale an affected wood heater that was originally equipped with a catalytic combustor if the catalytic element is deactivated or removed.

(g) No person is permitted to operate, sell or offer for sale an affected wood heater that has been physically altered to exceed the tolerance limits of its certificate of compliance, pursuant to §60.533(k).

(h) No person is permitted to alter, deface, or remove any permanent label required to be affixed pursuant to §60.536(a) through (e), as applicable.

(i) If a temporary label is affixed to the wood heater, retailers may not sell or offer for sale that wood heater unless the temporary label affixed is in accordance with §60.536(f), as applicable.

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### **§60.539 What hearing and appeal procedures apply to me?**

(a)(1) The affected manufacturer, laboratory or third-party certifier may request a hearing under this section within 30 days following receipt of the required notification in any case where the Administrator—

- (i) Denies an application for a certificate of compliance under §60.533(c) or §60.533(f);
- (ii) Denies an application for a renewal of certification under §60.533(i);
- (iii) Issues a notice of revocation of certification under §60.533(1);
- (iv) Denies an application for laboratory approval under §60.535(a);
- (v) Issues a notice of revocation of laboratory approval under §60.535(b);
- (vi) Denies an application for third-party certifier approval under §60.535(d); or
- (vii) Issues a notice of revocation of third-party certifier approval under §60.535(e).

(2) In any case where the Administrator issues a notice of revocation under §60.533(n)(3)(ii), the manufacturer may request a hearing under this section with the time limits set out in §60.533(n)(3)(ii).

(b) Any hearing request must be in writing, must be signed by an authorized representative of the petitioning manufacturer or laboratory and must include a statement setting forth with particularity the petitioner's objection to the Administrator's determination or proposed determination.

(c)(1) Upon receipt of a request for a hearing under paragraph (a) of this section, the Administrator will request the Chief Administrative Law Judge to designate an Administrative Law Judge as Presiding Officer for the hearing. If the Chief Administrative Law Judge replies that no Administrative Law Judge is available to perform this function, the Administrator will designate a Presiding Officer who has not had any prior responsibility for the matter under review, and who is not subject to the direct control or supervision of someone who has had such responsibility.

(2) The hearing will commence as soon as practicable at a time and place fixed by the Presiding Officer.

(3)(i) A motion for leave to intervene in any proceeding conducted under this section must set forth the grounds for the proposed intervention, the position and interest of the movant and the likely impact that intervention will have on the expeditious progress of the proceeding. Any person already a party to the proceeding may file an answer to a motion to intervene, making specific reference to the factors set forth in the foregoing sentence and paragraph (c)(3)(iii) of this section, within 10 days after service of the motion for leave to intervene.

(ii) A motion for leave to intervene in a proceeding must ordinarily be filed before the first prehearing conference or, in the absence of a prehearing conference, prior to the setting of a time and place for a hearing. Any motion filed after that time must include, in addition to the information set forth in paragraph (c)(3)(i) of this section, a statement of good cause for the failure to file in a timely manner. The intervener shall be bound by any agreements, arrangements and other matters previously made in the proceeding.

(iii) A motion for leave to intervene may be granted only if the movant demonstrates that his presence in the proceeding would not unduly prolong or otherwise prejudice the adjudication of the rights of the original parties, and that movant may be adversely affected by a final order. The intervener will become a full party to the proceeding upon the granting of leave to intervene.

(iv) Persons not parties to the proceeding may move for leave to file amicus curiae briefs. The movant must state his interest and the reasons why the proposed amicus brief is desirable. If the motion is granted, the Presiding Officer or Administrator will issue an order setting the time for filing such brief. An amicus curia may participate in any briefing after his motion is granted, and will be served with all briefs, reply briefs, motions and orders relating to issues to be briefed.

(4) In computing any period of time prescribed or allowed in this subpart, the day of the event from which the designated period begins to run will not be included. Saturdays, Sundays and federal legal holidays will be included. When a stated time expires on a Saturday, Sunday or legal holiday, the stated time period will be extended to include the next business day.

(d)(l) Upon his appointment, the Presiding Officer must establish a hearing file. The file will consist of the notice issued by the Administrator under §60.533(c)(2), §60.533(f)(3), §60.533(i)(4), §60.533(l)(2), §60.533(n)(3)(ii)(A), §60.535(a)(3), §60.535(b)(2), §60.535(d)(3) or §60.535(e)(2) together with any accompanying material, the request for a hearing and the supporting data submitted therewith, and all documents relating to the request for certification or approval or the proposed revocation of either.

(2) The hearing file must be available for inspection by any party, to the extent authorized by law, at the office of the Presiding Officer, or other place designated by him.

(e) Any party may appear in person, or may be represented by counsel or by any other duly authorized representative.

(f)(1) The Presiding Officer upon the request of any party, or at his discretion, may order a prehearing conference at a time and place specified by him to consider the following:

(i) Simplification of the issues,

(ii) Stipulations, admissions of fact, and the introduction of documents,

(iii) Limitation of the number of expert witnesses,

(iv) Possibility of agreement disposing of all or any of the issues in dispute,

(v) Such other matters as may aid in the disposition of the hearing, including such additional tests as may be agreed upon by the parties.

(2) The results of the conference must be reduced to writing by the Presiding Officer and made part of the record.

(g)(1) Hearings will be conducted by the Presiding Officer in an informal but orderly and expeditious manner. The parties may offer oral or written evidence, subject to the exclusion by the Presiding Officer of irrelevant, immaterial and repetitious evidence.

(2) Witnesses will not be required to testify under oath. However, the Presiding Officer will call to the attention of witnesses that their statements may be subject to penalties under title 18 U.S.C. 1001 for knowingly making false statements or representations or using false documents in any matter within the jurisdiction of any department or agency of the United States.

(3) Any witness may be examined or cross-examined by the Presiding Officer, the parties or their representatives.

(4) Hearings must be recorded verbatim. Copies of transcripts of proceedings may be purchased by the applicant from the reporter.

(5) All written statements, charts, tabulations and similar data offered in evidence at the hearings must, upon a showing satisfactory to the Presiding Officer of their authenticity, relevancy and materiality, be received in evidence and will constitute a part of the record.

(h)(1) The Presiding Officer will make an initial decision which must include written findings and conclusions and the reasons or basis therefor on all the material issues of fact, law or discretion presented on the record. The findings, conclusions

and written decision must be provided to the parties and made a part of the record. The initial decision will become the decision of the Administrator without further proceedings unless there is an appeal to the Administrator or motion for review by the Administrator. Except as provided in paragraph (h)(3) of this section, any such appeal must be taken within 20 days of the date the initial decision was filed.

(2) On appeal from or review of the initial decision, the Administrator will have all the powers which he would have in making the initial decision including the discretion to require or allow briefs, oral argument, the taking of additional evidence or the remanding to the Presiding Officer for additional proceedings. The decision by the Administrator must include written findings and conclusions and the reasons or basis therefor on all the material issues of fact, law or discretion presented on the appeal or considered in the review.

(3) In any hearing requested under paragraph (a)(2) of this section the Presiding Officer must render the initial decision within 60 days of that request. Any appeal to the Administrator must be taken within 10 days of the initial decision, and the Administrator must render a decision in that appeal within 30 days of the filing of the appeal.

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### **§60.539a Who implements and enforces this subpart?**

(a) Under section 111(c) of the Clean Air Act, the Administrator may delegate the following implementation and enforcement authority to a state, local or tribal authority upon request:

(1) Enforcement of prohibitions on the installation and operation of affected wood heaters in a manner inconsistent with the installation and owner's manual;

(2) Enforcement of prohibitions on operation of catalytic wood heaters where the catalyst has been deactivated or removed;

(3) Enforcement of prohibitions on advertisement and/or sale of uncertified model lines;

(4) Enforcement of prohibitions on advertisement and/or sale of affected heaters that do not have required permanent label;

(5) Enforcement of proper labeling of affected wood heaters; and

(6) Enforcement of compliance with other labeling requirements for affected wood heaters.

(7) Enforcement of certification testing procedures;

(8) Enforcement of requirements for sealing of the tested heaters and meeting parameter limits; and

(9) Enforcement of compliance requirements of EPA-approved laboratories.

(b) Delegations shall not include:

(1) Decisions on certification;

(2) Revocation of certification;

(3) Establishment or revision of standards;

(4) Establishment or revision of test methods;

(5) Laboratory and third-party certifier approvals and revocations;

(6) Enforcing provisions governing content of owner's manuals; and

(7) Hearings and appeals procedures.

(c) Nothing in these delegations will prohibit the Administrator from enforcing any applicable requirements.

(d) Nothing in these delegations will limit delegated entities from using their authority under section 116 of the Clean Air Act to adopt or enforce more restrictive requirements.

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### **§60.539b What parts of the General Provisions do not apply to me?**

The following provisions of subpart A of part 60 do not apply to this subpart:

- (a) Section 60.7;
- (b) Section 60.8(a), (c), (d), (e), (f) and (g);
- (c) Section 60.14; and
- (c) Section 60.15(d).

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## ELECTRONIC CODE OF FEDERAL REGULATIONS

e-CFR data is current as of May 1, 2020

Title 40 → Chapter I → Subchapter C → Part 60 → Subpart QQQQ

Title 40: Protection of Environment

PART 60—STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES (CONTINUED)

**Subpart QQQQ—Standards of Performance for New Residential Hydronic Heaters and Forced-Air Furnaces****Contents**

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SOURCE: 80 FR 13715, Mar. 16, 2015, unless otherwise noted.

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**§60.5472 Am I subject to this subpart?**

(a) You are subject to this subpart if you manufacture, sell, offer for sale, import for sale, distribute, offer to distribute, introduce or deliver for introduction into commerce in the United States, or install or operate a residential hydronic heater, forced-air furnace or other central heater manufactured on or after May 15, 2015, except as provided in paragraph (c) of this section.

(b) Each residential hydronic heater, forced-air furnace or other central heater must comply with the provisions of this subpart unless exempted under paragraphs (b)(1) through (b)(3) of this section. These exemptions are determined by rule applicability and do not require additional EPA notification or public notice.

(1) Affected residential hydronic heaters, forced-air furnaces or other central heaters manufactured in the United States for export are exempt from the applicable emission limits of §60.5474 and the requirements of §60.5475.

(2) Affected residential hydronic heaters, forced-air furnaces or other central heaters used for research and development purposes that are never offered for sale or sold and that are not used to provide heat are exempt from the applicable emission limits of §60.5474 and the requirements of §60.5475. No more than 12 affected residential central heaters manufactured per model line may be exempted for this purpose.

(3) Appliances that do not burn wood or wood pellets or wood chips (such as coal-only central heaters that meet the definition in §60.5473 or corn-only central heaters) are exempt from the applicable emission limits of §60.5474 and the requirements of §60.5475 provided that all advertising and warranties clearly denote that wood burning is prohibited in these appliances.

(c) The following are not affected central heaters and are not subject to this subpart:

- (1) Residential wood heaters subject to subpart AAA of this part.
- (2) Residential masonry heaters as defined in §60.5473.

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### §60.5473 What definitions must I know?

As used in this subpart, all terms not defined herein have the same meaning given them in the Clean Air Act and subpart A of this part.

*Approved test laboratory* means a test laboratory that is approved for central heater certification testing under §60.5477 or is an independent third-party test laboratory that is accredited under ISO-IEC Standard 17025 to perform testing using the test methods specified in §60.5476 by an accreditation body that is a full member signatory to the International Laboratory Accreditation Cooperation Mutual Recognition Arrangement and approved by the EPA for conducting testing under this subpart.

*Catalytic combustor* means a device coated with a noble metal used in a wood heater to lower the temperature required for combustion.

*Central heater* means a fuel-burning device designed to burn wood or wood pellet fuel that warms spaces other than the space where the device is located, by the distribution of air heated by the furnace through ducts or liquid heated in the device and distributed typically through pipes. Unless otherwise specified, these devices include, but are not limited to, residential forced-air furnaces (small and large) and residential hydronic heaters.

*Chip wood fuel* means wood chipped into small pieces that are uniform in size, shape, moisture, density and energy content.

*Coal-only hydronic heater or forced-air furnace* means an enclosed, coal-burning appliance capable of space heating or domestic water heating that has all of the following characteristics:

(1) Installation instructions, owner's manual and marketing information that state that the use of wood in the appliance, except for coal ignition purposes, is prohibited by law; and

(2) The model is listed by a nationally recognized safety-testing laboratory for coal use only, except for coal ignition purposes.

*Commercial owner* means any person who owns or controls a residential hydronic heater, forced-air furnace or other affected central heater in the course of the business of the manufacture, importation, distribution, or sale of the unit.

*Large residential forced-air furnace* means a residential forced-air furnace that is capable of a heat output of 65,000 BTU per hour or greater.

*Manufactured* means completed and ready for shipment (whether or not assembled or packaged) for purposes of determining the date of manufacture.

*Manufacturer* means any entity that constructs or imports into the United States a central heater.

*Model line* means all central heaters offered for sale by a single manufacturer that are similar in all material respects that would affect emissions as defined in this section.

*Particulate matter (PM)* means total particulate matter including coarse particulate (PM<sub>10</sub>) and fine particulate (PM<sub>2.5</sub>).

*Pellet fuel* means refined and densified solid wood shaped into small pellets or briquettes that are uniform in size, shape, moisture, density and energy content.

*Representative affected wood or central heater* means an individual heater that is similar in all material respects that would affect emissions as defined in this section to other heaters within the model line it represents.

*Residential forced-air furnace* means a fuel burning device designed to burn wood or wood pellet fuel that warms spaces other than the space where the furnace is located, by the distribution of air heated by the furnace through ducts.

*Residential hydronic heater* means a fuel burning device designed to burn wood or wood pellet fuel for the purpose of heating building space and/or water through the distribution, typically through pipes, of a fluid heated in the device, typically water or a water and antifreeze mixture.

*Residential masonry heater* means a factory-built or site-built wood-burning device in which the heat from intermittent fires burned rapidly in the firebox is stored in the refractory mass for slow release to building spaces. Masonry heaters are site-built (using local materials or a combination of local materials and manufactured components) or site-assembled (using factory-built components), solid fuel-burning heating appliances constructed mainly of refractory materials (e.g., masonry materials or soapstone). They typically have an interior construction consisting of a firebox and heat exchange channels built from refractory

components, through which flue gases are routed. ASTM E1602 “Standard Guide for Construction of Solid Fuel Burning Masonry Heaters” provides design and construction information for the range of masonry heaters most commonly built in the United States. The site-assembled models are generally listed to UL-1482.

*Sale* means the transfer of ownership or control, except that a transfer of control of an affected central heater for research and development purposes within the scope of §60.5472(b)(2) is not a sale.

*Similar in all material respects that would affect emissions* means that the construction materials, exhaust and inlet air system, and other design features are within the allowed tolerances for components identified in §60.5475(k).

*Small residential forced-air furnace* means a residential forced-air furnace that is only capable of a maximum heat output of less than 65,000 BTU per hour.

*Sold at retail* means the sale by a commercial owner of a central heater to the ultimate purchaser/user or noncommercial purchaser.

*Third-party certifier* (sometimes called third-party certifying body or product certifying body) means an independent third party that is accredited under ISO-IEC Standards 17025 and 17065 to perform certifications, inspections and audits by an accreditation body that is a full member signatory to the International Laboratory Accreditation Cooperation Mutual Recognition Arrangement and approved by the EPA for conducting certifications, inspections and audits under this subpart.

*Unseasoned wood* means wood with an average moisture content of 20 percent or more.

*Valid certification test* means a test that meets the following criteria:

(1) The Administrator was notified about the test in accordance with §60.5476(h);

(2) The test was conducted by an approved test laboratory as defined in this section;

(3) The test was conducted on a central heater similar in all material respects that would affect emissions as defined in this section to other central heaters of the model line that is to be certified; and

(4) The test was conducted in accordance with the test methods and procedures specified in §60.5476.

*Wood heater* under this subpart means an enclosed, wood burning-appliance capable of and intended for residential central heating or central heating and domestic water heating. Unless otherwise specified, these devices include, but are not limited to, hydronic heaters and forced-air furnaces.

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#### **§60.5474 What standards and requirements must I meet and by when?**

(a) *Standards.* Unless exempted under §60.5472, no person is permitted to:

(1) On or after May 15, 2015, manufacture, import into the United States or sell at retail a residential hydronic heater unless it has been certified to meet the 2015 particulate matter emission limits in paragraph (b)(1) of this section, except that a residential hydronic heater that was manufactured on or before May 15, 2015 may be imported into the United States and/or sold at retail on or before December 31, 2015.

(2) On or after May 15, 2020 manufacture or sell at retail a residential hydronic heater unless it has been certified to meet the 2020 particulate matter emission limit in paragraph (b)(2) or (b)(3) of this section.

(3) On or after May 15, 2015, manufacture or sell at retail a residential forced-air furnace unless it complies with the work practice and operating standards in paragraphs (d), (e), (f) and (g) of this section and the owner's manual requirements in appendix I.

(4) On or after May 16, 2016, manufacture or sell at retail a small residential forced-air furnace unless it has been certified to meet the 2016 particulate matter emission limits in paragraph (b)(4) of this section

(5) On or after May 15, 2017 manufacture or sell at retail a large forced-air furnace unless it has been certified to meet the 2017 particulate matter emission limits in paragraph (b)(5) of this section.

(6) On or after May 15, 2020 manufacture or sell at retail a small or large residential forced-air furnace unless it has been certified to meet the 2020 particulate matter emission limit in paragraph (b)(6) of this section.

(b)(1) 2015 residential hydronic heater particulate matter emission limit: A weighted average of 0.32 lb/mmBtu (0.137 g/MJ) heat output and a maximum per individual burn rate of 18.0 g/hr (0.041 lb/hr) as determined by the test methods and procedures in §60.5476 or an alternative crib wood or cord wood test method approved by the Administrator.

(2) 2020 residential hydronic heater particulate matter emission limit: 0.10 lb/mmBtu (0.026 g/MJ) heat output per individual burn rate as determined by the crib wood test methods and procedures in §60.5476 or an alternative crib wood test method approved by the Administrator .

(3) 2020 residential hydronic heater cord wood alternative compliance option for particulate matter emission limit: 0.15 lb/mmBtu (0.026 g/MJ) heat output per individual burn rate as determined by the cord wood test methods and procedures in §60.5476 or an alternative cord wood test method approved by the Administrator.

(4) 2016 small forced-air furnace particulate matter emission limit: A weighted average of 0.93 lb/mmBtu (0.40 g/MJ) heat output as determined by the test methods and procedures in §60.5476.

(5) 2017 large forced-air furnace particulate matter emission limit: A weighted average of 0.93 lb/mmBtu (0.40 g/MJ) heat output as determined by the test methods and procedures in §60.5476.

(6) 2020 forced-air furnace particulate matter emission limit: 0.15 lb/mmBtu (0.026 g/MJ) heat output per individual burn rate as determined by the cord wood test methods and procedures in §60.5476 or cord wood test methods approved by the Administrator.

(c) [Reserved]

(d) *Chip wood fuel requirements.* Operators of wood central heaters, including hydronic heaters and forced-air furnaces, that are certified to burn chip wood fuels may only burn wood chips that have been specified in the owner's manual. The chip wood fuel must meet the following minimum requirements:

- (1) Moisture content: Less than 35 percent,
- (2) Inorganic fines: Less than or equal to 1 percent;
- (3) Chlorides: Less than or equal to 300 parts per million by weight;
- (4) Ash content: No more than 2 percent;
- (5) No demolition or construction waste; and
- (6) Trace metals: Less than 100 mg/kg.

(e) *Pellet fuel requirements.* Operators of wood central heaters, including outdoor residential hydronic heaters, indoor residential hydronic heaters, and residential forced-air furnaces, that are certified to burn pellet fuels may burn only pellets that have been specified in the owner's manual and graded under a licensing agreement with a third-party organization approved by the EPA (including a certification by the third-party organization that the pellets do not contain, and are not manufactured from, any of the prohibited fuels in paragraph (f) of this section). The Pellet Fuels Institute, ENplus, and CANplus are initially deemed to be approved third-party organizations for this purpose, and additional organizations may apply to the Administrator for approval.

(f) *Prohibited fuel types.* No person is permitted to burn any of the following materials in an outdoor residential hydronic heater, indoor residential hydronic heater, residential forced-air furnace or other affected central heater:

- (1) Residential or commercial garbage;
- (2) Lawn clippings or yard waste;
- (3) Materials containing rubber, including tires;
- (4) Materials containing plastic;
- (5) Waste petroleum products, paints or paint thinners, or asphalt products;
- (6) Materials containing asbestos;
- (7) Construction or demolition debris;

(8) Paper products; cardboard, plywood or particleboard. The prohibition against burning these materials does not prohibit the use of fire starters made from paper, cardboard, saw dust, wax and similar substances for the purpose of starting a fire in an affected central heater;

(9) Railroad ties or pressure treated lumber;

(10) Manure or animal remains;

(11) Salt water driftwood or other or other previously salt water saturated materials;

(12) Unseasoned wood;

(13) Any materials that are not included in the warranty and owner's manual for the subject heater or furnace; or

(14) Any materials that were not included in the certification tests for the subject heater or furnace.

(g) *Operation of affected wood heaters.* A user must operate an outdoor residential hydronic heater, indoor residential hydronic heater, residential forced-air furnace or other affected central heater in a manner consistent with the owner's manual. The owner's manual must clearly specify that operation in a manner inconsistent with the owner's manual would void the warranty.

(h) *Temperature sensor requirement.* An affected wood heater equipped with a catalytic combustor must be equipped with a temperature sensor that can monitor combustor gas stream temperatures within or immediately downstream [within 2.54 centimeters (1 inch)] of the catalytic combustor surface.

[80 FR 13715, Mar. 16, 2015, as amended at 85 FR 18455, Apr. 2, 2020]

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### **§60.5475 What compliance and certification requirements must I meet and by when?**

(a) *Certification requirement.* (1) Each affected residential hydronic heater, forced-air furnace and other central heater must be certified to be in compliance with the applicable emission standards and other requirements of this subpart. For each model line manufactured or sold by a single entity, *e.g.*, company or manufacturer, compliance with applicable emission standards of §60.5474 must be determined based on testing of representative affected central heaters within the model line. If one entity licenses a model line to another entity, each entity's model line must be certified. If an entity intends to change the name of the entity or the name of the model, the manufacturer must apply for a new certification 60 days before making the change.

(2) The manufacturer of each model line must submit the information required in paragraph (b) of this section and follow either the certification process in paragraphs (c) through (e) of this section (for forced-air furnaces) or the certification procedure specified in paragraph (f) of this section.

(3) Models qualified as meeting the Phase 2 emission levels under the 2011 EPA hydronic heater partnership agreement are automatically deemed to have a certificate of compliance for the 2015 particulate matter emission standards and be valid until the effective date for the 2020 particulate matter emission standards.

(4) Models certified by the New York State Department of Environment and Conservation to meet the emission levels in §60.5474(b) are automatically deemed to have a certificate of compliance for the 2015 particulate matter emission standards and be valid until the effective date for the 2020 particulate matter emission standards.

(5) Models approved by the New York State Energy Research and Development Authority under the Renewable Heat New York (RHNY) Biomass Boiler Program are automatically deemed to have a certificate of compliance for the 2015 particulate matter emission standards and be valid until the effective date for the 2020 particulate matter emission standards provided that they comply with the thermal storage requirements in the RHNY program.

(6) Small forced-air furnace models that are certified under CSA B415.1-10 (IBR, see §60.17), by an EPA approved third-party certifier, to meet the 2016 particulate matter emission level will be automatically deemed to have a certificate of compliance for the 2016 particulate matter emission standards and be valid until the effective date for the 2020 particulate matter emission standards.

(7) Large forced-air furnace models that are certified under CSA B415.1-10 (IBR, see §60.17), by an EPA approved third-party certifier, to meet the 2017 particulate matter emission level will be automatically deemed to have a certificate of compliance for the 2017 particulate matter emission standards and be valid until the effective date of the 2020 particulate matter emission standards.

(b) *Application for a certificate of compliance.* Any manufacturer of an affected residential hydronic heater or forced-air furnace or other central heater must apply to the Administrator for a certificate of compliance for each model line. The application must be submitted to: [WoodHeaterReports@epa.gov](mailto:WoodHeaterReports@epa.gov). The application must be signed by a responsible representative of the manufacturer or an authorized representative and must contain the following:

(1) The model name and/or design number. The model name and/or design number must clearly distinguish one model from another. The name and/or design number cannot include the EPA symbol or logo or name or derivatives such as "EPA."

(2) Engineering drawings and specifications of components that may affect emissions (including specifications for each component listed in paragraph (k) of this section). Manufacturers may use assembly or design drawings that have been prepared for other purposes, but must designate on the drawings the dimensions of each component listed in paragraph (k) of this section. Manufacturers must identify dimensions of components listed in paragraph (k)(2) of this section that are different from those specified in that paragraph, and show that such differences cannot reasonably be anticipated to cause central heaters in the model line to exceed the applicable emission limits. The drawings must identify how the emission critical parts, such as air tubes and catalyst, can be readily inspected and replaced.

(3) A statement whether the firebox or any firebox component (including the materials listed in paragraph (k)(3) of this section) will be composed of material different from the material used for the firebox or firebox component in the central heater on which certification testing was performed and a description of any such differences and demonstration that any such differences may not reasonably be anticipated to adversely affect emissions or efficiency.

(4) Clear identification of any claimed confidential business information (CBI). Submit such information under separate cover to the EPA CBI Office; Attn: Residential Wood Heater Compliance Program Lead, 1200 Pennsylvania Ave. NW., Washington, DC 20004. Note that all emissions data, including all information necessary to determine emission rates in the format of the standard, cannot be claimed as CBI.

(5) All documentation pertaining to a valid certification test, including the complete test report and, for all test runs: Raw data sheets, laboratory technician notes, calculations and test results. Documentation must include the items specified in the applicable test methods. Documentation must include discussion of each test run and its appropriateness and validity, and must include detailed discussion of all anomalies, whether all burn rate categories were achieved, any data not used in the calculations and, for any test runs not completed, the data collected during the test run and the reason(s) that the test run was not completed. The documentation must show that the burn rate for the low burn rate category is no greater than the rate that an operator can achieve in home use and no greater than is advertised by the manufacturer or retailer. The test report must include a summary table that clearly presents the individual and overall emission rates, efficiencies and heat outputs. Submit the test report and all associated required information according to the procedures for electronic reporting specified in §60.5479(f).

(6) A copy of the warranties for the model line, which must include a statement that the warranties are void if the unit is used to burn materials for which the unit is not certified by the EPA and void if not operated according to the owner's manual.

(7) A statement that the manufacturer will conduct a quality assurance program for the model line that satisfies the requirements of paragraph (m) of this section.

(8) A statement describing how the tested unit was sealed by the laboratory after the completion of certification testing and asserting that such unit will be stored by the manufacturer in the sealed state until 5 years after the certification test.

(9) Statements that the central heater manufactured under this certificate will be—

(i) Similar in all material respects that would affect emissions as defined in this subpart to the central heater submitted for certification testing, and

(ii) Labeled as prescribed in §60.5478.

(iii) Accompanied by an owner's manual that meets the requirements in §60.5478. In addition, a copy of the owner's manual must be submitted to the EPA and be available to the public on the manufacturer's Web site.

(10) A statement that the manufacturer has entered into contracts with an approved laboratory and an approved third-party certifier that satisfy the requirements of paragraph (f) of this section.

(11) A statement that the approved laboratory and approved third-party certifier are allowed to submit information on behalf of the manufacturer, including any claimed to be CBI.

(12) A statement that the manufacturer will place a copy of the certification test report and summary on the manufacturer's Web site available to the public within 30 days after the Administrator issues a certificate of compliance.

(13) A statement of acknowledgment that the certificate of compliance cannot be transferred to another manufacturer or model line without written approval by the Administrator.

(14) A statement acknowledging that it is unlawful to sell, distribute, or offer to sell or distribute an affected wood heater without a valid certificate of compliance.

(15) Contact information for the responsible representative of the manufacturer and all authorized representatives, including name, affiliation, physical address, telephone number and email address.

(c) *Administrator approval process.* (1) The Administrator may issue a certificate of compliance for a model line if the Administrator determines, based on all information submitted by the applicant and any other relevant information available, that:

(i) A valid certification test demonstrates that the representative affected central heater complies with the applicable emission standards in §60.5474;

(ii) Any tolerances or materials for components listed in paragraph (k)(2) or (3) of this section that are different from those specified in those paragraphs may not reasonably be anticipated to cause central heaters in the model line to exceed the applicable emission limits; and

(iii) The requirements of paragraph (b) of this section have been met.

(2) The Administrator will deny certification if the Administrator determines that the criteria in paragraph (c)(1) of this section have not been satisfied. Upon denying certification under this paragraph, the Administrator will give written notice to the manufacturer setting forth the basis for this determination.

(d) *Level of compliance certification.* The Administrator will issue the certificate of compliance for the most stringent particulate matter emission standard that the tested representative central heater meets under §60.5474.

(e) *Conditional, temporary certificate of compliance.* A conditional, temporary certificate of compliance with the Step 1 p.m. emission standards may be granted by the Administrator until May 16, 2016 for small or large forced-air furnaces based on the manufacturer's submittal of a complete certification application meeting all requirements in §60.5475(b). The application must include the full test report by an EPA-approved laboratory and all required compliance statements by the manufacturer with the exception of a certificate of conformity by an EPA approved third-party certifier. The conditional, temporary approval would allow early marketing of forced-air furnaces as having a conditional, temporary certificate of compliance with the Step 1 p.m. emission standards until May 16, 2016 or until the Administrator completes the review of the application, whichever is earlier.

(f) *Third-party certifier-based application process.* (1) Any manufacturer of an affected central heater must apply to the Administrator for a certificate of compliance for each model line. The manufacturer must meet the following requirements:

(i) The manufacturer must contract with a third-party certifier for certification services. The contract must include regular (at least annual) unannounced audits under ISO-IEC Standard 17065 to ensure that the manufacturer's quality assurance plan is being implemented. The contract must also include a report for each audit under ISO-IEC Standard 17065 that fully documents the results of the audit. The contract must include authorization and requirement for the third-party certifier to submit all such reports to the Administrator and the manufacturer within 30 days of the audit. The audit report must identify deviations from the manufacturer's quality assurance plan and specify the corrective actions that need to be taken to address each identified deficiency.

(ii) The manufacturer must submit the materials specified in paragraph (b) of this section and a quality assurance plan that meets the requirements of paragraph (m) of this section to the third-party certifier. The quality assurance plan must ensure that units within a model line will be similar in all material respects that would affect emissions to the wood heater submitted for certification testing, and it must include design drawings for the model line.

(iii) The manufacturer must apply to the third-party certifier for a certification of conformity with the applicable requirements of this subpart for the model line.

(A) After testing by an approved test laboratory is complete, certification of conformity with the emission standards in §60.5474 must be performed by the manufacturer's contracted third-party certifier.

(B) The third-party certifier may certify conformity if the emission tests have been conducted per the appropriate guidelines: The test report is complete and accurate; the instrumentation used for the test was properly calibrated; the test report shows that the representative affected central heater meets the applicable emission limits specified in §60.5474; and the quality assurance plan is adequate to ensure that units within the model line will be similar in all material respects that would affect emissions to the central heater submitted for certification testing, and that the affected heaters would meet all applicable requirements of this subpart.

(iv) The manufacturer must then submit to the Administrator an application for a certificate of compliance that includes the certification of conformity, quality assurance plan, test report and all supporting documentation specified in paragraph (b) of this section.

(v) The submission also must include a statement signed by a responsible official of the manufacturer or authorized representative that the manufacturer has complied with and will continue to comply with all requirements of this subpart for certificate of compliance and that the manufacturer remains responsible for compliance regardless of any error by the test laboratory or third-party certifier.

(2) The Administrator will issue to the manufacturer a certificate of compliance for a model line if it is determined, based on all of the information submitted in the application for certification and any other relevant information, that:

(i) A valid certification of conformity has demonstrated that the representative affected central heater complies with the applicable emission standards in §60.5474;

(ii) Any tolerances or materials for components listed in paragraph (k)(2) or (3) of this section that are different from those specified in those paragraphs may not be reasonably anticipated to cause central heaters in the model line to exceed the applicable emission limits;

(iii) The requirements of paragraphs (b) of this section have been met; and

(iv) A valid certificate of conformity for the model line has been prepared and submitted.

(3) The Administrator will deny certification if the Administrator determines that the criteria in paragraph (f)(2) of this section have not been satisfied. Upon denying certification under this paragraph, the Administrator will give written notice to the manufacturer setting forth the basis for the determination.

(g) *Waiver from submitting test results.* An applicant for certification may apply for a potential waiver of the requirement to submit the results of a certification test pursuant to paragraph (b) of this section, if the central heater meets either of the following conditions:

(1) The central heaters of the model line are similar in all material respects that would affect emissions, as defined in §60.5473 and paragraph (k) of this section, to another model line that has already been issued a certificate of compliance. A manufacturer that seeks a waiver of certification testing must identify the model line that has been certified, and must submit a copy of an agreement with the owner of the design permitting the applicant to produce central heaters of that design.

(2) The manufacturer has previously conducted a valid certification test to demonstrate that the central heaters of the model line meet the applicable standard specified in §60.5474.

(h) *Certification period.* Unless revoked sooner by the Administrator, a certificate of compliance will be valid for 5 years from the date of issuance or until a more stringent standard comes into effect, whichever is sooner.

(i) *Renewal of certification.* (1) The manufacturer must renew a model line's certificate of compliance or recertify the model line every 5 years, or the manufacturer may choose to no longer manufacture or sell that model line after the expiration date. If the manufacturer chooses to no longer manufacture that model line, then the manufacturer must submit a statement to the Administrator to that effect.

(2) A manufacturer of an affected residential hydronic heater or forced-air furnace or other central heater may apply to the Administrator for potential renewal of its certificate of compliance by submitting the material specified in paragraph (b) and following the procedures specified in paragraph (f) of this section, or by affirming in writing that the central heaters in the model line continue to be similar in all material respects that would affect emissions to the representative central heater submitted for testing on which the original certificate of compliance was based and requesting a potential waiver from certification testing. The application must include a copy of the review of the draft application and approval by the third-party certifier.

(3) If the Administrator grants a renewal of certification, the Administrator will give written notice to the manufacturer setting forth the basis for the determination and issue a certification renewal.

(4) If the Administrator denies the request for a renewal of certification, the Administrator will give written notice to the manufacturer setting forth the basis for the determination.

(5) If the Administrator denies the request for a renewal of certification, the manufacturer and retailer must not manufacture or sell the previously-certified central heaters after the expiration date of the certificate of compliance.

(j) [Reserved]

(k) *Recertification.* (1) The manufacturer must recertify a model line whenever any change is made in the design submitted pursuant to paragraph (k)(2) of this section that affects or is presumed to affect the particulate matter emission rate for that model line. The manufacturer of an affected central heater must apply to the Administrator for potential recertification by submitting the material specified in paragraph (b) of this section and following the procedures specified in paragraph (f) of this section or by affirming in writing that the change will not cause the central heaters in the model line to exceed applicable emission limits and requesting a waiver from certification testing. The application for recertification must be reviewed and approved by the contracted third-party certifier and a copy of the review and approval must be included. The Administrator may waive this requirement upon written request by the manufacturer, if the manufacturer presents adequate rationale and the Administrator determines that the change may not reasonably be anticipated to cause central heaters in the model line to exceed the applicable emission limits. The granting of such a waiver does not relieve the manufacturer of any compliance obligations under this subpart.

(2) Any change in the design tolerances of any of the following components (where such components are applicable) is presumed to affect particulate matter and carbon monoxide emissions and efficiency if that change exceeds  $\pm 0.64$  cm ( $\pm 1/4$  inch) for any linear dimension and  $\pm 5$  percent for any cross-sectional area relating to air introduction systems and catalyst bypass gaps unless other dimensions and cross-sectional areas are previously approved by the Administrator under paragraph (c)(1)(ii) of this section:

(i) Firebox: Dimensions;

(ii) Air introduction systems: Cross-sectional area of restrictive air inlets and outlets, location and method of control;

(iii) Baffles: Dimensions and locations;

(iv) Refractory/insulation: Dimensions and location;

(v) Catalyst: Dimensions and location;

(vi) Catalyst bypass mechanism and catalyst bypass gap tolerances (when bypass mechanism is in closed position): Dimensions, cross-sectional area, and location;

(vii) Flue gas exit: Dimensions and location;

(viii) Door and catalyst bypass gaskets: Dimensions and fit;

(ix) Outer thermal shielding and thermal coverings: Dimensions and location;

(x) Fuel feed system: For central heaters that are designed primarily to burn wood pellet fuel or wood chips and other central heaters equipped with a fuel feed system, the fuel feed rate, auger motor design and power rating, and the angle of the auger to the firebox; and

(xi) Forced air combustion system: For central heaters so equipped, the location and horsepower of blower motors and the fan blade size.

(3) Any change in the materials used for the following components is presumed to affect particulate matter emissions and efficiency:

(i) Refractory/insulation; or

(ii) Door and catalyst bypass gaskets.

(4) A change in the make, model, or composition of a catalyst is presumed to affect particulate matter and carbon monoxide emissions and efficiency, unless the change has been requested by the central heater manufacturer and has been approved in advance by the Administrator, based on test data that demonstrate that the replacement catalyst is equivalent to or better than the original catalyst in terms of particulate matter emission reduction.

(l) *Criteria for revocation of certification.* (1) The Administrator may revoke certification of a product line if it is determined that the central heaters being manufactured or sold in that model line do not comply with the requirements of this subpart. Such a determination will be based on all available evidence, including but not limited to:

(i) Test data from retesting of the original unit on which the certification test was conducted on a unit that is similar in all material respects that would affect emissions;

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

(iii) A finding that the labeling of the central heater model line or the owner's manual or the associated marketing information does not comply with the requirements of §60.5478;

(iv) Failure by the manufacturer to comply with the reporting and recordkeeping requirements of §60.5479;

(v) Physical examination showing that a significant percentage (as defined in the quality assurance plan approved pursuant to paragraph (m) of this section, but no larger than 1 percent) of production units inspected is not similar in all material respects that would affect emissions to the representative affected central heater submitted for certification testing; or

(vi) Failure of the manufacturer to conduct a quality assurance program in conformity with paragraph (m).

(vii) Failure of the approved laboratory to test the central heater using the methods specified in §60.5476.

(2) Revocation of certification under this paragraph (l) of this section will not take effect until the manufacturer concerned has been given written notice by the Administrator setting forth the basis for the proposed determination and an opportunity to request a hearing under §60.5481.

(m) *Quality assurance program.* On or after May 16, 2016, for each certified model line, the manufacturer must conduct a quality assurance program that satisfies the requirements of paragraphs (m)(1) through (5) of this section.

(1) The manufacturer must prepare and operate according to a quality assurance plan for each certified model line that includes specific inspection and testing requirements for ensuring that all units within a model line are similar in all material respects that would affect emissions to the central heater submitted for certification testing and meet the emissions standards in §60.5474.

(2) The quality assurance plan must be approved by the third-party certifier as part of the certification of conformity process specified in paragraph (f) of this section.

(3) The quality assurance plan must include regular (at least annual) unannounced audits by the third-party certifier under ISO-IEC Standard 17065 to ensure that the manufacturer's quality assurance plan is being implemented.

(4) The quality assurance plan must include a report for each audit under ISO-IEC Standard 17065 that fully documents the results of the audit. The third-party certifier must be authorized and required to submit all such reports to the Administrator within 30 days of the audit. The audit report must identify deviations from the manufacturer's quality assurance plan and specify the corrective actions that need to be taken to address each identified deficiency.

(5) Within 30 days after receiving each audit report, the manufacturer must report to the third-party certifier and to the Administrator its corrective actions and responses to any deficiencies identified in the audit report. No such report is required if an audit report did not identify any deficiencies.

(n) *EPA compliance audit testing.* (1)(i) The Administrator may select by written notice central heaters or model lines for compliance audit testing to determine compliance with the emission standards in §60.5474.

(ii) The Administrator will transmit a written notification of the selected central heaters or model line(s) to the manufacturer, which will include the name and address of the laboratory selected to perform the audit test and the model name and serial number of the central heater(s) or central heater model line(s) selected to undergo audit testing.

(2)(i) The Administrator may test, or direct the manufacturer to have tested, the central heater(s) from the model line(s) selected under paragraph (n)(1)(i) of this section in a laboratory approved under §60.5477. The Administrator may select any approved test laboratory or federal laboratory for this audit testing.

(ii) The expense of the compliance audit test is the responsibility of the central heater manufacturer.

(iii) The test must be conducted using the same test method used to obtain certification. If the certification test consisted of more than one particulate matter sampling test method, the Administrator may direct the manufacturer and test laboratory as to which of these methods to use for the purpose of audit testing. The Administrator will notify the manufacturer at least 30 days prior to any test under this paragraph, and allow the manufacturer and/or his authorized representatives to observe the test.

(3) *Revocation of certification.* (i) If emissions from a central heater tested under paragraph (n)(2) of this section exceed the applicable emission standard by more than 50 percent using the same test method used to obtain certification, the Administrator will notify the manufacturer that certification for that model line is suspended effective 72 hours from the receipt of the notice, unless the suspension notice is withdrawn by the Administrator. The suspension will remain in effect until withdrawn by the Administrator, or the date 30 days from its effective date if a revocation notice under paragraph (n)(3)(ii) of this section is not issued within that period, or the date of final agency action on revocation, whichever occurs earliest.

(ii)(A) If emissions from a central heater tested under paragraph (n)(2) of this section exceed the applicable emission limit, the Administrator will notify the manufacturer that certification is revoked for that model line.

(B) A notice under paragraph (n)(3)(ii)(A) of this section will become final and effective 60 days after the date of written notification to the manufacturer, unless it is withdrawn, a hearing is requested under §60.5481(a)(2), or the deadline for requesting a hearing is extended.

(C) The Administrator may extend the deadline for requesting a hearing for up to 60 days for good cause.

(D) A manufacturer may extend the deadline for requesting a hearing for up to 6 months, by agreeing to a voluntary suspension of certification.

(iii) Any notification under paragraph (n)(3)(i) or (ii) of this section will include a copy of a preliminary test report from the approved test laboratory or federal test laboratory. The test laboratory must provide a preliminary test report to the Administrator within 14 days of the completion of testing, if a central heater exceeds the applicable emission limit in §60.5474. The test laboratory must provide the Administrator and the manufacturer, within 30 days of the completion of testing, all documentation pertaining to the test, including the complete test report and raw data sheets, laboratory technician notes, and test results for all test runs.

(iv) Upon receiving notification of a test failure under paragraph (n)(3)(ii) of this section, the manufacturer may request that up to four additional central heaters from the same model line be tested at the manufacturer's expense, at the test laboratory that performed the emissions test for the Administrator.

(v) Whether or not the manufacturer proceeds under paragraph (n)(3)(iv) of this section, the manufacturer may submit any relevant information to the Administrator, including any other test data generated pursuant to this subpart. The manufacturer must bear the expense of any additional testing.

(vi) The Administrator will withdraw any notice issued under paragraph (n)(3)(ii) of this section if tests under paragraph (n)(3)(iv) of this section show either—

(A) That exactly four additional central heaters were tested for the manufacturer and all four met the applicable emission limits; or

(B) That exactly two additional central heaters were tested for the manufacturer and each of them met the applicable emission limits and the average emissions of all three tested heaters (the original audit heater and the two additional heaters) met the applicable emission limits.

(vii) If the Administrator withdraws a notice pursuant to paragraph (n)(3)(vi) of this section, the Administrator will revise the certification values for the model line based on the test data and other relevant information. The manufacturer must then revise the labels and marketing information accordingly.

(viii) The Administrator may withdraw any proposed revocation, if the Administrator finds that an audit test failure has been rebutted by information submitted by the manufacturer under paragraph (n)(3)(iv) of this section and/or (n)(3)(v) of this section or by any other relevant information available to the Administrator.

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### **§60.5476 What test methods and procedures must I use to determine compliance with the standards and requirements for certification?**

Test methods and procedures specified in this section or in appendices of this part, except as provided under §60.8(b), must be used to determine compliance with the standards and requirements for certification under §§60.5474 and 60.5475 and for reporting carbon monoxide emissions and efficiency. The EPA will post all approved alternative test methods on the EPA Web site. The manufacturer or the manufacturer's authorized representative must submit a summary and the full test report with all supporting information, including detailed discussion of all anomalies, whether all burn rate categories were properly achieved, any data not used in the calculations and, for any test runs not completed, the data that were collected and the reason that the test run was not completed. The burn rate for the low burn rate category must be no greater than the rate that an operator can achieve in home use and no greater than is advertised by the manufacturer or retailer.

(a) Canadian Standards Administration (CSA) Method B415.1-10, sections 13.7-13.10 (IBR, see §60.17), must be used to measure the thermal efficiency and CO emissions of outdoor and indoor residential hydronic heaters and forced-air furnaces, except that the burn rates specified in Method 28WHH must be used for hydronic heaters.

(b) Testing conducted with continuously fed biomass as the fuel(s) must be conducted according to the relevant section of the ASTM E2618-13 (IBR, see §60.17) or adaptations approved by EPA. The EPA will post all approved alternative test

methods on the EPA Web site.

(c)(1) For outdoor and indoor residential hydronic heaters to be tested under the 2015 particulate matter emission standards in §60.5474(b)(1), the manufacturer must have an EPA-approved test laboratory use:

- (i) Method 28WHH;
- (ii) Method 28WHH PTS;
- (iii) ASTM E2618-13 (IBR, see §60.17) (using crib wood); or
- (iv) EN 303-5 (IBR, see §60.17), only for units sold with thermal storage.

(2) For outdoor and indoor residential hydronic heaters to be tested under the 2020 particulate matter emission standards in §60.5474(b)(2), the manufacturer must have an EPA-approved test laboratory use:

- (i) Method 28WHH;
- (ii) Method 28WHH PTS; or
- (iii) ASTM E2618-13 (IBR, see §60.17) (using crib wood).

(3) If the heater is equipped with full or partial heat storage, the manufacturer, retailer and installer must not sell or install the heater with less heat storage capacity than is used in the certification test.

(4) The manufacturer and approved laboratory must make the following adjustments to the methods listed in paragraphs (a), (c)(1) and (2) of this section:

- (i) For ASTM E2618-13 (IBR, see §60.17), the burn rate categories specified in Method 28WHH must be used;
- (ii) For EN 303-5 (IBR, see §60.17), the organic compounds must be included as part of the PM.

(iii) For ASTM 2618-13 (IBR, see §60.17) Appendix A1 for full thermal storage certification tests, the test must use the large scale as required in the test method unless the manufacturer requests a variance, in advance of testing, contingent upon measuring flue gas temperature, oxygen and CO, using a simple electronic spreadsheet calculator to estimate efficiency and conducting a comparison to the delivered efficiency to determine if a more detailed examination should be made.

(5) For particulate matter emission concentrations measured with ASTM E2515-11 (IBR, see §60.17), four-inch filters and Teflon membrane filters or Teflon-coated glass fiber filters may be used.

(6) For all tests conducted using ASTM 2515-11 (IBR, see §60.17) pursuant to this section, the manufacturer and approved test laboratory must also measure the first hour of particulate matter emissions for each test run using a separate filter in one of the two parallel trains. The manufacturer and approved test laboratory must report the test results for the first hour separately and also include them in the total particulate matter emissions per run.

(d)(1) For hydronic heaters subject to the 2020 cord wood alternative compliance option specified in §60.5474(b)(3), the manufacturers must have the approved laboratory conduct cord wood testing using the test methods listed below:

- (i) Method 28WHH;
- (ii) Method 28WHH PTS; or
- (iii) ASTM E2618-13 (IBR, see §60.17) (using cord wood).

(2) If the heater is equipped with full or partial heat storage, the manufacturer, retailer and installer must not sell or install the heater with less heat storage capacity than is used in the certification test.

(3) The manufacturer and approved laboratory must make the following adjustments to the methods listed in (d)(1) of this section:

- (i) For ASTM E2618-13 (IBR, see §60.17), use the burn rate categories specified in Method 28WHH;
- (ii) For all methods, report the results separately per burn rate category.

(e) For forced-air furnaces, use CSA Method B415.1-10 (IBR, see §60.17) to measure the heat output (mmBtu/hr) and particulate matter emission rate (lb/mmBtu heat output), except use the burn rate categories in Method 28WHH for the 2020

particulate matter emission standards. For the 2020 particulate matter emission standards, report the particulate matter, efficiency and CO emission results separately per burn rate category.

(f) For affected wood heaters subject to the particulate matter emission standards, emission concentrations must be measured with ASTM E2515-11 (IBR, see §60.17), except for the 2015 certification tests using EN303-5 (IBR, see §60.17). As required in paragraph (c)(4)(ii) of this section, the manufacturer and approved laboratory must add the organic gases to the PM for EN 303-5. Four-inch filters and Teflon membrane filters or Teflon-coated glass fiber filters may be used in ASTM E2515-11. Method 5H is not allowed for certification testing.

(g) Douglas fir may be used in ASTM E2618-13 and CSA B415.1-10 (IBR, see §60.17).

(h) The manufacturer of an affected central heater model line must notify the Administrator of the date that certification testing is to begin, by email, to [WoodHeaterReports@epa.gov](mailto:WoodHeaterReports@epa.gov). This notice must be at least 30 days before the start of testing. The notification of testing must include the manufacturer's name and physical and email addresses, the approved test laboratory's name and physical and email addresses, third-party certifier name, the model name and number (or, if unavailable, some other way to distinguish between models), and the dates of testing. The laboratory may substitute certification testing of another affected central heater on the original date in order to ensure regular laboratory testing operations.

(i) The approved test laboratory must allow the manufacturer, the manufacturer's approved third-party certifier, the EPA and delegated state regulatory agencies to observe certification testing. However, manufacturers must not involve themselves in the conduct of the test after the pretest burn has begun. Communications between the manufacturer and laboratory or third-party certifier personnel regarding operation of the central heater must be limited to written communications transmitted prior to the first pretest burn of the certification series. During certification tests, the manufacturer may communicate with laboratory personnel only in writing and only to notify them that the manufacturer has observed a deviation from proper test procedures. All communications must be included in the test documentation required to be submitted pursuant to §60.5475(b)(5) and must be consistent with instructions provided in the owner's manual required under §60.5478(f), except to the extent that they address details of the certification tests that would not be relevant to owners or regulators.

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#### **§60.5477 What procedures must I use for EPA approval of a test laboratory or EPA approval of a third-party certifier?**

(a) *Test laboratory approval.* (1) A laboratory must apply to the Administrator for approval to test under this rule by submitting documentation that the laboratory is accredited by a nationally recognized accrediting entity under ISO-IEC Standard 17025 to perform testing using the test methods specified under §60.5476. Laboratories accredited by EPA prior to May 15, 2015 may have until May 15, 2018 to submit documentation that they have accreditation under ISO-IEC Standard 17025 to perform testing using the test methods specified under §60.5476. ISO accreditation is required for all other laboratories performing hydronic heater testing beginning on May 15, 2015, and performing forced-air furnace testing beginning on November 16, 2015.

(2) As part of the application, the test laboratory must:

(i) Agree to participate biennially in an independently operated proficiency testing program with no direct ties to the laboratories participating;

(ii) Agree to allow the Administrator, regulatory agencies and certifying bodies access to observe certification testing;

(iii) Agree to comply with calibration, reporting and recordkeeping requirements that affect testing laboratories; and

(iv) Agree to perform a compliance audit test at the manufacturer's expense at the testing cost normally charged to such manufacturer if the laboratory is selected by the Administrator to conduct the compliance audit test of the manufacturer's model line. The test laboratory must provide a preliminary audit test report to the Administrator within 14 days of the completion of testing, if a central heater exceeds the applicable emission limit in §60.5474. The test laboratory must provide the Administrator and the manufacturer, within 30 days of the completion of audit testing, all documentation pertaining to the test, including the complete test report and raw data sheets, laboratory technician notes, and test results for all test runs.

(v) Have no conflict of interest and receive no financial benefit from the outcome of certification testing conducted pursuant to §60.5475.

(vi) Agree to not perform initial certification tests on any models manufactured by a manufacturer for which the laboratory has conducted research and development design services within the last 5 years.

(vii) Agree to seal any wood heater on which it performed certification tests, immediately upon completion or suspension of certification testing, by using a laboratory-specific seal.

(viii) Agree to immediately notify the Administrator of any suspended tests through email and in writing, giving the date suspended, the reason(s) why, and the projected date for restarting. The laboratory must submit the operation and test data obtained, even if the test is not completed.

(3) If the EPA approves the laboratory, the Administrator will provide the test laboratory with a certificate of approval for testing under this rule. If the EPA does not approve the laboratory, the Administrator will give written notice to the laboratory setting forth the basis for the determination.

(b) *Revocation of test laboratory approval.* (1) The Administrator may revoke the EPA laboratory approval if it is determined that the laboratory:

(i) Is no longer accredited by the accreditation body;

(ii) Does not follow required procedures or practices;

(iii) Has falsified data or otherwise misrepresented emission data;

(iv) Failed to participate in a proficiency testing program, in accordance with its commitment under paragraph (a)(2)(i) of this section; or

(v) Failed to seal the central heater in accordance with paragraph (a)(2)(vii) of this section.

(2) Revocation of approval under this paragraph (b) will not take effect until the laboratory concerned has been given written notice by the Administrator setting forth the basis for the proposed determination and an opportunity for a hearing under §60.5481. However, if revocation is ultimately upheld, all tests conducted by the laboratory after written notice was given will, at the discretion of the Administrator, be declared invalid.

(c) *Period of test laboratory approval.* (1) With the exception of laboratories meeting the provisions of paragraph (c)(2) of this section, and unless revoked sooner, a certificate of approval for testing under this rule is valid for 5 years from the date of issuance.

(2) Laboratories accredited by the EPA by May 15, 2015, under the provisions of §60.535 as in effect prior to that date may continue to be EPA accredited and deemed EPA approved for testing under this subpart until May 15, 2018, at which time the EPA accreditation and approval ends unless the laboratory has obtained accreditation under §60.5477 as in effect on that date.

(d) *Third-party certifier approval.* (1) A Third-party certifier may apply to the Administrator for approval to be an EPA-approved third-party certifier by submitting credentials demonstrating that it has been accredited by a nationally recognized accrediting entity to perform certifications and inspections under ISO-IEC Standard 17025, ISO-IEC Standard 17065 and ISO-IEC Standard 17020.

(2) As part of the application, the third-party certifier must:

(i) Agree to offer to contract with central heater manufacturers to perform third-party certification activities according to the requirements set out in this subpart.

(ii) Agree to periodically conduct audits as described in §60.5475(m) and the manufacturer's quality assurance program;

(iii) Agree to comply with reporting and recordkeeping requirements that affect approved central heater testing laboratories and third-party certifiers;

(iv) Have no conflict of interest and receive no financial benefit from the outcome of certification testing conducted pursuant to §60.5475;

(v) Agree to make available to the Administrator supporting documentation for each central heater certification and audit; and

(vi) Agree to not perform initial certification reviews on any models manufactured by a manufacturer for which the third-party certifier has conducted research and development design services within the last 5 years.

(3) If approved, the Administrator will provide the third-party certifier with a certificate of approval. The approval will expire 5 years after being issued unless renewed by the third-party certifier. If the EPA denies the approval, the Administrator will give written notice to the third-party certifier for the basis for the determination.

(e) *Revocation of third-party certifier approval.* (1) The Administrator will revoke the third-party certifier's EPA approval if it is determined that the certifier:

- (i) Is no longer accredited by the accreditation body;
- (ii) Does not follow required procedures or practices; or
- (iii) Has falsified certification data or otherwise misrepresented emission data.

(2) Revocation of approval under this paragraph (e) will not take effect until the certifier concerned is given written notice by the Administrator setting forth the basis for the proposed determination and an opportunity for a hearing under §60.5481. However, if revocation is upheld, all certifications by the certifier after written notice was given will, at the discretion of the Administrator, be declared invalid.

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#### **§60.5478 What requirements must I meet for permanent labels, temporary labels (hangtags), and owner's manuals?**

(a) *General permanent label requirements.* (1) Each affected central heater manufactured or sold on or after the date the applicable standards come into effect as specified in §60.5474, must have a permanent label affixed to it that meets the requirements of this section.

(2) The permanent label must contain the following information:

- (i) Month and year of manufacture of the individual unit;
- (ii) Model name and number;
- (iii) Certification test emission value, test method, and standard met; and
- (iv) Serial number.

(3) The permanent label must:

- (i) Be affixed in a readily visible or accessible location in such a manner that it can be easily viewed before and after the appliance is installed (a easily removable façade can be used for aesthetic purposes);
- (ii) Be at least 8.9 cm long and 5.1 cm wide (3 ½ inches long and 2 inches wide);
- (iii) Be made of a material expected to last the lifetime of the central heater;
- (iv) Present the required information in a manner so that it is likely to remain legible for the lifetime of the central heater; and
- (v) Be affixed in such a manner that it cannot be removed without damage to the label.

(4) The permanent label may be combined with any other label, as long as the required information is displayed, the integrity of the permanent label is not compromised, and the permanent label meets the requirements of §60.5478(a)(3).

(5) Any label statement under paragraph (b) of this section constitutes a representation by the manufacturer as to any central heater that bears it:

- (i) That a certification of compliance was in effect at the time the central heater left the possession of the manufacturer;
- (ii) That the manufacturer was, at the time the label was affixed, conducting a quality assurance program in conformity with §60.5475(m); and
- (iii) That all the central heaters individually tested for emissions by the manufacturer under its quality assurance program pursuant to §60.5475(m) met the applicable emissions limit.

(b) *Permanent label requirements for central heaters.* If a central heater belongs to a model line certified under §60.5475, and no unit in the model line has been found to exceed the applicable emission limits or tolerances through quality assurance testing, one of the following statements, as appropriate, must appear on the permanent label:

"U.S. ENVIRONMENTAL PROTECTION AGENCY Certified to comply with the 2015 particulate emission standards. Not approved for sale after May 15, 2020" or

"U.S. ENVIRONMENTAL PROTECTION AGENCY Certified to comply with the 2016 particulate emission standards. Not approved for sale after May 15, 2020" or

"U.S. ENVIRONMENTAL PROTECTION AGENCY Certified to comply with the 2017 particulate emission standards. Not approved for sale after May 15, 2020" or

"U.S. ENVIRONMENTAL PROTECTION AGENCY Certified to comply with the 2020 particulate emission standards using crib wood." or

"U.S. ENVIRONMENTAL PROTECTION AGENCY Certified to comply with the 2020 particulate emission standards using cord wood."

(c) *Additional permanent label content.* The permanent label for all certified central heaters must also contain the following statement on the permanent label:

"This appliance needs periodic inspection and repair for proper operation. Consult owner's manual for further information. It is against federal regulations to operate this appliance in a manner inconsistent with operating instructions in the owner's manual."

(d) *Permanent label requirements for affected wood heaters with exemptions under §60.5472(b).* (1) If an affected central heater is manufactured in the United States for export as provided in §60.5472(b)(1), the following statement must appear on the permanent label:

"U.S. ENVIRONMENTAL PROTECTION AGENCY Export appliance. May not be sold or operated in the United States."

(2) If an affected central heater is manufactured for use for research and development purposes as provided in §60.5472(b)(2), the following statement must appear on the permanent label:

"U.S. ENVIRONMENTAL PROTECTION AGENCY Not certified. Research Appliance. Not approved for sale or for operation other than for research."

(3) If an affected central heater is a non wood-burning central heater exclusively as provided in §60.5472(b)(3), the following statement must appear on the permanent label:

"U.S. ENVIRONMENTAL PROTECTION AGENCY This appliance is not certified for wood burning. Use of any wood fuel is a violation of federal regulations."

(e) *Temporary label (hangtag) voluntary options.* (1) Each model line certified to meet the 2020 particulate emission standards prior to May 15, 2020 may display the hangtags specified in section 3 of appendix I of this part. The electronic template will be provided by the Administrator upon approval of the certification.

(2) The hangtags in paragraph (e)(1) of this section end upon May 15, 2020.

(3) Each model certified to meet the 2020 Cord Wood Alternative Compliance Option may display the cord wood temporary label specified in section 3 of appendix I of this part. The electronic template will be provided by the Administrator upon approval of the certification.

(f) *Owner's manual requirements.* (1) Each affected central heater offered for sale by a commercial owner must be accompanied by an owner's manual that must contain the information listed in paragraph (f)(2) of this section (pertaining to installation), and paragraph (f)(3) of this section (pertaining to operation and maintenance). Such information must be adequate to enable consumers to achieve optimal emissions performance. Such information must be consistent with the operating instructions provided by the manufacturer to the approved test laboratory for operating the central heater during certification testing, except for details of the certification test that would not be relevant to the ultimate user. The commercial owner must also make current and historical owner's manuals available on the company Web site and upon request to the EPA.

(2) Guidance on proper installation information, including stack height, heater location and achieving proper draft.

(3) Proper operation and maintenance information, including minimizing visible emissions.

(i) Fuel loading and re-loading procedures, recommendations on fuel selection and warnings on what fuels not to use, such as unseasoned wood, treated wood, colored paper, cardboard, solvents, trash and garbage;

(ii) Fire starting procedures;

(iii) Proper use of air controls, including how to establish good combustion and how to ensure good combustion at the lowest burn rate for which the heater is warranted;

(iv) Ash removal procedures;

(v) Instructions for replacement of gaskets and other parts that are critical to the emissions performance of the unit and other maintenance and repair instructions;

(vi) For catalytic models, information on the following pertaining to the catalytic combustor: Procedures for achieving and maintaining catalyst activity, maintenance procedures, procedures for determining deterioration or failure, procedures for replacement and information on how to exercise warranty rights;

(vii) For catalytic models, the following statement—

"This wood heater contains a catalytic combustor, which needs periodic inspection and replacement for proper operation. It is against federal regulations to operate this wood heater in a manner inconsistent with operating instructions in this manual, or if the catalytic element is deactivated or removed"; and

(viii) For noncatalytic models, the following statement—

"This wood heater needs periodic inspection and repair for proper operation. It is against federal regulations to operate this wood heater in a manner inconsistent with operating instructions in this manual."

(4) Any manufacturer using the EPA-recommended language contained in appendix I of this part to satisfy any requirement of this paragraph (f) will be considered to be in compliance with that requirement, provided that the particular model language is printed in full, with only such changes as are necessary to ensure accuracy for the particular model line.

(g) Central heaters that are affected by this subpart, but that have been owned and operated by a noncommercial owner, are not subject to paragraphs (e) and (f) of this section when offered for resale.

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### **§60.5479 What records must I keep and what reports must I submit?**

(a)(1) Each manufacturer who holds a certificate of compliance pursuant to §60.5475(a)(2) for a model line must maintain records containing the information required by paragraphs (a)(2) through (4) of this section with respect to that model line for at least 5 years.

(2) All documentation pertaining to the certification test used to obtain certification, including the full test report and raw data sheets, laboratory technician notes, calculations, and the test results for all test runs, and discussions of the appropriateness and validity of all test runs, including runs attempted but not completed. The retained certification test documentation must include, as applicable, detailed discussions of all anomalies, whether all burn rate categories were properly achieved, any data not used in the calculations and, for any test runs not completed, the data that were collected and the reason that the test run was not completed. The retained certification test also must include documentation that the burn rate for the low burn category was no greater than the rate that an operator can achieve in home use and no greater than is advertised by the manufacturer or retailer.

(3) Results of the quality assurance program inspections required pursuant to §60.5475(m).

(4) For emissions tests conducted pursuant to the quality assurance program required by §60.5475(m), all test reports, data sheets, laboratory technician notes, calculations, and test results for all test runs, the corrective actions taken, if any, and any follow-up actions such as additional testing.

(b) Each approved test laboratory and third-party certifier must maintain records consisting of all documentation pertaining to each certification test, quality assurance program inspection and audit test, including the full test report and raw data sheets, technician notes, calculations, the test results for all test runs. Each approved test laboratory must submit accreditation credentials and all proficiency test results to the Administrator. Each third-party certifier must submit each certification test, quality assurance program inspection report and ISO-IEC accreditation credentials to the Administrator.

(c) Each manufacturer must retain each central heater upon which certification tests were performed and certification granted under §60.5475(a)(2) at the manufacturer's facility for 5 years after the certification test. Each central heater must remain sealed and unaltered. Any such central heater must be made available upon request to the Administrator for inspection and testing.

(d) Each manufacturer of an affected central heater model line certified pursuant to §60.5475(a)(2) must submit a report to the Administrator every 2 years following issuance of a certificate of compliance for each model line. This report must include the sales for each model by state and certify that no changes in the design or manufacture of the model line have been made that require recertification pursuant to §60.5475(k).

(e)(1) Unless otherwise specified, all records required under this section must be maintained by the manufacturer, commercial owner of the affected central heater, approved test laboratory or third-party certifier for a period of no less than 5 years.

(2) Unless otherwise specified, all reports to the Administrator required under this subpart must be made to:  
*WoodHeaterReports@epa.gov.*

(f) Within 60 days after the date of completing each performance test (e.g., initial certification test, tests conducted for quality assurance and tests for renewal or recertification), each manufacturer must submit performance test data electronically

to [WoodHeaterReports@epa.gov](mailto:WoodHeaterReports@epa.gov). Owners or operators who claim that some of the information being submitted for performance tests is CBI (e.g., design drawings) must submit a complete file, including information claimed to be CBI on a compact disk or other commonly used electronic storage media (including, but not limited to, flash drives), by mail, and the same file with the CBI omitted, electronically. The compact disk must be clearly marked as CBI and mailed to U.S. EPA, OECA CBI Office, Attention: Residential Wood Heater Compliance Program, Washington, DC 20004. Emission data and all information necessary to determine compliance, except sensitive engineering drawings and sensitive detailed material specifications, cannot be claimed as CBI.

(g) Within 30 days of receiving a certification of compliance for a model line, the manufacturer must make the full non-CBI test report and the summary of the test report available on the manufacturer's Web site.

(h) Each manufacturer who uses the exemption for R&D heaters under §60.5472(b)(2) must maintain records for at least 5 years documenting where the heaters were located, that the heaters were never offered for sale or sold and that the heaters were not used for the purpose of heating.

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### **§60.5480 What activities are prohibited under this subpart?**

(a) No person is permitted to advertise for sale, offer for sale, sell or operate an affected residential hydronic heater or forced-air furnace or other central heater that does not have affixed to it a permanent label pursuant to §60.5478(b) through (d), as applicable.

(b) No person is permitted to advertise for sale, offer for sale, or sell an affected central heater labeled under §60.5478(d)(1) except for export. No person is permitted to operate an affected central heater in the United States if it is labeled under §60.5478(d)(1).

(c)(1) No commercial owner is permitted to advertise for sale, offer for sale, or sell an affected central heater permanently labeled under §60.5478(b) unless:

(i) The affected appliance has been certified to comply with the particulate emission standards pursuant to §60.5474 as applicable; and

(ii) The commercial owner provides any purchaser or transferee with an owner's manual that meets the requirements of §60.5478(f), a copy of the warranty and a moisture meter.

(2) A commercial owner other than a manufacturer complies with the requirements of paragraph (c)(1) of this section if the commercial owner:

(i) Receives the required documentation from the manufacturer or a previous commercial owner; and

(ii) Provides that documentation unaltered to any person to whom the central heater that it covers is sold or transferred.

(d)(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 §60.5475(l)(1)(ii) that the certification test was not valid, the Administrator may give notice of that revocation and the grounds for it to all commercial owners.

(2) On and after the date of receipt of the notice given under paragraph (d)(1) of this section, no commercial owner is permitted to sell any central heater covered by the revoked certificate (other than to the manufacturer) unless the model line has been recertified in accordance with this subpart.

(e) No person is permitted to install or operate an affected central heater except in a manner consistent with the instructions on its permanent label and in the owner's manual pursuant to §60.5478(f), including only using fuels for which the unit is certified.

(f) No person is permitted to operate, sell or offer for sale an affected central heater that was originally equipped with a catalytic combustor if the catalytic element is deactivated or removed.

(g) No person is permitted to operate, sell or offer for sale an affected central heater that has been physically altered to exceed the tolerance limits of its certificate of compliance, pursuant to §60.5475(k).

(h) No person is permitted to alter, deface, or remove any permanent label required to be affixed pursuant to §60.5478(a) through (d), as applicable.

(i) If a temporary label is affixed to the central heater, retailers may not sell or offer for sale that central heater unless the temporary label affixed is in accordance with §60.5478(e), as applicable.

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### **§60.5481 What hearing and appeal procedures apply to me?**

(a)(1) The affected manufacturer, laboratory or third-party certifier may request a hearing under this section within 30 days following receipt of the required notification in any case where the Administrator—

- (i) Denies an application for a certificate of compliance under §60.5475 (a)(2);
- (ii) Denies an application for a renewal of certification under §60.5475(i);
- (iii) Issues a notice of revocation of certification under §60.5475(l);
- (iv) Denies an application for laboratory approval under §60.5477(a);
- (v) Issues a notice of revocation of laboratory approval under §60.5477(b).
- (vi) Denies an application for third-party certifier approval under §60.5477(d); or
- (vii) Issues a notice of revocation of third-party certifier approval under §60.5477(e).

(2) In any case where the Administrator issues a notice of revocation under §60.5475(n)(3)(ii), the manufacturer may request a hearing under this section with the time limits set out in §60.5475(n)(3)(ii).

(b) Any hearing request must be in writing, must be signed by an authorized representative of the petitioning manufacturer or laboratory, and must include a statement setting forth with particularity the petitioner's objection to the Administrator's determination or proposed determination.

(c)(1) Upon receipt of a request for a hearing under paragraph (a) of this section, the Administrator will request the Chief Administrative Law Judge to designate an Administrative Law Judge as Presiding Officer for the hearing. If the Chief Administrative Law Judge replies that no Administrative Law Judge is available to perform this function, the Administrator will designate a Presiding Officer who has not had any prior responsibility for the matter under review, and who is not subject to the direct control or supervision of someone who has had such responsibility.

(2) The hearing will commence as soon as practicable at a time and place fixed by the Presiding Officer.

(3)(i) A motion for leave to intervene in any proceeding conducted under this section must set forth the grounds for the proposed intervention, the position and interest of the movant and the likely impact that intervention will have on the expeditious progress of the proceeding. Any person already a party to the proceeding may file an answer to a motion to intervene, making specific reference to the factors set forth in the foregoing sentence and paragraph (c)(3)(iii) of this section within 10 days after service of the motion for leave to intervene.

(ii) A motion for leave to intervene in a proceeding must ordinarily be filed before the first prehearing conference or, in the absence of a prehearing conference, prior to the setting of a time and place for a hearing. Any motion filed after that time must include, in addition to the information set forth in paragraph (c)(3)(i) of this section, a statement of good cause for the failure to file in a timely manner. The intervener shall be bound by any agreements, arrangements and other matters previously made in the proceeding.

(iii) A motion for leave to intervene may be granted only if the movant demonstrates that his presence in the proceeding would not unduly prolong or otherwise prejudice the adjudication of the rights of the original parties, and that movant may be adversely affected by a final order. The intervener will become a full party to the proceeding upon the granting of leave to intervene.

(iv) Persons not parties to the proceeding may move for leave to file amicus curiae briefs. The movant must state his interest and the reasons why the proposed amicus brief is desirable. If the motion is granted, the Presiding Officer or Administrator will issue an order setting the time for filing such brief. An amicus curia may participate in any briefing after his motion is granted, and will be served with all briefs, reply briefs, motions, and orders relating to issues to be briefed.

(4) In computing any period of time prescribed or allowed in this subpart, the day of the event from which the designated period begins to run will not be included. Saturdays, Sundays, and federal legal holidays will be included. When a stated time expires on a Saturday, Sunday or legal holiday, the stated time period will be extended to include the next business day.

(d)(1) Upon his appointment the Presiding Officer must establish a hearing file. The file will consist of the notice issued by the Administrator under §60.5475(c)(2), §60.5475(f)(3), §60.5475(i)(4), §60.5475(l)(2), §60.5475(n)(3)(ii)(A), §60.5477(a)(3), §60.5477(b)(2), §60.5477(d)(3) or §60.5477(e)(2), together with any accompanying material, the request for a hearing and the

supporting data submitted therewith, and all documents relating to the request for certification or approval, or the proposed revocation of either.

(2) The hearing file must be available for inspection by any party, to the extent authorized by law, at the office of the Presiding Officer, or other place designated by him.

(e) Any party may appear in person, or may be represented by counsel or by any other duly authorized representative.

(f)(1) The Presiding Officer, upon the request of any party, or at his discretion, may order a prehearing conference at a time and place specified by him to consider the following:

(i) Simplification of the issues;

(ii) Stipulations, admissions of fact, and the introduction of documents;

(iii) Limitation of the number of expert witnesses;

(iv) Possibility of agreement disposing of all or any of the issues in dispute; and

(v) Such other matters as may aid in the disposition of the hearing, including such additional tests as may be agreed upon by the parties.

(2) The results of the conference must be reduced to writing by the Presiding Officer and made part of the record.

(g)(1) Hearings shall be conducted by the Presiding Officer in an informal but orderly and expeditious manner. The parties may offer oral or written evidence, subject to the exclusion by the Presiding Officer of irrelevant, immaterial and repetitious evidence.

(2) Witnesses will not be required to testify under oath. However, the Presiding Officer will call to the attention of witnesses that their statements may be subject to penalties under title 18 U.S.C. 1001 for knowingly making false statements or representations or using false documents in any matter within the jurisdiction of any department or agency of the United States.

(3) Any witness may be examined or cross-examined by the Presiding Officer, the parties, or their representatives.

(4) Hearings must be recorded verbatim. Copies of transcripts of proceedings may be purchased by the applicant from the reporter.

(5) All written statements, charts, tabulations and similar data offered in evidence at the hearings must, upon a showing satisfactory to the Presiding Officer of their authenticity, relevancy and materiality, be received in evidence and will constitute a part of the record.

(h)(1) The Presiding Officer will make an initial decision which must include written findings and conclusions and the reasons or basis therefor on all the material issues of fact, law, or discretion presented on the record. The findings, conclusions and written decision must be provided to the parties and made a part of the record. The initial decision will become the decision of the Administrator without further proceedings unless there is an appeal to the Administrator or motion for review by the Administrator. Except as provided in paragraph (h)(3) of this section, any such appeal must be taken within 20 days of the date the initial decision was filed.

(2) On appeal from or review of the initial decision the Administrator will have all the powers which he would have in making the initial decision including the discretion to require or allow briefs, oral argument, the taking of additional evidence or the remanding to the Presiding Officer for additional proceedings. The decision by the Administrator must include written findings and conclusions and the reasons or basis therefor on all the material issues of fact, law, or discretion presented on the appeal or considered in the review.

(3) In any hearing requested under paragraph (a)(2) of this section the Presiding Officer must render the initial decision within 60 days of that request. Any appeal to the Administrator must be taken within 10 days of the initial decision, and the Administrator must render a decision in that appeal within 30 days of the filing of the appeal.

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## **§60.5482 Who implements and enforces this subpart?**

(a) Under section 111(c) of the Clean Air Act, the Administrator may delegate the following implementation and enforcement authority to a state, local or tribal authority upon request:

(1) Enforcement of prohibitions on the installation and operation of affected central heaters in a manner inconsistent with the installation and owner's manual;

(2) Enforcement of prohibitions on operation of catalytic central heaters where the catalyst has been deactivated or removed;

(3) Enforcement of prohibitions on advertisement and/or sale of uncertified model lines;

(4) Enforcement of prohibitions on advertisement and/or sale of affected central heaters that do not have required permanent label;

(5) Enforcement of proper labeling of affected central heaters;

(6) Enforcement of compliance with other labeling requirements for affected central heaters.

(7) Enforcement of certification testing procedures;

(8) Enforcement of requirements for sealing of the tested central heaters and meeting parameter limits; and

(9) Enforcement of compliance requirements of EPA-approved laboratories.

(b) Delegations shall not include:

(1) Decisions on certification;

(2) Revocation of certification;

(3) Establishment or revision of standards;

(4) Establishment or revision of test methods;

(5) Laboratory and third-party certifier approvals and revocations;

(6) Enforcing provisions governing content of owner's manuals; and

(7) Hearings and appeals procedures.

(c) Nothing in these delegations will prohibit the Administrator from enforcing any applicable requirements.

(d) Nothing in these delegations will limit delegated entities from using their authority under section 116 of the Clean Air Act to adopt or enforce more restrictive requirements.

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### **§60.5483 What parts of the General Provisions do not apply to me?**

The following provisions of subpart A of part 60 do not apply to this subpart:

(a) Section 60.7;

(b) Section 60.8(a), (c), (d), (e), (f) and (g); and

(c) Section 60.15(d).

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Need assistance?