



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[EPA-HQ-OAR-2009-0734; FRL-9954-38-OAR]

**Reconsideration of Standards of Performance for New Residential Wood Heaters,
New Residential Hydronic Heaters and Forced-Air Furnaces**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final action denying petition for reconsideration.

SUMMARY: This action provides notice that the U.S. Environmental Protection Agency (EPA) Administrator, Gina McCarthy, denied a petition for reconsideration of the final Standards of Performance for New Residential Wood Heaters, New Residential Hydronic Heaters and Forced-Air Furnaces published in the **Federal Register** on March 16, 2015.

DATES: This action is effective on **[insert date of publication in the Federal Register]**.

FOR FURTHER INFORMATION CONTACT: Ms. Amanda Aldridge, Outreach and Information Division (C304-05), Office of Air Quality Planning and Standards, Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541-5268; fax number (919) 541-2664; email address: aldridge.amanda@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. How can I get copies of this document and other related information?

This Federal Register notice, the petition for reconsideration and the EPA's letter addressing the petition for reconsideration are available in the docket under Docket ID No. EPA-HQ-OAR-2009-0734.

Docket. The EPA has established a docket for this action under Docket ID No. EPA-HQ-OAR-2009-0734. Publicly available docket materials are available either electronically through <http://www.regulations.gov> or in hard copy at the EPA Docket Center (EPA/DC), EPA WJC West, Room 3334, 1301 Constitution Ave., NW, Washington, DC. The EPA Docket Center 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 Air Docket is (202) 566-1742. This action, the petition for reconsideration and the EPA's letter addressing the petition can also be found on the EPA's Web site at <http://www.epa.gov/ttn/oarpg>.

Electronic access. You may access this Federal Register document electronically from the Government Printing Office under the "Federal Register" listings at FDSys (<http://www.gpo.gov/fdsys/browse/collection.action?collectionCode=FR>).

II. Judicial Review

Section 307(b)(1) of the Clean Air Act (CAA) indicates which Federal Court of Appeals have venue over petitions for review of final EPA actions. This section provides, in part, that the petitions for review must be filed in the Court of Appeals for the District of Columbia Circuit if: (i) the agency action consists of "nationally applicable regulations promulgated, or final action taken, by the Administrator;" or (ii) such actions are locally

or regionally applicable, if "such action is based on a determination of nationwide scope or effect and if in taking such action the Administrator finds and publishes that such action is based on such a determination."

The EPA has determined that its action denying the petition for reconsideration is nationally applicable for purposes of CAA section 307(b)(1) because the action directly affects the final Standards of Performance for New Residential Wood Heaters, new Residential Hydronic Heaters and Forced-Air Furnaces published on March 16, 2015, ("2015 New Source Performance Standards (NSPS)"), which are nationally applicable regulations. Thus, any petitions for review of the EPA's decision to deny the petition for reconsideration described in this document must be filed in the United States Court of Appeals for the District of Columbia Circuit by **[insert date 60 days after date of publication in the Federal Register]**.

III. Description of Action

The 2015 NSPS finalizes amendments to the 1988 Standards of Performance for New Residential Wood Heaters (40 CFR part 60, subpart AAA), *i.e.*, the 1988 NSPS, and adds one new subpart: Standards of Performance for the New Residential Hydronic Heaters and Forced-Air Furnaces (40 CFR part 60, subpart QQQQ). The 2015 NSPS was developed following a CAA section 111(b)(1)(B) review of the 1988 NSPS (53 FR 5860, February 26, 1988). This information is contained in the docket, which is available at <http://www.regulations.gov>. On February 3, 2014, the EPA proposed Standards of Performance for New Residential Wood Heaters, New Residential Hydronic Heaters and Forced-Air Furnaces (79 FR 6373). The EPA received additional data and comments during the public comment period. These data and comments were considered and

analyzed and, where appropriate, the EPA revised the proposed rule. The final rule was published on March 16, 2015 (80 FR 13671).

On June 2, 2015, Richard S. Burns & Company, Inc. (“Burns”) submitted a petition for reconsideration of the 2015 NSPS (80 FR 13671, March 16, 2015). In its petition, Burns asks the EPA to reconsider aspects of the final rule’s pellet fuel requirements in 40 CFR 60.532(f). Specifically, Burns asked that the EPA reconsider the ban on pellet fuels made from construction and demolition waste and the ban on pellet fuels made from “prohibited fuels” which includes construction or demolition debris and allow certain wood that has been sorted from construction or demolition waste to be used in the manufacture of pellet fuels for residential wood heaters.

Burns’ reconsideration petition was submitted under Section 307(d)(7)(B) of the CAA, which sets forth the criteria for reconsideration. That section states that “(o)nly 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. If the person raising an objection can demonstrate to the Administrator that it was impractical to raise such objection within such time 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, the Administrator shall convene a proceeding for reconsideration of the rule and provide the same procedural rights as would have been afforded had the information been available at the time the rule was proposed.”

The EPA has carefully considered the petition and supporting information and evaluated whether the petition meets the CAA section 307(d)(7)(B) criteria for

reconsideration. The EPA has concluded that the petition does not meet the criteria for reconsideration. Thus, in a letter to the petitioner, the EPA Administrator, Gina McCarthy, denied the Richard S. Burns & Company, Inc.'s petition, and explained the reasons for the denial. This letter is available in the docket for this action.

IV. Conclusion

For the reasons discussed in the letter to the petitioner, their petition to reconsider the final Standards of Performance for New Residential Wood Heaters, New Residential Hydronic Heaters and Forced-Air Furnaces is denied.

List of Subjects in 40 CFR Part 60

Environmental protection, Administrative practices and procedures, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements

Dated: October 14, 2016.

Gina McCarthy,
Administrator.

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