

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

10 CFR Part 430

[Docket No. EE-RM-93-501]

RIN 1904-AA45

Energy Conservation Program for Consumer Products: Test Procedures for Furnaces and Boilers

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Interim final rule.

SUMMARY: The Department of Energy (the Department or DOE) is amending a provision of its recently promulgated final rule that prescribed revised test procedures to determine the energy efficiency of furnaces and boilers. Under today's amendment, the test procedures will provide that the flue collector box on a furnace or boiler with a power burner or draft inducer need not be insulated before the start of the cool-down test.

DATES: This rule is effective November 10, 1997. Written comments (ten copies) in response to this notice must be received by November 13, 1997.

ADDRESSES: Written comments are to be submitted to: U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Hearings and Dockets, Interim Final Rule for Test Procedures for Furnaces and Boilers, Docket No. EE-RM-93-501, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 586-7574.

Copies of the public comments received may be read at the Department of Energy Freedom of Information Reading Room, Forrestal Building, Room 1E-190, 1000 Independence Avenue, S.W., Washington, DC 20585, (202) 586-6020 between the hours of 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

For more information concerning public participation in this rulemaking proceeding, see Section IV, "Public Comment," of **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Cyrus H. Nasser, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Mail Station EE-43, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585-0121, (202) 586-9138. Or Edward Levy, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC-72, Forrestal Building, 1000 Independence

Avenue, SW, Washington, DC 20585-0103, (202) 586-9507.

SUPPLEMENTARY INFORMATION:

I. Discussion

II. Procedural Requirements

- A. Review Under the National Environmental Policy Act of 1969.
- B. Review Under Executive Order 12866, "Regulatory Planning and Review."
- C. Review Under Executive Order 12612, "Federalism."
- D. Review Under Executive Order 12630, "Governmental Actions and Interference With Constitutionally Protected Property Rights."
- E. Review Under the Paperwork Reduction Act.
- F. Review Under Executive Order 12988, "Civil Justice Reform."
- G. Review Under Unfunded Mandates Reform Act of 1995.
- H. Review Under Small Business Regulatory Enforcement Fairness Act of 1996.

III. Interim Final Rule

IV. Public Comment

I. Discussion

On August 23, 1993, DOE published in the **Federal Register** a proposal (hereinafter referred to as the 1993 proposed rule) to amend the DOE test procedures for furnaces and boilers. 58 FR 44538. A public hearing was held in Washington, DC, on January 5, 1994, on the proposed rule. On May 12, 1997, after review and evaluation of the comments received, DOE published in the **Federal Register** a final rule (hereinafter referred to as the 1997 final rule) amending the furnace test procedure. 62 FR 26140. The 1997 final rule incorporated by reference many provisions of the American National Standards Institute, Inc./American Society of Heating, Refrigerating and Air-Conditioning Engineers, Inc. (ANSI/ASHRAE) Standard 103-1993 (hereinafter referred to as Standard 103-1993). Standard 103-1993 includes most of the provisions in the 1993 proposed rule. However, as discussed in preamble to the 1997 final rule, the Department did not intend to adopt in the final rule any revision to the test procedure that would affect the measure of efficiency (Annual Fuel Utilization Efficiency (AFUE)) of existing furnaces and boilers. The 1997 final rule did not include, therefore, those provisions in the 1993 proposed rule (also contained in Standard 103-1993) that the Department believed would, if adopted, reduce the AFUE of certain existing furnaces and boilers.

Among the provisions of Standard 103-1993 that were included in the 1997 final rule was section 7.2.2.2. This section of Standard 103-1993 specifies that, for power burner units (including

power vented units and oil burners), the flue gas collector box shall be covered with insulation having an R-value of not less than 7 and an outer layer of aluminum foil before the cool-down and heat-up tests.

After the publication of the 1997 final rule, the Gas Appliance Manufacturers Association (GAMA) contacted the Department and asserted that the adoption of this insulation requirement in the DOE test procedures will reduce the AFUE of many furnaces and boilers. GAMA stated that for some units the reduced AFUE would be below the minimum standard, while for others it would be below the qualifying levels for many utility rebate programs.

As discussed in the preamble to the 1997 final rule, 62 FR at 26147, the requirement to insulate the flue collector box of power burner units can be traced to language in prior DOE test procedures and ANSI/ASHRAE Standard 103-1982. DOE has reviewed that language, and has found that it was ambiguous, and was susceptible to a reasonable interpretation that it did not apply to power vented units. Furthermore, since 1983 furnace manufacturers, GAMA and Intertek Testing Services (an independent testing laboratory contracted by GAMA to administer its furnace and boiler Efficiency Certification Program) have done efficiency tests on furnaces and boilers equipped with power burners without insulating the flue gas collector box.

As discussed above, the Department did not intend to include any provisions in the 1997 final rule which would affect the measured efficiency for furnaces or boilers. Upon further consideration of the above, the Department concludes that the requirement to insulate the flue collector box could lower existing AFUE measurements. The inclusion of this requirement would affect manufacturers' product offerings and their participation in utility rebate programs. Furthermore, it would add a testing burden on manufacturers, by requiring them to re-test and re-certify existing units. Therefore in today's interim final rule, DOE is deleting from its recently adopted test procedure for furnaces and boilers the insulation requirement for power burner units.

II. Procedural Requirements*A. Review Under the National Environmental Policy Act of 1969*

The Department has concluded that this interim final rule falls into a class of actions (categorical exclusion A5) that are categorically excluded from the

National Environmental Policy Act of 1969 (NEPA) review because they would not individually or cumulatively have a significant impact on the human environment, as determined by DOE's regulations (10 CFR Part 1021, Appendix A to Subpart D) implementing the NEPA (42 U.S.C. 4321, 4331-35, 4341-47). Therefore this interim final rule does not require an environmental impact statement or an environmental assessment pursuant to NEPA.

B. Review Under Executive Order 12866, "Regulatory Planning and Review"

Today's regulatory action has been determined not to be a "significant regulatory action" under Executive Order 12866, "Regulatory Planning and Review," 58 FR 51735, October 4, 1993. Accordingly, today's action was not subject to review under the Executive Order by the Office of Information and Regulatory Affairs.

C. Review Under Executive Order 12612, "Federalism"

Executive Order 12612 (52 FR 41685, October 30, 1987) requires that regulations or rules be reviewed for any substantial direct effects on States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among various levels of government. If there are sufficient substantial direct effects, then Executive Order 12612 requires preparation of a Federalism assessment to be used in all decisions involved in promulgating and implementing a regulation or a rule.

The interim final rule published today would not alter the distribution of authority and responsibility to regulate in this area. The interim final rule would only revise a currently applicable DOE test procedure to improve existing testing methods, and to add provisions that DOE might use in future standard setting. Accordingly, DOE has determined that preparation of a federalism assessment is unnecessary.

D. Review Under Executive Order 12630, "Governmental Actions and Interference With Constitutionally Protected Property Rights"

It has been determined pursuant to Executive Order 12630 (52 FR 8859, March 18, 1988) that this final rule would not result in any Takings which might require compensation under the Fifth Amendment to the United States Constitution.

The Department believes that a test procedure implementing a long-established statutory mandate in a manner calculated to minimize adverse

economic impacts does not constitute a "taking" of private property. Thus, testing under the appliance standards program does not invoke the provisions of E.O. 12630.

E. Review Under the Paperwork Reduction Act

No new information or recordkeeping requirements are imposed by this rulemaking. Accordingly, no OMB clearance is required under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

F. Review Under Executive Order 12988, "Civil Justice Reform"

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, "Civil Justice Reform," 61 FR 4729 (February 7, 1996), imposes on Executive agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. With regard to the review required by section 3(a), section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, the final regulations meet the relevant standards of Executive Order 12988.

G. Review Under Unfunded Mandates Reform Act of 1995

If any proposed or final rule includes a Federal mandate that may result in expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year, the Unfunded Mandates Reform Act of 1995, signed

into law on March 22, 1995, requires an agency (prior to promulgation) to prepare a budgetary impact statement and select the least costly, most cost effective and least burdensome alternative that achieve the objectives of the rule and is consistent with statutory requirements.

DOE has determined that the action promulgated today does not include such a Federal mandate. Therefore, the requirements of the Unfunded Mandates Act do not apply to this action.

H. Review Under Small Business Regulatory Enforcement Fairness Act of 1996

As required by 5 U.S.C. 801, DOE will report to Congress promulgation of the rule prior to its effective date. 5 U.S.C. 801. The report will state that it has been determined that the rule is not a "major rule" as defined by 5 U.S.C. 804(3).

III. Interim Final Rule

This Interim Final Rule revises a provision, concerning insulation of the flue collector box, that is included in the 1997 final rule promulgating test procedures for furnaces. The effective date of the test procedures in 1997 the final rule is November 10, 1997. In order to avoid confusion and unwarranted testing and compliance costs, DOE concluded that this amendment to the 1997 final rule must be effective on November 10, 1997, and must be issued as promptly as possible. Moreover based on the comments received in response to the 1993 proposed rule, the Department does not expect public comments objecting to the change made by this interim final rule.

Therefore, the Department finds that it would be impracticable, unnecessary and contrary to the public interest to have notice and public comment prior to issuing the amendment set forth in this interim final rule. However, the Department is providing for a post-publication public comment period, and will respond to comments as appropriate in a notice of final rulemaking.

IV. Public Comment

Interested persons are invited to participate in the rulemaking by submitting data, comments, or information with respect to the test procedures set forth in this notice to the address indicated at the beginning of the notice.

Comments should be identified both on the envelope and on the documents as "Test Procedures for Furnaces/Boilers, Docket No. EE-RM-93-501." Ten (10) copies are requested to be

submitted. If possible, the Department would appreciate an electronic copy of the comments on a 3.5" diskette. The Department is currently using WordPerfect™ 6.1. All submittals received by the date specified at the beginning of this notice will be considered by the Department of Energy before final action is taken on the interim final rule.

Pursuant to the provisions of 10 CFR 1004.11, any person submitting information which he or she believes to be confidential and exempt by law from public disclosure should submit one complete copy of the document and nine copies, if possible, from which the information believed to be confidential has been deleted. The Department of Energy will make its own determination with regard to the confidential status of the information and treat it according to its determination.

Factors of interest to the Department of Energy when evaluating requests to treat as confidential information that has been submitted include: (1) A description of the items; (2) an indication as to whether and why such items are customarily treated as

confidential within the industry; (3) whether the information is generally known by, or available from, other sources; (4) whether the information has previously been made available to others without obligation concerning its confidentiality; (5) an explanation of the competitive injury to the submitting person which would result from public disclosure; (6) an indication as to when such information might lose its confidential character due to the passage of time; and (7) why disclosure of the information would be contrary to the public interest.

List of Subjects in 10 CFR Part 430

Administrative practice and procedure, Energy conservation, Household appliances, Incorporation by reference.

Issued in Washington, DC, on September 5, 1997.

Joseph J. Romm,
Acting Assistant Secretary, Energy Efficiency and Renewable Energy.

For the reasons set forth in the preamble, Part 430 of Chapter II of Title 10, Code of Federal Regulations, is amended as set forth below.

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

1. The authority citation for part 430 continues to read as follows:

Authority: 42 U.S.C. 6291–6309.

Appendix N to Subpart B of Part 430—Uniform Test Method for Measuring the Energy Consumption of Furnaces and Boilers

2. Section 6.0 in appendix N to subpart B of part 430 is revised to read as follows:

* * * * *

6.0 *Apparatus.* The apparatus used in conjunction with the furnace or boiler during the testing shall be as specified in section 7 of ANSI/ASHRAE Standard 103–1993 except for the second paragraph of section 7.2.2.2 and except for section 7.2.2.5, and as specified in section 6.1 of this appendix.

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