

THE COMMONWEALTH OF MASSACHUSETTS

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December 4, 2009

Mr. Ronald P. Lewis
Appliance Standards
Buildings Technology Program
Department of Energy
Washington, D.C. 20585

RE: Massachusetts Petition for Waiver of Federal Preemption (Furnace Standard)

Dear Mr. Lewis:

As you know, on October 1, 2009, the Commonwealth of Massachusetts sent to the United States Department of Energy's Office of Energy Efficiency and Renewable Energy a petition for waiver of federal preemption that would allow Massachusetts to implement a 90% AFUE standard for non-weatherized, residential gas-fired furnaces. On October 29, 2009, Assistant Attorney General Fred Augenstern sent an e-mail to you regarding the requirement in 10 CFR 430.42(f) that DOE notify a petitioning state within 15 days of receiving the petition whether the petition has been accepted for filing. You kindly, and quickly, responded on November 6, 2009 that "DOE accepts the Commonwealth's petition for filing purposes."

We write today to urge DOE to publish notice of this petition at its earliest convenience. Under 10 CFR 430.43(a):

"Promptly after receipt of a petition and its acceptance for filing, notice of such petition shall be published in the FEDERAL REGISTER."

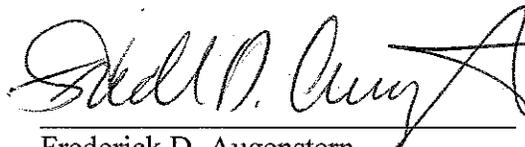
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The Commonwealth is well aware of the large number of appliance dockets before DOE, and fully appreciates the value of those dockets moving forward. However, we hope that it would not take much of the agency's time or resources to arrange for appropriate publication of notice in the Federal Register. The Commonwealth is eager to obtain a prompt decision on its petition, preferably within the six month period specified in 10 CFR 430.46(a). Delaying publication of notice will only serve to increase the likelihood that DOE does not meet that 6-month deadline. Moreover, even if the Secretary finds that he "cannot issue a final rule within the 6-month period pursuant to paragraph (a)," 10 CFR 430.46(c), and exercises his discretion to extend the period for review of the petition, it still will shorten the overall duration of DOE's review if notice is published right away, as required by 10 CFR 430.43.

AAG Augenstern may be reached at 617-963-2427, or at fred.augenstern@state.ma.us, should you wish to discuss this matter.

The Commonwealth appreciates your attention and assistance.

Sincerely,



Frederick D. Augenstern
Assistant Attorney General
Environmental Protection Division



Frank Gorke, Director
Division of Energy Efficiency
Department of Energy Resources