

## VIII. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at <http://www2.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 Regulations and Controlling Regulatory Costs*

This action is not expected to be an Executive Order 13771 regulatory action because this action is not significant under Executive Order 12866.

*C. Paperwork Reduction Act (PRA)*

This action does not impose an information collection burden under the PRA because this action does not impose additional requirements beyond those imposed by state law.

*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. This action will not impose any requirements on small entities beyond those imposed by state law.

*E. Unfunded Mandates Reform Act (UMRA)*

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. This action does not impose additional requirements beyond those imposed by state law. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, will result from this action.

*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: Coordination With Indian Tribal Governments*

This action does not have tribal implications, as specified in Executive Order 13175, because the SIP is not

approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction, and will not impose substantial direct costs on tribal governments or preempt tribal law. 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 impose additional requirements beyond those imposed by state law.

*I. Executive Order 13211: Actions 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)*

Section 12(d) of the NTTAA directs the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. The EPA believes that this action is not subject to the requirements of section 12(d) of the NTTAA because application of those requirements would be inconsistent with the CAA.

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

The EPA lacks the discretionary authority to address environmental justice in this rulemaking.

### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide, Volatile organic compounds.

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

Dated: May 12, 2020.

**John Buserud,**

*Regional Administrator, Region IX.*

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 60

[EPA–HQ–OAR–2018–0195; FRL–10009–20–OAR]

RIN 2060–AU87

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

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

**ACTION:** Proposed rule.

**SUMMARY:** The U.S. Environmental Protection Agency (EPA) is proposing to amend the Standards of Performance for New Residential Wood Heaters, New Residential Hydronic Heaters and Forced-Air Furnaces. In response to the situation created by the COVID–19 pandemic, this proposed action restores the retail sales opportunities that were provided by the original 5-year period for “Step 1” wood heaters, hydronic heaters, and forced-air furnaces that were manufactured or imported before the May 15, 2020, “Step 2” compliance date. Upon promulgation, retailers may continue selling Step 1 heaters through November 30, 2020.

**DATES:** *Comments.* Comments must be received on or before July 6, 2020.

*Public hearing:* If anyone contacts us requesting a public hearing on or before May 27, 2020, the EPA will hold a virtual public hearing on June 8, 2020. Please refer to the **SUPPLEMENTARY INFORMATION** section for additional information on the public hearing.

**ADDRESSES:** You may send comments, identified by Docket ID No. EPA–HQ–OAR–2018–0195, by any of the following methods:

- *Federal eRulemaking Portal:* <https://www.regulations.gov/> (our preferred method). Follow the online instructions for submitting comments.

- *Email:* [a-and-r-docket@epa.gov](mailto:a-and-r-docket@epa.gov). Include Docket ID No. EPA–HQ–OAR–2018–0195 in the subject line of the message.

*Instructions:* All submissions received must include the Docket ID number for this rulemaking. Comments received may be posted without change to <https://www.regulations.gov/>, including any personal information provided. For

detailed instructions on sending comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document. Out of an abundance of caution for members of the public and our staff, the EPA Docket Center and Reading Room was closed to public visitors on March 31, 2020, to reduce the risk of transmitting COVID-19. Our Docket Center staff will continue to provide remote customer service via email, phone, and webform. We encourage the public to submit comments via <https://www.regulations.gov/>

or email, as there is a temporary suspension of mail delivery to the EPA, and no hand deliveries are currently accepted. For further information on EPA Docket Center services and the current status, please visit us online at <https://www.epa.gov/dockets>.

If requested, the virtual hearing will be held on June 8, 2020. The hearing will convene at 9:00 a.m. Eastern Standard Time (EST) and will conclude at 3:00 p.m. EST. The EPA will announce further details on the virtual public hearing website at <https://www.epa.gov/residential-wood-heaters>. Refer to the **SUPPLEMENTARY INFORMATION** section below for additional information.

**FOR FURTHER INFORMATION CONTACT:** For questions about this action, contact Nathan Topham, Sector Policies and Programs Division, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541-0483 and email address: [topham.nathan@epa.gov](mailto:topham.nathan@epa.gov).

**SUPPLEMENTARY INFORMATION:**

*Participation in virtual public hearing.* Please note that the EPA is deviating from its typical approach because the President has declared a national emergency. Due to the current Centers for Disease Control and Prevention (CDC) recommendations, as well as state and local orders for social distancing to limit the spread of COVID-19, the EPA cannot hold in-person public meetings at this time.

If a public hearing is requested, the EPA will begin pre-registering speakers for the hearing upon publication of this document in the **Federal Register**. To register to speak at the virtual hearing, please use the online registration form available at <https://www.epa.gov/residential-wood-heaters> or contact Adrian Gates at (919) 541-4860 or by email at [gates.adrian@epa.gov](mailto:gates.adrian@epa.gov) to register to speak at the virtual hearing. The last day to pre-register to speak at

the hearing will be June 4, 2020. On June 5, 2020, the EPA will post a general agenda for the hearing that will list pre-registered speakers in approximate order at: <https://www.epa.gov/residential-wood-heaters>.

The EPA will make every effort to follow the schedule as closely as possible on the day of the hearing; however, please plan for the hearing to run either ahead of schedule or behind schedule.

Each commenter will have 5 minutes to provide oral testimony. The EPA encourages commenters to provide the EPA with a copy of their oral testimony electronically (via email) by emailing it to Nathan Topham and Adrian Gates. The EPA also recommends submitting the text of your oral testimony as written comments to the rulemaking docket.

The EPA may ask clarifying questions during the oral presentations but will not respond to the presentations at that time. Written statements and supporting information submitted during the comment period will be considered with the same weight as oral testimony and supporting information presented at the public hearing.

Please note that any updates made to any aspect of the hearing will be posted online at <https://www.epa.gov/residential-wood-heaters>. While the EPA expects the hearing to go forward as set forth above, if requested, please monitor our website or contact Adrian Gates at (919) 541-4860 or [gates.adrian@epa.gov](mailto:gates.adrian@epa.gov) to determine if there are any updates. The EPA does not intend to publish a document in the **Federal Register** announcing updates.

If you require the services of a translator or a special accommodation such as audio description, please pre-register for the hearing with Adrian Gates and describe your needs by May 29, 2020. The EPA may not be able to arrange accommodations without advance notice.

*Docket.* The EPA has established a docket for this rulemaking under Docket ID No. EPA-HQ-OAR-2018-0195. All documents in the docket are listed on the <https://www.regulations.gov/> website. Although listed, some information is not publicly available, e.g., Confidential Business Information (CBI) 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. Publicly available docket materials are available electronically through <https://www.regulations.gov/>.

*Instructions.* Direct your comments to Docket ID No. EPA-HQ-OAR-2018-0195. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <https://www.regulations.gov/>, including any personal information provided, unless the comment includes information claimed to be CBI or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <https://www.regulations.gov/> or email. This type of information should be submitted by mail as discussed below.

The EPA may publish any comment received to its public docket. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e., on the Web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>.

The <https://www.regulations.gov/> website allows you to submit your comment anonymously, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to the EPA without going through <https://www.regulations.gov/>, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any digital storage media you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should not include special characters or any form of encryption and be free of any defects or viruses. For additional information about the EPA's public docket, visit the EPA Docket Center homepage at <https://www.epa.gov/dockets>.

The EPA is temporarily suspending its Docket Center and Reading Room for public visitors to reduce the risk of transmitting COVID-19. Written

comments submitted by mail are temporarily suspended and no hand deliveries will be accepted. Notwithstanding the suspension of mail submission of regular comments, comments containing CBI should be submitted by mail.<sup>1</sup> Our Docket Center staff will continue to provide remote customer service via email, phone, and webform. We encourage the public to submit comments via <https://www.regulations.gov/>. For further information and updates on EPA Docket Center services, please visit us online at <https://www.epa.gov/dockets>.

The EPA continues to carefully and continuously monitor information from the CDC, local area health departments, and our federal partners so that we can respond rapidly as conditions change regarding COVID-19.

**Submitting CBI.** Do not submit information containing CBI to the EPA through <https://www.regulations.gov/> or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information on any digital storage media that you mail to the EPA, mark the outside of the digital storage media as CBI and then identify electronically within the digital storage media the specific information that is claimed as CBI. In addition to one complete version of the comments that includes information claimed as CBI, you must submit a copy of the comments that does not contain the information claimed as CBI directly to the public docket through the procedures outlined above. If you submit any digital storage media that does not contain CBI, mark the outside of the digital storage media clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and the EPA's electronic public docket without prior notice. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 Code of Federal Regulations (CFR) part 2. Send

or deliver information identified as CBI only to the following address: OAQPS Document Control Officer (C404-02), OAQPS, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, Attention Docket ID No. EPA-HQ-OAR-2018-0195. Note that written comments containing CBI and submitted by mail may be delayed and no hand deliveries will be accepted.

**Preamble acronyms and abbreviations.** We use multiple acronyms and terms in this preamble. While this list may not be exhaustive, to ease the reading of this preamble and for reference purposes, the EPA defines the following terms and acronyms here:

- BSEB best system of emission reduction
- CAA Clean Air Act
- CBI Confidential Business Information
- CDC Centers for Disease Control and Prevention
- CFR Code of Federal Regulations
- EPA Environmental Protection Agency
- EST Eastern Standard Time
- NAICS North American Industry Classification System
- NSPS new source performance standards
- NTTAA National Technology Transfer and Advancement Act
- PRA Paperwork Reduction Act
- OMB Office of Management and Budget
- RFA Regulatory Flexibility Act
- RWH Residential Wood Heater
- UMRA Unfunded Mandates Reform Act

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

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- J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations
- K. Application of CAA Section 307(d)

**I. General Information**

**A. Does this action apply to me?**

Table 1 lists the categories and entities that are the subject of this proposal. Table 1 is not intended to be exhaustive, but rather provides a guide for readers regarding the entities that this proposed action is likely to affect. The proposed revisions, if finalized, will be directly applicable to the affected entities. Federal, state, local, and tribal government entities will not be affected by this proposed action. Table 1 lists the types of entities that the EPA is now aware could potentially be affected by this action. Other types of entities not listed in the table could also be affected. To determine whether your entity is affected by this action, you should carefully examine the applicability criteria found in 40 CFR part 60, subpart AAA, 40 CFR 60.530 and 40 CFR part 60, subpart QQQQ, 40 CFR 60.5472. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

TABLE 1—SOURCE CATEGORIES AFFECTED BY THIS PROPOSED ACTION

Category	NAICS code <sup>1</sup>	Examples of entities that could be affected by this action
Residential Wood Heating .....	333414	Manufacturers, owners, and operators of wood heaters, pellet heaters/stoves, and hydronic heaters.
Retailers .....	333415 423730	Manufacturers, owners, and operators of forced-air furnaces. Warm air heating and air-conditioning equipment and supplies merchant wholesalers.

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

<sup>1</sup> As discussed below, CBI should not be submitted electronically through [Regulations.gov](https://www.regulations.gov/) or email. CBI should be submitted following the

procedures specified in the "Submitting CBI" section below. We encourage commenters to submit redacted or non-CBI versions of comments

electronically and include a statement in their electronic comments that they have separately submitted any CBI following the instructions below.

*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 action is available on the internet. Following signature by the EPA Administrator, the EPA will post a copy of this proposed action at <https://www.epa.gov/residential-wood-heaters>. Following publication in the **Federal Register**, the EPA will post the **Federal Register** version of the proposal and key technical documents at this same website.

A redline version of the regulatory language that incorporates the proposed changes in this action is available in the docket for this action (Docket ID No. EPA-HQ-OAR-2018-0195).

## II. Background

### A. Statutory Background

Section 111 of the Clean Air Act (CAA) requires the EPA Administrator to list categories of stationary sources that, in his or her judgment, cause or contribute significantly to air pollution which may reasonably be anticipated to endanger public health or welfare. The EPA must then issue “standards of performance” for new sources in such source categories. The EPA has the authority to define the source categories, determine the pollutants for which standards should be developed, and identify within each source category the facilities for which standards of performance will be established.

CAA section 111(a)(1) defines “a standard of performance” as “a standard for emissions of air pollutants which reflects the degree of emission limitation achievable through the application of the best system of emission reduction which (taking into account the cost of achieving such reduction and any non-air quality health and environmental impact and energy requirement) the Administrator determines has been adequately demonstrated.” This definition makes clear that the standard of performance must be based on “the best system of emission reduction (BSER).” The standard that the EPA develops, based on the BSER, is commonly a numerical emission limit, expressed as a performance level. As provided in CAA section 111(b)(5), the EPA does not prescribe a specific technology that must be used to comply with a standard of performance. Rather, sources generally can select any measure or combination of measures that will achieve the emission level of the standard.

*B. What action is the Agency taking?*

The EPA is proposing amendments to mitigate the impact of the ongoing COVID-19 pandemic on retailers who have lost valuable sales opportunities during the closures, stay-at-home orders, and other precautions taken to address the pandemic. The EPA is proposing to amend 40 CFR 60.532(b) of 40 CFR part 60, subpart AAA, to allow an affected residential wood heater manufactured or imported on or before May 15, 2020, and certified to meet the 2015 particulate matter emission limit specified in 40 CFR 60.532(a), to be sold at retail on or before November 30, 2020. The EPA is also proposing to amend 40 CFR 60.5474(a)(2) of 40 CFR part 60, subpart QQQQ, to allow an affected residential hydronic heater manufactured or imported on or before May 15, 2020, and certified to meet the 2015 particulate matter emission limit specified in 40 CFR 60.5474(b)(1), to be sold at retail on or before November 30, 2020. Finally, the EPA is proposing to amend 40 CFR 60.5474(a)(6) of 40 CFR part 60, subpart QQQQ, to allow an affected residential forced-air furnace manufactured or imported on or before May 15, 2020, and certified to meet the applicable 2016 and 2017 particulate matter emission limits specified in 40 CFR 60.5474(b)(4) and (5), respectively, to be sold at retail on or before November 30, 2020. The EPA is proposing to make conforming changes in the compliance certification requirements (40 CFR 60.533(h)(1) and (2) of 40 CFR part 60, subpart AAA, and 40 CFR 60.5475(a)(3) through (7) and (h) of 40 CFR part 60, subpart QQQQ) so that the compliance certification reflects the November 30, 2020, proposed date when applicable.

If these proposed revisions are finalized, we propose to make the revisions effective upon publication of the final rule in the **Federal Register**.

This action is unlikely to affect the total number of Step 1 units available on the market because the prohibition on manufacture of these units after May 15, 2020, remains. Therefore, this action allows manufacturers and retailers, of which 90 percent are small businesses, to recover the sales opportunities they would have had in the absence of the pandemic.

### III. Why is the Agency taking this action?

Residential wood heaters were originally listed under CAA section 111(b) on February 18, 1987 (see 52 FR 5065). Once listed, the EPA developed NSPS to 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 wood heaters (40 CFR part 60, subpart AAA) was proposed on February 18, 1987 (see 52 FR 4994) and promulgated on February 26, 1988 (see 53 FR 5859) (1988 Wood Heater NSPS). The NSPS was amended in 1998 to address an issue related to certification testing (see 63 FR 64869).

On February 3, 2014, the EPA proposed revisions to the NSPS (see 79 FR 6330) and promulgated revisions on March 16, 2015 (see 80 FR 13672). The final 2015 NSPS updated the 1988 Wood Heater NSPS emission limits, eliminated exemptions over a broad suite of residential wood combustion devices, and updated test methods and the certification process. The 2015 NSPS also added a new subpart (40 CFR part 60, subpart QQQQ) that covers new wood burning residential hydronic heaters and new forced-air furnaces.

The Residential Wood Heater source category is different from most NSPS source categories in that it regulates mass-produced residential consumer appliance products, rather than industrial facilities. Thus, important elements in determining the BSER include the costs and environmental impacts on consumers of delaying production while wood heating devices are designed, tested, field evaluated, and certified. Section 111(b)(1)(B) of the CAA requires that the standards be effective upon the promulgation of the NSPS. Considering these factors, as discussed more fully in the 2015 **Federal Register** document, the 2015 NSPS final rule took a two-step compliance approach, in which certain Step 1 standards became effective on May 15, 2015, and more stringent Step 2 standards would become effective 5 years later, on May 15, 2020. In particular, one of the bases for the Step 2 limits and deadline was that 5 years was sufficient time for manufacturers to develop models to meet the more stringent Step 2 standards and for retailers to transition from selling Step 1 units to Step 2 units. Providing this 5 year time period was a key aspect of the 2015 rule because, pursuant to CAA 111(a)(1), the stringency of a standard of performance under CAA 111 must reflect “the degree of emission limitation achievable” through the application of the best system of emission reduction. In turn, what is achievable is dependent on how much “lead time” sources have to meet the standard. See *Portland Cement Assn. v. Ruckelshaus*, 486 F.2d 375, 391–92 (D.C. Cir. 1973). According to industry

representatives, the time lost due to the pandemic has impacted manufacturers as well as retailers because manufacturers will be required to repurchase some unsold units from retailers.<sup>2</sup>

The 2015 rule provided that retailers would have until May 15, 2020, to sell heaters and furnaces that were certified to meet the Step 1 limits. Based on the current NSPS, all units sold after May 15, 2020, must meet the more stringent Step 2 standards. Hence, under the current rule, units certified to meet Step 1 standards may no longer be sold after May 15, 2020.

On November 30, 2018, the EPA proposed (see 83 FR 61574) to amend 40 CFR part 60, subpart QQQQ, to allow a “sell-through” provision to give retailers additional time after the May 2020 effective date of the Step 2 standard to sell Step 1-compliant hydronic heaters and forced-air furnaces remaining in their inventory. The EPA also took comment on whether to amend 40 CFR part 60, subpart AAA, for wood heaters and pellet fuel heaters to provide a similar sell-through period.

Based on the comments and data received, the EPA decided to take final action on the proposed sell-through provisions by not promulgating such provisions, because insufficient relevant data were submitted to substantiate a rule revision to provide a sell-through provision (see 85 FR 18448). The EPA solicited comment via a range of questions in the proposal. While manufacturers and retailers made qualitative statements asserting economic harm from stranded inventories if a retail sell-through was not allowed, these statements were generally not supported by actual data and did not demonstrate that the 5-year period provided by the 2015 rule was not sufficient time to meet the Step 2 deadline.

In a recent turn of events, the COVID-19 pandemic has resulted in very significant losses of retail sales<sup>3</sup> beginning about March 15 and expected to continue through May 15, 2020 (the deadline for the Step 2 standards), due to substantial temporary closure of stores, stay at home directives, and the overall focus on addressing the challenges posed by the pandemic. This

situation has resulted in a loss of about 60 days of the remaining time retailers were authorized to sell remaining Step 1 units, and, thus, deprived them of the full 5-year time period that formed the basis for the Step 2 standards and deadline set in the 2015 rule. In the absence of the COVID-19 pandemic, retailers would have been working diligently throughout this 60-day period to sell Step 1 devices by offering discounts, sales events, and other incentives before the May 15, 2020, deadline. In this proposed rule, EPA is proposing to provide time for retailers to sell Step 1 devices to ensure they get the full benefit of the 5 year “lead time” on which the Step 2 standards were based by replacing the time period for sales opportunities that lost due to COVID-19.

It is difficult to precisely replace the lost sales opportunities resulting from the lost 60 days. First, there is still significant uncertainty with regard to when the pandemic will subside enough such that retailers can reopen, re-hire staff who have been temporarily laid-off, and resume a level of normal retail operations.

Second, summer months are typically a very low selling season for wood heating devices.<sup>4</sup> Thus, simply providing an additional 60 days during the summer would not replace the sales opportunities lost due to the steps taken to protect public health during the pandemic and, thus, not replace the time lost from the 5-year period that was contemplated in the 2015 rule.

For all of these reasons, to ensure retailers will regain the sales opportunities lost as a result of the closures, shut-down orders, and other precautions taken due to the pandemic during the last 60 days leading up to May 15, 2020, the EPA is proposing to allow retailers to sell Step 1 certified wood heating devices from the date of promulgation, if this proposal is promulgated, until November 30, 2020. In addition, in light of the above, during the period between May 15, 2020, and publication of EPA’s final action on this proposal, EPA will treat the sale of Step 1 devices as a low enforcement priority.

#### IV. Summary of Cost, Environmental, and Economic Impacts

The COVID-19 pandemic is causing an unanticipated impact (mandatory store closures, loss of sales, excess stranded inventory) that the proposed rule will help to mitigate. This action roughly replaces the 60 days of sales

opportunities that retailers would have otherwise had in the absence of the pandemic.

The EPA understands that there may be impacts from this proposed action, if it is finalized as proposed. We are unable to quantify what, if any, impacts there may be and seek public comments to help inform us of any potential impacts. We are placing the Supplemental Regulatory Impact Analysis (RIA) from the 2018 proposed “sell-through” in the docket as an illustration of what impacts of additional sales time could look like.

#### V. Labeling Provisions

The EPA is aware of a potential issue that could be faced by retailers selling Step 1 units during the proposed sales period that would begin well after May 15, 2020, and run to November 30, 2020. Both subparts, 40 CFR part 60, subpart AAA, and 40 CFR part 60, subpart QQQQ, contain requirements for permanent labels to be affixed to affected units as required in 40 CFR 60.536(b) of 40 CFR part 60, subpart AAA, and 40 CFR 60.5478(b) of 40 CFR part 60, subpart QQQQ, as applicable. Under these provisions, such labels must display a statement that the unit is “U.S. ENVIRONMENTAL PROTECTION AGENCY Certified to comply with the 2015 {or other applicable standard} particulate emission standards. Not approved for sale after May 15, 2020.” The statement that the unit is “Not approved for sale after May 15, 2020” could confuse consumers who might not understand that (if the proposed sell-through is finalized), such units could, in fact, legally be sold after May 15, 2020, and until November 30, 2020. To address this potential issue, if the proposed sales period is finalized, retailers would be allowed to notify potential customers with signs, decals, hangtags or other types of signage communicating that retailers are allowed to sell, and consumers are allowed to purchase, the Step 1 devices until November 30, 2020, notwithstanding the label that is required to be permanently affixed to the unit. The EPA notes that, even if the proposed sales period is finalized, no person may remove or alter the existing permanent label that is required to be affixed to the unit.

#### VI. 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>.

<sup>2</sup> Letter from Jack Goldman, Hearth, Patio & Barbecue Association to Andrew Wheeler, U.S. EPA, dated March 24, 2020. See page 2, “In addition, some of our members supply major home center chains, and report that over \$10 million worth of product will not sell in time and must be repurchased. This may even call into question the continued existence of these small manufacturers.”

<sup>3</sup> Letter from Jack Goldman, Hearth, Patio & Barbecue Association to Andrew Wheeler, U.S. EPA, dated March 24, 2020.

<sup>4</sup> 2018 December Business Climate Report in *Hearth and Home Magazine*, dated February 2019, showing monthly sales data.

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

This action is a significant regulatory action that was submitted to the Office of Management and Budget (OMB) for review because it has novel legal and policy issues. Any changes made in response to OMB recommendations have been documented in the docket.

*B. Paperwork Reduction Act (PRA)*

This action does not impose any new information collection burden under the PRA. The OMB has previously approved the information collection activities contained in the existing regulations and has assigned OMB control numbers 2060–0161 (40 CFR part 60, subpart AAA) and 2060–0693 (40 CFR part 60, subpart QQQQ). This action is believed to result in no changes to the information collection requirements of the 2015 NSPS, so that the information collection estimate of project cost and hour burden from the 2015 final rule have not been revised.

*C. 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 provides sufficient time to retailers of Step 1 residential wood heaters and residential hydronic heaters and forced-air furnaces, including the 90% of them that are small businesses, to sell inventory that would otherwise be stranded due to the lost sales time as a result of the COVID–19 pandemic situation without an extension of the Step 2 compliance date.

*D. 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.

*E. 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.

*F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments*

This action does not have tribal implications as specified in Executive Order 13175. This action does not change any requirements for affected entities, including tribes. Thus, Executive Order 13175 does not apply to this action. Consistent with the EPA Policy on Consultation and Coordination with Indian Tribes, the EPA will provide outreach through the National Tribal Air Association and will offer consultation to tribal officials.

*G. 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.

*H. 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.

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

This rulemaking does not involve technical standards.

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

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.

*K. Application of CAA Section 307(d)*

Pursuant to CAA section 307(d)(1)(C), this action is subject to the provisions of CAA section 307(d). To the extent that any aspect of this rule is not within the scope of CAA section 307(d)(1)(C), pursuant to CAA section 307(d)(1)(V), the Administrator determines that this action is subject to the provisions of CAA section 307(d). Section 307(d)(1)(V) of the CAA provides that the provisions of CAA section 307(d) apply to “such other actions as the Administrator may determine.”

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

Environmental protection, Administrative practice and procedure.

**Andrew Wheeler,**  
*Administrator.*

For the reasons set forth in the preamble, 40 CFR part 60 is proposed to be 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 AAA—Standards of Performance for New Residential Wood Heaters**

- 2. Section 60.532 is amended by revising paragraph (b) to read as follows:

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

\* \* \* \* \*

(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). However, an affected wood heater manufactured or imported on or before May 15, 2020, and certified as of May 15, 2020, to meet the 2015 particulate matter emission limit in paragraph (a) of this section may be sold at retail on or before November 30, 2020. Compliance for all heaters must be determined by the test methods and procedures in § 60.534.

\* \* \* \* \*

- 3. Section 60.533 is amended by revising paragraphs (h)(1) and (2) to read as follows:

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

\* \* \* \* \*

(h) \* \* \*

(1) For a model line that was previously certified as meeting the 1990 Phase II emission standards under the 1988 new source performance standards (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). However, a model line, manufactured or imported on or before May 15, 2020, with a certificate of compliance for the 2015 emission standards that was in effect as of May 15, 2020, may be sold at retail on or before November 30, 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. However, a model line, manufactured or imported on or before May 15, 2020, with a certificate of compliance for the 2015 emission standards that was in effect as of May 15, 2020, may be sold at retail on or before November 30, 2020.

\* \* \* \* \*

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

■ 4. Section 60.5474 is amended by revising paragraphs (a)(2) and (6) to read as follows:

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

(a) \* \* \*

(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 (3) of this section, except that a residential hydronic heater manufactured or imported on or before May 15, 2020, and certified as of May 15, 2020, to meet the 2015 particulate matter emission limit in paragraph (b)(1) of this section, may be sold at retail on or before November 30, 2020.

\* \* \* \* \*

(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, except that a small or large residential forced-air furnace manufactured or imported on or before May 15, 2020, and certified as of May 15, 2020, to meet the applicable particulate matter emission limit in paragraph (b)(4) or (5) of this section, respectively, may be sold at retail on or before November 30, 2020.

\* \* \* \* \*

■ 5. Section 60.5475 is amended by revising paragraphs (a)(3) through (7) and (h) to read as follows:

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

(a) \* \* \*

(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 in § 60.5474. However, a model line, manufactured or imported on or before May 15, 2020, with a certificate of compliance for the 2015 emission standards that was in effect as of May 15, 2020, may be sold at retail on or before November 30, 2020.

(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 in § 60.5474. However, a model line, manufactured or imported on or before May 15, 2020, with a certificate of compliance for the 2015 emission standards that was in effect as of May 15, 2020, may be sold at retail on or before November 30, 2020.

(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 in § 60.5474 provided that they comply with the thermal storage requirements in the RHNY program. However, a model line, manufactured or imported on or before May 15, 2020, with a certificate of compliance for the 2015 emission standards that was in effect as of May

15, 2020, may be sold at retail on or before November 30, 2020.

(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 in § 60.5474. However, a model line, manufactured or imported on or before May 15, 2020, with a certificate of compliance for the 2016 emission standards that was in effect as of May 15, 2020, may be sold at retail on or before November 30, 2020.

(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 in § 60.5474. However, a model line, manufactured or imported on or before May 15, 2020, with a certificate of compliance for the 2017 emission standards that was in effect as of May 15, 2020, may be sold at retail on or before November 30, 2020.

\* \* \* \* \*

(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. However, a model line, manufactured or imported on or before May 15, 2020, with a certificate of compliance for the applicable 2015, 2016, or 2017 emission standards that was in effect as of May 15, 2020, may be sold at retail on or before November 30, 2020.

\* \* \* \* \*

[FR Doc. 2020–11096 Filed 5–21–20; 8:45 am]

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 180**

[EPA–HQ–OPP–2013–0219; FRL–10008–87]

RIN 2070–ZA16

**Dipropylene Glycol and Triethylene Glycol; Exemption From the Requirement of a Pesticide Tolerance**

AGENCY: Environmental Protection Agency (EPA).