

(b) *Effective period.* This section is effective from March 23, 2020 through April 6, 2020.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23, entry of persons and vessels into this zone is prohibited unless authorized by the Captain of the Port Marine Safety Unit Pittsburgh (COTP) or a designated representative.

(2) Persons or vessels requiring entry into or passage through the zone must request permission from the COTP or a designated representative. The COTP's representative may be contacted at (412) 221-0807 or on VHF-FM Channel 16.

(3) All persons and vessels shall comply with the instructions of the COTP or a designated representative. Designated COTP representatives include United States Coast Guard commissioned, warrant, and petty officer.

(d) *Information broadcasts.* The COTP or a designated representative will inform the public through Local Notice to Mariners (LNMs), Broadcast Notices to Mariners (BNMs), and/or Marine Safety Information Bulletins (MSIBs), as appropriate.

Dated: March 24, 2020.

**A.W. Demo,**

*Commander, U.S. Coast Guard, Captain of the Port Marine Safety Unit Pittsburgh.*

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 60**

[EPA-HQ-OAR-2018-0195; FRL-10006-75-OAR]

RIN 2060-AU00

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

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

**ACTION:** Final rule.

**SUMMARY:** In this final action, the U.S. Environmental Protection Agency (EPA) is amending the 2015 New Source Performance Standards (NSPS) for New Residential Wood Heaters, New Residential Hydronic Heaters and Forced-Air Furnaces. This final action removes certain requirements from the rule for pellet fuel to meet certain specifications regarding density, size, and content, while retaining a provision in the rule that requires EPA-approved third-party organizations to specify

minimum requirements as part of the pellet fuel certification process. Also, in this final action, the EPA is deciding not to make changes that it had proposed that would have allowed a sell-through period for Step 1-certified residential wood heating devices that are manufactured before the May 2020 compliance date to be sold at retail after that date. Finally, this preamble provides a clarification of how the "prohibited fuels" provision applies to pallets.

**DATES:** The final rule is effective on April 2, 2020.

**ADDRESSES:** The EPA has established a docket for this action 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 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 through <https://www.regulations.gov/>, or in hard copy at the EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Eastern Standard Time (EST), Monday through Friday. 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 final action, contact Rochelle Boyd, Sector Policies and Programs Division (Mail Code D243-02), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541-1390; fax number: (919) 541-4991; and email address: [boyd.rochelle@epa.gov](mailto:boyd.rochelle@epa.gov). For information about the applicability of the NSPS to a particular entity, contact Rafael Sanchez, Office of Enforcement and Compliance Assurance, U.S. Environmental Protection Agency, WJC South Building (Mail Code 2227A), 1200 Pennsylvania Avenue NW, Washington, DC 20460; telephone number: (202) 564-7028; and email address: [sanchez.rafael@epa.gov](mailto:sanchez.rafael@epa.gov).

**SUPPLEMENTARY INFORMATION:**

*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:

CAA Clean Air Act  
CFR Code of Federal Regulations  
CRA Congressional Review Act  
EPA Environmental Protection Agency  
NAICS North American Industry Classification System  
NPRM notice of proposed rulemaking  
NSPS New Source Performance Standards  
NTTAA National Technology Transfer and Advancement Act  
OMB Office of Management and Budget  
PFI Pellet Fuels Institute  
PRA Paperwork Reduction Act  
RFA Regulatory Flexibility Act  
RTC Response to Comment  
RWH Residential Wood Heater  
UMRA Unfunded Mandates Reform Act  
U.S.C. United States Code

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

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**I. General Information***A. Does this action apply to me?*

Regulated entities. Categories and entities potentially regulated by this

action are shown in Table 1 of this preamble.

TABLE 1—SOURCE CATEGORIES AFFECTED BY THIS FINAL ACTION

Source category	NAICS code <sup>1</sup>	Examples of regulated entities
Residential Wood Heating .....	333414	Manufacturers, owners, and operators of wood heaters, pellet heaters/stoves, and hydronic heaters.
	333415	Manufacturers, owners, and operators of forced-air furnaces.
Testing Laboratories .....	541380	Testers of wood heaters, pellet heaters/stoves, and hydronic heaters.
Retailers .....	423730	Warm air heating and air-conditioning equipment and supplies merchant wholesalers.

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

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this final action for the source category listed. This table 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 regulated. To determine whether you are regulated by this action, you should carefully examine the applicability criteria found in the final rule. 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 of this preamble, your delegated authority, or your EPA Regional representative listed in the General Provisions at 40 CFR 60.4.

*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 is 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/residential-wood-heaters>. Following publication in the **Federal Register**, the EPA will post the **Federal Register** version of the final action and key technical documents at this same website.

*C. Judicial Review*

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

307(d)(7)(B) of the CAA further provides 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.” This section also provides a mechanism for the EPA to convene a proceeding for reconsideration, “[i]f the person raising an objection can demonstrate to the EPA 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 to us 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**

The statutory background for the Residential Wood Heaters (RWH) source category is provided in the proposed rule for this final action (83 FR 61577, November 30, 2018) and will not be repeated here. Residential wood heaters were originally listed under CAA section 111(b) on February 18, 1987 (52 FR 5065). Under section 111 of the CAA, “Standards of Performance for New Stationary Sources,” the EPA lists categories of sources that, in the EPA’s judgment, cause or contribute significantly to air pollution, which may reasonably be anticipated to endanger public health or welfare pursuant to

CAA section 111(b)(1)(A), and then promulgates federal standards of performance for new sources within such categories under CAA section 111(b)(1)(B). The original NSPS for RWH (40 CFR part 60, subpart AAA) was proposed on February 18, 1987 (52 FR 4994), and promulgated on February 26, 1988 (53 FR 5859) (1988 RWH NSPS). The 1988 RWH NSPS focused on adjustable burn rate wood heaters, including cord wood heaters and some pellet fuel heaters. The NSPS was amended in 1998 to address an issue related to certification testing (63 FR 64869).

On February 3, 2014, the EPA proposed revisions to the NSPS (79 FR 6330) and promulgated revisions on March 16, 2015 (80 FR 13672) (2015 RWH NSPS). The final 2015 RWH NSPS updated the 1988 RWH NSPS emission limits, eliminated exemptions over a broad suite of wood heating devices,<sup>1</sup> and updated test methods and the certification process. The 2015 RWH NSPS broadened the applicability of the 1988 RWH NSPS to specifically include all single burn rate wood heaters and all pellet fuel heaters. The 2015 RWH NSPS also added a new subpart (40 CFR part 60, subpart QQQQ) that covers new wood burning hydronic heaters and new forced-air furnaces. Hydronic heaters and forced-air furnaces represent a small portion of total U.S. wood heating device manufactured output in recent years. The market share for each of the categories considered in this final rule are as follows: Wood and pellet stoves were 96 percent, hydronic heaters were less than 1 percent and forced air furnaces were 3 percent of the total

<sup>1</sup> As used in this preamble, the term “wood heaters” refers to all appliances covered in 40 CFR part 60, subpart AAA, and the terms “hydronic heaters” and “forced-air furnaces” refer to appliances covered in 40 CFR part 60, subpart QQQQ. Also, in this action, the term “wood heating device(s)” refers to all units regulated by the 2015 RWH NSPS (40 CFR part 60, subparts AAA and QQQQ).

market in 2017–2019 in terms of units sold.<sup>2</sup>

The 2015 RWH NSPS also directs owners of pellet fuel or wood chip heaters to burn only fuel that meet certain minimum requirements. In the 2015 final rule preamble (80 FR 13682), the EPA stated: “For pellet-fueled appliances, operation according to the owner’s manual includes operation only with pellet fuels that are specified in the owner’s manual. Manufacturers must only specify graded and licensed pellets that meet certain minimum requirements.”

The RWH 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 best system of emission reduction as specified in CAA section 111(a)(1) include the costs and environmental impacts on consumers of delaying production while wood heating devices with those systems are designed, tested, field evaluated, and certified. Section 111(b)(1)(B) of the CAA requires that the standards be effective upon the effective date of the NSPS. Considering these factors, in the 2015 RWH NSPS final rule, the EPA took a two-step compliance approach, in which certain Step 1 standards became effective in May 2015 and more stringent Step 2 standards would become effective 5 years later, in May 2020.

As the May 15, 2020, Step 2 compliance date approached, representatives from the manufacturing and retail industry expressed concern that a substantial number of retailers have either limited or stopped their purchases of Step 1-certified wood heating devices from the manufacturers due to concerns they may not be able to sell these devices before the May 2020 Step 2 compliance date and would, therefore, be left with unsalable inventory. Manufacturers also expressed concern that these reductions in sales would result in reduced earnings needed to develop Step 2-compliant model lines.

On November 30, 2018, the EPA proposed (83 FR 61574) to amend 40 CFR part 60, subpart QQQQ, by allowing 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. In addition, the EPA took comment on whether the minimum pellet fuel requirements in the 2015 RWH NSPS should be retained or revised.

### III. Public Comments

Public comments on the 2018 proposed rule and the EPA’s responses to these comments are addressed in a separate Response to Comment (RTC) document, available in the docket for this action at Docket ID No. EPA–HQ–OAR–2018–0195.

### IV. What is included in the final rule?

#### A. Pellet Fuel Minimum Requirements

This section explains the final actions being taken and the rationale for these actions.

#### 1. Final Requirements for Pellet Fuel Burned in Residential Wood Heating Devices

Certification tests for pellet-burning wood heating devices require that pellet fuels be made of wood with certain minimum quality requirements to ensure consistent operation for every certification test. These requirements have the added benefit to manufacturers of minimizing emissions during certification testing.

The 2015 RWH NSPS requires owners of wood heating devices that are certified to burn pellet fuels to 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. The Pellet Fuels Institute (PFI), ENplus, and CANplus are the current EPA-approved third-party organizations for this purpose (additional organizations may apply to the Administrator for approval). See the pellet fuel requirements stated in 40 CFR 60.532(e) and 40 CFR 60.5474(e). Based on these requirements, the EPA concluded that a certified pellet fuel heater’s performance in a consumer’s home would be consistent with the heater’s performance in the laboratory using the EPA’s certification test methods. Under the provisions of the 2015 RWH NSPS, a pellet manufacturer is not obligated to produce pellets that meet the pellet fuel requirements, but operators and manufacturers of pellet fuel heaters in the United States are prohibited from using pellets that do not meet the pellet fuel requirements. The pellet fuel requirements, in addition to ensuring consistency with certification testing,

were intended to safeguard against emissions hazardous to human health and the environment when the pellets are burned in pellet fuel heaters operated in the home by consumers.

Since publication of the 2015 RWH NSPS, interested parties have raised issues concerning the pellet fuel requirements. First, these parties have questioned the EPA’s authority to promulgate the pellet fuel requirements. The comments and issues related to the EPA’s authority to promulgate the pellet fuel requirements are summarized and addressed in the RTC document available at Docket ID No. EPA–HQ–OAR–2018–0195. The EPA has considered these comments and concluded that the Agency has the authority to set pellet fuel requirements for the reasons discussed in the RTC.

Second, interested parties have questioned the need for the pellet fuel requirements (because they are already part of the requirements imposed by the third-party organizations that must grade pellets under 40 CFR 60.532(e) and 40 CFR 60.5474(e)) and commented that the specific minimum fuel requirements will inhibit innovations that may improve pellet fuel heater operation and decrease emissions.

After reviewing public comments on these issues, the EPA has determined 40 CFR part 60, subparts AAA and QQQQ, should be revised to delete the following seven pellet fuel minimum requirements which are currently found at 40 CFR 60.532(e) and 40 CFR 60.5474(e):

1. Density: Consistent hardness and energy content with a minimum density of 38 pounds/cubic foot;
2. Dimensions: Maximum length of 1.5 inches and diameter between 0.230 and 0.285 inches;
3. Inorganic fines: Less than or equal to 1 percent;
4. Chlorides: Less than or equal to 300 parts per million by weight;
5. Ash content: No more than 2 percent;
6. Contains no demolition or construction waste; and
7. Trace metals: Less than 100 milligrams per kilogram.

The EPA is retaining the prohibition that was stated in the eighth pellet fuel minimum requirement that stated pellet fuel must not contain any of the prohibited fuels in 40 CFR 60.532(f) and 40 CFR 60.5474(f). Sections 40 CFR 60.532(f) and 40 CFR 60.5474(f) state that no person is permitted to burn any of the following materials in an affected wood heating device:

1. Residential or commercial garbage;
2. Lawn clippings or yard waste;

<sup>2</sup> Wood Appliance Sales Summary, dated March 10, 2020, is available in the docket for this final action (<https://www.regulations.gov/docket?D=EPA-HQ-OAR-2018-0195>).

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 (40 CFR 60.532(f)(9)) and Railroad ties or pressure-treated lumber (40 CFR 60.5474(f)(9));
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.

The EPA has decided to leave the prohibited fuels list in the regulation for clarity and continuity as these materials are referred to in the provisions regarding "prohibited fuel types" in 40 CFR 60.532(f) and 60.5474(f). Unlike the requirements in 40 CFR 60.532(e)(1) through (7) and 60.5474(e)(1) through (7) that we are removing, which regulated the characteristics of the pellet fuel, this prohibited fuels list impacts all fuel types used in all wood heating devices. Retaining this provision assures that these specified materials will be not be used as a source of fuel and prevents the burning of trash, plastics, yard waste, and other unsuitable materials. For most of the items on the prohibited fuels list, it is widely-recognized and widely-accepted that the burning of such material increases emissions regardless of the type of wood heating device. Moreover, the burning of anything not included in the warranty and owner's manual can damage a stove and thereby cause increased emissions, as well as potential safety issues, because the stove is unable to perform as designed. It should also be noted that the PFI's Quality Assurance/Quality Control Handbook recognizes that the 2015 RWH NSPS ". . . contain provisions regarding "prohibited fuel types" in 40 CFR 60.532(f) and 60.5474(f). To the extent that these requirements apply to pellet fuel manufacturers, these materials are considered prohibited for the purpose of the PFI Residential/Commercial

Densified Fuel Standards Program."<sup>3</sup> Finally, as discussed above, one purpose that is served in removing the seven minimum requirements discussed above is to provide flexibility for innovation. Keeping the requirement that pellets not contain any of the prohibited fuels does not inhibit innovation and ensures that these materials are not included in pellets.

The EPA is implementing this prohibition in 40 CFR 60.532(e) and 40 CFR 60.5474(e) by including the requirement that the grading done by third-party organizations include a certification by the third-party organization that the pellets do not contain and are not manufactured from any of the prohibited fuels listed in 40 CFR 60.532(f) and 40 CFR 60.5474(f).

Finally, interested persons have asked questions about how the prohibitions in 40 CFR 60.532(f)(12) and 40 CFR 60.5474(f)(12) against "unseasoned wood" (which is defined in 40 CFR 60.531 and 40 CFR 60.5473 as wood with an average moisture content at or above 20 percent) applies to pellet fuel. The EPA is clarifying that the determination of moisture content is made at the end of the manufacturing process, and the prohibition on unseasoned wood in 40 CFR 60.532(f)(12) and 40 CFR 60.5474(f)(12) does not prohibit the use of unseasoned wood earlier in the pellet fuel manufacturing process. The EPA notes that the approved third-party organizations determine moisture content as part of their examination and grading of the pellet fuels. For example, PFI's current *Standard Specification for Residential/Commercial Densified Fuel* requires a limit of  $\leq 8.0$  percent moisture for a premium pellet.<sup>4</sup>

## 2. Rationale for the Final Pellet Fuel Requirements

As explained in the EPA's November 2016 *Supplemental Response to Pellet Fuels Institute's Comments for Remand of the Record Based on Existing Docket for Residential Wood Heaters New Source Performance Standards*,<sup>5</sup> the

<sup>3</sup> *Pellet Fuels Institute Residential/Commercial Densified Fuel QA/QC Handbook*, Section 6.7, Status November 9, 2018.

<sup>4</sup> PFI's November 2018 pellet fuel specifications are available in the docket for this final action (<https://www.regulations.gov/docket?D=EPA-HQ-OAR-2018-0195>) and at [https://www.pelletheat.org/assets/docs/2018/2018\\_PFI\\_Standard%20Specification.pdf](https://www.pelletheat.org/assets/docs/2018/2018_PFI_Standard%20Specification.pdf).

<sup>5</sup> The EPA's November 2016 *Supplemental Response to Pellet Fuel Institute's Comments for Remand of the Record Based on Existing Docket for Residential Wood Heaters New Source Performance Standards* is available on *Regulations.gov* in the docket for the 2015 RWH NSPS at <https://www.regulations.gov/document?D=EPA-HQ-OAR-2009-0734-1805>.

EPA has the authority to impose minimum pellet fuel requirements. As such, for the reasons stated above, the Agency has decided to retain the list of prohibited fuels in 40 CFR 60.532(f) and 40 CFR 60.5474(f), which applies not only to pellets, but to all wood fuels burned in residential wood heating devices subject to this rule. However, the EPA has decided to remove the first seven requirements currently listed in 40 CFR 60.532(e)(1) through (7) and in 40 CFR 60.5474(e)(1)–(7). The Agency has made this determination for the following reasons.

First, minimum requirements/specifications are already part of PFI's and other third-parties' requirements and will, therefore, be imposed by the retained rule requirement that the pellets be certified by PFI or another EPA-approved third-party. For example, PFI's current *Standard Specifications for Residential/Commercial Densified Fuel* includes requirements on density, dimensions, fines, chlorides, ash, and trace metals that are similar to those of the 2015 RWH NSPS.<sup>6</sup> The remaining requirement—that the pellets contain no demolition or construction waste—is already contained in the list of prohibited fuels in 40 CFR 60.532(f) and 40 CFR 60.5474(f), which the Agency is not altering in this action. The EPA recognizes that PFI and the other approved third-party organizations might revise their current specifications to alter or remove these requirements. On that point, the EPA notes that, first, the third-party organizations had pellet fuel specifications prior to the EPA's 2015 promulgation of the minimum pellet fuel requirements (and, in fact, the EPA's 2015 minimum requirements relied heavily on the third-party specifications). Further, the third-party organizations' specifications now are as protective as the pellet fuel specifications that the EPA promulgated in 2015 and, although the EPA recognizes that the third-party organizations may revise their specifications to reflect innovations (as discussed below), there is no reason to conclude that revisions by the third-party organizations will make their specifications less protective because of the EPA's action to remove the minimum requirements in 40 CFR 60.532(e) and 40 CFR 60.5474(e).<sup>7</sup>

<sup>6</sup> PFI's November 2018 pellet specifications are available in the docket for this final action (<https://www.regulations.gov/docket?D=EPA-HQ-OAR-2018-0195>) and at [https://www.pelletheat.org/assets/docs/2018/2018\\_PFI\\_Standard%20Specification.pdf](https://www.pelletheat.org/assets/docs/2018/2018_PFI_Standard%20Specification.pdf).

<sup>7</sup> The EPA acknowledges that it previously held the view that having the minimum requirements

Furthermore, if one or more of the third-party organizations were to revise their specifications in a way that could lead to increases in emissions, the EPA could conduct a rulemaking to re-impose some or all of the minimum requirements that we are taking out in this final rule (and could add additional minimum requirements that are not currently in the rule).

Second, as noted by multiple commenters, the minimum pellet fuel requirements serve to codify a static list of requirements, until an updated rule is promulgated. Innovations may occur in the interim regarding pellet fuel heater technology, which may require an update to the list of pellet specifications, prior to when a revised rule is promulgated. The removal of the minimum requirements from 40 CFR 60.532(e)(1) through (7) and 40 CFR 60.5474(e)(1) through (7) will allow third-party organizations to update their pellet fuel specifications in step with developments in pellet fuel heater technology, so as to not delay or preclude innovation that may improve pellet fuel heater operation and decrease emissions. Thus, this final action will ensure that the RWH regulations are protective, and at the same time do not unnecessarily preclude, inhibit, or delay technological innovation.

### 3. Clarification Concerning the Burning of Pallets and the Use of Pallets in Manufacturing Pellet Fuel

Interested parties have asked the EPA to clarify the scope of the prohibition on “pallets” in 40 CFR 60.532(f)(9). Although the EPA, in this final action, is not making any change to the regulatory text concerning pallets, in this preamble, we are clarifying two aspects of how the prohibited fuels list applies to: (a) The burning of pallets; and (b) the use of pallets in the manufacture of pellet fuel.

First, the prohibition on “pallets” in 40 CFR 60.532(f)(9) bans only the use of *pressure-treated* pallets, because “pallets” is part of the phrase “pressure-treated wood or pallets” and the term “pressure-treated” is intended to apply both to “wood” and to “pallets.”

Second, pallets that are contaminated with any of the materials listed as a prohibited fuel type in 40 CFR 60.532(f) may not be burned or used to

manufacture pellets because such burning or use is barred by the specific subsection that bans the contaminating material. For example, manufacturing pellets from pallets contaminated with “waste petroleum products, paint or paint thinners, or asphalt products” (*i.e.*, the language in 40 CFR 60.532(f)(5)) is prohibited by 40 CFR 60.532(f)(5). As a second example, pallets that are contaminated with asbestos may not be used to make pellets, due to the prohibition against “materials containing asbestos” in 40 CFR 60.532(f)(6).

### B. Decision Regarding Promulgating New Sell-Through Provisions

Based on the comments and data received on the November 30, 2018, proposal (83 FR 61574), the EPA has decided to take final action on the proposed sell-through provisions by not promulgating such provisions. To justify a sell-through, the Agency first requires sufficient data from manufacturers and retailers demonstrating why a sell-through is needed. Insufficient data were provided by manufacturers and retailers to justify a sell-through, especially in light of the fact that in every residential wood heating device category, there are model lines certified to meet the Step 2 standards that are already available, and have been available for considerable time, which supports the conclusion that the Step 2 standards were achievable. For example, the record shows that, as of March 2018 (over 2 years before the May 2020 Step 2 deadline), there were Step 2-certified model lines available for each category of wood heating device (83 FR 61578). According to the EPA Certified Wood Heater Database,<sup>8</sup> as of March 5 2020, there were 196 Step 2-certified wood heater model lines and pellet fuel heater model lines compared with 405 Step 1-certified model lines. This means that Step 2 model lines represented 33 percent of all certified wood heater and pellet fuel heater model lines. Likewise, as of March 5, 2020, there were 13 Step 2-certified hydronic heater model lines compared with 99 Step 1-certified hydronic heater model lines (or 12 percent). An additional 12 of the 99 Step 1-certified hydronic heater model lines would meet the Step 2 limit, but need to re-test to be certified. Assuming all these model lines are certified, Step 2 hydronic heater model lines will represent 22 percent of all certified model lines. Finally, as of March 5, 2020, there were two Step 2-certified

forced-air furnace model lines compared with 18 Step 1-certified model lines (or 10 percent).

By contrast, manufacturers did not provide the Agency with information showing that any manufacturers have tried but failed to develop Step 2 model lines. Thus, there is no support in the record showing that manufacturers could not develop Step 2 models in time to: (1) Have Step 2 models for sale as retailers reduced or discontinued their purchase of Step 1 models; and (2) allow for manufacturers and retailers to replace their inventories of Step 1 models with Step 2 models in advance of the May 2020 deadline. In short, the record shows that some manufacturers have tried and succeeded in developing Step 2 model lines but contains no adequately supported examples of manufacturers that have tried and failed to develop Step 2 model lines.

Finally, it is important to note that manufacturers have had since May 2015 to develop Step 2-compliant wood heating devices, and that retailers have had since May 2015 to manage their inventory of Step 1-compliant wood heating devices and replace them with Step 2-compliant wood heating devices ahead of the May 2020 deadline. The record shows that Step 2-compliant model lines have been available to retailers for a considerable amount of time. For example, there were wood heater, pellet fuel heater, hydronic heater, and forced-air furnace models that were Step 2-certified starting in 2017<sup>9</sup> and, as of March 20, 2018, more than 2 years before the May 2020 compliance deadline, there were 78 wood heater model lines (44 pellet fuel heaters and 34 wood heaters), nine hydronic heater model lines and one forced-air furnace model line certified to Step 2 (83 FR 61578). Further, some model lines have emissions significantly below the Step 2 standard, showing not only that it is possible to achieve the Step 2 standard but also that manufacturers can develop models well below the Step 2 standard.<sup>10</sup> Based on this record, the Agency has insufficient grounds to conclude that a sell-through period is needed and to change the established NSPS and allow a sell-through.

Regarding the data necessary to justify a sell-through, the EPA solicited this information in the notice of proposed rulemaking (NPRM) by posing multiple

stated in the regulatory text was needed to prevent them from changing without EPA action. See EPA's November 2016 *Supplemental Response to Pellet Fuel Institute's Comments for Remand of the Record Based on Existing Docket for Residential Wood Heaters New Source Performance Standards* (Docket ID Item No. EPA-HQ-OAR-2009-0734-1805), at 8. For the reasons discussed above in section IV.A, the EPA's policy view on this matter has changed.

<sup>8</sup> The EPA Certified Wood Heater Database is available at <https://www.epa.gov/compliance/epa-certified-wood-heater-database>.

<sup>9</sup> See the EPA list of certified room heaters and central heaters at <https://cfpub.epa.gov/oarweb/woodstove/index.cfm?fuseaction=app.about>.

<sup>10</sup> See *id.*, which shows a significant number of Step 2-certified models with emission rates well below the Step 2 standard for both room heaters and central heaters.

questions to stakeholders while requesting comment on the proposed 2-year sell-through, including, but not limited to, the following queries:

- Whether retailers are currently declining to purchase Step 1-compliant wood heating devices and how widespread is this reduction in purchases;
- The cost or other impacts that retailers could have on manufacturers if they decline to purchase Step 1-compliant wood heating devices;
- The typical period of time between when a retailer purchases a wood heating device and when the device is sold to the consumer;
- What period of time would be sufficient for retailers to sell their inventory of Step 1-compliant heaters;
- The number of Step 1-compliant wood heating devices that are currently in production and the number that are being designed for Step 2 compliance that have not yet been EPA-certified;
- The number of Step 2 wood heating devices that are currently Step 2-certified; and
- How far in advance of the current May 2020 Step 2 compliance date manufacturers will need to submit their EPA certification applications to meet the standard as well as manufacture, market, and distribute their products without disruption to their business.

While manufacturers and retailers made qualitative statements asserting economic harm from stranded inventory if a retail sell-through was not allowed, these statements were not supported by contextual data. In fact, commenters did not submit sufficient data to the Agency in response to the NPRM's solicitations, and in particular, provided insufficient data showing a percentage decrease in sales approaching 2020 relative to previous years and/or the percentage of Step 1 inventory that would be stranded without a sell-through since the promulgation of the 2015 RWH NSPS.

As we explained previously, as of March 5, 2020, there were two Step 2-certified forced-air furnace model lines. Because both model lines tested for certification using an (Agency-approved) alternative test method, the Agency undertook a separate action making this alternative method broadly applicable to model lines that are electronically or thermostatically controlled.<sup>11</sup> This means that forced-air furnace manufacturers may use this test method without submitting a model-

specific rationale to the EPA requesting permission to use the method. We expect that this broadly applicable alternative test method for electronically or thermostatically controlled model lines will allow more forced-air furnaces—both small and large model lines—to certify to the Step 2 standard and become available to consumers in the near term.

In addition, we note that, as mentioned by several commenters, the estimated monetized forgone benefits of the proposed sell-through exceed the estimated cost savings to manufacturers and retailers by a factor of 10 to 20. As shown in the supplemental Regulatory Impact Analysis for the proposal, the annual monetized fine particulate matter-related forgone health benefits of the proposed amendments, from 2019–2022, were \$100 million to \$230 million (2016 dollars) at a 3-percent discount rate as compared to annual cost savings to manufacturers and retailers estimated at \$8.3 million (2016 dollars). These large net forgone benefits (forgone benefits – cost savings) were another consideration in our decision to not change the 2015 RWH NSPS to allow a sell-through period with respect to Step 2. Additional information and assessment regarding potential impacts are provided in a support document titled: *A Qualitative Assessment of Impacts of Not Including a Sell-Through for Wood Heating Devices, Wood Heaters NSPS—Draft Support Document*—by EPA/OAQPS technical staff dated March 10, 2020.

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

### A. What are the affected facilities?

The baseline for measuring quantifiable impacts to affected facilities is the 2015 RWH NSPS (80 FR 13672). No impacts are anticipated against this baseline because we are not changing the compliance deadline required by the 2015 RWH NSPS. We also do not anticipate any quantifiable impacts from eliminating the seven pellet fuel requirements in 40 CFR 60.532(e) and 40 CFR 60.5474(e) because minimum requirements/specifications are already part of third-parties' requirements and will, therefore, be imposed by the retained rule requirement that the pellets be certified by an EPA-approved third-party. However, the change to the pellet fuel minimum requirements will revise the regulatory requirements to which manufacturers, testing labs, owners, and operators of pellet-burning wood heaters, pellet-burning hydronic heaters, and pellet-burning forced air furnaces are subject.

### B. What are the air quality impacts?

This final action makes a clarification to the prohibited fuel types, removes from the rule requirements for pellet fuel to meet certain minimum requirements regarding density, size, and content, and instead relies on EPA-approved third-party organizations to specify minimum requirements as part of the pellet fuel certification process. As discussed in section IV.A.2 of this preamble, we anticipate that the EPA-approved third-party organizations will continue to specify the same or similar minimum requirements as required in the 2015 RWH NSPS. The EPA will continue to monitor these requirements to determine if any changes to the regulations are needed. In addition to our review of these requirements, as part of our ongoing collaborations with many stakeholders (including states, citizen groups, wood heater manufacturers, and other industry groups), we expect that any concerns related to third-party requirements would be brought promptly to the EPA's attention. Also, in this final action, the EPA is deciding not to finalize changes that would have allowed a sell-through period for Step 1-certified residential wood heating devices that are manufactured before the May 2020 compliance date to be sold at retail after that date. In this final action, the Agency is not making any change or otherwise taking any final action with respect to the original compliance schedule for both manufacturers and retailers set forth in the 2015 RWH NSPS (80 FR 13672). Accordingly, there are no air quality impacts associated with this final action. The air quality impacts associated with the RWH NSPS were discussed in detail in the March 16, 2015, final RWH NSPS and supporting documentation.

### C. What are the cost and economic impacts?

We did not estimate the cost and economic impacts of the change in pellet fuel requirements, because we do not anticipate any quantifiable cost or economic impacts to affected facilities. Manufacturers, testing labs, owners, and operators of pellet-burning wood heaters, pellet-burning hydronic heaters, and pellet-burning forced air furnaces will still be required to burn only pellets graded under a licensing agreement with an EPA-approved third-party.

### D. What are the benefits?

We did not estimate the benefits of the change in pellet fuel requirements, because we expect the benefits, forgone or otherwise, to be minimal. Such

<sup>11</sup> See <https://www.epa.gov/emc/broadly-applicable-approved-alternative-test-methods#ATLs> for ALT-134, available at: [https://www.epa.gov/sites/production/files/2019-08/documents/l.s.\\_bilodeau\\_steel\\_product\\_manufacturing\\_8-19-2019\\_0.pdf](https://www.epa.gov/sites/production/files/2019-08/documents/l.s._bilodeau_steel_product_manufacturing_8-19-2019_0.pdf).

benefits are dependent on emissions reduction changes associated with this final action and, as discussed in section V.B of this preamble, we do not anticipate emissions reduction changes relative to the 2015 RWH NSPS (80 FR 13672).

## 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>.

### 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 raises novel legal and policy issues. Any changes made in response to OMB recommendations have been documented in the docket.

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

This action is not expected to be subject to Executive Order 13771 because this final rule is expected to result in no more than *de minimis* costs or savings.

### 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 in the existing regulations and has assigned OMB control number 2060-0161 for 40 CFR part 60, subpart AAA, and OMB control number 2060-0693 for 40 CFR part 60, subpart QQQQ. This action is believed to result in no changes to the information collection requirements of the 2015 RWH NSPS, so that the information collection estimate of project cost and hour burden from the 2015 final rule have not been revised.

### 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 final rule will not impose any new

requirements on any entities because it does not impose any additional regulatory requirements relative to those specified in the 2015 RWH NSPS. We have, therefore, concluded that this action will have no net regulatory burden for all directly regulated small entities.

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

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531-1538. 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. This rule will not impose any requirements on tribal governments. 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.

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

This action is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866, and because the EPA does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. Because this final action will not result in air quality impacts relative to the 2015 RWH NSPS, as noted in section V.B of this preamble, we do not anticipate a change in risk to anyone, including children. Further, as noted in the preamble to the 2015 RWH NSPS, the EPA does not believe that the environmental health risks or safety risks addressed by the 2015 RWH NSPS presents a disproportionate risk to children based on distributional assessments of effects from residential wood smoke emissions (see 80 FR 13700).

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

This action is not a “significant energy action” because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

### 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

The EPA believes that this action does not have disproportionately high and adverse human health or environmental effects on minority populations, low-income populations, or indigenous peoples, as specified in Executive Order 12898 (59 FR 7629, February 16, 1994). As noted in the preamble to the 2015 RWH NSPS, the EPA believes that the human health or environmental risk addressed by the 2015 RWH NSPS will not have potential disproportionately high and adverse human health or environmental effects on minority, low-income, or indigenous populations from residential wood smoke emissions (see 80 FR 13701). Because this final action does not have air quality impacts relative to the 2015 RWH NSPS, as discussed in section V.B of this preamble, it will not alter the EPA’s prior findings that, on a nationwide basis, cancer risks due to residential wood smoke emissions among disadvantaged population groups generally are lower than the risks for the general population due to residential wood smoke emissions.

### 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.

Dated: March 11, 2020.

**Andrew R. Wheeler,**  
Administrator.

For the reasons set forth in the preamble, the EPA amends 40 CFR part 60 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 (e) to read as follows:

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

\* \* \* \* \*

(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.

\* \* \* \* \*

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

■ 3. Section 60.5474 is amended by revising paragraph (e) to read as follows:

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

\* \* \* \* \*

(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.

\* \* \* \* \*

[FR Doc. 2020-05961 Filed 4-1-20; 8:45 am]

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 92

[Docket No. FWS-R7-MB-2020-0008; FXMB12610700000-201-FF07M01000]

RIN 1018-BE24

#### Migratory Bird Subsistence Harvest in Alaska; Region-Specific Regulations

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Interim rule.

**SUMMARY:** The U.S. Fish and Wildlife Service (Service or we) is establishing regulations for the subsistence harvest of migratory birds in Alaska for the 2020 season and beyond. These regulations allow for the continuation of customary and traditional subsistence uses of migratory birds in Alaska and prescribe regional information on when and where the harvesting of birds may occur. These regulations were developed under a co-management process involving the Service, the Alaska Department of Fish and Game, and Alaska Native representatives and are subject to public review. Based on any comments received, we may revise this interim rule. The Alaska subsistence harvest season begins on April 2, 2020.

**DATES:** This rule is effective April 2, 2020. We will accept comments received or postmarked on or before April 13, 2020.

**ADDRESSES:** You may submit comments on this interim rule by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments to Docket No. FWS-R7-MB-2020-0008.

- *U.S. mail or hand-delivery:* Public Comments Processing, Attn: FWS-R7-MB-2020-0008; U.S. Fish and Wildlife Service; 5275 Leesburg Pike, MS: JAO/1N; Falls Church, VA 22041-3803.

We will post all comments on <http://www.regulations.gov>. This generally means that we will post any personal information you provide us (see Public Comments, below, for more information).

**FOR FURTHER INFORMATION CONTACT:** Cheryl A. Graves, U.S. Fish and Wildlife

Service, 1011 E. Tudor Road, Mail Stop 201, Anchorage, AK 99503; (907) 786-3887.

#### SUPPLEMENTARY INFORMATION:

##### Public Comments

We solicit comments or suggestions from the public. To ensure that any action resulting from this interim rule will be as accurate and as effective as possible, we request that you send relevant information for our consideration. The comments that will be most useful and likely to influence our decisions are those that you support by quantitative information or studies and those that include citations to, and analyses of, the applicable laws and regulations. Please make your comments as specific as possible and explain the basis for them.

You must submit your comments and materials concerning this interim rule by one of the methods listed above in **ADDRESSES**. We will not accept comments sent by email or fax or to an address not listed in **ADDRESSES**. If you submit a comment via <http://www.regulations.gov>, your entire comment—including any personal identifying information, such as your address, telephone number, or email address—will be posted on the website. When you submit a comment, the system receives it immediately. However, the comment will not be publicly viewable until we post it, which might not occur until several days after submission.

If you mail or hand-carry a hardcopy comment directly to us that includes personal information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. All comments and materials we receive will be available for public inspection in two ways:

(1) Via <http://www.regulations.gov>. Search for FWS-R7-MB-2020-0008, which is the docket number for this rulemaking.

(2) In-person viewing by appointment, during normal business hours, at the Division of Migratory Bird Management, MS: MB, 5275 Leesburg Pike, Falls Church, VA 22041-3803; (703) 358-1714.

##### Background

The Migratory Bird Treaty Act of 1918 (MBTA, 16 U.S.C. 703 *et seq.*) was enacted to conserve certain species of migratory birds and gives the Secretary of the Interior the authority to regulate the harvest of these birds. The law further authorizes the Secretary to issue regulations to ensure that the