Sent: Wednesday, September 23, 2020 11:59 AM PDT **To:** russell.gold@wsj.com <russell.gold@wsj.com> **CC:** Meredith Fowlie <fowlie@berkeley.edu>

Hi Russell.

Meredith forwarded your email to me -- this is something I spend way too much time thinking about. I think the answer to your question turns almost entirely who is elected President. California almost certainly needs a wavier from the EPA to require that all vehicles be zero emission by 2035. The Trump EPA will deny any such waiver request. A Biden Administration would likely grant it and if the waiver finding is based both on air pollution regulation (in particular meeting National Ambient Air Quality Standards) and climate change should be legally strong.

I think this is not just posturing. The state is serious about its air quality and serious about its climate goals and it will be almost impossible for California to meet tough new ozone standards without moving away from the internal combustion engine. Transportation remains the biggest source of ozone pollution and is the biggest greenhouse gas contributor in the state.

Finally, the state has a long history of pushing automotive pollution control technology, starting with the catalytic converter in the 1970s. Technology forcing and California car regulation are practically synonomous.

Hope this helps.

Ann Carlson
Shirley Shapiro Professor of Environmental Law
Faculty Co-Director, Emmett Institute on Climate Change and the Environment
UCLA School of Law
(310) 206-9496

From: Andrew Lootens-White <alootenswhite@hlcommission.org>

Sent: Monday, November 30, 2020 12:53 PM PST

To: Carlson, Ann <carlson@law.ucla.edu>

Subject: A (re)Inviatation to HLC's Annual Conference lineup

Hi Ann -

I hope you and your family are safe and healthy in what has been an extremely challenging year.

I want to thank you for agreeing to be a featured speaker last year at the Higher Learning Commission's (HLC's) Annual Conference last year. You'll recall that due to the pandemic, HLC unfortunately had no choice but to cancel the conference out of safety concerns.

Well, HLC's Conference is back and this spring it will be 100% virtual, held April 5-9, 2021. I'm reaching out to see if you would have interest in doing a featured/invited session this year. We have a good deal of flexibility on the nuance of such a session which we imagine would be substantially based on the intersections of climate change and higher education, including topics such as preparing for climate change, college and university divestment from carbon-heavy energy, policy and activism issues and priorities (particularly in light of the Biden administration's arrival), and so forth.

Given the adjusted format and virtual nature of the event which would not require any travel, we are able to offer a \$1500 honorarium and complimentary registration to the general program if you wish. The session could be your preference of either live or pre-recorded, and we would work with you to construct the online format of the session so as to encourage audience engagement. For example, if any component is pre-recorded, we could still do a live Q&A. Similarly, we've had other featured presenters ask for a format that is divided into thirds and includes a short presentation, a conversation with a facilitator or panel, then ending with audience Q&A.

This year's theme is aptly named, "Crisis and Community" which would lend itself very well to the topic of your session. Although typically our registration is above 4,000, we are learning that online events of this nature can easily exceed normal attendance levels. More information can be found here: https://www.hlcommission.org/Programs-Events/conference.html

We would be extremely happy to include you on the program this year, but we also understand that everyone's life has been altered a bit this past year, so if this is not a good year, we would be disappointed but certainly understand. Thanks for considering our request; let us know what you think or questions you may have.

-andy

Andrew Lootens-White, Ph.D.
Vice President of Accreditation Relations
Higher Learning Commission
800.621.7440 x105 | www.hlcommission.org

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From: Revesz, Richard <Revesz@exchange.law.nyu.edu>

Sent: Thursday, January 21, 2021 2:35 PM PST To: Carlson, Ann <carlson@law.ucla.edu>

Subject: A huge congratulations

Dear Ann:

Congratulations on taking a position in the Biden Administration. And it's so wonderful that you'll be the Chief Counsel at NHTSA. I know that you'll be able to do a lot to change the historical perspective of the agency.

I'm very happy for you, because it will be such an amazing experience, and for our country, because I know that you will make an enormous positive difference on the issues we care about.

I'll be delighted, of course, to help you in any way I can. Please reach out anytime.

Warm regards,

Ricky

From: Ben Ryan

Sent: Wednesday, December 09, 2020 9:08 AM PST

To: Carlson, Ann <carlson@law.ucla.edu> **Subject:** AB 617, The Nation magazine

Dear Dr. Carlson,

I just read your terrific <u>article on AB 617 on LegalPlanet</u>. I am actually in the process of finishing a similar article for The Nation which mirrors your own arguments. I base many of my own on recent research by Jonathan London at UC Davis and a team at Berkeley that wrote a recent policy paper on AB 617 published by the Brookings Institute.

The plan is to run my article as soon as the EPA pick is announced. And if it's Mary Nichols, that'll make the article a much bigger deal.

Would you care to send me a quote for my article succinctly summing up your point about why AB 617 can and should inspire the Biden administration?

Could you also perhaps write a second version of the quote that I would only use if Nichols is nominated for EPA and that would acknowledge this fact and reflect on how her becoming the head of EPA might inform the use of AB 617 as a model?

Thanks so much, and I'm glad that we're on the same page about this matter. It gives me confidence that I'm not going out on any kind of a limb with my article!

Best.

Ben

Ben Ryan benryan.net

Follow on:
Facebook
Twitter

From: Carlson, Ann

Sent: Wednesday, December 16, 2020 10:49 PM PST
To: Chandler Randol randol@eli.org
Subject: Accepted: ELI Webinar: The Biden Administration: Climate and the Environment at a Critical Juncture

From: Carlson, Ann
Sent: Thursday, December 17, 2020 12:57
To: Phil Barnett
Subject: Actually

NHTSA general counsel

From: Gardbaum, Stephen <gardbaum@law.ucla.edu> Sent: Thursday, January 21, 2021 9:15 AM PST

To: Carlson, Ann <carlson@law.ucla.edu>

Subject: Ann Carlson

Many, many congratulations, Ann. That's fabulous.

It's of course for the greater/greatest good, but we'll miss you.

Warmly, Stephen

From: Mnookin, Jennifer <MNOOKIN@law.ucla.edu>

Sent: Thursday, January 21, 2021 8:48 AM
To: Mnookin, Jennifer <MNOOKIN@law.ucla.edu>

Subject: Ann Carlson

Dear Colleagues,

I am writing to let you know that Ann Carlson will be taking a leave from the law school to begin serving in the Biden-Harris Administration effective yesterday, January 20. President Biden has appointed Ann to serve as Chief Counsel of the National Highway Traffic Safety Administration. NHTSA has joint responsibility, together with EPA, for regulating greenhouse gases/fuel economy from the transportation sector, and she is part of the Biden-Harris "whole agency" approach to addressing climate change. She will remain in Los Angeles working remotely in the immediate term but will move to Washington, D.C. when the pandemic eases.

Although we will miss her very much, I admire Ann for her willingness to serve in the new Administration to address climate change. Her new position continues the work she has done for many years on the issue our new President calls "the number one threat to humanity." Please join me in congratulating Ann on her new appointment.

All best.

Jennifer

Jennifer L. Mnookin

Dean and Ralph and Shirley Shapiro Professor of Law Co-Director, PULSE@UCLA Law (310) 825-8202



From: Mnookin, Jennifer <MNOOKIN@law.ucla.edu> **Sent:** Thursday, January 21, 2021 8:47 AM PST **To:** Mnookin, Jennifer <MNOOKIN@law.ucla.edu>

Subject: Ann Carlson

Dear Colleagues,

I am writing to let you know that Ann Carlson will be taking a leave from the law school to begin serving in the Biden-Harris Administration effective yesterday, January 20. President Biden has appointed Ann to serve as Chief Counsel of the National Highway Traffic Safety Administration. NHTSA has joint responsibility, together with EPA, for regulating greenhouse gases/fuel economy from the transportation sector, and she is part of the Biden-Harris "whole agency" approach to addressing climate change. She will remain in Los Angeles working remotely in the immediate term but will move to Washington, D.C. when the pandemic eases.

Although we will miss her very much, I admire Ann for her willingness to serve in the new Administration to address climate change. Her new position continues the work she has done for many years on the issue our new President calls "the number one threat to humanity." Please join me in congratulating Ann on her new appointment.

All best,

Jennifer

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Jennifer L. Mnookin

Dean and Ralph and Shirley Shapiro Professor of Law Co-Director, PULSE@UCLA Law (310) 825-8202



From: Melling, Daniel <melling@law.ucla.edu>
Sent: Tuesday, January 19, 2021 3:16 PM PST
To: Carlson, Ann <carlson@law.ucla.edu>

Subject: Announcement tomorrow

Hi Ann – I was planning to work w/ Josh Rich to publish a short article on the UCLA Law site tomorrow to announce the news of your appointment – just wanted to give you a heads up. We will send a draft later today.

Daniel Melling

Communications Manager

UCLA School of Law | Emmett Institute on Climate Change and the Environment

Office (310) 206-7974 Mobile (310) 408-9417

From: Melling, Daniel <melling@law.ucla.edu> Sent: Tuesday, January 19, 2021 11:58 AM

To: Horowitz, Cara <HOROWITZ@law.ucla.edu>; Hecht, Sean <hecht@law.ucla.edu>; Parson, Edward <PARSON@law.ucla.edu>;

Carlson, Ann <carlson@law.ucla.edu>; Emmett Institute Faculty & Staff <EmmettInstituteFaculty&Staff@law.ucla.edu>

Subject: RE: sharing some news

Ann, I will be assembling a task force of faculty to take up all the media requests that you've previously handled!

We will miss you tremendously but it's both exciting and reassuring to know that you will be helping NHTSA move towards a more climate-friendly agenda alongside Mayor Pete and many others.

Look forward to keeping in touch and congratulations again on this appointment, I'll be tuning in tomorrow. Daniel

PS – DOT/NHTSA is right by Nats Park, so expecting updates on Dodgers away performance if/when you move to the district.

Daniel Melling

Communications Manager

UCLA School of Law | Emmett Institute on Climate Change and the Environment

Office (310) 206-7974 Mobile (310) 408-9417

From: Horowitz, Cara < HOROWITZ@law.ucla.edu>

Sent: Tuesday, January 19, 2021 11:34 AM

To: Hecht, Sean < hecht@law.ucla.edu >; Parson, Edward < PARSON@law.ucla.edu >; Carlson, Ann < carlson@law.ucla.edu >;

Emmett Institute Faculty & Staff < EmmettInstituteFaculty&Staff@law.ucla.edu>

Subject: Re: sharing some news

Ditto to all of this, with one friendly amendment: I refuse to think of this as Ann's "departure." "Leave of absence" is a much friendlier phrase. Ann, the country is lucky to have you working directly on its behalf, and I know you'll find new and high-leverage ways to make the world a better place from within the Biden camp.

(And this is a minor request in the grand scheme of things, but: please collect some fun gossip for us, too.)

Cara Horowitz

Andrew Sabin Family Foundation Co-Executive Director Emmett Institute on Climate Change and the Environment UCLA School of Law

From: Hecht, Sean < hecht@law.ucla.edu > Sent: Tuesday, January 19, 2021 11:27 AM

To: Parson, Edward < PARSON@law.ucla.edu >; Carlson, Ann < carlson@law.ucla.edu >; Emmett Institute Faculty & Staff

< EmmettInstituteFaculty&Staff@law.ucla.edu>

Subject: Re: sharing some news

Thanks, Ted. I echo everything you say here.

Ann: The Emmett Institute owes its existence to you and your leadership. I can't express enough how grateful I am to you for your role in what we've built here. Your departure will leave a big gap, but at the same time, we now have built something enduring. With the leadership of Ted along with the rest of our amazing faculty, I'm confident that our team will continue to grow and contribute, in a new environment where the possibilities are greater.

I'm sorry we can't give you the send-off you deserve, both because of the pace of your transition and because of COVID limitations.

The country is lucky to have you in your new role, and I hope you're able to enjoy it.

All my best, Sean

From: Parson, Edward < PARSON@law.ucla.edu > Sent: Tuesday, January 19, 2021 11:03 AM

To: Carlson, Ann <carlson@law.ucla.edu>; Emmett Institute Faculty & Staff < EmmettInstituteFaculty & Staff@law.ucla.edu>

Subject: RE: sharing some news

Congratulations, Ann!

What good judgment on their part, and how exciting for you to get to be at the center of this work.

We wish you all success, and hope to be able to engage you as your duties allow in thinking through how Emmett can best contribute.

All best wishes, Ted

Edward A. Parson

Dan and Rae Emmett Professor of Environmental Law Faculty Co-Director, Emmett Institute on Climate Change and the Environment Director, Al Pulse Program (https://aipulse.org) Room 3456 | UCLA School of Law

parson@law.ucla.edu

Phone, academic year 2020-2021 (250) 886-1299

https://www.law.ucla.edu/faculty/faculty-profiles/edward-a-parson

From: Carlson, Ann <<u>carlson@law.ucla.edu</u>> Sent: Tuesday, January 19, 2021 10:58 AM

To: Emmett Institute Faculty & Staff < EmmettInstituteFaculty & Staff@law.ucla.edu >

Subject: sharing some news

Hi all,

I am writing to let you know that the Biden-Harris team has appointed me to serve as the Chief Counsel of the National Highway Traffic Safety Administration. NHTSA, as you know, has joint authority with EPA over the car and truck GHG standards and as a result the early political appointments will for the first time have strong climate experience. I'll be sworn in tomorrow as part of a large group of "first day appointees." I'm telling a few folks now but ask that you keep the news confidential until late tomorrow.

I'm incredibly excited about the opportunity but it of course this means that I will be taking a leave from UCLA for the near future. You will be in terrific hands with Cara, Sean, and Ted and I will look forward to seeing all of Emmett's terrific work from a bit of a distance. I'll be here in L.A. for now working remotely until I'm told I need to move east.

I'll miss you all but don't be strangers!

Ann Carlson Shirley Shapiro Professor of Environmental Law Faculty Co-Director, Emmett Institute on Climate Change and the Environment UCLA School of Law (310) 206-9496

From: Joyce Mason
Sent: Monday, January 25, 2021 10:44 AM PST To: Carlson, Ann <carlson@law.ucla.edu>

Subject: Article for Observer

Attachment(s): "NATIVE FULLERTONIAN GOES TO WASHINGTON.docx"

Hi Ann,

Again, congratulations on this wonderful appointment in Biden's government. Attached is the article that will accompany the two photos I sent to Jesse La Tour, the new editor. (Sharon Kennedy retired about a year ago.) All of this came from your and Cynthia's Facebook postings.

Joyce

NATIVE FULLERTONIAN GOES TO WASHINGTON

Born and brought up in Fullerton, Ann Carlson attended Raymond School, Wilshire Junior High, and Fullerton High School. After graduating from U.C. Santa Barbara and from Harvard Law School, Ann forged a career in Environmental Law teaching at U.C.L.A. Law School. She is currently writing a book on how Southern California has cleaned up its air pollution.

On Wednesday, January 20, Ann was sworn in as Chief Counsel of the National Highway Traffic Safety Administration (NHTSA). The NHTSA is responsible for highway safety but also has joint responsibility, along with the EPA, for greenhouse gas and fuel economy standards for the transportation sector.

Carlson says, "I'm part of a group of appointees that make real the Biden-Harris commitment to make tackling climate change a whole government priority."

She will be working remotely in the near term but will then move to Washington, D.C. and commute back and forth to her home in Los Angeles as often as possible. Her husband, Carl H. Moor, is a judge in Los Angeles.

The photo shows Carlson being sworn in by President Biden, just hours after his inauguration on January 20.

From: Richard Day <rday@jbrpt.org>
Sent: Thursday, December 17, 2020 12:47 PM PST

To: Carlson, Ann <carlson@law.ucla.edu>

Subject: Biden-Harris Appointments Interview Invitation - Chief Counsel - NHTSA at the Department of Transportation

Attachment(s): "Interview_Process__Helpful_Resources_FAQ.pdf_.pdf"

Dear Ann:

My name is Richard Day, and I'm an assistant with the Biden-Harris Transition Appointments Team. We are delighted to invite you to interview for the role of Chief Counsel - National Highway Traffic Safety Administration at the Department of Transportation.

Scheduling: To schedule your interview(s), please click the "Enter your availability now >" link at the bottom of this email and share your full availability for the next 14 calendar days. Please include weekend and evening availability, as well as times throughout the day. Make sure that availability blocks are no shorter than 45 minutes each. At minimum, five days of availability is appreciated.

Once you have provided your availability and we have matched you with an interviewer, you will receive an email confirming the time of your interview and instructions for connecting to your interviewer. Due to the compressed timeline, we may use your availability to go ahead and schedule several interviews. You must provide your availability within the next 48 hours or your interview will be canceled.

Additionally, we have attached a document with information regarding the interview process and other helpful resources that may help you prepare for your interview.

Please note that we are reaching out to you in your personal capacity for the sole purpose of discussing potential agency employment in the Biden-Harris Administration. This invitation does not preclude you from consideration across other entities within the Administration, such as the White House. Additionally, your invitation to interview and your interview discussions are strictly confidential; your failure to protect the confidentiality of the process may impact your ability to proceed in the personnel process.

Best.

The Biden-Harris Transition Appointments Team

Enter your availability now >

Dear LAW Board -

I wanted to let you all know that Ann has resigned from the LAW Board asthe Biden-Harris Administration has appointed her as Chief Counsel of The National Highway Traffic Safety Administration (NHTSA), where she will make a huge contribution addressing climate change given NHTSA's central role in the GHG car and truck standards! What is our (and UCLA's) loss is the new Administration's gain, and I'm sure you will join me in thanking Ann for all she has done for LAW, and congratulating her for hew new adventure, where she will do amazing things four our planet!

In a fortuitous coincidence, Jon, key staff (Kim, Kelly, Rebecca) and I welcomed new board member Johanna Dyer Bracy yesterday with an orientation, and Johanna will be joining the Legal Committee (helping fill the large shoes Ann is leaving behind, though we will need to elect a new chair) as well as Development Committee. Johanna is excited to meet the board at our February meeting, and I look forward to seeing you all then as well!

Thanks again to Ann for her years of service to LA Waterkeeper (and we will figure out a way to raise a glass to her, even in our socially distanced world), and Johanna for beginning her service!

br

BRUCE REZNIK

Executive Director (310) 394-6162 x100 @LAWaterkeeper



From: Marc Fisher <marcfisher@berkeley.edu>
Sent: Thursday, November 12, 2020 5:38 PM PST
To: Carlson, Ann <carlson@law.ucla.edu>

Subject: Cabinet Post

Ann,

Would you be interested in a Cabinet Post in the Biden administration? The request for nominations is out there and you came to mind. Let me know if you would be comfortable with my making this recommendation.

Marc

Sent from my iPad

From: Julia Forgie
Sent: Friday, November 06, 2020 8:07 PM PST
To: Carlson, Ann <carlson@law.ucla.edu>

Subject: Career chat

Hi Ann,

I hope you're holding up alright! What a week - but I got teary eyed listening to Joe talk now, so I'd say it was a successful one.

This election has made me resurface with respect to my job and to think about other opportunities to fight climate change. I was wondering if you might have a few minutes to talk about possible opportunities to get involved in the Biden administration or otherwise put myself in a position to really effectively fight climate change.

Thanks! Julia

Julia Forgie

Ph:

From: Carlson, Ann

Sent: Thursday, January 21, 2021 8:50 PM PST
To: sophie.shulman@dot.gov <sophie.shulman@dot.gov>
Subject: Carlson Joins NHTSA as Chief Counsel.jr.dm.sbh.jr.docx

Attachment(s): "Carlson Joins NHTSA as Chief Counsel.jr.dm.sbh.jr.docx"

Hi Sophie - UCLA is planning to post this tomorrow. Let me know if it raises any issues for you. Thanks!

Carlson Joins NHTSA as Chief Counsel

UCLA School of Law Professor Ann Carlson has been appointed to serve as the chief counsel of the National Highway Traffic Safety Administration, the federal agency that has joint authority with the Environmental Protection Agency over car and truck greenhouse gas standards.

Carlson is the Shirley Shapiro Professor of Environmental Law and faculty co-director of UCLA Law's Emmett Institute on Climate Change and the Environment.

She is a nationally renowned leader in legal scholarship, advocacy and teaching on environmental issues, including groundbreaking work in air pollution law and policy. A frequent commentator in the national media, Carlson co-wrote with Dan Farber and William Boyd the top casebook *Environmental Law* (West, 2019) and co-edited with Dallas Burtraw the book *Lessons from the Clean Air Act: Building Durability and Flexibility into U.S. Climate and Energy Policy* (Cambridge University Press, 2019).

Read a <u>Q&A with Ann Carlson</u> on why Biden's election as president causes optimism on climate policy.

"To be appointed on Inauguration Day, alongside several other people with strong climate experience, is a clear example of the Biden administration's unyielding commitment to confronting climate change," says Carlson, who will take a leave of absence from UCLA Law to perform her governmental duties. "I'm incredibly honored to serve and help promote the president's initiatives to curb greenhouse-gas emissions and reverse the disastrous impacts that they have had on the environment."

Carlson – who holds a B.A., *magna cum laude*, from UC Santa Barbara and a J.D., *magna cum laude*, from Harvard Law School – also serves as vice chair of the California Environmental Protection Agency's <u>Independent Emissions Market Advisory Committee</u>, and in 2017 she was named the <u>University of California's Sustainability Champion</u>. A beloved leader in the classroom, she has also received UCLA's Distinguished Teaching Award and Eby Award for the Art of Teaching, and UCLA Law's Rutter Award for Excellence in Teaching.

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From: C. Scott Fulton <fulton@eli.org> Sent: Monday, February 01, 2021 4:40 AM PST To: C. Scott Fulton <fulton@eli.org> CC: Benjamin F. Wilson <BWilson@bdlaw.com>; Margaret Spring <mspring@mbayaq.org>; Brenda Mallory <bmallory@selcdc.org>; Brenda com> ; amurgier@beccarvarela.com <amurgier@beccarvarela.com>; beth.deane@firstsolar.com <beth.deane@firstsolar.com>; bobperciasepe@c2es.org
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Stacey J. Halliday <SHalliday@bdlaw.com>; stephen.rahaim@dupont.com <stephen.rahaim@dupont.com>; hilary.tompkins@hoganlovells.com <hilary.tompkins@hoganlovells.com>; vpatton@edf.org <vpatton@edf.org>; Wang, Alex <alex.wang@law.ucla.edu>; kevin.wei@bayeco.cn <kevin.wei@bayeco.cn>; Jay Pendergrass <pendergrass@eli.org>;

<carlson@law.ucla.edu>
Subject: Carlton Waterhouse

To the ELI Board — Per the note below, effective today, Carlton Waterhouse has resigned from our Board for the happiest of circumstances, having accepted a post with the Biden Administration. His position as Deputy Assistant Administrator of OLEM should, among other things, put him in the center of EPA's work on environmental justice.

I will let Carlton's note speak for itself, but I'm sure I can say on behalf of all of us how proud we are of him and how we pleased we are for the country that he has been given this important opportunity to serve. With Carlton and Ann Carlson now part of the Administration and with Brenda Mallory soon to be confirmed as CEQ Chair, the Administration will enjoy the talents of some of our very best.

Congrats, Carlton, and best wishes for a successful tenure. Please come back to us when your service is done.

Loretta Reinersmann <reinersmann@eli.org>; Melodie DeMulling <demulling@eli.org>; Carlson, Ann

Scott

Scott Fulton
President
Environmental Law Institute

Begin forwarded message:

From: "Waterhouse, Carlton" <carlton.waterhouse@law.howard.edu>

Date: January 31, 2021 at 10:29:02 PM EST

To: "C. Scott Fulton" <fulton@eli.org>, bwilson@bdlaw.com

Subject: New Appointment and Resignation

External Email - If suspicious, please contact blain@eli.org

Dear Scott and Ben,

I am writing to submit my resignation from the board effective February 1, 2021. I write this with a mix of joy and sadness. As you know, I will join the Biden administration in the Office of Land and Emergency Management tomorrow and will need to remove myself from the board to fulfill my new responsibilities. Although my time on the board has been short, it has been an amazing experience. I am so honored to have been able to serve with such a fantastic group of people and under such phenomenal leadership. Thank you for this opportunity and for the great work that you have done and that I know ELI will continue to do. Please share this with the full board and staff on my behalf.

Carlton Waterhouse, J.D., Ph.D. Professor of Law Environmental Justice Center, Director

Howard University School of Law
carlton.waterhouse@howard.edu

From: John Putnam

Sent: Wednesday, January 20, 2021 12:40 PM PST

To: Carlson, Ann <carlson@law.ucla.edu>

Subject: Chance to Meet?

Ann-

Congratulations on your new role as NHTSA Chief Counsel! I'd love to connect soon so we can introduce ourselves and start conversations about the many critical things on the list touching NHTSA. I have time after the President's swearing-in this afternoon and hope to have my DOT access by then.

I look forward to connecting!

John

From:

Sent: Thursday, January 21, 2021 1:58 PM PST **To:** Carlson, Ann <carlson@law.ucla.edu>

Subject: Congrats and Potential Fellowship Opportunities

Attachment(s): "Resume 1-20.pdf"

Hi Professor Carlson,

Congratulations on your appointment as the new General Counsel for NHTSA!I am extremely excited to see the work that the office will do in relation to auto emissions and CAFE standards.

I have been applying to post grad jobs related to clean energy, a just transition, and climate change in government and non profit settings. Although I am continuing the job search, I am starting to think about potential fellowship host organizations, in case I apply for the UCLA Law internal funded public service fellowships later this spring.

If you hear of any potential opportunities within the General Counsel's office for post grad positions or fellowship placements, or this spring externships/ law student volunteers, I would be extremely interested to be involved in whatever way is needed. I would greatly enjoy building off of the work that I have done at the California AG-Environment Section and Earthjustice.

I apologize for bothering you, I just am extremely excited for the work that the Administration is going to do over the next few years to address our climate crisis, and it would be a dream to be involved in any way, paid or unpaid, in this world changing work. I just wanted to express my interest and volunteer my legal services if helpful or needed.

Thank you,

UCLA Law 2021

From: Roth, Sammy <sammy.roth@latimes.com>
Sent: Thursday, January 28, 2021 11:16 AM PST
To: Carlson, Ann <carlson@law.ucla.edu>
Subject: Congrats on the appointment to NHTSA

Hey Ann, a bit belated but just saw the news. Hope all is well with you.

Best, Sammy Roth

Sammy Roth Energy Reporter Los Angeles Times @Sammy_Roth

Sign up for Boiling Point, my weekly newsletter on climate change, energy and the environment: <u>latimes.com/boilingpoint</u>

From: Hines, Robert <RHines@fbm.com> Sent: Monday, January 25, 2021 9:19 AM PST To: Carlson, Ann <carlson@law.ucla.edu> Subject: congrats on your new role!

Professor Carlson – congrats on your appointment as Chief Counsel to NHTSA; may I say, I perfect position for you?!

Hope you're doing well.

All the best,

Buzz

Robert L. Hines Partner He/Him/His rhines@fbm.com D 415.954.4935 M 415.722.9956







235 Montgomery Street 17th FL San Francisco, CA 94104 www.fbm.com

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From: Michaels, Jon <MICHAELS@law.ucla.edu>Sent: Thursday, January 21, 2021 2:28 PM PST To: Carlson, Ann <carlson@law.ucla.edu>Subject: CONGRATS!!!

NHTSA is an amazing organization—and they do so much! So excited for you, for the environment, and for all of us who use the roads!

Jon

From: Jonathan B. Wiener, J.D. <wiener@law.duke.edu> **Sent:** Monday, January 25, 2021 7:54 PM PST

To: Carlson, Ann <carlson@law.ucla.edu>

Subject: congrats!!

Congrats Ann !!

I just saw you named chief counsel of NHTSA! Terrific place to be to shape the transition to EVs, AVs, etc. Fantastic news.

Best wishes, Jonathan

Jonathan B. Wiener

William R. & Thomas L. Perkins Professor of Law, and Professor of Environmental Policy & Public Policy Law School, Nicholas School of the Environment, and Sanford School of Public Policy Duke University | Email wiener@law.duke.edu | Web https://law.duke.edu/fac/wiener/

Co-Director, Duke Center on Risk, https://scienceandsociety.duke.edu/research/center-on-risk/

University Fellow, Resources for the Future (RFF), www.rff.org
Public Member, Administrative Conference of the United States (ACUS), www.acus.gov

Past President (2008), Society for Risk Analysis (SRA), www.sra.org; Co-chair, 2012 World Congress on Risk http://sra.org/worldcongress2012

From: Jason Mark <jason.mark@sierraclub.org>
Sent: Wednesday, January 27, 2021 10:20 AM PST
To: Carlson, Ann <carlson@law.ucla.edu>
Subject: Congrats!
Hey, Ann
I just saw the news that you've been appointed by the Biden Administration to serve as general counsel at NHTSA.
Congrats!
Keep up the great work. And keep in touch!
Jason

Editor, SIERRA

- -- Get the latest environmental news atwww.sierramagazine.org --
- -- Explore, Enjoy, and Protect the Planet. Become a member today. --

From:

Sent: Tuesday, February 02, 2021 3:34 PM PST **To:** Carlson, Ann <carlson@law.ucla.edu>

Subject: Congrats!

Attachment(s): "YodaKyber.jpg", "CamKyber.jpeg"

Hi Professor!

I know I'm a little late with the well-wishes, but I have a good excuse. We had a baby boy on 1/1/21, and it was an ordeal, so we've been playing catch up. Luckily, the little guy is doing really well now. I'll attach a couple photos here.

Though I've been a little frustrated at the grant of leases for a few oil drills, for the most part, I'm really encouraged by the Biden administration's positions and policy moves as they relate to the environment. It's not going to be perfect, but I'm glad you're there to steer them in the right direction.

If you need any help this summer, let me know--I'm still looking for a solid summer internship.

All the best,



From: Blumstein, Dan <marmots@ucla.edu> Sent: Friday, January 29, 2021 3:49 PM PST To: Carlson, Ann <carlson@law.ucla.edu>

Subject: congrats!

Dear Ann,

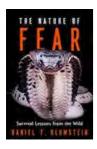
Congrats on your appointment to the Biden administration!! How exciting! Such promise! Thrive!

Dan

Daniel T. Blumstein, Professor
Department of Ecology & Evolutionary Biology Institute of the Environment & Sustainability University of California Los Angeles

Board President and Research Scientist The Rocky Mountain Biological Laboratory

O: (310) 267-4746 C: (310) 890-1455 W: <u>Blumstein Lab</u>



Don't be afraid to check out my new popular book: The Nature of Fear: Survival Lessons from the Wild [Harvard]

From: Dawn Reeves <dreeves@iwpnews.com> Sent: Monday, January 25, 2021 10:33 AM PST To: Carlson, Ann <carlson@law.ucla.edu>

Subject: congrats!

I am late to the party but just saw you were named chief counsel for NHTSA.

That's fantastic. Congratulations! Means you're moving to DC?

If yes I'd love to meet in person for a coffee when time/safely allows.

Dawn

From: Matt Petersen <matt@laincubator.org> Sent: Thursday, January 21, 2021 12:13 PM PST To: Carlson, Ann <carlson@law.ucla.edu>

Subject: Congrats!

Dear Ann.

Just a quick note to say congratulations on your new post with NHTSA! Looking forward to seeing the great work you will do for President Biden and our nation. Excited you and Steve will be there. Please let us know if we can ever be of assistance in an way.

Warmest regards, Matt

_

Matt Petersen, President & CEO Los Angeles Cleantech Incubator (LACI) www.laci.org From: Dan McGraw <dan@carbon-pulse.com> Sent: Thursday, January 21, 2021 8:07 AM PST To: Carlson, Ann <carlson@law.ucla.edu>

Subject: Congrats!

Hey Ann,

I just saw that you were nominated to the general counsel position at NHTSA. Congrats!

I just wanted to check that this will likely led you to resign from the IEMAC?

Thanks!

Dan McGraw Head of Americas Carbon Pulse 817-253-1689 From: Behdad, Ali <behdad@humnet.ucla.edu>
Sent: Sunday, January 31, 2021 4:55 PM PST
To: Carlson, Ann <carlson@law.ucla.edu>

Subject: congrats

Dear Ann,

I hope this email finds you well.

I am writing to congratulate you on your appointment as the Chief Counsel on NHTSA—we are very happy for you and grateful for the service you would be doing, albeit that we will miss you at UCLA.

Best wishes,

Ali

From: Willette, Demian < Demian. Willette@Imu.edu>

Sent: Friday, January 29, 2021 9:26 AM PST **To:** Carlson, Ann <carlson@law.ucla.edu>

Subject: Congratulations from a former student on your NHTSA appointment

Dear Professor Carlson,

I want to add my congratulations to you on your recent appointment to the Biden Administration as Chief Council of the National Highway Traffic Safety Administration!

It is wonderful news to hear and wish you many successes in your new position. I was delighted to hear the news and have shared it with others.

I continue to look back and drawn on lesson learned in the Environmental Law course I took with you back in 2009. I was one of a handful of Environmental Health Science doctoral students who huddles in the back row amongst all the law students. For example, this month several students and I published a research article on mislabeling of ecolabeled seafood in *Marine Policy* which includes a review of the current federal regulations.

Thank you for instruction and inspiration while I was your student, and congratulations again on your appointment!

Sincerely,

Demian Willette

Demian A. Willette, Ph.D.
Assistant Professor. Biology

Faculty Affiliate, Environmental Science Program Loyola Marymount University 1 LMU Drive, MS 8888, Los Angeles, CA 90045

E-mail: demian.willette@lmu.edu Office phone: 01-310-338-6425 Lab website: www.willettelab.com From: Jason Saxe
Sent: Thursday, January 21, 2021 10:26 AM PST

To: Carlson, Ann <carlson@law.ucla.edu> **Subject:** Congratulations from a former student

Hi Ann.

I wanted to reach out and say congratulations! I saw the announcement that you'll be named Chief Counsel at NHTSA (I assume if Sean retweets it, I can rely on it).

I've been engaging with some of my former colleagues at the Dept. of Commerce and NOAA and I can say one of the greatest pleasures of the last two months has been seeing the inspired public servants they're lining up to right the ship. I connected with some members of the transition team at Commerce and threw my name in the hat as the administration staffs up.

I'd make a pitch that I'd love to help you achieve NHTSA's mandate, but to be honest my experience in the land transportation/emissions regulation space is essentially nil. With that said, I live in DC now and would love to reconnect once we're all vaccinated and things start returning to normal.

Congratulations again!

Jason Saxe JD/MBA 2014 From: Hewitt, Alison <ahewitt@stratcomm.ucla.edu> Sent: Wednesday, January 27, 2021 3:15 PM PST

To: Carlson, Ann <carlson@law.ucla.edu> **Subject:** Congratulations on the appointment!

Hi Ann,

I wanted to send my heartfelt congratulations to you on your appointment as chief counsel of NHTSA! I'm so disappointed that you won't still be at UCLA, but absolutely thrilled to know that we'll have someone so smart and good-hearted working at a national level. I'll sleep better at night knowing you're working on emissions policies from the top.

My office would like to send you a UCLA mug as a small token of congratulations and a reminder of how glad we were to have you here (and how glad we'll be if you come back). Would you mind sharing your address so we can send that to you?

Congratulations again.

Best, Alison

Alison Hewitt
Senior Media Relations Officer
UCLA Strategic Communications | Office of Media Relations
ahewitt@stratcomm.ucla.edu
c 818-521-3175
she/her/hers

From: Mo, Angela (ENRD) <Angela.Mo@usdoj.gov> Sent: Wednesday, January 27, 2021 4:27 PM PST

To: Carlson, Ann <carlson@law.ucla.edu>

Subject: Congratulations on your new appointment

Dear Ann,

I just saw the good and exciting news about your new appointment at NHTSA. Congratulations and I hope it's a rewarding experience.

Also, a belated thank you for again extending an invitation to the last ELI annual dinner. Unfortunately I had a scheduling conflict, but I appreciate the invitation nonetheless.

All the best, Angela

Angela Mo
Senior Counsel
Environmental Enforcement Section
U.S. Department of Justice
(202) 514-1707
Express mail: 4 Constitution Square, 150 M Street, N.E., Room 2.900, Washington, D.C. 20002
Regular mail: Ben Franklin Station, P.O. Box 7611, Washington, D.C. 20044-7611

From: Volokh, Eugene < VOLOKH@law.ucla.edu> Sent: Thursday, January 21, 2021 9:06 AM PST To: Carlson, Ann < carlson@law.ucla.edu> Subject: Congratulations on your new position!

Very impressive.

From: Mnookin, Jennifer < MNOOKIN@law.ucla.edu>

Sent: Thursday, January 21, 2021 8:48 AM
To: Mnookin, Jennifer <MNOOKIN@law.ucla.edu>

Subject: Ann Carlson

Dear Colleagues,

I am writing to let you know that Ann Carlson will be taking a leave from the law school to begin serving in the Biden-Harris Administration effective yesterday, January 20. President Biden has appointed Ann to serve as Chief Counsel of the National Highway Traffic Safety Administration. NHTSA has joint responsibility, together with EPA, for regulating greenhouse gases/fuel economy from the transportation sector, and she is part of the Biden-Harris "whole agency" approach to addressing climate change. She will remain in Los Angeles working remotely in the immediate term but will move to Washington, D.C. when the pandemic eases.

Although we will miss her very much, I admire Ann for her willingness to serve in the new Administration to address climate change. Her new position continues the work she has done for many years on the issue our new President calls "the number one threat to humanity." Please join me in congratulating Ann on her new appointment.

All best,

Jennifer

Jennifer L. Mnookin

Dean and Ralph and Shirley Shapiro Professor of Law Co-Director, PULSE@UCLA Law (310) 825-8202



From: Ruben Aronin <ruben@betterworldgroup.com> Sent: Thursday, January 21, 2021 10:48 AM PST To: Carlson, Ann <carlson@law.ucla.edu>

Subject: Congratulations on your NHTSA appointment

Hi Ann.

Congratulations on your appointment as head legal counsel for NHTSA. That's so exciting and so fortuitous for aggressively moving forward on clean vehicle standards at last for a change.

All my best,

Ruben

PS. So glad to see Steve Cliff is heading there with you.

From: Greenberg, Mark D. <mdg@humnet.ucla.edu> Sent: Thursday, January 21, 2021 10:24 PM PST To: Carlson, Ann <carlson@law.ucla.edu>

Subject: CONGRATULATIONS!!!

Dear Ann,

This is extremely cool – not to mention extremely good for the country. Can't wait to hear more about it.

Love from all of us.

Mark

From: Mnookin, Jennifer <MNOOKIN@law.ucla.edu>

Sent: Thursday, January 21, 2021 8:48 AM **To:** Mnookin, Jennifer <mnookin@law.ucla.edu>

Subject: Ann Carlson

Dear Colleagues,

I am writing to let you know that Ann Carlson will be taking a leave from the law school to begin serving in the Biden-Harris Administration effective yesterday, January 20. President Biden has appointed Ann to serve as Chief Counsel of the National Highway Traffic Safety Administration. NHTSA has joint responsibility, together with EPA, for regulating greenhouse gases/fuel economy from the transportation sector, and she is part of the Biden-Harris "whole agency" approach to addressing climate change. She will remain in Los Angeles working remotely in the immediate term but will move to Washington, D.C. when the pandemic eases.

Although we will miss her very much, I admire Ann for her willingness to serve in the new Administration to address climate change. Her new position continues the work she has done for many years on the issue our new President calls "the number one threat to humanity." Please join me in congratulating Ann on her new appointment.

All best.

Jennifer

Jennifer L. Mnookin

Dean and Ralph and Shirley Shapiro Professor of Law Co-Director, PULSE@UCLA Law (310) 825-8202



From: Doug Carstens <dpc@cbcearthlaw.com>
Sent: Thursday, January 21, 2021 8:30 AM PST
To: Carlson, Ann <carlson@law.ucla.edu>
CC: Hecht, Sean <hecht@law.ucla.edu>
Subject: CONGRATULATIONS!!!

Dear Ann,

Congratulations on your appointment as NHTSA General Counsel!!!

What great and exciting news!

I hope you will enjoy Washington, and be able to do great things there. You're an inspiration for all of us.

Warmly, Doug From: Denise Grab <dgrab@rmi.org>

Sent: Friday, January 22, 2021 12:28 AM PST **To:** Carlson, Ann <carlson@law.ucla.edu>

Subject: Congratulations!

Hi Ann,

Congratulations on your appointment as NHTSA Chief Counsel! Our country is so lucky to have you bring your expertise and passion to this role. I genuinely can't think of a better person for the job and look forward to seeing what's next for NHTSA.

All best



Denise Grab

Manager, Carbon-Free Buildings Program
Pronouns: she/her/hers
Mobile +1 510.501.6380

1901 Harrison Street, Suite 200 | Oakland, CA | 94612

rmi.org | follow us

Creating a clean, prosperous, and secure low-carbon energy future

From: Rechtschaffen, Cliff < Cliff.Rechtschaffen@cpuc.ca.gov>

Sent: Thursday, January 21, 2021 4:20 PM PST To: Carlson, Ann <carlson@law.ucla.edu>

Subject: Congratulations!

Hi Ann

Congrats on the NHTSA job—very very exciting! Lord knows we'll need a super knowledgeable & meticulous lawyer like you there to unwind the damage of the 4 years. Good luck & hope you enjoy it; you're there at a critically important juncture.

Best

Cliff

Sent: Friday, January 22, 2021 5:29 AM PST To: Carlson, Ann <carlson@law.ucla.edu>

Subject: Congratulations!

Good morning Ann,

Congratulations! I am so excited for you to take such an important role with the Biden Administration. What a wonderful opportunity in which you are going to shine. Give em' hell!

Good luck! Jonathan

Jonathan Rosenbloom

Professor of Law, Vermont Law School Executive Director, Sustainable Development Code

Office: 802-831-1215

Remarkable Cities and the Fight Against Climate Change

Articles on SSRN

From: Jonathan Rosenbloom

Sent: Friday, January 15, 2021 10:34 PM To: Carlson, Ann <carlson@law.ucla.edu>

Subject: RE: workshop invitation

Thanks again for this opportunity Ann,

I hope all is well with you. I'll miss you in the class, but it just means I'll have to invite myself back when you return and COVID is under control so I can enjoy the warm sun of LA in winter.

Take care and have a good weekend! Jonathan

Jonathan Rosenbloom

Professor of Law, Vermont Law School Executive Director, Sustainable Development Code

Office: 802.831.1215

Remarkable Cities and the Fight Against Climate Change Articles on SSRN

From: Carlson, Ann < carlson@law.ucla.edu> Sent: Thursday, January 14, 2021 1:36 PM

To: Jonathan Rosenbloom < irosenbloom@vermontlaw.edu >

Cc: Boyd, William < BOYD@law.ucla.edu >

Subject: Re: workshop invitation

Great, Jonathan. Thank you! I do need to share some news with you -- it turns out that I'll be taking a leave this semester and William Boyd will be teaching in my place. All is well with me but my plans have changed. William has co-taught the class with me in a previous year. I've cc'd him here.

Here is the way the class typically works. You should plan to speak for only 10 minutes or so. The students will, of course, have read the paper and will have questions for you. For your remarks, you might want to (but need not) address the following:

- 1) how did you come to write about the topic?
- 2) what are you struggling with/could use additional help on?
- 3) how early or late in the project are you -- that can help students assess how open you are to major changes
- 4) who is your audience? Is your audience the general public, environmentalists, or whom?
- 5) how does this fit in with your other work (only if you think it'd help students situate the project.)

Many of the students have background in environmental policy or law but not all. They're a great group of students.

Half the students will have written reaction papers to your paper and William will send them to you before you speak to the students. It's a fun experience!

Thanks so much.

Best.

Ann
Ann Carlson
Shirley Shapiro Professor of Environmental Law
Faculty Co-Director, Emmett Institute on Climate Change and the Environment
UCLA School of Law
(310) 206-9496

From: Jonathan Rosenbloom < irosenbloom@vermontlaw.edu>

Sent: Thursday, January 14, 2021 10:30 AM **To:** Carlson, Ann < <u>carlson@law.ucla.edu</u>>

Subject: RE: workshop invitation

Hi Ann,

I would be honored to join you all on February 11th! I'll circulate the paper in about two weeks. Just a heads up, it is not going to be pretty! That said, I have a few significant questions that I welcome thoughts on, as well as any other points the students may raise. In an earlier email you mentioned that you have some suggestions for me to set forth a few comments about the draft. I'll keep an eye out for those as well.

How long is ideal for the presentation? I'm really looking forward to the feedback, comments, and discussion.

Thanks for this opportunity!

Sincerely, Jonathan

Jonathan Rosenbloom

Professor of Law, Vermont Law School Executive Director, <u>Sustainable Development Code</u>

Office: 802.831.1215

Remarkable Cities and the Fight Against Climate Change Articles on SSRN

From: Carlson, Ann < carlson@law.ucla.edu > Sent: Thursday, January 14, 2021 12:22 PM

To: Jonathan Rosenbloom < <u>irosenbloom@vermontlaw.edu</u>>

Subject: Re: workshop invitation

So would Feb 11 work for you?

On Jan 14, 2021, at 8:04 AM, Carlson, Ann carlson@law.ucla.edu> wrote:

Hi Jonathan - the class goes for an hour and a half. Most of that is in conversation with the students. The paper can be in a very early stage so long as there's enough there to engage the students.

On Jan 14, 2021, at 5:11 AM, Jonathan Rosenbloom jrosenbloom@vermontlaw.edu> wrote:

Good morning Ann,

I hope you too are doing well given the current state of US affairs.

Thanks for following up on this. When does the class conclude on Thursdays? And how developed should the paper be?

Sincerely,

Jonathan

Jonathan Rosenbloom

Professor of Law, Vermont Law School

Executive Director, Sustainable Development Code

Office: 802.831.1215

On Jan 12, 2021, at 8:01 PM, Carlson, Ann carlson@law.ucla.edu wrote:

Hi Jonathan,

Following up about the workshop this spring and including William Boyd, who will be part of the teaching team. As I mentioned previously, the course meets on several Thursdays

at 6:00 pst (for the speaker). Any chance you can make it Feb 11? We will need the paper two weeks before that in order to circulate to students and have them write response papers. We can probably make other dates work if the 11th won't.

Thanks and I hope you're hanging in during the all the tumult.

Ann Carlson
Shirley Shapiro Professor of Environmental Law
Faculty Co-Director, Emmett Institute on Climate Change and the Environment
UCLA School of Law
(310) 206-9496

From: Jonathan Rosenbloom < irosenbloom@vermontlaw.edu>

Sent: Tuesday, August 11, 2020 10:49 AM **To:** Carlson, Ann <<u>carlson@law.ucla.edu</u>>

Subject: RE: workshop invitation

Hi Ann,

That is fabulous! The paper will be in much better shape and I'll likely be able to engage on a deeper level. Thursdays will not be an issue in the Spring.

Thanks again for letting me participate. I'm really looking forward to it. When you have the spring date(s), please let me know.

Sincerely, Jonathan

Jonathan Rosenbloom

Professor of Law, Vermont Law School Executive Director, <u>Sustainable Development Code</u>

Office: 802-831-1215

New Book: Remarkable Cities and the Fight Against Climate Change

Articles on SSRN

From: Carlson, Ann [mailto:carlson@law.ucla.edu]

Sent: Tuesday, August 11, 2020 1:46 PM

To: Jonathan Rosenbloom < irosenbloom@vermontlaw.edu >

Subject: Re: workshop invitation

Hi Jonathan,

Turns out those dates are now booked. Two possibilities -- if you're ready, we can do an earlier time or if not, what about in the spring? no dates selected yet though the course will again be on a Thursday. There will be five or six dates to choose from. If possible, the course will be in person so it would involve travel but of course we have no idea yet what the future holds.

Let me know what you think. Thanks!

Ann Carlson Shirley Shapiro Professor of Environmental Law Faculty Co-Director, Emmett Institute on Climate Change and the Environment UCLA School of Law (310) 206-9496

From: Jonathan Rosenbloom < irosenbloom@vermontlaw.edu >

Sent: Sunday, August 9, 2020 6:01 PM **To:** Carlson, Ann <<u>carlson@law.ucla.edu</u>>

Subject: RE: workshop invitation

Hi Ann,

Thanks for your willingness to work with me on this. How about slating me in for one of the later dates, preferably Nov. 12th or Oct 15, 29 (later better!). One more little, maybe big, obstacle, I teach twice on Thursdays 11:20am-12:35pm and 3:30pm-5pm (EDT). Does your class time conflict? I hope not and I'm really looking forward to it.

Sincerely,

Jonathan

Jonathan Rosenbloom

Professor of Law, Vermont Law School Executive Director, Sustainable Development Code

Office: 802.831.1215

New Book: Remarkable Cities and the Fight Against Climate Change

Articles on SSRN

From: Carlson, Ann < carlson@law.ucla.edu> **Sent:** Wednesday, August 5, 2020 1:47 PM

To: Jonathan Rosenbloom < irosenbloom@vermontlaw.edu >

Subject: Re: workshop invitation

Hi Jonathan,

So sorry to be slow in responding. Yes, more time is fine (since I've already given it to you by my inaction!). Any update in your thinking? I'd love to have you share some of your work on planning/land use and environmental justice but the other articles sound good too.

Ann Carlson Shirley Shapiro Professor of Environmental Law Faculty Co-Director, Emmett Institute on Climate Change and the Environment UCLA School of Law (310) 206-9496

From: Jonathan Rosenbloom < irosenbloom@vermontlaw.edu>

Sent: Wednesday, July 29, 2020 6:56 PM To: Carlson, Ann < carlson@law.ucla.edu>

Subject: Re: workshop invitation

Hi Ann.

Wonderful to hear from you and similarly your Facebook posts are fantastic and it seems like you're enjoying the summer as much as we possibly can at this moment.

Thanks so much for this invitation and I would love to participate. I suspect it would really help move my piece forward. Throughout the day I've been trying to think if I have a piece that fits the bill or, more conveniently, if the piece I'm working on would fit the class. And, unfortunately, I'm not sure it does. Can you give me a little bit more time to think about it? When do you need an answer?

The piece I'm working on is a local green infrastructure piece in the MS watershed and the ability of local governments to circumvent some state preemption around pesticide and fertilizer regulation. The piece I was going to work on after that takes a holistic look at local development and energy. But I'm not sure I can have something really useful for the class by October. Anyhow, this is more information than you asked for. I look forward to hearing from you. Sincerely, Jonathan

Jonathan Rosenbloom Professor of Law, Vermont Law School Executive Director, Sustainable Development Code

Office: 802.831.1215

On Jul 29, 2020, at 12:56 PM, Carlson, Ann <arlson@law.ucla.edu> wrote:

Hi Jonathan,

Nice to see from FB that you and your family are enjoying Vermont. So beautiful there. Hope you're hanging in during these crazy times. Looks like Vermont is at least in better shape than most other states.

I'm writing because I'm teaching a Climate and Energy workshop in the next academic year and I'm very much hoping you'd be willing to present a work in progress to my students via zoom. The workshop format involves submitting a draft to our students two weeks before you present; students then provide written responses to you a week prior to the workshop event. A week later. you then participate in a zoom session with students -- the idea is to have you set forth a few comments about the draft (I'll send you suggestions separately before you present) and then engage with the students, who will ask you questions and make comments on it. There will be about 16 students in the

class. Normally, I'd have you come out in person but of course nothing is normal right now and at the rate we're going I don't think you want to fly into L.A. during the pandemic!

The course is taught over the entire academic year but we're looking to schedule our fall talks first. Any chance I could persuade you to come on any of the following dates?

Sept 17 October 1 Oct 15 Oct 29 Nov 12

If you're game, would you send us two or three dates that work for you and I'll accommodate one of them?

Thanks much! I'd love to have our students engage with your work.

Best,

Ann

Ann Carlson Shirley Shapiro Professor of Environmental Law Faculty Co-Director, Emmett Institute on Climate Change and the Environment UCLA School of Law (310) 206-9496

From: Jocelyn Samuels
Sent: Thursday, January 28, 2021 8:22 AM PST
To: Carlson, Ann <carlson@law.ucla.edu>

Subject: Congratulations!

Ann --

I just heard the wonderful news about your new role at NHTSA! I'm thrilled that you will be joining us feds and know how transformative your work will

Will you be moving to DC at any point? I would love to welcome you to town.

Hope you are staying safe and healthy and embracing this new adventure. What a difference a week makes!

All my best,

Jocelyn

From: Poulakidas, Jennifer < ipoulakidas@support.ucla.edu>

Sent: Sunday, January 24, 2021 9:46 PM PST **To:** Carlson, Ann <carlson@law.ucla.edu>

Subject: congratulations!

Hello, Ann -

BIG congratulations to you on your very exciting appointment to the Biden administration! There is no doubt you will be a force at NHTSA and will play a significant role in getting our country back on the right track with respect to addressing the climate crisis. Of course, never hesitate to let me know if we can be helpful to you as you take on this important job. And please come back to UCLA after this J

All the best, jennifer

p.s. a good friend, Kei Koizumi, is the chief of staff at OSTP. He served in OSTP under Obama/Holdren as well. If you don't already know him and would be interested in an introduction, I'd be happy to do that!

Jennifer Poulakidas Associate Vice Chancellor Government and Community Relations jpoulakidas@support.ucla.edu 310.794.6808 direct 202.557.1888 cell



From: Alexandra Klass <aklass@umn.edu> Sent: Saturday, January 30, 2021 11:29 AM PST To: Carlson, Ann <carlson@law.ucla.edu>

Subject: Congratulations!

Dear Ann -- I am so excited about your position at NHTSA. What an accomplishment and so well deserved. I am looking forward to following your adventures and all the great things you will do (or at least try to do).

Best,

Alex

Alexandra B. Klass Distinguished McKnight University Professor University of Minnesota Law School 229-19th Avenue South Minneapolis, MN 55455 aklass@umn.edu

612-625-0155

Bio: https://www.law.umn.edu/profiles/alexandra-klass

From: Jesse Lueders

Sent: Wednesday, January 27, 2021 5:25 PM PST

To: Carlson, Ann <carlson@law.ucla.edu>

Subject: Congratulations!

 $\mbox{Hi Ann - I'm tremendously happy to hear about your appointment to NHTSA. Good for you, and great for the rest of us! You'll do some excellent work there.$

The other UCLA alums at EPA Region 9 share my enthusiasm—we've been emailing around today. Congratulations from all!

From: Nicholas van Aelstyn < Nvan Aelstyn @sheppardmullin.com >

Sent: Friday, January 22, 2021 5:59 PM PST **To:** Carlson, Ann <carlson@law.ucla.edu>

Subject: Congratulations!

Hi Ann,

I just read that you've been nominated to serve as General Counsel to NHTSA. And that you'll be serving along with Steve Cliff from ARB. That's fantastic news! Both for our country and you. Congratulations! The only downside is that we'll lose a calm and cogent voice on IEMAC and Legal Planet. Best of luck to you!

Warm regards,

Nico

Nicholas W. van Aelstyn | Partner +1 415-774-2970 | direct +1 415-265-2495 | mobile

NvanAelstyn@sheppardmullin.com | Bio

SheppardMullin

Four Embarcadero Center, 17th Floor San Francisco, CA 94111-4109 +1 415-434-9100 | main www.sheppardmullin.com | LinkedIn | Twitter

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From: H. Jordan Diamond <idiamond@law.berkeley.edu>

Sent: Thursday, January 21, 2021 10:06 AM PST

To: Carlson, Ann <carlson@law.ucla.edu>

CC: Daniel FARBER <dfarber@law.berkeley.edu>; Holly Doremus <hdoremus@law.berkeley.edu>; Ted Lamm

<tlamm@law.berkeley.edu>; Ken Alex <ken.alex@berkeley.edu>; Eric Biber <ebiber@law.berkeley.edu>; Ethan Elkind

<eelkind@law.berkeley.edu>; Claudia Polsky <cpolsky@law.berkeley.edu> Subject: Congratulations!

Ann,

We just learned of your appointment as Chief Counsel of NHTSA, and simply wanted to send a note of heartfelt excitement and congratulations from all of your Berkeley E&E colleagues. We will miss having you "next door" but the administration is immensely lucky to get your expertise and dedication, and we can't wait to see the changes you drive.

Congratulations, Ann!

All the best, Dan, Holly, Eric, Claudia, Ken, Ethan, Ted, and Jordan

H. Jordan Diamond (she/her/hers) Executive Director, Center for Law, Energy & the Environment School of Law, University of California, Berkeley clee.berkeley.edu

From: Light, Sarah E < lightsa@wharton.upenn.edu> **Sent:** Monday, January 25, 2021 12:04 PM PST To: Carlson, Ann <carlson@law.ucla.edu>

Subject: Congratulations!

Congratulations on your appointment at NHTSA! That is so terrific. Looking forward to your imprint on the agency.

Warmly, Sarah

Sarah E. Light Associate Professor of Legal Studies & Business Ethics The Wharton School, University of Pennsylvania https://lgst.wharton.upenn.edu/profile/lightsa/

Faculty Co-Lead, Wharton Business, Climate, and Environment Lab The Wharton Risk Center

https://riskcenter.wharton.upenn.edu/business-climate-and-environment-lab/

From: Anabtawi, Iman <Anabtawi@law.ucla.edu> Sent: Thursday, January 21, 2021 9:20 AM PST To: Carlson, Ann <carlson@law.ucla.edu>

Subject: Congratulations!

So glad to hear this, Ann. I know you'll be an asset to the Administration. No need to get back to me re LSOE. I've communicated with Scott and we'll all regroup. All my best, Iman

From: Mnookin, Jennifer <MNOOKIN@law.ucla.edu> Sent: Thursday, January 21, 2021 8:48 AM To: Mnookin, Jennifer <MNOOKIN@law.ucla.edu>

Subject: Ann Carlson

Dear Colleagues,

I am writing to let you know that Ann Carlson will be taking a leave from the law school to begin serving in the Biden-Harris Administration effective yesterday, January 20. President Biden has appointed Ann to serve as Chief Counsel of the National Highway Traffic Safety Administration. NHTSA has joint responsibility, together with EPA, for regulating greenhouse gases/fuel economy from the transportation sector, and she is part of the Biden-Harris "whole agency" approach to addressing climate change. She will remain in Los Angeles working remotely in the immediate term but will move to Washington, D.C. when the pandemic eases.

Although we will miss her very much, I admire Ann for her willingness to serve in the new Administration to address climate change. Her new position continues the work she has done for many years on the issue our new President calls "the number one threat to humanity." Please join me in congratulating Ann on her new appointment.

All best,

Jennifer

Jennifer L. Mnookin

Dean and Ralph and Shirley Shapiro Professor of Law Co-Director, PULSE@UCLA Law (310) 825-8202



From: Connie Kasari kasari@gseis.ucla.edu Sent: Friday, January 29, 2021 3:35 PM PST To: Carlson, Ann <carlson@law.ucla.edu

Subject: congratulations!

Ann..

Seriously you are a rock star! Congrats on your new appointment in the Biden administration....and to think "I knew you

enjoy, hope you are surviving the crazy pandemic! Best and Happy 2021 (new administration, new hope!) Connie

Connie Kasari, PhD
Distinguished Professor
Human Development & Psychology
GSE&IS
Center for Autism Research & Treatment
Semel Institute
UCLA

kasari@gseis.ucla.edu

From: Quiros, David@ARB < David.Quiros@arb.ca.gov> Sent: Thursday, January 21, 2021 2:01 PM PST

To: Carlson, Ann <carlson@law.ucla.edu>

Subject: Congratulations!

Hi Professor Carlson,

I just saw that you will be NHSTA's General Counsel under the Biden Administration. Big congratulations to you! And, I hope everything else is going well for you, and you don't miss UCLA too much. I am grateful that I was able to take your environmental law course back in 2011, and for having you on my doctoral committee. Best Regards,

David

David C. Quiros, D.Env. Manager, Freight Technology Section Transportation and Toxics Division California Air Resources Board phone (telework): (916) 264-9378 | david.quiros@arb.ca.gov From: Colgan, Beth <colgan@law.ucla.edu> Sent: Thursday, January 21, 2021 9:09 AM PST To: Carlson, Ann <carlson@law.ucla.edu>

Subject: Congratulations!

Ann,

This is so very exciting and well-deserved. While we will miss you here at UCLA, as an American I could not be happier that you will be serving in this role.

Let me also just say thank you for all of your support—from my initial hiring and beyond—over the last several years. It has meant a lot to have you as a role model and friend.

Best, Beth

Sent from my iPhone

Begin forwarded message:

From: "Mnookin, Jennifer" < MNOOKIN@law.ucla.edu>

Date: January 21, 2021 at 8:48:10 AM PST

To: "Mnookin, Jennifer" < MNOOKIN@law.ucla.edu>

Subject: Ann Carlson

Dear Colleagues,

I am writing to let you know that Ann Carlson will be taking a leave from the law school to begin serving in the Biden-Harris Administration effective yesterday, January 20. President Biden has appointed Ann to serve as Chief Counsel of the National Highway Traffic Safety Administration. NHTSA has joint responsibility, together with EPA, for regulating greenhouse gases/fuel economy from the transportation sector, and she is part of the Biden-Harris "whole agency" approach to addressing climate change. She will remain in Los Angeles working remotely in the immediate term but will move to Washington, D.C. when the pandemic eases.

Although we will miss her very much, I admire Ann for her willingness to serve in the new Administration to address climate change. Her new position continues the work she has done for many years on the issue our new President calls "the number one threat to humanity." Please join me in congratulating Ann on her new appointment.

All best.

Jennifer

Jennifer L. Mnookin

Dean and Ralph and Shirley Shapiro Professor of Law Co-Director, PULSE@UCLA Law (310) 825-8202

<image001.png>

From: Emerson, Blake <Emerson@law.ucla.edu> Sent: Thursday, January 21, 2021 10:40 AM PST To: Carlson, Ann <carlson@law.ucla.edu>

Subject: congratulations!

Dear Ann,

Congratulations on your appointment as Chief Counsel of NHTSA. What a fitting honor and crucial role. If there are ever general administrative law questions that arise and you need a sounding board, please feel free to reach out.

All the best, Blake

Blake Emerson Assistant Professor of Law UCLA School of Law 385 Charles E. Young Drive East, Room 2458 Los Angeles, CA 90095 Phone: (310) 825-4895

Email: emerson@law.ucla.edu

From: Richard Frank
Sent: Thursday, January 21, 2021 12:42 PM PST
To: Carlson, Ann <carlson@law.ucla.edu>

Subject: Congratulations...

...on your new post in the Biden Administration!

Go do good and great things in D.C.

Rick

Sent from my iPad

From: Eric Blau <ericblau@san.rr.com>
Sent: Sunday, January 24, 2021 4:27 PM PST
To: Carlson, Ann <carlson@law.ucla.edu>

Subject: congratulations

Hi Ann,

Our friend/neighbor Harry Litman alerted us to the great news---

Congratulations on your new job with the NHTSA; seems we only write to acknowledge kudos for you! Hope you and Pete B. can help make our transportation systems more efficient and environmentally friendly.

Jullie Gollin Eric Blau From: Patricia O'Toole

Sent: Thursday, January 28, 2021 11:29 AM PST To: Carlson, Ann <carlson@law.ucla.edu>

Subject: Congratulations

Hi, Ann:

I heard about your appointment as Chief Counsel of the NHTSA. A well-deserved honor, and I wanted to add my congratulations to the many I'm sure you're receiving. It will undoubtedly be a challenge, and I hope a rewarding and fulfilling one. Congratulations!

Best regards,

Pat O'Toole

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Patricia M. O'Toole, Esq. The O'Toole Law Firm (213) 630-4220

From:
Sent: Friday, February 05, 2021 10:59 AM PST
To: Carlson, Ann <carlson@law.ucla.edu>

Subject: Congratulations

Hi Professor Carlson,

Just wanted to say congratulations on your position as Chief Counsel at NHTSA! I'm honored to have taken Property Law with you.

Hope you and friends and family are doing well.



J.D., 2020 UCLA School of Law

From: Ginsburg, David <GINSBURG@law.ucla.edu> Sent: Thursday, January 21, 2021 12:29 PM PST To: Carlson, Ann <carlson@law.ucla.edu>

Subject: Congratulations

Very well done, Ann. I'm very excited for you, and the country.

All best, David

DAVID R. GINSBURG (Retired)

Ziffren Center for Media, Entertainment, Technology and Sports Law UCLA School of Law 385 Charles Young Drive East Los Angeles, CA 90095 310 433-6366

From: Mnookin, Jennifer MNOOKIN@law.ucla.edu

Sent: January 21, 2021 8:48:10 AM

To: Mnookin, Jennifer MNOOKIN@law.ucla.edu

Subject: Ann Carlson

Dear Colleagues,

I am writing to let you know that Ann Carlson will be taking a leave from the law school to begin serving in the Biden-Harris Administration effective yesterday, January 20. President Biden has appointed Ann to serve as Chief Counsel of the National Highway Traffic Safety Administration. NHTSA has joint responsibility, together with EPA, for regulating greenhouse gases/fuel economy from the transportation sector, and she is part of the Biden-Harris "whole agency" approach to addressing climate change. She will remain in Los Angeles working remotely in the immediate term but will move to Washington, D.C. when the pandemic eases.

Although we will miss her very much, I admire Ann for her willingness to serve in the new Administration to address climate change. Her new position continues the work she has done for many years on the issue our new President calls "the number one threat to humanity." Please join me in congratulating Ann on her new appointment.

All best,

Jennifer

Jennifer L. Mnookin

Dean and Ralph and Shirley Shapiro Professor of Law Co-Director, PULSE@UCLA Law (310) 825-8202



From: Block, Gene

Sent: Thursday, January 21, 2021 9:39 PM PST To: Carlson, Ann <carlson@law.ucla.edu>

Subject: Congratulations

I learned through my special sources up in Eugene, Oregon that you have been appointed as Chief Counsel at NHTSA. My most sincere congratulations. I know you will add greatly to the quality of this governmental organization. I am still celebrating the regime change on Wednesday!

Best, Gene

Gene D. Block UCLA Chancellor Box 951405, 2147 Murphy Hall Los Angeles, California 90095-1405 Phone: (310) 825-2151 Fax: (310) 206-6030

From: Foldy, Ben <ben.foldy@wsj.com>

Sent: Thursday, January 21, 2021 1:43 PM PST **To:** Carlson, Ann <carlson@law.ucla.edu>

Subject: Congratulations

Hi Ann,

My name's Ben Foldy and I'm a reporter at the Wall Street Journal, where I cover the auto industry with a particular focus on EVs and federal policy. Along with my colleague Tim Puko who covers the EPA, I've spearheaded most of the paper's coverage of CAFE/SAFE/CARB since I started at the paper in June '19, including breaking the Trump administration's investigation into the 4 OEMs that signed on with CARB.

I genuinely *love* covering NHTSA from both an environmental and safety policy perspective and would love to connect at your convenience to introduce myself and chat about your vision for the agency. Not looking to write a story or anything like that, just a completely on background, getting to know you kind of call.

I imagine you're very busy, so please reach out at your convenience. I'm at 313-330-4323 oben.foldy@wsj.com. I hope you and yours are healthy and well and look forward to connecting soon.

Many thanks, Ben

--

Ben Foldy

Autos Reporter, The Wall Street Journal He/his

Mobile/Signal/WhatsApp: +1-313-330-4323 (Use the Signal app for secure calls/texts)

E: ben.foldy@wsj.com T: @benfoldy P: ben.foldy@protonmail.com

From: Stein, Julia <steinj@law.ucla.edu>

Sent: Thursday, January 21, 2021 11:15 AM PST

To: Carlson, Ann <carlson@law.ucla.edu>; Foldy, Ben <ben.foldy@wsj.com>

Subject: Connecting Ben and Ann

Hi Ann.

Congratulations again—NHTSA is so lucky to have you!

By this e-mail, just wanted to put you in touch with Ben Foldy of the Wall Street Journal, with whom I've spoken a few times about the clean cars litigation and who was excited to see the news of your nomination.

Thanks much!

Julia E. Stein (she/her/hers)

Clinical Supervising Attorney, Frank G. Wells Environmental Law Clinic Project Director, Emmett Institute on Climate Change & the Environment



UCLA School of Law 385 Charles E. Young Dr. East | 1242 Law Building Los Angeles, CA 90024 (310) 794-5132 http://law.ucla.edu/emmett From: Bradley M. Marten martenlaw.com Sent: Thursday, January 21, 2021 11:43 PM PST To: Carlson, Ann carlson@law.ucla.edu CC: Katie Thomson kathomso@amazon.com

Subject: Coolio

Ann:

This is really great. You'll be able to make a big impact at DOT - maybe more than at any other agency. The immediate and very near term decarbonization opportunities with trains, planes and automobiles are enormous, as you of course know better than me. Why, I just bought an electric Volvo myself.

You may run into my son, David, in your work. He is the lead transportation lawyer for Senator Cantwell (D-WA), who now chairs the Commerce Committee. He spent the last year worling on an airline safety bill (following the Boeing Max crashes) - which was enacted in December along with the most recent stimulus package. He's a great kid (takes after his mother).

Stay in touch. Maybe we can lure you into a guest speaker role on Katie's GreenTech webinar on transportation. Stay well.

Best - Brad

Sent from my iPhone

On Jan 21, 2021, at 9:17 AM, Carlson, Ann <carlson@law.ucla.edu> wrote:

Dear colleagues,

I am writing to let you know that I am taking on a new role and, as a result, will have to resign from the ELI Board. Yesterday, I was sworn in as Chief Counsel of NHTSA. As you of course know, NHTSA plays a key role in reducing carbon emissions from the transportation sector and my appointment is, I think, an indication that President Biden is serious about a "whole government" approach to climate change.

I'm incredibly excited about my new role but very sad that I will no longer be able to serve on the ELI board. Serving with all of you has been a remarkably enriching experience and seeing ELI's influence and effectiveness grow under Scott's leadership has been so rewarding. I will miss all of you, though can perhaps see more of some of you once I move east when the pandemic recedes and the Department of Transportation brings more of its workforce back into the building. For now I'll remain in L.A. working remotely.

Thank you all for your friendship, environmental commitment and work for ELI. Let's remain in touch.

All best,

Ann

Ann Carlson Shirley Shapiro Professor of Environmental Law Faculty Co-Director, Emmett Institute on Climate Change and the Environment UCLA School of Law (310) 206-9496

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From: Juan Carlos Rodriguez < jc.rodriguez@law360.com>

Sent: Tuesday, January 19, 2021 11:07 AM PST To: Carlson, Ann <carlson@law.ucla.edu>

Subject: CPP/ACE rule decision

I was wondering if you are available to discuss the attached DC Circuit ruling on the Clean Power Plan/ACE rule? Trying to put something together looking at big takeaways from it such as what are the most important legal findings and why, what will the impact be on the Biden administration, what are the Supreme Court prospects if industry decides to appeal?

I am looking to do this interview today or tomorrow morning.

Thanks.

Juan Carlos Rodriguez Senior Environment Reporter

Legal News & Data 111 West 19th Street 5th Floor New York, NY 10011 Office: 646-783-7197

Cell: 505-353-2277

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From: Samantha Eley

Sent: Wednesday, January 27, 2021 12:51 PM PST

To: Carlson, Ann <carlson@law.ucla.edu>

Subject: DC

Hi Ann,

I hope you're well! It was great to see all the Moors the other night! It was such a great way to honor MorMor and Lynn given our current restrictions. I wanted to congratulate you on your new job as NHTSA Chief Counsel! I had heard that Biden was putting people with environmental chops into key positions along with spreading climate change policy over all fed departments, so it's nice to see it's true.

I'd love to grab a (socially distant) coffee with you once you're settled! Also, is Ian in DC? I thought I heard him say something about the inauguration over zoom. I've been in DC since 2017 and at my current job since late 2018. I'm at the Union of Concerned Scientists, a climate and energy NGO, doing legislative research, mostly around the food and agriculture space. I'm thinking about my next move and was hoping to get some advice from you.

Thank you, and congrats again!

Sam

From: Carlson, Ann (NHTSA) <ann.carlson@dot.gov>Sent: Thursday, January 28, 2021 8:35 PM PST To: Carlson, Ann <carlson@law.ucla.edu>Subject: document Attachment(s): "s1briefing.docx"

From: Carlson, Ann

Sent: Saturday, January 30, 2021 8:20 AM PST **To:** Carlson, Ann (NHTSA) <ann.carlson@dot.gov>

Subject: documents

Attachment(s): "Californiataxes.pdf", "Ethics Pledge.signed.pdf", "Ethicsack.signed.pdf", "SF-61 (Appointment

Affadavit).signed.pdf"

Ann Carlson Shirley Shapiro Professor of Environmental Law Faculty Co-Director, Emmett Institute on Climate Change and the Environment UCLA School of Law (310) 206-9496



EMPLOYEE'S WITHHOLDING ALLOWANCE CERTIFICATE

Complete this form so that your employer can withhold the correct California state income tax from your paycheck.

Er	nter Personal Information			
Fi	rst, Middle, Last Name	Social Security Number		
A	ddress	Filing Status		
City, State, and ZIP Code		SINGLE or MARRIED (with two or more incomes) MARRIED (one income) HEAD OF HOUSEHOLD		
1.	Total Number of Allowances you're claiming (Use Worksheet A for allowances. Use other worksheets on the following pages as appl			
2.	. Additional amount, if any, you want withheld each pay period (if employer agrees), (Worksheet B and C) OR			
Exe	emption from Withholding			
3.	I claim exemption from withholding for 2020, and I certify I mee \ensuremath{OR}	et both of the conditions for exemption. Write "Exempt" here		
4.	I certify under penalty of perjury that I am not subject to Californ forth under the Service Member Civil Relief Act, as amended by t and the Veterans Benefits and Transition Act of 2018.	o contract of the contract of		
	der the penalties of perjury, I certify that the number of withholding which I am entitled or, if claiming exemption from withholding, that	ng allowances claimed on this certificate does not exceed the number nat I am entitled to claim the exempt status.		
Em	ployee's Signature	Date		
Er	mployer's Section: Employer's Name and Address	California Employer Payroll Tax Account Number		

PURPOSE: This certificate, DE 4, is for **California Personal Income Tax (PIT) withholding** purposes only. The DE 4 is used to compute the amount of taxes to be withheld from your wages, by your employer, to accurately reflect your state tax withholding obligation.

Beginning January 1, 2020, Employee's Withholding Allowance Certificate (Form W-4) from the Internal Revenue Service (IRS) will be used for federal income tax withholding **only**. You must file the state form Employee's Withholding Allowance Certificate (DE 4) to determine the appropriate California Personal Income Tax (PIT) withholding.

If you do not provide your employer with a withholding certificate, the employer must use Single with Zero withholding allowance.

CHECK YOUR WITHHOLDING: After your DE 4 takes effect, compare the state income tax withheld with your estimated total annual tax. For state withholding, use the worksheets on this form.

EXEMPTION FROM WITHHOLDING: If you wish to claim exempt, complete the federal Form W-4 and the state DE 4. You may claim exempt from withholding California income tax if you meet both of the following conditions for exemption:

- 1. You did not owe any federal/state income tax last year, and
- 2. You do not expect to owe any federal/state income tax this year. The exemption is good for one year.

If you continue to qualify for the exempt filing status, a new DE 4 designating EXEMPT must be submitted by February 15 each year to continue your exemption. If you are not having federal/state income tax withheld this year but expect to have a tax liability next year, you are required to give your employer a new DE 4 by December 1.

Member Service Civil Relief Act: Under this act, as provided by the Military Spouses Residency Relief Act and the Veterans Benefits and Transition Act of 2018, you may be exempt from California income tax on your wages if

- (i) your spouse is a member of the armed forces present in California in compliance with military orders;
- (ii) you are present in California solely to be with your spouse; and
- (iii) you maintain your domicile in another state.

If you claim exemption under **this** act, **check the box on Line 4**. You may be required to provide proof of exemption upon request.

The *California Employer's Guide* (DE 44) (PDF, 2.4 MB) (edd.ca.gov/pdf_pub_ctr/de44.pdf) provides the income tax withholding tables. This publication may be found by visiting Forms and Publications (edd.ca.gov/Payroll_Taxes/Forms_and_Publications.htm). To assist you in calculating your tax liability, please visit the Franchise Tax Board (FTB) (ftb.ca.gov).

If you need information on your last *California Resident Income Tax Return* (FTB Form 540), visit the Franchise Tax Board (FTB) (ftb.ca.gov).

NOTIFICATION: The burden of proof rests with the employee to show the correct California income tax withholding. Pursuant to section 4340-1(e) of **Title 22**, **California Code of Regulations (CCR)**, the FTB or the EDD may, by special direction in writing, require an employer to submit a Form W-4 or DE 4 when such forms are necessary for the administration of the withholding tax programs.

PENALTY: You may be fined \$500 if you file, with no reasonable basis, a DE 4 that results in less tax being withheld than is properly allowable. In addition, criminal penalties apply for willfully supplying false or fraudulent information or failing to supply information requiring an increase in withholding. This is provided by section 13101 of the **California Unemployment Insurance Code** and section 19176 of the **Revenue and Taxation Code**.

WORKSHEETS

INSTRUCTIONS — 1 — ALLOWANCES*

When determining your withholding allowances, you must consider your personal situation:

- Do you claim allowances for dependents or blindness?
- Will you itemize your deductions?
- Do you have more than one income coming into the household?

TWO-EARNERS/MULTIPLE INCOMES: When earnings are derived from more than one source, under-withholding may occur. If you have a working spouse or more than one job, it is best to check the box "SINGLE or MARRIED (with two or more incomes)." Figure the total number of allowances you are entitled to claim on all jobs using only one DE 4 form. Claim allowances with **one** employer.

Do **not** claim the same allowances with more than one employer. Your withholding will usually be most accurate when all allowances are claimed on the DE 4 filed for the highest paying job and zero allowances are claimed for the others.

MARRIED BUT NOT LIVING WITH YOUR SPOUSE: You may check the "Head of Household" marital status box if you meet all of the following tests:

- (1) Your spouse will not live with you **at any time** during the year;
- (2) You will furnish over half of the cost of maintaining a home for the entire year for yourself and your child or stepchild who qualifies as your dependent; and
- (3) You will file a separate return for the year.

HEAD OF HOUSEHOLD: To qualify, you must be unmarried or legally separated from your spouse and pay more than 50% of the costs of maintaining a home for the **entire** year for yourself and your dependent(s) or other qualifying individuals. Cost of maintaining the home includes such items as rent, property insurance, property taxes, mortgage interest, repairs, utilities, and cost of food. It does not include the individual's personal expenses or any amount which represents value of services performed by a member of the household of the taxpayer.

KSHEET A REGULAR WITHHOLDING ALLOWANCES	
Allowance for yourself — enter 1	(A)
Allowance for your spouse (if not separately claimed by your spouse) — enter 1	(B)
Allowance for blindness — yourself — enter 1	(C)
Allowance for blindness — your spouse (if not separately claimed by your spouse) — enter 1	(D)
Allowance(s) for dependent(s) — do not include yourself or your spouse	(E)
Total — add lines (A) through (E) above and enter on line 1 of the DE 4	(F)
	Allowance for yourself — enter 1 Allowance for your spouse (if not separately claimed by your spouse) — enter 1 Allowance for blindness — yourself — enter 1 Allowance for blindness — your spouse (if not separately claimed by your spouse) — enter 1 Allowance(s) for dependent(s) — do not include yourself or your spouse

INSTRUCTIONS — 2 — (OPTIONAL) ADDITIONAL WITHHOLDING ALLOWANCES

If you expect to itemize deductions on your California income tax return, you can claim additional withholding allowances. Use Worksheet B to determine whether your expected estimated deductions may entitle you to claim **one or more additional** withholding allowances. Use last year's FTB Form 540 as a model to calculate this year's withholding amounts.

Do not include deferred compensation, qualified pension payments, or flexible benefits, etc., that are deducted from your gross pay but are not taxed on this worksheet.

You may reduce the amount of tax withheld from your wages by claiming one additional withholding allowance for each \$1,000, or fraction of \$1,000, by which you expect your estimated deductions for the year to exceed your allowable standard deduction.

WORKSHEET B ESTIMATED DEDUCTIONS Use this worksheet only if you plan to itemize deductions, claim certain adjustments to income, or have a large amount of nonwage income not subject to withholding. 1. Enter an estimate of your itemized deductions for California taxes for this tax year as listed in the schedules in the FTB Form 540 1. 2. Enter \$9,074 if married filing joint with two or more allowances, unmarried head of household, or qualifying widow(er) with dependent(s) or \$4,537 if single or married filing separately, dual income married, or married with multiple employers 3. Subtract line 2 from line 1, enter difference Enter an estimate of your adjustments to income (alimony payments, IRA deposits) Add line 4 to line 3, enter sum Enter an estimate of your nonwage income (dividends, interest income, alimony receipts) 7. If line 5 is greater than line 6 (if less, see below [go to line 9]); Subtract line 6 from line 5, enter difference 8. Divide the amount on line 7 by \$1,000, round any fraction to the nearest whole number Add this number to Line F of Worksheet A and enter it on line 1 of the DE 4. Complete Worksheet C, if needed, otherwise stop here. 9. If line 6 is greater than line 5; Enter amount from line 6 (nonwage income) 10. Enter amount from line 5 (deductions) 11. Subtract line 10 from line 9, enter difference Complete Worksheet C

*Wages paid to registered domestic partners will be treated the same for state income tax purposes as wages paid to spouses for California PIT withholding and PIT wages. This law does not impact federal income tax law. A registered domestic partner means an individual partner in a domestic partner relationship within the meaning of section 297 of the Family Code. For more information, please call our Taxpayer Assistance Center at 1-888-745-3886.

WORKSHEET C

ADDITIONAL TAX WITHHOLDING AND ESTIMATED TAX

1.	Enter estimate of total wages for tax year 2020.	1.	
2.	Enter estimate of nonwage income (line 6 of Worksheet B).	2.	
3.	Add line 1 and line 2. Enter sum.	3.	
4.	Enter itemized deductions or standard deduction (line 1 or 2 of Worksheet B, whichever is largest).	4.	
5.	Enter adjustments to income (line 4 of Worksheet B).	5.	
6.	Add line 4 and line 5. Enter sum.	6.	
7.	Subtract line 6 from line 3. Enter difference.	7.	
8.	Figure your tax liability for the amount on line 7 by using the 2020 tax rate schedules below.	8.	
9.	Enter personal exemptions (line F of Worksheet A x \$134.20).	9.	
10.	Subtract line 9 from line 8. Enter difference.	10.	
11.	Enter any tax credits. (See FTB Form 540).	11.	
12.	Subtract line 11 from line 10. Enter difference. This is your total tax liability.	12.	
13.	Calculate the tax withheld and estimated to be withheld during 2020. Contact your employer to request the amount that will be withheld on your wages based on the marital status and number of withholding allowances you will claim for 2020. Multiply the estimated amount to be withheld by the number of pay periods left in the year. Add the total to the amount already withheld for 2020.	13.	
14.	Subtract line 13 from line 12. Enter difference. If this is less than zero, you do not need to have additional	•	
	taxes withheld.	14.	
15.	Divide line 14 by the number of pay periods remaining in the year. Enter this figure on line 2 of the DE 4.	15.	

NOTE: Your employer is not required to withhold the additional amount requested on line 2 of your DE 4. If your employer does not agree to withhold the additional amount, you may increase your withholdings as much as possible by using the "single" status with "zero" allowances. If the amount withheld still results in an underpayment of state income taxes, you may need to file quarterly estimates on Form 540-ES with the FTB to avoid a penalty.

THESE TABLES ARE FOR CALCULATING WORKSHEET C AND FOR 2020 ONLY

SINGLE PERSONS, DUAL INCOME MARRIED WITH MULTIPLE EMPLOYERS

IF THE TAXABLE INCOME IS		CC	MPUTED TAX	IS	
OVER	BUT NOT	OF AMO	UNT OVER	PLUS	
	OVER				
\$0	\$8,809	1.100%	\$0	\$0.00	
\$8,809	\$20,883	2.200%	\$8,809	\$96.90	
\$20,883	\$32,960	4.400%	\$20,883	\$362.53	
\$32,960	\$45,753	6.600%	\$32,960	\$893.92	
\$45,753	\$57,824	8.800%	\$45,753	\$1,738.26	
\$57,824	\$295,373	10.230%	\$57,824	\$2,800.51	
\$295,373	\$354,445	11.330%	\$295,373	\$27,101.77	
\$354,445	\$590,742	12.430%	\$354,445	\$33,794.63	
\$590,742	\$1,000,000	13.530%	\$590,742	\$63,166.35	
\$1,000,000	and over	14.630%	\$1,000,000	\$118,538.96	

UNMARRIED HEAD OF HOUSEHOLD

IF THE TAXABLE INCOME IS		CC	MPUTED TAX	IS
OVER	BUT NOT	OF AMO	UNT OVER	PLUS
	OVER			
\$0	\$17,629	1.100%	\$0	\$0.00
\$17,629	\$41,768	2.200%	\$17,629	\$193.92
\$41,768	\$53,843	4.400%	\$41,768	\$724.98
\$53,843	\$66,636	6.600%	\$53,843	\$1,256.28
\$66,636	\$78,710	8.800%	\$66,636	\$2,100.62
\$78,710	\$401,705	10.230%	\$78,710	\$3,163.13
\$401,705	\$482,047	11.330%	\$401,705	\$36,205.52
\$482,047	\$803,410	12.430%	\$482,047	\$45,308.27
\$803,410	\$1,000,000	13.530%	\$803,410	\$85,253.69
\$1,000,000	and over	14.630%	\$1,000,000	\$111,852.32

MARRIED PERSONS

IF THE TAXABLE INCOME IS		CO	MPUTED TAX	IS
OVER	BUT NOT	OF AMO	UNT OVER	PLUS
	OVER			
\$0	\$17,618	1.100%	\$0	\$0.00
\$17,618	\$41,766	2.200%	\$17,618	\$193.80
\$41,766	\$65,920	4.400%	\$41,766	\$725.06
\$65,920	\$91,506	6.600%	\$65,920	\$1,787.84
\$91,506	\$115,648	8.800%	\$91,506	\$3,476.52
\$115,648	\$590,746	10.230%	\$115,648	\$5,601.02
\$590,746	\$708,890	11.330%	\$590,746	\$54,203.55
\$708,890	\$1,000,000	12.430%	\$708,890	\$67,589.27
\$1,000,000	\$1,181,484	13.530%	\$1,000,000	\$103,774.24
\$1,181,484	and over	14.630%	\$1,181,484	\$128,329.03

If you need information on your last California Resident Income Tax Return, FTB Form 540, visit **Franchise Tax Board (FTB)** (ftb.ca.gov).

The DE 4 information is collected for purposes of administering the PIT law and under the authority of Title 22, CCR, section 4340-1, and the California Revenue and Taxation Code, including section 18624. The Information Practices Act of 1977 requires that individuals be notified of how information they provide may be used. Further information is contained in the instructions that came with your last California resident income tax return.

APPOINTMENT AFFIDAVITS

NHTSA Chief Co	ounsel	01/20/2021
(Position to which Appointed)		(Date Appointed)
Department of Transportation		Washington, DC
(Department or Agency)	(Bureau or Division)	(Place of Employment)
, Ann Carlson		, do solemnly swear (or affirm) that
that I will bear true faith and a reservation or purpose of eva I am about to enter. So help	allegiance to the same; that I take th asion; and that I will well and faithful me God.	against all enemies, foreign and domestic; nis obligation freely, without any mental ly discharge the duties of the office on which
I am not participating in an	y strike against the Government of	THE FEDERAL GOVERNMENT the United States or any agency thereof, nt of the United States or any agency
C. AFFIDAVIT AS T	O THE PURCHASE AND	SALE OF OFFICE
	e acting in my behalf, given, transfer of receiving assistance in securing t	rred, promised or paid any consideration this appointment.
		(Signature of Appointee)
•		(agriculture)
Subscribed and sworn (or aff	irmed) before me this 20 day of _	January , 2021
at Washington	DC	
(City)	(State)	,
(SEAL)		(Signature of Officer)
Commission expires	·	Executive and Political Resources Center
(If by a Notary Public, the date of his	s/her Commission should be shown)	(Title)

Note - If the appointee objects to the form of the oath on religious grounds, certain modifications may be permitted pursuant to the Religious Freedom Restoration Act. Please contact your agency's legal counsel for advice.

Standard Form 61 Revised August 2002

Initial Ethics Orientation

As a part of your Entry onto Duty packet, you have received a copy of the STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE EXECUTIVE BRANCH, (Ethics Regulations).

You are entitled to one hour of official duty time to review the Ethics Regulations.

When you have completed your review, please sign below to indicate that you have done so, and return the signed form (in person or by email) to:

Office of the General Counsel (C-10)
Office of the Secretary
ethicsoffice@dot.gov

If you have questions about the ethics regulations, please feel free to email ethicsoffice@dot.gov

Thank you.

/s/ an É M	Date: 01/30/2021
Ann E Carlson	
print name here please	
Office Telephone Number:	_
Office Routing Symbol:	_
Office Location:	_

ETHICS PLEDGE

I recognize that this pledge is part of a broader ethics in government plan designed to restore and maintain public trust in government, and I commit myself to conduct consistent with that plan. I commit to decision-making on the merits and exclusively in the public interest, without regard to private gain or personal benefit. I commit to conduct that upholds the independence of law enforcement and precludes improper interference with investigative or prosecutorial decisions of the Department of Justice. I commit to ethical choices of post-Government employment that do not raise the appearance that I have used my Government service for private gain, including by using confidential information acquired and relationships established for the benefit of future clients.

Accordingly, as a condition, and in consideration, of my employment in the United States Government in a position invested with the public trust, I commit myself to the following obligations, which I understand are binding on me and are enforceable under law:

- 1. Lobbyist Gift Ban. I will not accept gifts from registered lobbyists or lobbying organizations for the duration of my service as an appointee.
- 2. Revolving Door Ban All Appointees Entering Government. I will not for a period of 2 years from the date of my appointment participate in any particular matter involving specific parties that is directly and substantially related to my former employer or former clients, including regulations and contracts.
- 3. Revolving Door Ban Lobbyists and Registered Agents Entering Government. If I was registered under the Lobbying Disclosure Act, 2 U.S.C. 1601 et seq., or the Foreign Agents Registration Act (FARA), 22 U.S.C. 611 et seq., within the 2 years before the date of my appointment, in addition to abiding by the limitations of paragraph 2, I will not for a period of 2 years after the date of my appointment:
 - (a) participate in any particular matter on which I lobbied, or engaged in registrable activity under FARA, within the 2 years before the date of my appointment;
 - (b) participate in the specific issue area in which that particular matter falls; or
 - (c) seek or accept employment with any executive agency with respect to which I lobbied, or engaged in registrable activity under FARA, within the 2 years before the date of my appointment.
- 4. Revolving Door Ban Appointees Leaving Government. If, upon my departure from the Government, I am covered by the post-employment restrictions on communicating with employees of my former executive agency set forth in section 207(c) of title 18, United States Code, and its implementing regulations, I agree that I will abide by those restrictions for a period of 2 years following the end of my appointment. I will abide by these same restrictions with respect to communicating with the senior White House staff.
- 5. Revolving Door Ban Senior and Very Senior Appointees Leaving Government. If, upon my departure from the Government, I am covered by the post-employment restrictions set forth in sections 207(c) or 207(d) of title 18, United States Code, and those sections' implementing regulations, I agree that, in addition, for a period of 1 year following the end of my appointment, I will not materially assist others in making communications or appearances that I am prohibited from undertaking myself by (a) holding myself out as being available to engage in lobbying activities in support of any such communications or appearances; or (b) engaging in any such lobbying activities.
- 6. Revolving Door Ban Appointees Leaving Government to Lobby. In addition to abiding by the limitations of paragraph 4, I also agree, upon leaving Government service, not to lobby any covered executive branch official or non-career Senior Executive Service appointee, or engage in any activity on behalf of any foreign government or foreign political party which, were it undertaken on January 20, 2021, would require that I register under FARA, for the remainder of the Administration or 2 years following the end of my appointment, whichever is later.
- 7. *Golden Parachute Ban.* I have not accepted and will not accept, including after entering Government, any salary or other cash payment from my former employer the eligibility for and payment of which is limited to individuals accepting a position in the United States Government. I also have not accepted and will not accept any non-cash benefit from my former employer that is provided in lieu of such a prohibited cash payment.
- 8. *Employment Qualification Commitment*. I agree that any hiring or other employment decisions I make will be based on the candidate's qualifications, competence, and experience.
- 9. Assent to Enforcement. I acknowledge that the Executive Order entitled "Ethics Commitments by Executive Branch Personnel," issued by the President on January 20, 2021, which I have read before signing this document, defines certain of the terms applicable to the foregoing obligations and sets forth the methods for enforcing them. I expressly accept the provisions of that Executive Order as a part of this agreement and as binding on me. I understand that the terms of this pledge are in addition to any statutory or other legal restrictions applicable to me by virtue of Federal Government service.

	an E M	Jan 30	. 2021
Signature		Date	,
Name (Type or Print): _	Ann E Carlson		

From: Kim, Lauren <kiml@law.ucla.edu>
Sent: Thursday, January 21, 2021 8:40 AM PST
To: Carlson, Ann <carlson@law.ucla.edu>
CC: Mnookin, Jennifer <MNOOKIN@law.ucla.edu>

Subject: DRAFT: Ann Carlson

Hi Ann,

Congrats!! Before I send, just confirming, should I change the highlighted to today's date, or should I change to say effective, January 20 (and just delete "today"). I'm assuming the latter but wanted to make sure. Thanks.

Dear Colleagues,

I am writing to let you know that Ann Carlson will be taking a leave from the law school to begin serving in the Biden-Harris Administration effective today, January 21. President Biden has appointed Ann to serve as Chief Counsel of the National Highway Traffic Safety Administration. NHTSA has joint responsibility, together with EPA, for regulating greenhouse gases/fuel economy from the transportation sector, and she is part of the Biden-Harris "whole agency" approach to addressing climate change. She will remain in Los Angeles working remotely in the immediate term but will move to Washington, D.C. when the pandemic eases.

Although we will miss her very much, I admire Ann for her willingness to serve in the new Administration to address climate change. Her new position continues the work she has done for many years on the issue our new President calls "the number one threat to humanity." Please join me in congratulating Ann on her new appointment.

All best.

Jennifer

-----Original Message-----

From: Carlson, Ann <carlson@law.ucla.edu> Sent: Thursday, January 21, 2021 7:31 AM To: Kim, Lauren <kiml@law.ucla.edu>

Cc: Mnookin, Jennifer <MNOOKIN@law.ucla.edu>

Subject: It's public now

You can send the email. Thx!!!

From: Carlson, Ann

Sent: Wednesday, January 20, 2021 5:04 AM PST To: Mnookin, Jennifer <MNOOKIN@law.ucla.edu>

Subject: Draft

How's this? (I can't sleep!)

Dear colleagues,

I am writing to let you know that Ann Carlson will be taking a leave from the law school to begin serving in the Biden-Harris Administration effective today, January 20. President Biden has appointed Ann to serve as Chief Counsel of the National Highway Traffic Safety Administration. NHTSA has joint responsibility, together with EPA, for regulating greenhouse gases/fuel economy from the transportation sector, and she is part of the Biden-Harris "whole agency" approach to addressing climate change. She will remain in Los Angeles working remotely in the immediate term but will move to Washington, D.C. when the pandemic eases.

Although we will miss her very much, I am grateful to Ann for her willingness to serve in the new Administration to address climate change. Her new position continues the work she has done for many years on the issue our new President calls "the number one threat to humanity." Please join me in congratulating Ann on her new appointment.

From: Carlson, Ann

Sent: Thursday, January 21, 2021 6:29 PM PST

To: Steve Cliff

Subject: E & E article

Begin forwarded message:

Biden taps climate experts for DOT, eyes clean car rules

Maxine Joselow, E&E News reporter Published: Thursday, January 21, 2021

President Biden today named two California-based climate experts to top roles at the Department of Transportation.

The appointments signal Biden's commitment to look to the Golden State to establish aggressive nationwide clean car standards. The California Air Resources Board has set greenhouse gas standards for automobiles that are more stringent than federal rules.

Steve Cliff. California Air Resources Board

Steve Cliff, the deputy executive officer at CARB, was named deputy administrator of the National Highway Traffic Safety Administration.

NHTSA (pronounced "NIT-suh") is the division of DOT tasked with setting fuel economy standards for passenger cars and light trucks.

Cliff came to CARB in 2008, leading the development of the state's cap-and-trade program for greenhouse gases.

He left the board from 2014 to 2016 for a stint as the first director of sustainability at the California Department of Transportation under then-Gov. Jerry Brown (D).

Cliff returned to CARB as senior adviser to then-Chair Mary Nichols and later as deputy executive officer, according to a bio on the board's website.

Asked for comment, CARB Executive Officer Richard Corey said in an email to E&E News: "Dr. Cliff has played an integral role in leading California's actions to clean the air and protect public health. He is uniquely suited to work with states, industry and communities to expedite the move to a safe, efficient, and pollution-free transportation system. We look forward to renewing our partnership with the federal government."

Ann Carlson. UCLA School of Law

In addition to Cliff, Biden today selected UCLA School of Law professor Ann Carlson as NHTSA chief counsel.

At UCLA, Carlson served as faculty co-director of the Emmett Institute on Climate Change and the Environment, where she published numerous articles on climate and the law.

Former President Trump directed EPA and NHTSA to roll back the clean car standards established by former President Obama.

Biden has made reinstating strong clean car standards a top priority as part of his broader climate agenda.

Soon after being inaugurated yesterday, Biden signed an executive order on the environment that called for "establishing ambitious, job-creating fuel economy standards" in consultation with "labor unions, states and industry."

In an interview with E&E News last month, Carlson said the Biden administration could show international

leadership on climate change by targeting	100% electric	vehicle sales	and phasing	out sales of ne	w gasoline-
powered cars.					

"It would be symbolically really important on the climate front for the world's second-biggest emitter — and biggest emitter historically — to be phasing out the internal combustion engine," she said at the time (*Climatewire*, Dec. 7, 2020).

Carlson didn't respond to a request for comment in time for publication.

Confidentiality Notice:

Please note that I have retired from the practice of law at Baker Botts. Any information contained herein does not constitute legal advice of Baker Botts L.L.P.

Additional Personnel Forms and Items Needed

Personnel Forms:

- SF-61 Appointment Affidavit (please sign above Signature of Appointee)
- Initial Ethics Orientation Form (in the Ethics folder)
- Ethics Pledge (in the Ethics folder)
- State Tax Form (in the State Tax Form Folder)

Personnel Form (will be sent to you in a separate email):

• OF-306 Declaration for Federal Employment (please sign next to 17b. "Appointee" and date 01/20/2021).

Two Forms of ID Needed to Verify Your Identity and Employment Eligibility:

- Copy of your current Passport AND copy of your current Driver's License OR
- Copy of your current Driver's License AND copy of your Social Security Card

Entrance On Duty (EODS Forms)

For New Employees and Employees Transferring from the U.S. Senate or House of Representatives, please complete the following forms in EODS

- DOT-1681 Identification Card Credential Application
- Educational Data Form
- Emergency Notification Form Revised
- I-9 Employment Eligibility Verification
- SF-1152 Designation of Beneficiary Unpaid Compensation Revised
- SF-1199A Direct Deposit Signup Form
- SF-144 Statement of Prior Federal Service
- SF-181 Ethnicity and Race Identification
- SF-256 Self Identification of Disability
- Selective Service Registration
- W-4 Form 2021 Federal Income Tax

Federal Employee Benefits Forms

- DG-60 FEHB Premium Conversion Waiver (*Please ONLY submit this form if you are electing to waive premium conversion on your health coverage, if you are not, no action is needed*)
- FEGLI FEHB FEDVIP FSA LTC Benefits Information
- FEGLI, FEHB, FEDVIP, TSP, FSA, LTC Benefits Election/Acknowledgement Notice View PDF
- SF-2809 Health Benefits Election Form
- SF-2809 Health Benefits Information
- SF-2817 Life Insurance Election FEGLI Revised November
- SF-2817 Life Insurance Election Information

- SF-2823 Designation of Beneficiary FEGLI
- SF-3102 Designation of Beneficiary FERS Revised February
- TSP Information
- TSP-1 Thrift Savings Plan Election Form Revised

For employees transferring from the U.S. Senate or House of Representatives, your benefits information will transfer to DOT.

ETHICS PLEDGE

I recognize that this pledge is part of a broader ethics in government plan designed to restore and maintain public trust in government, and I commit myself to conduct consistent with that plan. I commit to decision-making on the merits and exclusively in the public interest, without regard to private gain or personal benefit. I commit to conduct that upholds the independence of law enforcement and precludes improper interference with investigative or prosecutorial decisions of the Department of Justice. I commit to ethical choices of post-Government employment that do not raise the appearance that I have used my Government service for private gain, including by using confidential information acquired and relationships established for the benefit of future clients.

Accordingly, as a condition, and in consideration, of my employment in the United States Government in a position invested with the public trust, I commit myself to the following obligations, which I understand are binding on me and are enforceable under law:

- 1. Lobbyist Gift Ban. I will not accept gifts from registered lobbyists or lobbying organizations for the duration of my service as an appointee.
- 2. Revolving Door Ban All Appointees Entering Government. I will not for a period of 2 years from the date of my appointment participate in any particular matter involving specific parties that is directly and substantially related to my former employer or former clients, including regulations and contracts.
- 3. Revolving Door Ban Lobbyists and Registered Agents Entering Government. If I was registered under the Lobbying Disclosure Act, 2 U.S.C. 1601 et seq., or the Foreign Agents Registration Act (FARA), 22 U.S.C. 611 et seq., within the 2 years before the date of my appointment, in addition to abiding by the limitations of paragraph 2, I will not for a period of 2 years after the date of my appointment:
 - (a) participate in any particular matter on which I lobbied, or engaged in registrable activity under FARA, within the 2 years before the date of my appointment;
 - (b) participate in the specific issue area in which that particular matter falls; or
 - (c) seek or accept employment with any executive agency with respect to which I lobbied, or engaged in registrable activity under FARA, within the 2 years before the date of my appointment.
- 4. Revolving Door Ban Appointees Leaving Government. If, upon my departure from the Government, I am covered by the post-employment restrictions on communicating with employees of my former executive agency set forth in section 207(c) of title 18, United States Code, and its implementing regulations, I agree that I will abide by those restrictions for a period of 2 years following the end of my appointment. I will abide by these same restrictions with respect to communicating with the senior White House staff.
- 5. Revolving Door Ban Senior and Very Senior Appointees Leaving Government. If, upon my departure from the Government, I am covered by the post-employment restrictions set forth in sections 207(c) or 207(d) of title 18, United States Code, and those sections' implementing regulations, I agree that, in addition, for a period of 1 year following the end of my appointment, I will not materially assist others in making communications or appearances that I am prohibited from undertaking myself by (a) holding myself out as being available to engage in lobbying activities in support of any such communications or appearances; or (b) engaging in any such lobbying activities.
- 6. Revolving Door Ban Appointees Leaving Government to Lobby. In addition to abiding by the limitations of paragraph 4, I also agree, upon leaving Government service, not to lobby any covered executive branch official or non-career Senior Executive Service appointee, or engage in any activity on behalf of any foreign government or foreign political party which, were it undertaken on January 20, 2021, would require that I register under FARA, for the remainder of the Administration or 2 years following the end of my appointment, whichever is later.
- 7. Golden Parachute Ban. I have not accepted and will not accept, including after entering Government, any salary or other cash payment from my former employer the eligibility for and payment of which is limited to individuals accepting a position in the United States Government. I also have not accepted and will not accept any non-cash benefit from my former employer that is provided in lieu of such a prohibited cash payment.
- 8. Employment Qualification Commitment. I agree that any hiring or other employment decisions I make will be based on the candidate's qualifications, competence, and experience.
- 9. Assent to Enforcement. I acknowledge that the Executive Order entitled "Ethics Commitments by Executive Branch Personnel," issued by the President on January 20, 2021, which I have read before signing this document, defines certain of the terms applicable to the foregoing obligations and sets forth the methods for enforcing them. I expressly accept the provisions of that Executive Order as a part of this agreement and as binding on me. I understand that the terms of this pledge are in addition to any statutory or other legal restrictions applicable to me by virtue of Federal Government service.

an E M		Jan 30	, 20 21
Signature		Date	
Name (Type or Print): _	Ann E Carlson		

Initial Ethics Orientation

As a part of your Entry onto Duty packet, you have received a copy of the STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE EXECUTIVE BRANCH, (Ethics Regulations).

You are entitled to one hour of official duty time to review the Ethics Regulations.

When you have completed your review, please sign below to indicate that you have done so, and return the signed form (in person or by email) to:

Office of the General Counsel (C-10) Office of the Secretary ethicsoffice@dot.gov

If you have questions about the ethics regulations, please feel free to email ethicsoffice@dot.gov

Thank you.

/s/an & on	Date: 01/30/2021
Ann E Carlson	
print name here please	
Office Telephone Number:	
Office Routing Symbol:	
Office Location:	

From: Tiffany Worthy <tworthy@jbrpt.org>
Sent: Saturday, January 16, 2021 6:22 AM PST

To: training <training@jbrpt.org>

Subject: Federal Budget 101 for Biden-Harris Appointees + Follow Up 1/14/21

Attachment(s): "Federal Budget, Management & Regulatory Process_1-14-2021.pdf"

Hello!

Thank you for joining Thursday's Federal Budget 101 session! We hope you found the session to be useful and informative.

We've attached the slides to the presentation, and we hope you are continuing to find value in our <u>training videos</u>. Unfortunately, we are unable to provide the session recording at this time. We do apologize and hope you can still find value in the slides.

If you have any questions or difficulty accessing the materials, please reach out to training@jbrpt.org

Thank you,

Biden-Harris Transition Leadership & Training Team



Federal Budget, Management & Regulatory Process

January 14, 2021

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Welcome



Cristina Killingsworth
OMB ART Member
Biden-Harris Transition



Sasha Baker OMB ART Member Biden-Harris Transition



Divya Kumaraiah OMB ART Member Biden-Harris Transition



Bridget Dooling
OMB ART Member
Biden-Harris Transition

AGENDA

Participants will learn about the Office of Management & Budget (OMB) and the different processes that it coordinates:

- Budget
- Management
- Regulatory

What is OMB?	
President's Budget Process	
Management at OMB	
Regulatory & More at OIRA	
Tips on Working With OMB	
Q&A	



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What is the Office of Management and Budget?

OMB sits in the Executive Office of the President and serves as the nerve center of the federal government. OMB staff is composed mostly of civil servants with a layer of political leadership who function as part of the larger White House/EOP team. OMB's primary functions include:

- Budget: Prepares the President's annual budget request to Congress and implements appropriations bills and
 other enacted funding measures.
- Regulatory review: Coordinates interagency review of regulatory actions through OIRA.
- Management: Administers the administration's procurement, financial management, information technology, personnel, and performance management policies.
- Legislative and other clearance: Coordinates the interagency clearance process for legislation, congressional
 testimony, executive orders, and other presidential actions.



The Current State of Play

- Fiscal Year (FY) 2021 began on October 1, 2020 and lasts until September 30, 2021.
- The FY 2021 Omnibus and COVID Relief and Response Act was signed by President Trump on December 27, 2020.
- The first budget of President-elect Biden's administration will be FY22, starting October 1, 2021.
- Until then, the incoming administration will inherit a budget that, depending on the program/agency, may reflect
 the prior administration's priorities and funding requests.
- OMB can help identify any funding, regulatory, and management mechanisms or flexibilities to ensure the Biden administration can accomplish its agenda on Day 1.
- On the regulatory side, there will be actions to alter regulatory choices of the prior administration, new regulations to implement Biden-Harris priorities, and regulations required by existing or new statutes.
- On management, there will be an early focus on developing the President's Management Agenda that aligns with the new administration's priorities.



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What is the President's Budget Request?

- The President's Budget is a proposal to Congress that reflects the administration's desired plan for the next fiscal year. Congress ultimately determines federal spending levels.
- The Budget reflects not only funding amounts, but administration policies, desired legislative language, and other key data.
- Work on the President's Budget begins 18 months before the beginning of the next fiscal year.
 For example, work on the FY 2023 budget (Oct. 2022 Sept. 2023) will begin in the Spring of 2021.



The Calendar

In a non-transition year, the basic timeline for budget formulation is:

- Spring/Summer: OMB sends guidance and Agencies develop proposals
- September: Agency requests are due to OMB
- Fall: OMB considers requests
- Late November: OMB sends back counter-proposal or "Passback"
- Early December: OMB works to resolve Agency appeals
- January: Budget printed
- February: Budget transmitted to Congress

In a transition year, that timeline will be compressed with the aim to submit a budget blueprint by March and a full request later in the Spring.



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Budget Roll-out

Starting in January/February, OMB and agencies will:

- Prepare for committee hearings to defend and answer questions about the budget submission
- Develop press briefing materials (fact sheets, op-eds, etc.)
- Prepare Congressional Budget Justifications ("CBJs" or "CJs") to provide more in-depth analysis and explain their requests

Congressional Appropriations Process:

- Congress is supposed to pass a budget resolution creating a framework and setting overall spending limits. However, this step often does not happen and is not required for appropriations to move forward.
- In the Spring and Summer, the 12 appropriations subcommittees in each chamber conduct hearings and draft appropriations bills.
- The full House and Senate vote on their bills and develop conference bills that, if passed, go to the President for signature.
- If an appropriations bill is not signed before the start of the fiscal year (October 1), Congress must pass a continuing resolution to provide stopgap funding for affected discretionary agencies.

Appropriations Subcommittees:

- Agriculture
- · Commerce Justice Science
- Defense
- Energy and Water
- Financial Services
- Homeland Security
- Interior and Environment
- Labor Health and Human Services Education
- Legislative Branch
- Military Construction Veterans
- State Foreign Operations
- Transportation Housing and Urban Development



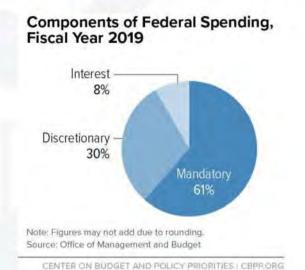
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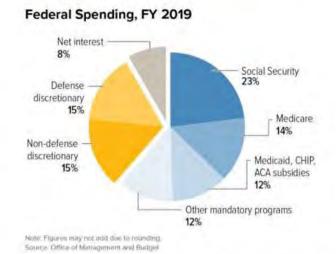
Mandatory vs. Discretionary Programs

- Mandatory spending for entitlement (including Social Security, Medicare, and Medicaid) and certain other programs is generally governed by statute rather than annual appropriation acts.
- Economic assumptions inform budget formulation for mandatory programs and decisions are often not finalized until late December.
- The Appropriations Committees have jurisdiction over discretionary spending and authorizing committees have jurisdiction over mandatory spending programs.
- Defense spending is over half of the discretionary budget, and DoD's budget formulation process differs from the rest of federal agencies.

ı.

Mandatory vs. Discretionary Programs





CANTER ON BUDGET AND POLICE PROPRIES DISPOSE



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Budget Execution

- Once Congress appropriates funds, Agencies report to Congress on how they plan to spend appropriated funds and notify Congress of changes to their plans (requirements vary by agency).
- Before an agency can obligate any funding, OMB must apportion, or approve, the amount of funds that an agency may use for a particular time period, program, project, or activity.
- Agencies cannot spend more than they are appropriated or before funds are apportioned, otherwise they risk violating the Antideficiency Act (ADA).

How Can I Find New Money?

In advance of a new fiscal year:

 The most reliable way to fund a new initiative or increase funding for a program is to include the request in an Agency request to OMB for inclusion in the President's Budget.

In the event of an emergency or unforeseen funding need:

- Funds can sometimes be reallocated within or transferred from another account. This means
 making funding tradeoffs between programs and often requires Congressional notification.
- In certain circumstances, the administration can request supplemental or emergency funding.

In all scenarios, engaging OMB early increases their ability to help you identify funding options.



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Management Policies

Responsible for developing and overseeing federal policy and cross-agency coordination for several areas:

- Office of Federal Procurement Policy (OFPP): improve Federal procurement practices, includes full range of acquisitions
- Office of Federal Financial Management (OFFM): improve financial management, reduce improper payments, improve grants management, and "right-size" real property
- Office of Performance and Personnel Management (OPPM): improve performance results and transparency, and develop personnel practices with Office of Personnel Management (OPM)
- Office of E-Government and Information Technology (E-Gov, USDS): make it easier for citizens and businesses to interact with the Federal Government, save taxpayer dollars, and streamline citizen participation



Regulatory Review Process & More

OMB's Office of Information and Regulatory Affairs (OIRA) coordinates interagency review of draft regulations.

- OIRA reviews draft agency rules at the proposed and final stage.
- OIRA wears three hats in this review process:
 - OIRA's own review under EO 12866
 - o Facilitating review from others in the Executive Office of the President
 - Facilitating interagency review

OIRA also:

- Coordinates a semi-annual regulatory agenda
- Approves information collections under the Paperwork Reduction Act
- Coordinates the U.S. statistical system as well as aspects of information and privacy policy



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How Can I Best Work with OMB?

The most successful appointees treat OMB as a partner in achieving their objectives.

- Work closely with your agency budget staff when developing policy proposals; they will coordinate with OMB to help you determine whether new funding is needed.
- Involve OMB staff early in proposed programmatic changes, particularly those that have budgetary or regulatory implications. OMB can help you get to "yes" if involved early enough.
- Be prepared to provide data and answer detailed questions about your assumptions and the scope of your proposal. See the passback process as an opportunity to strengthen your request to Congress!
- On the regulatory side, your career counterparts will be able to give you a lot of good advice on how to work with OIRA and navigate the regulatory process.
- Plan ahead for the Paperwork Reduction Act and consider ways to use it to advance your policy goals.



Questions?



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From: TrackingUpdates@fedex.com < TrackingUpdates@fedex.com >

Sent: Friday, January 15, 2021 11:57 AM PST **To:** Carlson, Ann <carlson@law.ucla.edu>

Subject: FedEx Shipment 782657228779: This shipment is scheduled to be sent

Hi. This shipment is scheduled to be sent on Fri 1/15/2021.

The delivery date may be updated when FedEx receives the package.

Estimated delivery date

Mon, 01/18/2021 by 12:00pm

INITIATED

MANAGE DELIVERY

TRACKING NUMBER <u>782657228779</u>

FROM US Department of Transportation

1200 New Jersey Ave, S.E.

Room W12-160

Washington, DC, US, 20590

TO Ann Elizabeth Carlson

215 S Van Ness Avenue

LOS ANGELES, CA, US, 90004

INVOICE NUMBER Non-Career Return

REFERENCE NHTSA

SHIPPER REFERENCE NHTSA

PACKAGING TYPE Your Packaging

ORIGIN Washington, DC, 20590

DESTINATION LOS ANGELES, CA, US, 90004

STANDARD TRANSIT Mon, 01/18/2021 by 12:00pm

NUMBER OF PIECES 1

TOTAL SHIPMENT WEIGHT 1.00 LB

SERVICE TYPE FedEx Priority Overnight

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All weights are estimate	ed.					
To track the latest status	s of your shipment	, click on the trackin	g number above.			
Standard transit is the d Limitations and exception Back Guarantee, or con	ons may apply. Ple	ase see the FedEx	Service Guide for to		·	
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Thank you for your busi	ness.					

From: TrackingUpdates@fedex.com < TrackingUpdates@fedex.com >

Sent: Monday, January 18, 2021 8:19 AM PST To: Carlson, Ann <carlson@law.ucla.edu>

Subject: FedEx Shipment 782657228779: Your package has been delivered

Hi. Your package was delivered Mon, 01/18/2021 at 8:17am.

Delivered to 215 S VAN NESS AVE, LOS ANGELES, CA 90004

OBTAIN PROOF OF DELIVERY

TRACKING NUMBER <u>782657228779</u>

FROM US Department of Transportation

1200 New Jersey Ave, S.E.

Room W12-160

Washington, DC, US, 20590

TO Ann Elizabeth Carlson

215 S Van Ness Avenue

LOS ANGELES, CA, US, 90004

INVOICE NUMBER Non-Career Return

REFERENCE NHTSA

SHIPPER REFERENCE NHTSA

SHIP DATE Sat 1/16/2021 02:26 PM

DELIVERED TO Residence

PACKAGING TYPE Your Packaging

ORIGIN Washington, DC, US, 20590

DESTINATION LOS ANGELES, CA, US, 90004

SPECIAL HANDLING Deliver Weekday

Residential Delivery

NUMBER OF PIECES 1

TOTAL SHIPMENT WEIGHT 9.00 LB

SERVICE TYPE FedEx Priority Overnight

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Please do not res		ge. This email was s	sent from an unatte	nded mailbox. This r	eport was generated	l at approximately
All weights are estima	ated.					
To track the latest sta	tus of your shipmen	t, click on the tracki	ng number above.			
Standard transit is the Limitations and excep Back Guarantee, or co	tions may apply. Ple	ease see the FedEx	Service Guide for	•	·	·
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Thank you for your bu	usiness.					

From: TrackingUpdates@fedex.com < TrackingUpdates@fedex.com >

Sent: Monday, January 18, 2021 7:41 AM PST To: Carlson, Ann <carlson@law.ucla.edu>

Subject: FedEx Shipment 782657228779: Your package is scheduled for delivery today

Hi. Your package is scheduled for delivery today.

SCHEDULED DELIVERY

Mon, 01/18/2021 by 12:00pm

OUT FOR DELIVERY LOS ANGELES, CA

MANAGE DELIVERY

TRACKING NUMBER <u>782657228779</u>

FROM US Department of Transportation

1200 New Jersey Ave, S.E.

Room W12-160

Washington, DC, US, 20590

TO Ann Elizabeth Carlson

215 S Van Ness Avenue

LOS ANGELES, CA, US, 90004

INVOICE NUMBER Non-Career Return

REFERENCE NHTSA

SHIPPER REFERENCE NHTSA

SHIP DATE Sat 1/16/2021 02:26 PM

PACKAGING TYPE Your Packaging

ORIGIN Washington, DC, US, 20590

DESTINATION LOS ANGELES, CA, US, 90004

SPECIAL HANDLING Deliver Weekday

STANDARD TRANSIT Mon, 01/18/2021 by 12:00pm

NUMBER OF PIECES 1

TOTAL SHIPMENT WEIGHT 9.00 LB

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All weights are estimated.	
To track the latest status of your shipment, click on the tracking number above.	
Standard transit is the date and time the package is scheduled to be delivered by, based on the selected sentimitations and exceptions may apply. Please see the FedEx Service Guide for terms and conditions of service Back Guarantee, or contact your FedEx Customer Support representative.	
© 2021 Federal Express Corporation. The content of this message is protected by copyright and trademark law. Review our <u>privacy policy</u> . All rights reserved.	aws under U.S. and international
Thank you for your business.	

From: TrackingUpdates@fedex.com < TrackingUpdates@fedex.com >

Sent: Sunday, January 17, 2021 7:03 AM PST To: Carlson, Ann <carlson@law.ucla.edu>

Subject: FedEx Shipment 782657228779: Your package is scheduled for delivery tomorrow

Hi. Your package is scheduled for delivery tomorrow.

SCHEDULED DELIVERY

Mon, 01/18/2021 by 12:00pm

IN TRANSIT MEMPHIS, TN

MANAGE DELIVERY

TRACKING NUMBER <u>782657228779</u>

FROM US Department of Transportation

1200 New Jersey Ave, S.E.

Room W12-160

Washington, DC, US, 20590

TO Ann Elizabeth Carlson

215 S Van Ness Avenue

LOS ANGELES, CA, US, 90004

INVOICE NUMBER Non-Career Return

REFERENCE NHTSA

SHIPPER REFERENCE NHTSA

SHIP DATE Sat 1/16/2021 02:26 PM

PACKAGING TYPE Your Packaging

ORIGIN Washington, DC, US, 20590

DESTINATION LOS ANGELES, CA, US, 90004

SPECIAL HANDLING Deliver Weekday

STANDARD TRANSIT Mon, 01/18/2021 by 12:00pm

NUMBER OF PIECES 1

TOTAL SHIPMENT WEIGHT 1.00 LB

SERVICE TYPE FedEx Priority Overnight

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Standard transit is the Limitations and excep Back Guarantee, or c	otions may apply. Ple	ease see the FedEx	Service Guide for t	•	·	
© 2021 Federal Expre law. Review our priva			ssage is protected t	by copyright and trad	emark laws under U	.S. and international
Thank you for your bu	usiness.					

From: TrackingUpdates@fedex.com < TrackingUpdates@fedex.com >

Sent: Saturday, January 16, 2021 11:27 AM PST To: Carlson, Ann <carlson@law.ucla.edu>

Subject: FedEx Shipment 782657228779. This shipment was tendered to FedEx Express

Hi. This shipment was tendered to FedEx Express on Sat 1/16/2021.

Estimated delivery date

Mon, 01/18/2021 by 12:00pm

PICKED UP ALEXANDRIA, VA

MANAGE DELIVERY

TRACKING NUMBER <u>782657228779</u>

FROM US Department of Transportation

1200 New Jersey Ave, S.E.

Room W12-160

Washington, DC, US, 20590

TO Ann Elizabeth Carlson

215 S Van Ness Avenue

LOS ANGELES, CA, US, 90004

INVOICE NUMBER Non-Career Return

REFERENCE NHTSA

SHIPPER REFERENCE NHTSA

SHIP DATE Sat 1/16/2021 02:26 PM

PACKAGING TYPE Your Packaging

ORIGIN Washington, DC, 20590

DESTINATION LOS ANGELES, CA, US, 90004

STANDARD TRANSIT Mon, 01/18/2021 by 12:00pm

NUMBER OF PIECES 1

TOTAL SHIPMENT WEIGHT 1.00 LB

SERVICE TYPE FedEx Priority Overnight

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All weights are estimated.					
To track the latest status of you	r shipment, click on the tracking i	number above.			
Limitations and exceptions may	time the package is scheduled to apply. Please see the FedEx Se ar FedEx Customer Support repre	ervice Guide for terr			
© 2021 Federal Express Corpo law. Review our privacy policy.	ration. The content of this messa All rights reserved.	ge is protected by o	copyright and trade	mark laws under U.S.	and international
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Sent: Friday, January 15, 2021 11:55 AM PST To: Carlson, Ann <carlson@law.ucla.edu>

Subject: FedEx Shipment 796041906638: This shipment is scheduled to be sent

Hi. This shipment is scheduled to be sent on Fri 1/15/2021.

The delivery date may be updated when FedEx receives the package.

Estimated delivery date

Tue, 01/19/2021 by 4:30pm

INITIATED

MANAGE DELIVERY

TRACKING NUMBER <u>796041906638</u>

FROM 215 S Van Ness Avenue

LOS ANGELES, CA, US, 90004

TO US Department of Transportation

Kelly Simpson

1200 New Jersey Ave, S.E.

Room W12-160

Washington, DC, US, 20590

INVOICE NUMBER Non-Career Return

REFERENCE NHTSA

SHIPPER REFERENCE NHTSA

PACKAGING TYPE Your Packaging

ORIGIN LOS ANGELES, CA, 90004

DESTINATION Washington, DC, US, 20590

SPECIAL HANDLING Print Return Label

STANDARD TRANSIT Tue, 01/19/2021 by 4:30pm

NUMBER OF PIECES 1

TOTAL SHIPMENT WEIGHT 5.00 LB

SERVICE TYPE FedEx 2Day

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Limitations and exce	he date and time the eptions may apply. Pl contact your FedEx (ease see the FedE	x Service Guide for	-		
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Thank you for your b	business.					



Digital Toolkit: President-elect Biden Announces Key Members of Climate Team

GUIDANCE:

President-elect Biden has nominated a tested team of bold thinkers who will take on the urgent, existential threat of climate change. They will be ready on day one to advance the President-elect's agenda and lead the world to confront the climate crisis — creating good-paying union jobs, building resilient communities, and making historic investments in environmental justice to advance public health and economic opportunity for all Americans.

KEY ASK:

Amplify these announcements on social media and share the nominee bio pages. We have also included sample content below—but encourage creativity and personal storytelling, if possible!

SAMPLE CONTENT AND ASSETS:

(copy/paste, or create your own)

Governor Jennifer Granholm, Secretary of Energy

- A crisis-tested two-term Governor of Michigan, @JenGranholm has been nominated to serve as Secretary of @ENERGY. Her vision and leadership helped rescue the U.S. auto industry and spark a clean energy jobs boom.
 https://buildbackbetter.gov/nominees-and-appointees/jennifer-granholm
- .@JenGranholm worked in close partnership with President-elect Biden to implement a
 recovery that deployed record clean energy investments to create 21st century jobs and
 diversify Michigan's economy.
 https://buildbackbetter.gov/nominees-and-appointees/jennifer-granholm
- .@JenGranholm understands the transformational power a good job can have on a
 person's life—and she knows that clean energy is the key to creating millions of good
 union jobs at home and growing a stronger, inclusive middle class.
 https://buildbackbetter.gov/nominees-and-appointees/jennifer-granholm

Congresswoman Deb Haaland, Secretary of Interior

- .@DebHaalandNM is a barrier-breaking public servant who has spent her career fighting for families, including in tribal nations, rural communities, and communities of color. There is no one better to lead @Interior.

 https://buildbackbetter.gov/nominees-and-appointees/deb-haaland
- Currently serving as Vice Chair of the House Committee on Natural Resources,
 @DebHaalandNM will be ready on day one to protect our public lands and fight for a clean energy future.
 https://buildbackbetter.gov/nominees-and-appointees/deb-haaland
- .@DebHaalandNM is poised to make history as the first-ever Native American Cabinet secretary. https://buildbackbetter.gov/nominees-and-appointees/deb-haaland

Brenda Mallory, Chair of the Council on Environmental Equality

- .@Brenda_Mallory, an accomplished and committed environmental lawyer with many years of experience in public service, has been nominated to serve as Chair of the Council on Environmental Quality.
 https://buildbackbetter.gov/nominees-and-appointees/brenda-mallory
- .@Brenda_Mallory would be the first African American to hold the position of CEQ Chair since its creation more than half a century ago. https://buildbackbetter.gov/nominees-and-appointees/brenda-mallory
- Having previously served as General Counsel to the CEQ, @Brenda_Mallory knows how to work across government to enact policies and advance climate and environmental justice goals. https://buildbackbetter.gov/nominees-and-appointees/brenda-mallory

Michael Regan, EPA Administrator

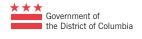
- .@Michael_S_Regan is a long-time public servant who has earned widespread recognition in his current role as Secretary of the NC Department of Environmental Quality. He has spent more than two decades working on climate and environmental solutions. https://buildbackbetter.gov/nominees-and-appointees/michael-regan
- .@Michael_S_Regan previously served at the EPA under both Democratic and Republican presidents—leading initiatives to improve energy efficiency and air quality and mitigate pollution—and focused on climate issues at the Environmental Defense Fund. https://buildbackbetter.gov/nominees-and-appointees/michael-regan
- .@Michael_S_Regan is a subject matter expert who knows how to bring together government, business, and advocacy organizations to advance environmental justice and take on the most pressing climate and environmental challenges we face. https://buildbackbetter.gov/nominees-and-appointees/michael-regan

Gina McCarthy, National Climate Advisor

- .@Gina_McCarthy, one of the nation's most trusted and accomplished voices on environmental issues, has been appointed to serve as the first-ever National Climate Advisor to head the newly formed White House Office of Domestic Climate Policy. https://buildbackbetter.gov/nominees-and-appointees/gina-mccarthy
- .@Gina_McCarthy has been at the forefront of environmental and public health progress for over three decades, leading efforts to reduce greenhouse gases, mitigate air pollution, conserve critical water sources, and safeguard vulnerable communities from chemical hazards.
 - https://buildbackbetter.gov/nominees-and-appointees/gina-mccarthy
- The Obama-Biden administration's Clean Power Plan, spearheaded and signed by @Gina_McCarthy, set the most ambitious standards for lowering carbon emissions in American history, and helped pave the way for the Paris Climate Agreement. https://buildbackbetter.gov/nominees-and-appointees/gina-mccarthy

Ali Zaidi, Deputy National Climate Advisor

- .@ali_a_zaidi a leading expert and long-time advisor to President-elect Biden on climate issues, has been appointed to serve as Deputy National Climate Advisor. https://buildbackbetter.gov/nominees-and-appointees/ali-zaidi
- An accomplished public servant who served in a variety of climate-focused roles with the Obama-Biden Administration, @ali_a_zaidi helped draft and implement the groundbreaking Climate Action Plan and helped negotiate the Paris Climate Agreement. https://buildbackbetter.gov/nominees-and-appointees/ali-zaidi



____Year

D-4 Employee Withholding Allowance Certificate

Your	r first name M.I. Last name		
Hom	ne address (number and street) Apartment i	numbor	
11011	ne address (number and street) Apartment i	ilullibei	
	Social secur	rity number	
City	State Zip code		
L			
1	Tax filing status Fill in only one: Single Married filing jointly Married filing separately Married filing separately	-	ousehold
2	Total number of withholding allowances from worksheet below		
3	Additional amount, if any, you want withheld from each paycheck		
4	If you are claiming exemption from withholding, read below and write "EXEMPT" in this box.		
	I am exempt because: last year I did not owe any DC income tax and had a right to a full refund of all DC income tax withheld not expect to owe any DC income tax and expect a full refund of all DC income tax withheld from me; and I qualify for exempt		
	If claiming exemption, are you a full-time student?		
Sig	gnature Under penalties of law, I declare that I have examined this return and to the best of my knowledge it is correct.		
_	ployee's signature Date		
	poloyer Keep this certificate with your records. If 10 or more exemptions are claimed or if you suspect this certificate contains f		
plea	ase send a copy to: Office of Tax and Revenue, 941 North Capitol St., NE, Washington, DC 20002-4259 Attn: Compliance Ac Detach and give top portion to your employer. Keep bottom portion for your records.	dministration	
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a b c d e f g h i G Section j k l m	ction A Number of withholding allowances Enter 1 for yourself and Enter 1 if you are filing as a head of household and Enter 1 if you are 65 or over and Enter 1 if you are blind Enter 1 for your spouse if filing jointly Enter 1 if married filing jointly and your spouse is 65 or over and Enter 1 if married filing jointly and your spouse is blind Number of allowances Add Lines a through h and enter on Line 2. If you would like to claim additional allowances, complete section B below. Cition B Additional withholding allowances Enter \$1,000 if married filing separately; all others enter \$2,000		b c d e f g h

> Detach and give top portion to your employer. Keep bottom portion for your records.

Who must file a Form D-4?

Every new employee who resides in DC and who is required to have taxes withheld, must fill out Form D-4 and file it with his/her employer. If you are not liable for DC taxes because you are a nonresident you must file Form D-4A (Certificate of Nonresidence in the District of Columbia) with your employer.

When should you file?

File Form D-4 whenever you start new employment. Once filed with your employer, it will remain in effect until you file an amended certificate. You may file a new withholding allowance certificate any time if the number of withholding allowances you are entitled to increases. You must file a new certificate within 10 days if the number of withholding allowances you claimed decreases.

How many withholding allowances should you claim?

Use the worksheet on the front of this form to figure the number of withholding allowances you should claim. If you want less money withheld from your paycheck, you may claim additional allowances by completing Section B of the worksheet, Lines j through o. However, if you claim too many allowances, you may owe taxes at the end of the year.

Should I deduct an additional amount from my paycheck?

In some instances, even if you claim zero withholding allowances, you may not have enough tax withheld. You may, upon agreement with your employer, have more tax withheld by entering on Line 3, a dollar amount of your choosing.

What to file

After completing Form D-4, detach the top portion and file it with your employer. Keep the bottom portion for your records.

Agency Onboarding Toolkit

JANUARY 2021



A Note on Using This Toolkit

When saving your responses in the fillable fields within Adobe Acrobat, please make sure to select the "Save As" option to save this as a different document. Otherwise, the responses you record may not be truly saved.

If you are using Preview to edit the document, you shouldn't encounter any issues saving by clicking "Command" + "S" to save the document.



Table of Contents

- I. What to Expect
- II. Learning Guide: Biden-Harris Core Trainings
 - A. Biden-Harris Administration Core Values
 - B. <u>Biden-Harris Administration Policy Priorities</u>
 - C. Government Service as a Biden-Harris Admin Appointee
 - D. <u>Diversity, Equity, and Inclusion</u>
- III. Onboarding Roadmap
- IV. Best Practices from Agency Alumni
 - 1. <u>United States Agency for International Development</u>
 (USAID)
 - 2. <u>United States Department of Agriculture (USDA)</u>
 - 3. United States Department of Commerce (DOC)
 - 4. United States Department of Energy (DOE)
 - 5. <u>United States Department of Health and Human Services</u>
 (HHS)
 - 6. <u>United States Department of Homeland Security (DHS)</u>
 - 7. <u>United States Department of Housing and Urban</u>
 <u>Development (HUD)</u>
 - 8. <u>United States Department of Labor (DOL)</u>
 - 9. <u>United States Department of Transportation (DOT)</u>
- V. Appendices
 - A. Guide: Advice for Junior Staff
 - B. Guide: Buddy Program Ideas for New Appointees
 - C. Guide: Team-building in a Remote Environment
 - D. Guide: Training Templates



What to Expect from Your Onboarding Experience



President-elect Biden and the Biden-Harris administration will confront some of the most significant challenges an incoming president has ever faced. **You** are a critical member of the team that has been assembled to meet these challenges on Day One — and our goal is to set you up for success.

By the end of our onboarding experience, you will be able to say with confidence:

Develop Organizational Context

- I know what the Biden-Harris administration's values and mission are and, importantly, feel connected with them.
- I feel confident talking about the mission of my agency and can talk about its history.
- I understand how each agency, including my own, supports this mission.
- I understand the current opportunities and challenges ahead of us to operationalize that mission.
- I can articulate the impact our work will have on the country and around the world.

Establish Strong, Trusting Relationships and A Feeling of Belonging

- I have developed an authentic relationship with other members of my agency and government staffers outside of my agency.
- I have a foundational understanding of how to work with career staff in a way that is respectful, productive, and leads with integrity.
- I feel I have a seat at the table and my voice and presence is valued at my agency/office.

Achieve Clarity on My Role and Responsibilities

- I can clearly articulate my goals and the expected outcomes of my work during the early days of the administration.
- I know how I will communicate with, and receive feedback from, my manager and peers to achieve my goals.
- I know who I can approach with questions.

Perform Role with Excellence, Equity, and Joy

- I have the support I need to be successful in my role.
- I have access to the tools and resources I need to do my work effectively.
- I have reflected on ways to operate in my role with an orientation to diversity, inclusion, belonging, and equity.





Learning Guide: Biden-Harris Core Trainings

The Learning Guide will contextualize the core trainings for appointees, and will help guide you through the Onboarding Roadmap that follows.

We ask that you actively participate and engage with the content in the trainings, take notes, jot down questions, and come back to parts you want to reinforce.

Biden-Harris Administration Core Values



4 minutes | Watch video on YouTube →

This training will provide you with an overview of the vision and core values of President-elect Biden and Vice President-elect Harris.

You will hear directly from the President-elect and Vice President-elect about the core values that drive the work they do, and how they do it.

Biden-Harris Administration Core Values



4 minutes | Watch video on YouTube →

What are your personal values, and how do they align with the core values of the President-elect and the Vice President-elect?
What inspiration do you draw from the vision and mission of the President-elect and Vice President-elect?
How will you center this as you do your work?

Biden-Harris Administration Core Values



4 minutes | Watch video on YouTube →

What made you want to serve in the Biden-Harris administration? How do you envision carrying the "why" you're here through your service in the federal government?

Biden-Harris Administration Policy Priorities



59 minutes | Watch video on YouTube →

This training will provide you with a high-level briefing about the Biden-Harris administration's policy priorities.

You will come away from the training better understanding how your work, regardless of issue area or agency component, ladders up to the administration's broader priorities and feeling a call to action to contribute.

Biden-Harris Administration Policy Priorities



59 minutes | <u>Watch video on YouTube</u> →

How has the COVID-19 pandemic exacerbated existing structural issues like racial inequality? What is the Biden-Harris administration's strategy for addressing this?
How do you see your role in the Biden-Harris administration laddering up to support achieving the commitments to racial equity as outlined in the Biden-Harris agenda?

Biden-Harris Administration Policy Priorities



59 minutes | <u>Watch video on YouTube</u> →

In order to address the four crises and build back better, agencies and teams across the government will have to work together. Think about what you'll be working on in the first 100 days. Which agencies or teams will you need to work with?	
	111111111

Government Service as a Biden-Harris Admin Appointee



37 minutes | Watch video on YouTube →

This training will provide you with an overview of government service, focusing on what to expect and how to serve as a political appointee for the Biden-Harris Administration.

You will receive a briefing on the new information environment and a briefing on the ethical obligations of the Biden-Harris Administration.

You will also deepen your understanding of change management, how to build and maintain strong relationships in the workforce, and how to work effectively in a remote work environment.

Government Service as a Biden-Harris Admin Appointee



37 minutes | Watch video on YouTube →

How has the landscape of government service evolved over the last presidential administration? What opportunities and challenges do you see serving in the Biden-Harris administration?
What are the best ways to engage existing career staff? How will you make respectful and effective collaboration with career staff a priority in your role?

Government Service as a Biden-Harris Admin Appointee



37 minutes | Watch video on YouTube →

Take five minutes to think about a time when you were approached by a newly hired person in a company or organization you were working in. Who was the person? How did you or your team welcome and start a new relationship with that person? How do you think that other person felt as a new hire? What rituals or connection points were built to maintain an effective relationship? What can you commit to in your new role on January 20th?



37 minutes | Watch video on YouTube →

Think about your most recent professional experiences. What insights can you share about how to adapt and apply change management as you enter this new role?		
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37 minutes | Watch video on YouTube →

Vocabulary

PAS: Presidential Appointment with Senate Confirmation.

PA: Presidential Appointment (without Senate Confirmation).

CA: Career Appointment.

NA: Noncareer Appointment.

Schedule C (SC): A Schedule C employee is an employee in a position that is excepted from the competitive service because of its policy-determining nature or because it involves a close and confidential working relationship with the agency head or other top appointed official. Persons with this type of appointment range from secretaries and chauffeurs to policy advisors.

SES: Senior Executive Service; Members of the SES serve in the key positions just below the top Presidential appointees. SES members are the major link between these appointees and the rest of the Federal workforce. They operate and oversee nearly every government activity in approximately 75 Federal agencies.

SF 86: Standard Form 86 - a form that is required for most appointees and is a questionnaire for National Security Positions.

SF 85P: Questionnaire for Public Trust Positions.

SF 85P-S: Supplemental Questionnaire for Selected Positions.



37 minutes | Watch video on YouTube →

Resources / The New Information Environment

The New Information Environment - Examples

- Russian disinformation about mail-in voting and other issues
 circulated on specialty conservative social media platforms after being
 flagged and taken down by other platforms. Meanwhile, an
 organization linked to the Russian government has taken aim at
 potential Biden administration nominees with messaging designed to
 resonate with the American left.
- After <u>helping fuel the anti-vaccination debate</u> in the US, Russia (and others) have turned to <u>COVID vaccine disinformation</u>, which many think will <u>surround</u> any vaccination campaign.
- Chinese state and state-linked accounts used Twitter and other
 platforms to <u>delegitimize US democracy as chaotic and violent</u> in the
 wake of racial justice protests following George Floyd's death.
- Spanish language mis/disinformation <u>circulated widely on social</u> <u>media and through private messaging apps</u> in the runup to the 2020 election; experts said tech platforms moved more slowly to flag or take action on this content vs. English-language content.

The New Information Environment - Resources

- DHS/CISA's "<u>Disinformation Toolkit</u>" provides both resources and a model for public communication about disinformation.
- Country case studies: the UK government's <u>response</u> to Russian disinformation around the Sergei Skripal poisoning; the French government's <u>response</u> to the 2017 election's Macron Leaks; Taiwan's <u>approach</u> to Chinese disinformation in the runup to 2020 elections; Finland's whole-of-society <u>approach</u> to building resilience to disinformation.



37 minutes | Watch video on YouTube →

Resources / Ethics and Change Management

Ethics

- <u>Background Investigations and Security Clearances</u> (Partnership for Public Service)
 - Important Forms
 - Questionnaire for National Security Positions (SF 86)
 - Questionnaire for Public Trust Positions (SF 85P)
 - Supplemental Questionnaire for Selected Positions (SF 85P-S)
- Financial Disclosure and Ethics (Partnership for Public Service)
 - Important Forms
 - Public Financial Disclosure Report (OGE Form 278e)
 - Confidential Financial Disclosure Report (OGE Form 450)
- Additional Reading:
 - Post-Employment, "Revolving Door," Laws for Federal Personnel (Congressional Research Service)
 - OGE Nominee Guide: The U.S. Office of Government Ethics
 Nominee Guide was specifically created for PAS nominees but has
 some helpful information about government ethics laws and
 standards for ethical conduct that apply to all Executive Branch
 appointees.
 - OGE Standards of Conduct for Employees of the Executive Branch (U.S. Office of Government Ethics)
 - Introduction to the Primary Post-Government Employment
 Restrictions Applicable to Former Executive Branch Employees
 (U.S. Office of Government Ethics)

Change Management

- The Hard Side of Change Management (Harvard Business Review)
- Manager Tips, Tools & Rules (LEADx; Podcast)
- <u>Using Fair Process to Make Better Decisions</u> (The Management Center)



45 minutes | Watch video on YouTube →

This training will provide you with a foundational overview of diversity, equity, and inclusion concepts to prepare you with the acumen and skills to orient to these concepts starting on Day One.

You will come away from the training having reflected on your identity and equity, and feeling prepared to promote inclusive, discriminationand harrassment-free work environments.



45 minutes | <u>Watch video on YouTube</u> →

How does your identity impact the ways you engage with the concepts of diversity, equity, and inclusion? (Identity is the way you think about yourself, the way you view and are viewed in the world, and the characteristics that define you.)
What does inclusion and belonging look and/or feel like in practice for you? How will you encourage these concepts amongst your team in your role? If possible, think through experiences where you felt a sense of inclusion and what actions, behaviors, and language made that true for you that you can replicate.



45 minutes | <u>Watch video on YouTube</u> →

How can you practice identifying and challenging the structures and behaviors that perpetuate systemic racism and other forms of exclusion?		
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45 minutes | Watch video on YouTube →

Key Takeaways

Inclusion does not happen automatically when you have diversity. Our behavior and ability to be inclusive is influenced by unconscious bias and micro-inequities.

Hold yourself accountable to being inclusive as even the most well-intentioned employees make mistakes and have an opportunity to learn. Hold others accountable if you notice someone being excluded, offended, marginalized, or harassed. Respond to the offender directly if you feel comfortable and safe doing so.

Anti-discrimination laws and policies preserve and promote workplace equality and fairness and provide critical guidance on maintaining a level employment playing field. Familiarize yourself with the protected categories and policies, such as the Equal Pay Act and Americans with Disabilities Act.



45 minutes | Watch video on YouTube →

Vocabulary

Following the sessions, define in your own words the following key terms: **Diversity**, **Equity**, and **Inclusion**. Review definitions for the following key terms and familiarize yourself with others here from the W.K. Kellogg Foundation and Racial Equity Tools:

Ally: A person who makes the commitment and effort to recognize their privilege (based on gender/gender identity, class, race, sexual identity, disability, etc.) and work in solidarity with marginalized groups towards equity.

Intersectionality: Understanding how multiple identities can help clarify the ways in which a person can simultaneously experience privilege and oppression. For example, a Black woman in America does not experience gender inequalities in exactly the same way as a white woman, nor racial oppression identical to that experienced by a Black man. Each race and gender intersection produces a qualitatively distinct life.

Microaggression: The everyday verbal, nonverbal, and environmental slights, snubs, or insults, whether intentional or unintentional, which communicate hostile, derogatory, or negative messages to target persons based solely upon their marginalized group membership.

Racism: Involves one group having the power to carry out systematic discrimination through the institutional policies and practices of the society and by shaping the cultural beliefs and values that support those racist policies and practices. Racism is different from racial prejudice, hatred, or discrimination.

Institutional or Systemic Racism: Institutional racism refers specifically to the ways in which institutional policies and practices create different outcomes for different racial groups. The institutional policies may never mention any racial group, but their effect is to create advantages for whites and oppression and disadvantage for people from groups classified as people of color.



45 minutes | Watch video on YouTube →

Resources

Implicit Association Test

- Take the <u>Implicit Association Tes</u>t for gender identity, race, sexual orientation, and/or religion (highly encouraged).
- You will have the opportunity to participate in an Implicit Bias Workshop in February where you will dive deeper into understanding and mitigating bias.

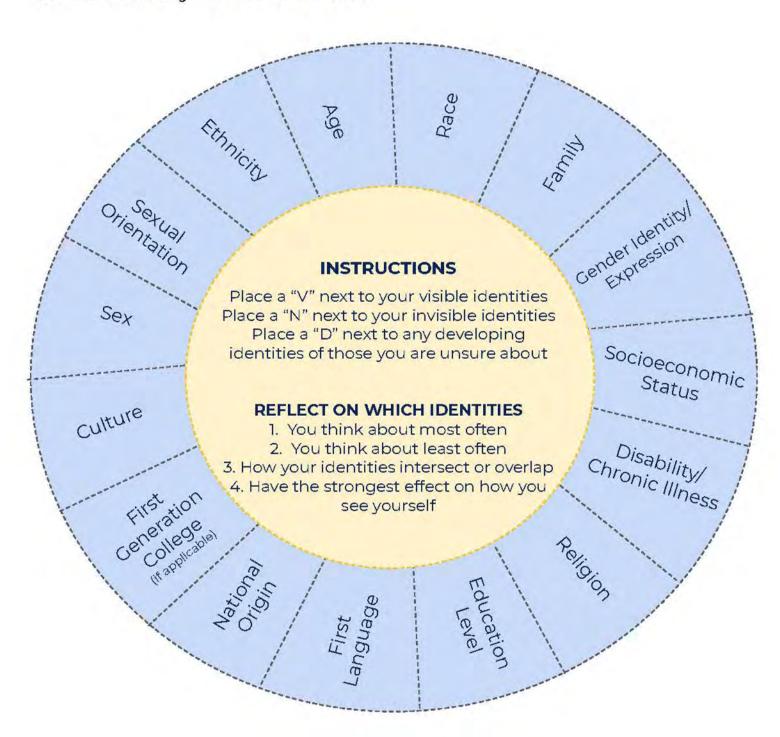
More Reading

- Read <u>White Privilege: Unpacking the Invisible Knapsack</u> by Peggy McIntosh and consider the following reflection questions:
 - Do you agree with McIntosh about the concept of the 'invisible knapsack'? Why or why not?
 - What are some things you can add to McIntosh's list as examples of your own 'invisible knapsack' if you believe yourself to wear one? Do you unintentionally perpetuate white privilege - how?
 - Note: This article was first published in 1989, consider what still rings true in McIntosh's writing and what has changed.
- Anti-Racist Allies: How to Respond to Microagressions (2020 CNN)
 - O Using the resources in the article and the definition above, reflect on a time when you were either a witness, perpetrator, recipient, or interrupter of a microaggression and jot down additional insights on learning on the experience.
- Global research on the <u>Gender Gap</u> (McKinsey & Company)
- The Diversity & Inclusion Revolution, 2018 (Deloitte Review)
- The Economic Impact of the Racial Wealth Gap, 2019 (McKinsey & Company)



45 minutes | Watch video on YouTube →

Social Identity Wheel Exercise







Onboarding Roadmap

The following **Onboarding Roadmap** provides high-level guidance on how political appointees may choose to spend the weeks leading up to Day One (and a few days thereafter) to ensure (1) the development of agency-specific and administration-wide context and (2) effective team-building.

Onboarding Roadmap



Week 1 & Week 2

Monday, January 4, 20 Focus: Developing Age	21 - Friday, January 8, 2021 ncy-Specific Context
Monday, January 4th	Review <u>Best Practices from Agency Alumni</u>
Tuesday, January 5th	Watch Biden-Harris Administration Core Values training recording [link]
Wednesday, January 6th	 Watch Government Service as A Biden-Harris Administration Appointee training recording [link] Watch President-elect Bident and Vice President-elect Harris' acceptance speeches (Wall Street Journal)
Thursday, January 7th	 Watch Diversity, Equity, and Inclusion training recording [link] Complete the <u>Social Identity Wheel exercise</u>
Friday, January 8th	Ensure you've completed your Greenhouse onboarding tasks

	21 - Friday, January 15, 2021 ninistration-Wide Context
Monday, January 11th	 For senior agency leaders, attend Management training [link] Watch Biden-Harris Administration Policy Priorities training recording [link]
Tuesday, January 12th	 For Chiefs of Staff and Deputy Chiefs of Staff, attend the Management training [link]
Wednesday, January 13th	For general managers, attend the Management training [link]
Thursday, January 14th	Attend: Federal Budget Process 101 training
Friday, January 15th	Attend: Briefing on Federal COVID-19 Protocol

Onboarding Roadmap



Week 3 & Week 4

Monday, January 18, 20 Focus: Team-Building	021 - Friday, January 22, 2021
Monday, January 18th	 Review <u>Federal Government Acronym Guide</u> Watch General Counsel Briefing: "Guidance on Handling Records" [<u>link</u>]
Tuesday, January 19th	Review <u>Guide: Buddy Program Ideas for New Appointees</u>
Wednesday, January 20th	Inauguration DayVirtual Swearing-in Ceremony
Thursday, January 21st	Review <u>Guide: Team-building in a Remote Environment</u>
Friday, January 22nd	Ensure you've completed your Greenhouse onboarding tasks

Monday, January 25, 2 Focus: Ongoing Learnin	021 - Friday, January 29, 2021 ng and Development
Monday, January 25th	 Watch the Management training recording (as most applicable to your role)
Tuesday, January 26th	Read <u>Guide</u> : <u>Advice for Junior Staff</u>
Wednesday, January 27th	• Listen to " <u>The History of Presidential Transitions</u> ," episode 14 of the Partnership for Public Service's Transition Lab podcast
Thursday, January 28th	Watch <u>President-elect Biden announce Cabinet nominations</u> (ABC News)
Friday, January 29th	• (If feasible) Organize a socially-distant team picnic





The following section includes practical advice from agency alumni of the Obama-Biden administration on what they wish they would have known on Day One, agency-specific recommendations for the next cohort of political appointees, and more.



Sourced from Obama-Biden Administration Alumni

United States Agency for International Development (USAID)

As you reflect back on your time in an agency, what do you wish you had known to have been able to hit the ground running?

"Treat people with respect. Regardless of rank/political vs. career, everyone is working towards a common purpose and serving the nation. Particularly important is to be nice to support staff. They are not servants, nor are they stupid. Treat them with respect because they are experts at what they do and are absolutely integral in advancing whatever task/project you are working on. Common decency goes a long way."

"Always do your homework before a meeting. One way to think about preparing for a meeting: ensure you only ask questions in a meeting that can't be answered from doing your prerequisite homework (i.e. reading the policy literature, reviewing the history, inquiring with your support staff or peer colleagues for background). Don't forget to talk to people within your bureau who have worked on these issues and could have really important context/background information to understand the history of some issues - you don't have to reinvent the wheel."

"It's common to think about making your pitch geared toward the most important person in the room (i.e. the Assistant Administrator or the Administrator). That said, do not forget to address your pitch toward the second most important person in the room. The most important person in the room will always be looking for support and someone to assign next steps to work on the project."



Sourced from Obama-Biden Administration Alumni

United States Agency for International Development (USAID)

As you reflect back on your time in an agency, what do you wish you had known to have been able to hit the ground running?

"Departments and agencies have individual cultures, agendas, rivalries, and constituencies that are institutional and last from administration to administration, and managing these differences takes up much more time and bandwidth than expected. Understanding that history/legacy can be really important to advancing your work. One example is the tensions between the State Department and U.S. Agency for International Development:

"They generally have to work closely together, but have different missions (diplomacy vs. development), different sizes of staff and budgets (State has more people, but USAID has more money), different approaches to Congress (State is openly contemptuous of the Hill, while USAID seeks partnership), and different senses of time and success (State is focused more on short-term influences on government actions, USAID on long-term, measurable improvements in a country's metrics, with programs designed to last several years).

"These differences can have a lot of influence over activities at USAID (from our perspective), for example going all the way down to having to negotiate extensively with State about whether to even provide Congress a briefing on something. Similarly, the role of the F Bureau or State's ACE offices for some USAID regional bureaus (E&E, Asia) can exacerbate power struggles/tensions."



Sourced from Obama-Biden Administration Alumni

United States Agency for International Development (USAID)

As you reflect back on your time in an agency, what do you wish you had known to have been able to hit the ground running?

"There are a lot of people in the executive branch, which means there are usually multiple levels of internal approval/clearance and a lot of negotiating/influence to get anything done. Power is therefore very diffuse. A lot of time will be spent convincing people in your own bureau, let alone across the agency, that a particular action needs to be done. There are meetings to plan meetings to discuss meetings to decide whether to have meetings, and nothing's been said until everyone's had a chance to say it. The plus side of this is that if you are successful in pushing a particular idea, it can become conventional wisdom and last beyond your time in the agency.

"Another reason you will have to spend your time convincing people to do something is that many career staff are experts in what they do, and for the most part they really are nonpartisan and dedicated to serving the public. This is good in that they really do know what they are talking about, they can be objective, and they take pains to ensure that things are done properly. On the flip side, some can be very tunnel visioned ('oh, I don't know anything about urban health, I just do rural health, and in fact, I just do rural children's health, I don't know anything about rural maternal health') and if they don't want to do something they will generally find a way not to do it. You will also spend quite a bit of time figuring out which career person is actually the one you need to speak with about a particular topic."



Sourced from Obama-Biden Administration Alumni

United States Agency for International Development (USAID)

As you reflect back on your time in an agency, what do you wish you had known to have been able to hit the ground running?

"Remember to give feedback (especially *positive* feedback) particularly to career staff. A lot of career staff also don't necessarily get feedback/see the benefits of doing 'bigger' or different projects outside of what they view to be the norm of their portfolio. Closing the loop with them on why their work on something was recognized by the higher ups is really helpful to make the next ask easier.

"For example, USAID's E&E Bureau had experienced a substantial deduction in budget and staffing for a few years which the presidentially-appointed, Senate-confirmed Assistant Administrator (AA) was working hard to address, primarily by meeting with staffers and Members of Congress to make the pitch for more funding. That effort required a lot of graphics/numbers/charts to be created so we could visually show what had happened as well as show the precarious nature of the region (Russian aggression, foreign fighters going to Syria, unemployment rates, etc.). It required a lot of 'extra' work from the program office, but once the staff there started getting positive messages from the AA or readouts of meetings where their slides were key in advancing the discussion, they became more aware of why the extra work was being done and much more willing to do the tasks."



Sourced from Obama-Biden Administration Alumni

United States Agency for International Development (USAID)

As you reflect back on your time in an agency, what do you wish you had known to have been able to hit the ground running?

"One very positive thing about the executive branch is that there are a lot of training options available, and even as an appointee you can participate in them to build your skills. It may take some work to figure out what the opportunities are, but it is worth it. I learned a lot of lessons about management through formal trainings, for example, that I was then able to implement with my team."



Sourced from Obama-Biden Administration Alumni

United States Agency for International Development (USAID)

In the specific agency or office in which you worked, what do you wish you would have known about that agency specifically and what would you share with the next cohort of appointees?

"There is an unusual culture at USAID among many career officials – particularly but not exclusively Foreign Service – that headquarters in Washington is simply a support office for the Missions abroad, where the 'real' work of the Agency is done. There are definitely FS Officers who referred to Washington as a 'hardship post.' That may have been true thirty years ago, but in this globalized, interconnected world and in this constrained budget environment, success in Washington is essential to the Agency's success overall, particularly with the Hill. Many of the key factors in the 'new USAID' that Congress likes – such as increased use of public-private partnerships; the emphasis on science, technology, and innovation; the recognition that the goal of development assistance is promoting self-reliance in countries, not dependency; and increased rigor in evaluations – are driven out of D.C. by policy if not practice. So cooperation from Missions with requests from Washington – including on how to work with congressional delegations to make visits successful – is essential.

"Legislative affairs and regional bureaus can earn this cooperation by demonstrating that we have the contacts and the understanding to get Missions what they need in terms of funding and support from Congress – but in return, Missions have to give us what we need in terms of information (and in a timely manner). Similarly, working within a regional Bureau, there has to be a balance: Missions are both a receiver of support from Washington, but also as an 'on the ground' resource for Washington. There were numerous times when requests for input from a Mission were perceived as a burden when in reality, taskers coming from senior agency leadership are a huge opportunity to highlight the important work happening abroad. It is important for Bureau leadership to take the lead in setting the standard of engagement with Missions, working closely with Mission Directors as well as the desk officers to explain and maintain the standards."



Sourced from Obama-Biden Administration Alumni

United States Agency for International Development (USAID)

In the specific agency or office in which you worked, what do you wish you would have known about that agency specifically and what would you share with the next cohort of appointees?

Specific to working in the legislative affairs office of USAID (known by the acronym LPA/LEG)

"Many people at USAID are essentially scientists and are very expert in whatever their particular field is. This is great in that they actually know what they are doing. The challenge for LPA/LEG is that scientists (yes, stereotyping a bit here) can be socially awkward and not always coherent to non-scientists, so when bringing a USAID expert to Congress for a briefing, you often have to do extensive preparation so that congressional staff can understand what the USAID expert is talking about. You also have to do serious vetting as to whether you can even take someone to the Hill in the first place (they may simply be too incoherent or unable to stay on message).

"One of the biggest challenges for LPA/LEG is that most employees of the Agency do not understand Congress or its role as part of the U.S. government (and to be fair, there's no reason they should - they are experts in other matters). The result is that many folks in the Agency (including politicals, sometimes) do not always grasp why clear, responsive communication with the Hill is so important - or even why we have to respond to Congress in the first place. Or, on the other hand, people overdo it because they don't understand how the Hill works, either reacting explosively to any random thing that Congress does without trying to grasp the context, or insisting that every little thing their bureau or office does has to be broadcast to everyone on the Hill all the time. So continued 'inreach' by LPA/LEG - providing 'Congress 101' trainings and actively providing Hill insights and readouts in internal meetings - to the rest of USAID is critical, because it reinforces LPA/LEG's value, explains why Congress is important, and demonstrates that LPA/LEG staff are actually subject matter experts themselves."



Sourced from Obama-Biden Administration Alumni

United States Agency for International Development (USAID)

In the specific agency or office in which you worked, what do you wish you would have known about that agency specifically and what would you share with the next cohort of appointees?

Specific to being a Special Assistant (SA)

"It was really important to figure out what Executive Secretariat (ES) is and how they worked (they manage any taskers/briefers/papers for the Agency front office as well as serve as point for taskers/briefers from State's front office that needs USAID input or any taskers/prep materials for NSC meetings). A lot of my early struggle was because I never really understood who was in ES or what their specific clearance process was for taskers. Ensuring new SAs get that info (even if it's just an email pre-drafted by ES) would help hit the ground running because ES taskers hit their inbox basically from day 1."

"Figure out what paper is being sent up to the 6th floor (where the Administrator's office is) and how your bureau should/could plug into it. Go to the weekly Administrator schedule preview meetings with the Administrator's scheduler. They are really helpful to see what is happening and on the books for the 6th floor. Part of the challenges with the size of USAID and the work being done is that there are a lot of things that require cross-bureau clearances but not everyone remembers all the points of intersection. Working to build relationships with key counterparts in different bureaus can help negate the risk of being left out of the process. It was really important to remember that exclusions if they happened were generally not malicious so working to get added to a clearance list was much easier when approached with a 'hey, my AA heard about this briefer for the Deputy, our office for XYZ would really like to weigh in with some ideas/examples' rather than hitting someone with a more outraged stance. Also, if the issue is within ES, literally speaking with your Bureau's ES liaison will fix that problem relatively quickly."



Sourced from Obama-Biden Administration Alumni

United States Agency for International Development (USAID)

Is there anything else that you think new appointees should know or think about before they start?

"You are going to be at the department or agency for a short time, but if you are able to effect culture change, your legacy will be long-lasting. So think about what you would like that legacy to be (and make sure it is in line with the President's agenda!), and be very deliberate and respectful in working with career staff to convince them that your idea is their own, so they will carry it on after you leave."

"Remember that the last four years were hard for a lot of career staff. Fear of budget cuts, having to adapt work to fit into the demands of the last administration, and dealing with an erosion of principles and norms across U.S. foreign policy would definitely have impacted career staff. Just because the administration has changed does not mean morale will miraculously bounce back. Go out of your way to show respect for career staff's service and knowledge, and encourage them to contribute to the rebuilding of the department/agency as the experts and citizen-servants that they are."



Sourced from Obama-Biden Administration Alumni

United States Department of Agriculture (USDA)

As you reflect back on your time in an agency, what do you wish you had known to have been able to hit the ground running?

"Internally to USDA, just learning the structure and how things actually get done. I was very lucky that an amazing career woman worked in my office who knew the USDA system. Before coming to USDA, I had never heard of OBPA (and I had worked in ag. policy in D.C. for almost 10 years by this point!). OBPA is so critical within USDA from building a budget, to working with OMB, to rulemaking."

"The rulemaking process. There are so many steps from start to finish and understanding how that process works, how much time each stage needs (depending on prioritization within the agency), etc. Have someone sit you down and give you the school house rock version of how a law gets implemented."

"Invest in your relationships with career staff. They were there before you and will be there after you. They are knowledgeable and professional and want to help the administration deliver on their priorities; however, they also want to be respected for what they bring to the table. Asking their opinion (whether you end up going that direction or not) will pay dividends. Also, understand while you, as a political appointee, are in a sprint...career staff are in a marathon. Some will work in agencies for their entire career...you need to figure out how to work at what can feel like different paces or sense of urgency."



Sourced from Obama-Biden Administration Alumni

United States Department of Agriculture (USDA)

In the specific agency or office in which you worked, what do you wish you would have known about that agency specifically and what would you share with the next cohort of appointees?

"Interagency process - understand this process early! Build relationships with your counterparts at agencies you work with often (for me it was USTR, Commerce, FDA, NSC, NEC, and sometimes HHS). Agencies will have different priorities and goals they are trying to advance. Having good relationships with folks will only help those hard conversations. (Also, do the same within USDA. If you are working on trade issues, for example, get to know the folks at FSIS, APHIS, REE, etc.)."

"OMB - one of the things which was apparent right away is how important OMB is. But there are a lot of different layers and use them to the full advantage -- whether that is at the Secretary level, COS, agency, or career staff."



Sourced from Obama-Biden Administration Alumni

United States Department of Agriculture (USDA)

Is there anything else that you think new appointees should know or think about before they start?

"Build a solid team - at USDA, in the mission area, in the agencies, and in the states. These jobs are hard and having a team you can work with and rely on is so important. (Speaking of teams - build diverse teams. Nothing was more useful when trying to tackle complex policy questions than having different perspectives and life experiences at the table.)"

"Try to meet colleagues and counterparts in other agencies -- I waited until the end to really make an effort to do this and I wish I had done so sooner. Their perspectives are valuable and you can find important ways to collaborate."

"What got you here will not make you successful now that you are in the job."

"Drop the ego. Your job is to serve, and you are a representative of the entire administration."



Sourced from Obama-Biden Administration Alumni

United States Department of Agriculture (USDA)

Is there anything else that you think new appointees should know or think about before they start?

"Return every call within 24 hours. Acknowledge your colleagues and your constituents even if you can't get them an immediate answer. Let them know you are working on it."

"Be nice to everyone, but especially the career staff."

"Remember that your time is temporary."

"Transparency and accountability matter."

"You don't have to know everything. Ask for help."

"True power comes from sharing power. Empower your teammates and support each other."



Sourced from Obama-Biden Administration Alumni

United States Department of Commerce (DOC)

As you reflect back on your time in an agency, what do you wish you had known to have been able to hit the ground running?

"This is a team sport and you need to work collaboratively across your agency and the entire administration. Remember how your actions impact others and focus on being as inclusive and collaborative as possible. Too often, people don't remember to be respectful of the people they see working in their areas, e.g. WH—Agencies, Agency OSEC—Bureaus."

"In a nutshell: Relationships, Relationships, Relationships. Build meaningful solid working relationships with the career staff. They will guide you along the way and help you stay connected to the work long after you've moved on. Build great relationships with your fellow appointees. You all are on a mission together. You don't have a lot of time to 'change the world' so the support from others who understand and are trying to do the same is critical...and fun."

"Don't take yourself too seriously. Yes, the work we are doing is serious but there are amazing folks inside and outside of government making herculean strides just like you! You are a member of a team and none of this can be done alone."



Sourced from Obama-Biden Administration Alumni

United States Department of Commerce (DOC)

As you reflect back on your time in an agency, what do you wish you had known to have been able to hit the ground running?

"Learning your agency and the bureaus can be daunting. So, take every opportunity you can to learn. We asked each bureau to do a 101 for the politicals. This was essentially a crash course to what each bureau did and how they functioned. This was especially helpful for Commerce appointees since Commerce's bureaus are so 'different."

"The agencies can sometimes be challenging to navigate when you first arrive. Have patience and take the time to observe and learn how they operate. There may be bureaucratic ways of doing business that you might struggle with, but these agencies are also filled with hardworking civil servants who have tons of advice and expertise to share. Listen and learn from them. Be sure to take the time to learn about the bureau you are in and its culture before trying to change anything."

"It's a marathon, not a sprint. These positions can be very time intensive. Remember to pace yourself and take time to brainstorm new ideas. If you are running on all cylinders at all times for a long period of time, you will burn out or simply be less effective. Be sure to remember that everything doesn't need to happen on day 1 or month 1."



Sourced from Obama-Biden Administration Alumni

United States Department of Commerce (DOC)

In the specific agency or office in which you worked, what do you wish you would have known about that agency specifically and what would you share with the next cohort of appointees?

"Commerce is a broad and diverse agency. Particularly those working in the Office of the Secretary need to remember that the bureaus are experts and that you need to win them as allies, not rule them as their bosses."

"The career staff [at the International Trade Administration (ITA)] have invaluable experience (often decades of it). They are trade and industry experts. Rely on them. They may be afraid to speak up because political appointees don't always value their opinions. Try to build a culture where they feel like part of the team. It may take time to build trust, but will be worth it. Morale has always been low at ITA, but the political leadership can make a significant impact."



Sourced from Obama-Biden Administration Alumni

United States Department of Commerce (DOC)

Is there anything else that you think new appointees should know or think about before they start?

"So many things to add. These jobs are an honor and a privilege. Enjoy the journey and be respectful of the career employees. They have just been through four hard years and they were there before you and will be there after. You need to win their respect and the honor to lead them."

"It is an incredible honor to serve our country. Your positions will wield the ability to make a huge impact. Do not take this lightly. Remember this in all of your interactions internally and externally."

"Try to avoid creating a culture of us vs. them between career and political staff. This does happen at some agencies. We are one team and career staff will be a critical part of the administration's success."

"Make sure to take time to reflect on the amazing journey you are on. You will be incredibly busy, but make sure you stop to appreciate what you are a part of."



Sourced from Obama-Biden Administration Alumni

United States Department of Energy (DOE)

As you reflect back on your time in an agency, what do you wish you had known to have been able to hit the ground running?

"All politicals would have benefitted from an overview of the agency, the President's priorities for it, and what was expected of an appointee."

"An orientation/training before (or soon after) starting would have been helpful -- to cover what DOE does, what program offices do what, how the support offices operate, how DOE interacts with the White House and other agencies, etc. While difficult to put together, something that outlines each of the programs and their overall goals or priorities would be extremely helpful."

"One of the first things I actually learned is that working in an agency means that the White House is a boss and a stakeholder. When you get a call from someone in the White House asking you to do something, it's possible, if not likely, that another part of the White House has called asking someone else in your agency to ask for the same thing or something completely contradictory. I spent a ton of time telling one part of the White House what another part was doing. It helps if you and your colleagues at the agency are coordinated and communicate on what asks are coming in from the White House and what information is going over to the White House (and how). Further, having an explainer on which parts of the White House and key contacts at other agencies would have been tremendously valuable."



Sourced from Obama-Biden Administration Alumni

United States Department of Energy (DOE)

As you reflect back on your time in an agency, what do you wish you had known to have been able to hit the ground running?

"Ensure Transition materials are distributed to appointees who joined after the first few months -- though, perhaps a sanitized/condensed version."

"Provide a better understanding of the role of a schedule C appointee, and encourage more interaction among schedule Cs in different programs and offices. Truly explaining to junior politicals not only their functional role (supporting their principal to do XYZ), but the context behind having a Schedule C in a certain place/office/etc."

"Equip politicals with resources on where to go for help, e.g. when to lean on the White House Liaison, when to reach out to other Special Assistants in similar roles, etc. Having some sort of cheat sheet for who to reach out to would have been fantastic since it can be overwhelming and intimidating to reach out to people with seemingly fancy titles like Assistant Secretary or Chief of Staff."

"A clearer appreciation for the role of the career staff. I watched people struggle to understand the value of the career staff and miss opportunities to leverage their institutional knowledge and expertise."



Sourced from Obama-Biden Administration Alumni

United States Department of Energy (DOE)

In the specific agency or office in which you worked, what do you wish you would have known about that agency specifically and what would you share with the next cohort of appointees?

"Acronym List -- DOE is an acronym morass!"

"DOE 101, from the history of the Manhattan Project / AEC / ERDA through the '70s energy crisis to today."

"Making of the Atomic Bomb by Richard Rhodes. Especially for EM and NNSA, understanding the context of what happened and what DOE is doing now is very important. But even with EERE and other program offices, awareness of more recent history such as the Recovery Act would be helpful."

"Where do I get data, e.g. tapping into EIA?"

"Which labs do what and how do I work with them?"

"What is the relationship between DOE and FERC?"

"Organize some topical brown bags."



Sourced from Obama-Biden Administration Alumni

United States Department of Energy (DOE)

In the specific agency or office in which you worked, what do you wish you would have known about that agency specifically and what would you share with the next cohort of appointees?

"Hold/attend bi-weekly Special Assistant meetings so it isn't just the monthly Schedule C all-hands."

"Encourage Schedule Cs to attend support offices' weekly meetings (like the weekly PA meeting with the Communications liaisons) for increased contextual awareness, etc."

"At EERE, they used a lot of contractors, so some understanding about what roles were appropriate for contractors and why. That would have been helpful to know, especially when it came to the press shop. It was hard to navigate between EERE communications and PA."



Sourced from Obama-Biden Administration Alumni

United States Department of Energy (DOE)

Is there anything else that you think new appointees should know or think about before they start?

"Your security clearance is going to take longer to process than you think."

"Spend as much time getting to know/bonding with GC, PA, and the career staff as possible!"

"There's never going to be an end to the amount of work you could be doing, so prioritize, triage, and be kind to yourself."

"Your principals are extremely important and you need to serve them well, but be on team staff. Don't throw your colleagues under the bus."

"Be nice to the security detail."

"I was oftentimes scared to speak up as a Special Assistant. I didn't know what I was empowered (or not empowered) to do, or what my place was. I tried to be a team player and do whatever I was asked instead of bringing particular insight or strategy to the table, because that's what I thought I was supposed to be doing. It seems critical for any Special Assistant to know how to use their voice and intelligence to help get things done. I was overly deferential, careful, and respectful of existing process and people."



Sourced from Obama-Biden Administration Alumni

United States Department of Energy (DOE)

Is there anything else that you think new appointees should know or think about before they start?

"Take the time to learn about and from the folks who've been around for a while. The transition to a huge bureaucracy is a challenge, especially if you're coming from the Hill. It's easy to get lost - whether physically (I can't tell you how many extra miles I walked around in Forrestal trying to find the right elevator or the open coffee shop), in information, or in the various processes, procedures, and protocols."

"Every appointee should know the CFO vs OMB vs X Committee budget process - that grounds you in reality very quickly."

"There should be more formal shoutouts on good work and successful initiatives to all the appointees from senior management. I think that acknowledgement builds more good will and shows other colleagues potential area to collaborate or learn from too."



Sourced from Obama-Biden Administration Alumni

United States Department of Health and Human Services (HHS)

As you reflect back on your time in an agency, what do you wish you had known to have been able to hit the ground running?

"Make sure to check out the Plum Book for a sense of all of the appointees across the government."

"The career folks are your best resource - get to know them well, grab coffee, give them a call."

"Pick up the phone often - it's the best way to get to know people, especially those who have been working at your agency for a while, and build relationships. It will also help get quick answers when you email in the future or are in a bind."

"See where you can collaborate. Agencies are big and often times other staff (political and career) could be working towards the same goal as you. See if you can share resources or divide and conquer."

"External stakeholders can be some of your best friends. See who agrees with you and who you can bring along. They have resources and flexibility you might not. Leverage them when you can. You'll accomplish more than if you just leaned on government staff."



Sourced from Obama-Biden Administration Alumni

United States Department of Health and Human Services (HHS)

In the specific agency or office in which you worked, what do you wish you would have known about that agency specifically and what would you share with the next cohort of appointees?

"HHS has 10 regional offices and the folks who work there are a mix of appointees and career employees. They are a great way to connect with people across the country and the regional directors will have a great sense of what the needs are in their specific areas. Make sure to consult them for any regional needs and keep them in the loop!"

"HHS is also an extensive agency with many divisions. Staff have a wealth of knowledge and experience. Lean on it and use it. You don't have to be the expert in everything but it helps to know how to get answers from others."

"Get to know the other political appointees in other divisions, especially the special assistants. They can help get information faster."



Sourced from Obama-Biden Administration Alumni

United States Department of Health and Human Services (HHS)

Is there anything else that you think new appointees should know or think about before they start?

"Don't be afraid to ask questions."

"Read everything you can get your hands on - reference the shared drives, read transition documents, learn about what your office worked on before."

"Go to all the meetings you're invited to, and ask if you can attend others if they interest you."

"Stay open to new opportunities - keep an open mind if a new opportunity comes along, even if it's not exactly where you'd envision yourself."

"You're not expected to know every acronym or policy detail. Look things up after meetings and build your knowledge up over time."

"Don't be afraid of someone's title. Everyone is working towards the same goals and you're all on the same team. Call and email people if you need something. Don't be shy."

"The only thing that isn't a renewable resource is time. Use every minute you're there wisely. It will fly by."



Sourced from Obama-Biden Administration Alumni

United States Department of Homeland Security (DHS)

As you reflect back on your time in an agency, what do you wish you had known to have been able to hit the ground running?

"Do some initial rudimentary research on DHS and what the mission is. This includes looking into TSA, USSS, ICE, CBP, FEMA, USCIS, FLETC, and USCG."

"Understand that what you have heard or read on the outside is significantly different to the challenges within."

"Research and learn who the outgoing and former DHS appointees were, despite being from different administrations. DHS has a nascent culture of keeping a community of 'formers;' also, many 'formers' will or still do work in the DHS space in think-tanks, private sector, boards/commissions, or are other subject matter experts."

"Unlike other departments, DHS is still building its own culture, meaning, DHS is not DOD, DOJ, FBI, NCTC, or CIA; it's very much its own department -- learn it."

"Recognize that many of your fellow appointees in other agencies, the White House, your friends, the Hill, the media, and your family may not know or understand DHS, and that's OK."



Sourced from Obama-Biden Administration Alumni

United States Department of Homeland Security (DHS)

In the specific agency or office in which you worked, what do you wish you would have known about that agency specifically and what would you share with the next cohort of appointees?

"DHS civil service employees are extremely dedicated for the most part and many have a chip on their shoulders because they feel like DHS is regularly looked down upon."

"While DHS civil service employees are dedicated, morale in the department ebbs and flows. This is usually tied to the media cycle. Be supportive and fight for them."

"Respect what has been built and the existing culture at DHS, while it is still maturing it is strong. **Do not** assume you know how to make things better by using consulting strategy or using practice from other agencies, saying things like, 'This is how we did things at X."

"Listen! Listen to the civil service employees and work with them to push for change. In many cases, they will look to you to use your relationships to cut through red tape."

"Be an advocate for the Department and the workforce. This will give you credibility and respect."



Sourced from Obama-Biden Administration Alumni

United States Department of Homeland Security (DHS)

Is there anything else that you think new appointees should know or think about before they start?

"Remember you are here to serve and that you are in a position of privilege. Mission comes first."

"A quick story: a civil service employee told an Obama appointee that, 'you all (appointees) come and go. If you disrespect me, I can just wait you out and not lift a finger.' Be respectful, understand you are there to support and lead from behind in many cases."

"Do not hesitate to speak up if you have something to contribute to the discussion, and do not hesitate to take your seat at the table."

"Build and maintain relationships with other DHS and other agency appointees. Relationships are key to getting things done."

"If you ever complain that you, 'have to go to the White House,' or 'the front office,' or 'another agency,' or 'public engagement,' you need to ask yourself why you are serving. There are so many who want to be in your shoes. Remember that you are representing your country."



Sourced from Obama-Biden Administration Alumni

United States Department of Housing and Urban Development (HUD)

As you reflect back on your time in an agency, what do you wish you had known to have been able to hit the ground running?

"Even though this Partnership for Public Service resource is for Assistant Secretaries for Management, I found the advice helpful for all. Having worked in Treasury, CFPB and HUD, I think it would be good to understand how the agency makes decisions where there may be a policy disagreement. Treasury (and the State Department) have strong offices of the Executive Secretary that help resolve policy, program and management disagreements across the agency before elevating to the Secretary for a decision. HUD uses their DepSec office for this. There is no right or wrong answer here, AND you can change this as the team gets filled in at the agencies. It will help close open communication loops and make your team more effective.

"You represent not only your agency (FHA), but also the larger organization (HUD) and the new Administration. Figure out who can get things done in the organization. Remember to keep other parts of the Administration informed. OMB, NEC, etc. have important roles to play and will be needed to get things done."



Sourced from Obama-Biden Administration Alumni

United States Department of Housing and Urban Development (HUD)

As you reflect back on your time in an agency, what do you wish you had known to have been able to hit the ground running?

"It would have been helpful to have an orientation about what it was going to be like as an appointee—the expectations, the long hours, the challenging life/work balance, the red tape and bureaucracy and the many gates that have to be crossed in order to get anything done in a large agency. Would have been helpful also to have access to former Clinton alumni who worked in the same agency who could potentially be mentors, etc.

"Also some career advice about not only starting a political appointment but planning for the exit strategy. There should have been more opportunities for training and professional development for the more junior appointees at the outset and leadership training for the more senior people. They instituted this late in the Obama administration.

"There should also be a quicker process of winnowing folks who will not work out in their initial appointee role and the White House Liaison should have been charged with finding them alternative placement. Often the solution was to work around that person which caused more stress and delays in getting things done."



Sourced from Obama-Biden Administration Alumni

United States Department of Housing and Urban Development (HUD)

In the specific agency or office in which you worked, what do you wish you would have known about that agency specifically and what would you share with the next cohort of appointees?

"I worked at Treasury, stood up the Consumer Financial Protection Bureau (CFPB) and worked at HUD. In each, it would be helpful to have better understood the inspector general/audit issues and any connection to congressional investigative committees. This may be another dynamic that changes over time, but it is important to have a process to track these kinds of sticky issues."

"The Federal Housing Administration (FHA) consists of 3,000 dedicated employees, most of whom work outside of D.C. Reach out to them and thank them for their work in these difficult times. And no matter how well you think you know the agency, there are important functions that you don't know about and will need to learn.

"There will be a tension between wanting to signal a new direction and wanting to keep the trains running. Think carefully about what you want to accomplish in the first 100 days, but remember that managing a large agency is more a marathon than a sprint. (And be careful with the metaphors...you are talking to a very diverse group.)"



Sourced from Obama-Biden Administration Alumni

United States Department of Housing and Urban Development (HUD)

In the specific agency or office in which you worked, what do you wish you would have known about that agency specifically and what would you share with the next cohort of appointees?

"The budget and finance staff should provide exactly what funds are available, have not been spent and the funds that have been committed for the next 2 years. Staff often present the budgets in total dollars as if it's available, but in reality it is not. I would like to have known the roles that senior staff had in relation to policy topics of interest to the Sect and would have requested in advance a plan for filling out policy areas in the Sect's office with Senior staff. Things to request in advance: outstanding correspondence to congressional members including time delayed in responses, outstanding requests from key sector leaders, membership organizations and outstanding requests from Governors and Mayors."

"I wished there would have been an orientation to the agency senior career staff—their functions and portfolios plus how we resolve differences across departments. An organizational chart along with a glossary of the agency's frequently used acronyms would have been helpful. Meetings at the senior level should not only include appointees, but the senior career staff since they are indispensable. Their perspectives should be solicited more often and given more weight."



Sourced from Obama-Biden Administration Alumni

United States Department of Housing and Urban Development (HUD)

Is there anything else that you think new appointees should know or think about before they start?

"No matter the agency, spend time getting to know the career staff, especially the SESers. The vast majority are seasoned experts in their jobs and want to work with you! They may have had good or bad experiences these last four years but keep everyone focused on what's possible. And have fun. :)"

"Study the org chart and budget of the organization. Figure out what is being worked on. (Active rulemaking, changes to handbooks etc.) What are the upcoming deadlines/deliverables?"

"New appointees should have a serious conversation with their families about the demands that will be made of their time, the financial sacrifices that have to be made and the level of public scrutiny of one's personal affairs (vetting, background checks, etc.). Appointees should also learn to lean on each other, not be afraid to ask for help, and create safe spaces where they can support each other."



Sourced from Obama-Biden Administration Alumni

United States Department of Housing and Urban Development (HUD)

Is there anything else that you think new appointees should know or think about before they start?

"Work quickly to fill the Travel and Advance team so that the Sect. can get out to visit the most critical geographic areas and state and community leaders. Of course this is so that the Sect. is ready once cleared for travel after the pandemic has been managed.

"Appointees should be introduced to the appropriate WH staff as soon as possible. It should not be some big mystery who the WH policy leads are.

"The Sect. should be provided every regulation and policy that was overturned in the last 4 years along with a list of contracts, contractors and vendors that received any agreement that will be in place when the new administration starts. Lastly, there should be information provided about all pending lawsuits, discriminations and harassment claims along with the balance of the fund for paying out losses."



Sourced from Obama-Biden Administration Alumni

United States Department of Labor (DOL)

As you reflect back on your time in an agency, what do you wish you had known to have been able to hit the ground running?

"It's okay not to know how the agency works, what everyone does, or even who to ask about something. If you feel overwhelmed during your first few weeks, it probably means you're absorbing the complexities and nuances of that agency--and that's a good thing! Listen, be humble, ask questions, and read up on the basics of federal rulemaking. With time, you'll get the hang of it. Also, Exec Sec is incredible--they know everything! Use them, thank them, embrace them."

"If I had a clearer idea of what the goals of the agency/sub-agency were, it would have helped to contextualize my work and help me ID strategic opportunities (and feel better saying no to stuff)."



Sourced from Obama-Biden Administration Alumni

United States Department of Labor (DOL)

In the specific agency or office in which you worked, what do you wish you would have known about that agency specifically and what would you share with the next cohort of appointees?

"There are **many** points of connection, even within DOL (forget the full administration). Having a full understanding of who's talking to whom about what topics (and whether enforcement or advancing programs) would be challenging, but super helpful. I really didn't appreciate that ETA and OSHA would both be talking to the same people that I wanted to talk to, so I'd recommend at least understanding how different offices interact with each other and stakeholders would be useful."

"Don't assume that the sub-agencies within DOL are in regular communication, even if you observe an overlap in their portfolios. If your job is to make X program run better or implement Y policy, make sure everyone who cares about that program or policy is in the room when you discuss it. You don't want to waste time by inviting people to meetings they don't need to be at, but it's better to err on the side of inclusion (at least initially). When you're convening that meeting, ask the invitees to tell you if you've left anyone off--and then apologize if you did."

"Your teammates are awesome. Get to know them and rely on them. You're about to make lifelong friends."



Sourced from Obama-Biden Administration Alumni

United States Department of Labor (DOL)

Is there anything else that you think new appointees should know or think about before they start?

"When you first start, you'll have plenty of fresh ideas about how to improve things, whether it's how the agency operates or new policy ideas. Keep a list, but remember that nothing is going to change overnight, or even in a year or two. This is also why your career colleagues are your most important allies--they are the ones who will make sure any positive change continues after you're gone, so be kind, respectful, and gracious, even if you don't always see eye-to-eye."

"This will be the best job you ever have--don't take a single day for granted."



Sourced from Obama-Biden Administration Alumni

United States Department of Transportation (DOT)

As you reflect back on your time in an agency, what do you wish you had known to have been able to hit the ground running?

"I started my time in the Obama administration in June of 2009 during a period where the administration was still just getting off the ground. What I did not know at the time was that, while I had been hired because of my background and skills, I would be coming into my appointment without a job description. My duties and responsibilities were carved out over time with the input of my manager as our team identified agency priorities. It was important during that time that I be willing to roll with the punches and be an excellent team player that was willing to take on any task, no matter how small. As time passed, we settled into more defined roles and I led a number of special projects that I am still very proud of."

"I had never worked in the federal government before serving in the administration, so I wish I had a more immediate understanding of the organizational structure and relationship between political and career staff. I would stress the importance of respecting and developing strong relationships with career staff at your agency. I would not have been able to be as effective as quickly without the support and guidance of the amazing career staff who have dedicated their careers to DOT and public service."



Sourced from Obama-Biden Administration Alumni

United States Department of Transportation (DOT)

In the specific agency or office in which you worked, what do you wish you would have known about that agency specifically and what would you share with the next cohort of appointees?

"I worked at three different agencies, Agriculture, Defense, and Transportation. What I learned over time is that each agency has a very unique culture and way of operating that I had to make the time to learn. I knew that I had to make it a priority to build relationships with career staff who could educate me on agency history and protocols. However, I didn't know in the beginning that I should also make it a priority to get to know each member of our political team so that we could connect on both a personal and professional level. There will be times when you don't agree with your colleagues, and having strong, positive peer relationships will make it a lot easier to compromise and collaborate in order to resolve disagreements in a professional and expeditious way. Remember, you are all on the same team!"



Sourced from Obama-Biden Administration Alumni

United States Department of Transportation (DOT)

In the specific agency or office in which you worked, what do you wish you would have known about that agency specifically and what would you share with the next cohort of appointees?

"While I was given a brief overview of what each Administration within DOT focused on (FRA, FAA, FTA, etc), a more detailed breakdown of which specific policy priorities and initiatives each Administration was working on would have been helpful. It would have helped me form a clearer sense of how our work at DOT was making a difference within the larger context of the Obama administration. I would want the next cohort of appointees at DOT to know how incredible it is to be a part of shaping the future of transportation, from self-driving cars to high-speed rail to safety improvements across all modes of transportation. I'll never forget the sight of Secretary Foxx standing in the middle of Baltimore's infamous 'Highway to Nowhere' listening to a community leader describe how that transportation project cut her neighborhood in half and hurt her community. He asked me to organize that tour of transportation in Baltimore for our group of DOT appointees, to highlight that DOT has a responsibility to ensure transportation policy has a positive impact on communities. Another day, I had the chance to watch university students show off the self-driving cars they designed to the National Highway Traffic Safety Administration, demonstrating the technology that will one day make true self-driving vehicles a reality."



Sourced from Obama-Biden Administration Alumni

United States Department of Transportation (DOT)

Is there anything else that you think new appointees should know or think about before they start?

"Have fun! Attend the Happy Hours or after work events that are organized for political appointees whenever you can. Also, showing up to Agency or Department wide hosted events (such as awards ceremonies, conferences, holiday celebrations) is a fantastic way to visibly show your support for the hard work of your career colleagues and learn a great deal about the culture of your agency."

"Savor every second of the experience, because it will be over before you know it. It's such an honor and a privilege to serve, and this experience will be unmatched by any other for the rest of your life. Take advantage of as many appointee experiences (tours, special events, etc.) and professional development opportunities as you can. As a Deputy White House Liaison, I saw first hand the contrast between appointees who had enthusiasm for getting the most out of the experience and those who did not. Also, seek out opportunities to get to know your fellow appointees. It may seem difficult at first because you may not see other appointees from different parts of your agency as frequently, so don't be shy to ask your White House Liaison team for help facilitating more opportunities to build those relationships."





The following guide includes practical advice for new junior staff, sourced from Obama-Biden administration alumni.

Sourced from Obama-Biden Administration Alumni

The best thing about being a junior staffer was the community. And the best way to learn, we found, was by watching others. Because you're starting anew in this wonderful place, we wanted to offer a scattershot of lessons learned.

Former staff assistants, legislative assistants, legal assistants, executive assistants, press assistants etc. are all around you. We have your back. We've been there.

This advice is general and not specific to your office. Some of this advice is specific to working in the office (e.g. "Physical Security"), but most of it is not.

Dust this off and make it your own -- or ignore it and invent a better way. Best of luck!

Sourced from Obama-Biden Administration Alumni

1

Email Etiquette

Rule #1: Emails live forever

- Never put anything in email you wouldn't want to see on the front page of the Washington Post.
- Emails are often forwarded up. Never put anything in email you wouldn't want your boss -- or boss's boss -- to see.

To, from, cc, bcc

- Do not reply all unless necessary.
- Be very careful with the distinction between bcc and cc. When sending an invitation to a large group where the group should not have visibility into others invited, the default should be bcc.
- You may want to cc someone so they know you sent the email, or so they're aware of an issue, without expecting them to act. You may note "Cc'ing [Name] for visibility" so no response is expected from them by others.
- If you receive an email and think others should be on the chain, reply "+[Name]" and add them to the chain.

Sourced from Obama-Biden Administration Alumni

1

Email Etiquette (cont.)

Uniformity

- Uniformity is important. Pick a personal style and stick to it.
- Establishing uniformity in your communications (subject lines, content of message, time of day you send) signals to others that you are in control.
- Practically, people will more easily discern new information if your emails follow the same format.
- If you do not personally know the person you are emailing (or someone else cc'd on the chain), always look them up in the staff directory or on Google, to make sure that the information you are sharing with them or the ask you are sending them is appropriate.
- While tone-matching in email is generally a good strategy, err on the side of formality.

Sourced from Obama-Biden Administration Alumni

1

Email Etiquette (cont.)

Being responsive and getting responses

- When you receive an email, email back to confirm that you've received an email and you're working on it -- even if you don't have the information you need to answer the email. This avoids the sender wondering if you received their email.
- If you ask someone for something and they respond, respond to their email to close the loop. Don't leave them wondering whether you received their email, or feeling as though you did not appreciate their effort.
- Set a different alert noise for emails that come in from your principals.
- If you need an answer by a certain time, be sure to flag it in the email.
- Do not use the "important" designation on Outlook unless it is absolutely necessary.
- From time to time you're going to have to poke people for their answer. Phrases for this are: "Looping back on this." "Checking in on this." You can call if you need to escalate.

Sourced from Obama-Biden Administration Alumni

2

Creating Documents or Drafting the Content of Emails

- There is a White House style guide. Look for it on the internal EOP web page.
- If you're unsure of how to format something, ask for and use a sample or a previous document. No need to invent the wheel and less work all around. It's good for things to be uniform, as mentioned above, because people can quickly distinguish new information.
- If you are using a form or template, be sure to highlight the parts that need changing or filling in. That way you can prevent the wrong information or filler text from going out.
- Never put joking or snarky names or information as a placeholder. We get tired. It might go out accidentally and cause you embarrassment.
- File name conventions matter. Figure out what filing convention is preferable for your principal or team and stick to it.

Sourced from Obama-Biden Administration Alumni

3

Scheduling

Finding time

- Use Scheduling Assistant in Outlook to look for overlapping windows of availability.
- When you are scheduling a meeting for a group, send an email to other assistants that offer windows. "Please respond if time in these windows does not work for you."
- Some calendar holds are not real, or can be moved around. Some meetings routinely end early. If you're in a jam and can't find a window for the folks that need to get scheduled, poke around to make sure the holds are real.

Calendar invite

 Uniformity for calendar invitations, like emails, is important. For example, meeting names: "Chat," "huddle," "sync," "deep dive" can signal different things to your team if you stick to the same vocabulary over and over again.

Before the meeting

 Five or ten minutes before a meeting, email noting that we are running "on time" or with an ETA for when the meeting will begin. Note that folks may be coming from different buildings, so will need to know when to leave.

Sourced from Obama-Biden Administration Alumni

4

Phone Etiquette

- Create a system with your principal about how to relay missed calls or voicemails.
- For sensitive or personal information, err on the side of calling.

5

Tips for Adobe Acrobat

- When printing a double-sided binder, make sure the first page of each new section, document, etc. is on an odd page in Adobe.
- If you must, insert pages to make sure the documents start on odd pages. This will make each document start on the front of a page.
- Before sending anything externally, go to "protect" and click remove metadata.

Sourced from Obama-Biden Administration Alumni



Security

Physical Security (In-person, White House-specific)

- If you misplace your badge, laptop, or other official assets, report it immediately. It will be okay.
- Be mindful that the White House campus is a secure environment maintained by the USSS. The mission of the USSS is to keep the President and other protectees safe; it is not their job to ensure that your day or your office's event goes smoothly.
- Coordinate with White House Operations early in the event planning process to make sure you understand any special security procedures required to bring in catering and any special equipment (e.g. A/V equipment, vehicles, lights, boxes of M&Ms, etc.) required for an event.
- In general, White House Operations is the primary channel of communication between White House staff and USSS. If you have or anticipate any issues related to USSS generally, or bringing guests or things into the White House specifically, White House Operations should be your first call.

Sourced from Obama-Biden Administration Alumni



Security (cont.)

Information Security

- Work should never be conducted over personal email or on your personal phone. In the unavoidable event that any work (or work-related discussion) is conducted using your personal email or phone, you have a statutory obligation to immediately forward that written product to your work account for preservation.
- Follow guidance carefully about handling personal and identifying information.
- Make sure your personal accounts have two-factor authentication.
- Do not work on documents or sensitive materials in public areas.
- When you do go to an office, do not take documents out of the office. Do not wear your badge in public.
- Follow guidance about what you can post on social media

 and when in doubt, don't. Never post something you
 wouldn't be comfortable seeing on the cover of the
 Washington Post.
- Your boss's trust in you is the most important part of being a junior staffer. Loose lips sink ships. When in doubt, don't share information.

Sourced from Obama-Biden Administration Alumni

7

Attitude

- What people remember more than any particular substantive work product is how you handle yourself under pressure. This means:
 - Focus on what you can do to address or fix a situation, and do not get upset (in the moment) at how a fire drill started.
 - o Act like you've been there before, and don't freak out.
 - To the extent you can instill confidence in your principal that they don't have to worry about whatever thing you're handling, that's helpful (even if you have no idea how to do it or handle it in the moment).
- Try not to point out a problem unless you are also suggesting a solution.
- Don't pass on your frustration or stress to others. As you
 move up, if you were treated poorly as a junior staffer, do not
 treat others poorly.
 - This applies to everyone -- the people working in Ike's, the custodians, and all of the interns deserve your respect.
- White House-specific guidance: Learn what the other EOP components and White House Offices do and where they sit.
 Even if it is not "in your job description" to know anything about the US Trade Representative or the Office of Science and Technology Policy, it is to your benefit to be able to capably navigate the White House campus and respectfully engage with all of the people who work there.

Sourced from Obama-Biden Administration Alumni



Interns

- White House-specific guidance: Interns are critical to the functioning of each White House office.
 Without them, the work of your office -- or any office -- could not get done. With them, your office will run better, and you will be better at your job.
 - Invest time in 1) the selection process and 2) training your interns when they arrive. The more you invest at the front end, the better served you and your office will be.
 Throughout the semester, give feedback.
 - O Be good to the interns. Set up brown bag lunches. Invite them to meetings. Make sure senior folks in their office meet them and, if appropriate, send them a quick thank you for any huge lifts. Create a process for interns to give feedback on your program.
- Interns are one of the biggest pools for hiring when an office needs a new junior staffer. If you have a really stand-out former intern, remember them and advocate for them when there are openings.

Guide: Advice for Junior Staff

Sourced from Obama-Biden Administration Alumni



Triaging Work

- When someone asks for something, always, always, ask when they'll need it by.
 - If your principal says ASAP, but you are already working on something that needs to be done ASAP, be transparent about what you're doing and ask them to help you prioritize.
- A good rule of thumb is to complete things at night if you can. You never know what's coming the next morning. You may not have time to put together binders for a 10 a.m. meeting if you leave it until 9 a.m., because a fire drill may emerge at 8:30.
- Similarly, your work may fit into tasks during the day when things are crazy; and tasks after hours when you can work undisturbed by fire drills.

Guide: Advice for Junior Staff

Sourced from Obama-Biden Administration Alumni

10

Tackling questions you don't have answers to

- You'll probably get a lot of questions for which you do not know the answer. For each new ask (unless it's obvious it's not urgent) you should take a couple minutes from whatever you're working on to try to get a basic sense of what needs to be done for the new ask.
 - Quickly check on what needs external support / needs to wait for others to respond and get that stuff rolling, if easy (i.e., if a quick email is all you need to do, shoot that off asap).
 - Figure out what more you need from the principal after you orient yourself to the problem. You go back to your principal with an organized list of questions you need them to answer.
- This is all to avoid you having a task sitting on your desk from 10 AM until you can get to it at 8 PM, and then realizing everything you need to get started working on it requires other peoples' inputs.

Guide: Advice for Junior Staff

Sourced from Obama-Biden Administration Alumni

11

And above all else

- Ninety-five percent of the battle is 1) being competent and 2) being a kind, fun person to work with.
 - O How good you are at your job doesn't say anything about who you are as a person. It's okay to mess up. Own those mistakes and move on. Try not to make the same mistake twice. But if you do, it's okay.
 - How good others are at their jobs isn't who they are. Be compassionate, and patient. Do not throw others under the bus. The road is long.
- Most problems are fixable; be honest and ask for help when you need it.



Guide: Buddy Program Ideas for New Appointees

The objective behind the "Buddy Program" ideas outlined on the following pages is to build cohesion among new appointees, starting on Day One. "Buddy Programs" help foster relationship-building along multiple dimensions, within varied cohorts, and lay the groundwork for inclusive communities.

Guide: Buddy Program Ideas for New Appointees

With thanks to Biden-Harris Transition Staff

Setup	 Consider matching appointees by: Self-reported issue or policy area of interest; Role type or function (Special Assistant, Chief of Staff, White House Liaison, etc.); Self-reported identity (Parents in government, same city of origin, previous type of employment, etc.); Randomly, as it might be enough that they are both new appointees.
Program Outline	 Here's a proposed program outline to get you started: E-introduce the buddies on the first day of their virtual onboarding. Intro includes a one-pager with a few starter questions, such as: Where they live currently; What they were doing before this; How they dealt with quarantine; What they're most excited about; What they're most nervous about; Advice for each other. Buddies agree to complete a few onboarding sections at the same time. They schedule calls to discuss each module, treating parts of the Onboarding program like a virtual book club, or watch party.

Guide: Buddy Program Ideas for New Appointees

With thanks to Biden-Harris Transition Staff

Idea #2: New Hire Class		
Summary	Group together 10 - 15 new appointees who start around the same time. Provide some scaffolding for them to get to know each other as a group.	
Setup	Scaffolding could include: Mailing listserv (e.g. "jan-01-hires@jbrpt.org"); Signal chat group; Facebook group; 1-2 virtual social/happy hours.	
Program Outline	 Here's a proposed program outline to get you started: Organize one virtual gathering with all of them, then let someone volunteer to organize future events. Ask members to create a "getting-to-know-you" slide with 4 - 5 photos of something important to them (family, something that makes them happy, something that inspires them, a place they have been, etc.). 	
Design Questions	Could this work inter-agency, too? What would be the benefits?	

Guide: Buddy Program Ideas for New Appointees

With thanks to Biden-Harris Transition Staff

Summary	Pair one career staff member with an incoming appointee from the same agency.
Setup	 Consider the following: Make this an opt-in program for career staff, surveying them to gauge interest and availability. Pair based on area of interest or identity (similar to option #1: new appointee buddies). Recommend a baseline of four to six hours of virtual chats over six months. Offer a few getting-to-know-you questions and a one-pager of virtual coffee chat ideas.
Program Outline	 Here's a proposed program outline to get you started: Career staff and new appointee meet several times for virtual coffee and getting-to-know-you sessions. If/when they are in person in D.C., could provide a stipend for meeting for lunch, coffee, a cultural event, etc. Have them send a one to two paragraph report to the "buddy program" manager after six months. This program provides the opportunity for career staff members and incoming appointees to get to know each other 1:1.
Design Questions	Do we have a list of career staff? Should we do these pairings by policy area of interest or identity-based (or something else)?



Guide: Team-building in a Remote Environment

The following guide includes a variety of ideas on how to build team while operating in a remote environment.

Guide: Team-building in a Remote Environment

Virtual Team-building Bank

Looking for ways to build team while working remotely? Take a look at the bank of ideas below to help you get started.

- Atlassian's "<u>Icebreaker Activities</u>"
- Baking projects: team members can bake brownies (or whichever baked good they prefer) while live streaming from their kitchens, and then enjoy them together.
- Fast Company's "12 road-tested team building activities that work for real-life remote teams," including:
 - Virtual lunches, gift exchanges, learning circles, GIF battles, collaborative playlists, and more!
- Google Meet/Zoom background competition: team members compete for the best virtual call background.
- Happy/social hour: everyone sits down with their beverage (alcoholic or non) of choice.
- Pick up physical kits (i.e. gingerbread house kits, etc.) and make them together over a call.
- Slack's "<u>Distance is no match for these remote</u> team-building activities"
- Team members can volunteer to lead virtual exercise sessions, including <u>Feldenkrais</u>, gentle seated yoga, or stretching.
- Trivia, of course! Consider <u>Kahoot!</u> as a platform for such, or a great resource for other virtual games.
- We Work Remotely's "<u>5 Non-Cheesy Team Building Tips</u>
 <u>For Remote Employees</u>"



Guide: Training Templates

Whether it's your first time organizing a training, or whether you're a seasoned pro, these resources may be helpful in pulling together new trainings for your agency, office, or sub-team.

Guide: Training Templates

Getting Started with Trainings

Resources

Whether it's your first time organizing a training, or whether you're a seasoned pro, the resources below may be helpful in pulling together new trainings for your agency, office, or sub-team. These are cornerstone elements to the creation of an effective and enjoyable training experience.

- Training slide deck: <u>Use this template</u> as a starting point for your visual training needs.
 - Reference <u>this deck</u> and <u>this deck</u> for great examples of visually appealing training slide decks.
- Training outline and facilitation guide: <u>Use this template</u> as a guide for planning out your training from start to finish, including developing a facilitation guide.
 - Reference <u>this document</u> for a great example of a well thought-out and clearly organized training outline.
- Talking points: Use the training outline template linked above as a guide when developing talking points for each of your speakers.
 - Reference this example of talking points that are concise, effective, and digestible for both the speaker and the audience.



From: Mark Gold
Sent: Wednesday, January 20, 2021 3:54 PM PST
To: Carlson, Ann <carlson@law.ucla.edu>

Subject: Finally some hope.

Ann - how are you doing? I hope all are well and safe.

Are you helping out much with the Biden administration on climate?

I am still so upset about the character assassination of Mary. So horrible. I hope EPA can still get turned around.

The state job is fine. COVID world has made it a grind. Maybe things will turn around soon. I hope we can finally work with the Feds again. One of our own, Janea Scott, is now counselor for the Secretary of Interior - Deb Haaland.

Talk to you soon.

Mark

From: Carlson, Ann on behalf of Carlson, Ann <carlson@law.ucla.edu>

Sent: Tuesday, January 19, 2021 3:56 PM PST **To:** Warren, James <WARRENJ@law.ucla.edu>

Subject: form

Attachment(s): "Carlson S2021.xlsx"

Here's the signed form. The salary will be \$150,000. Can you add it to the form so I don't screw it up? is that everything you

need?

Ann Carlson
Shirley Shapiro Professor of Environmental Law
Faculty Co-Director, Emmett Institute on Climate Change and the Environment
UCLA School of Law
(310) 206-9496

From: Warren, James < WARRENJ@law.ucla.edu>

Sent: Tuesday, January 19, 2021 1:40 PM
To: Carlson, Ann <<u>carlson@law.ucla.edu</u>>
Cc: Parr, Tracey <<u>PARR@law.ucla.edu</u>>

Subject: RE: Me

Thanks Ann.

APO confirms we should just set up through June 30 for now and extend as necessary. If you can email me the completed form we'll get Jennifer's sign-off and forward to APO for approval.

Thanks! James

From: Carlson, Ann <<u>carlson@law.ucla.edu</u>>
Sent: Tuesday, January 19, 2021 11:39 AM
To: Warren, James <<u>WARRENJ@law.ucla.edu</u>>
Cc: Parr, Tracey <<u>PARR@law.ucla.edu</u>>

Subject: Re: Me

Happy to do whatever is easiest. Thanks!

Ann Carlson Shirley Shapiro Professor of Environmental Law Faculty Co-Director, Emmett Institute on Climate Change and the Environment UCLA School of Law (310) 206-9496

From: Warren, James < WARRENJ@law.ucla.edu > Sent: Tuesday, January 19, 2021 11:38 AM
To: Carlson, Ann < carlson@law.ucla.edu > Cc: Parr, Tracey < PARR@law.ucla.edu >

Subject: RE: Me

HI Ann,

We can ask for that stretch and see, though I vaguely recall some preference from the center for setting these up on the AY calendars. Presuming it's okay with you I can check with the director there (Erika Chau) and see which approach is cleaner, two years up front or year by year.

Best, James

From: Carlson, Ann <<u>carlson@law.ucla.edu</u>>
Sent: Tuesday, January 19, 2021 11:30 AM
To: Warren, James <<u>WARRENJ@law.ucla.edu</u>>
Cc: Parr, Tracey <<u>PARR@law.ucla.edu</u>>

Subject: Re: Me

It's definitely extended -- my guess is two years? Does it make sense to extend for two years?

Ann Carlson
Shirley Shapiro Professor of Environmental Law
Faculty Co-Director, Emmett Institute on Climate Change and the Environment
UCLA School of Law
(310) 206-9496

From: Warren, James < WARRENJ@law.ucla.edu > Sent: Tuesday, January 19, 2021 10:55 AM

To: Carlson, Ann <carlson@law.ucla.edu> Cc: Parr, Tracey < PARR@law.ucla.edu >

Subject: RE: Me

Presuming it's an extended leave we could conceivably set through the end of this AY (June 30) and work from there. I've set the attached form as such.

APO might also ask us the amount of compensation from the feds. If you happen to know you can just add to the second part of section A in the attached.

If that all sounds good you can finish with an e-signature at the bottom and we'll forward to Jennifer and then APO for approval. In an ideal world we can get the leave in by tomorrow sometime just to get ahead of pay compute for this month. Not a huge issue if we don't, but the sooner we can get everything set up the more likely it will be that Path can adjust your January earnings accordingly and avoid any overpayment.

Let me know if anything else! James

----Original Message--From: Carlson, Ann < carlson@law.ucla.edu> Sent: Tuesday, January 19, 2021 10:32 AM To: Warren, James < WARRENJ@law.ucla.edu > Cc: Parr, Tracey < PARR@law.ucla.edu >

Subject: Re: Me

I don't know how long the leave will be. Is that ok? And thank you!

> On Jan 19, 2021, at 10:23 AM, Warren, James <WARRENJ@law.ucla.edu> wrote:

> Hi Ann,

> Wow, congrats! We'll get a leave form together. Do you know how long the leave is likely to last? Health benefits should continue through January.

> Best. > James

> -----Original Message-----

> From: Carlson, Ann <carlson@law.ucla.edu> > Sent: Monday, January 18, 2021 4:06 PM > To: Warren, James < WARRENJ@law.ucla.edu > > Cc: Parr, Tracey < PARR@law.ucla.edu >

> Subject: Me

> So, you are probably aware that my life has taken a mysterious turn and I'm ready to update you on it and get the appropriate paperwork in motion. I have been appointed by the Biden administration to serve as the chief counsel for the National Highway Traffic Safety Administration. The agency is in charge of climate standards for cars and trucks, which is why they have recruited me for the position. The job starts Wednesday, believe it or not. I was just offered a job yesterday although this has been in the works for a few weeks.

> So, I will be taking a leave from UCLA and need to get the appropriate paperwork in motion. I will also need to carry my UCLA health insurance through the end of January since I won't get onto federal benefits until then. Thank you! Let me know what else I need to do.

> I will begin to send emails to people tomorrow and Wednesday letting them know about my new position so if you could keep this somewhat under wraps I would appreciate it.

From: Rich, Joshua < rich@law.ucla.edu>

Sent: Thursday, December 17, 2020 10:03 AM PST

To: Carlson, Ann <carlson@law.ucla.edu>; Horowitz, Cara <HOROWITZ@law.ucla.edu> **CC:** Wyer, Kathy <WYER@law.ucla.edu>; Melling, Daniel <melling@law.ucla.edu>

Subject: FW: (HuffPost - Media Request): Biden enviro picks

Hi Ann and Cara,

I don't know how Kathy normally handles these things, but she's not fully available today.

Any interest in speaking with Chris at the HuffPost? See his query below.

Please let me know.

Thanks, Josh

From: Chris D'Angelo <chris.dangelo@huffpost.com>
Date: Thursday, December 17, 2020 at 12:59 PM

To: "Rich, Joshua" <rich@law.ucla.edu>

Subject: Fwd: (HuffPost - Media Request): Biden enviro picks

Hi Joshua. Adding you to the below email as Kathy's bounced back saying she's out today.

Thanks,

Chris D'Angelo Reporter, <u>HuffPost</u> Washington, DC m: <u>314-580-0191</u> Twitter: @c. m. dange

Twitter: oc_m_dangelo

huffingtonpost.com/chris-dangelo/

----- Forwarded message -----

From: Chris D'Angelo < chris.dangelo@huffpost.com>

Date: Thu, Dec 17, 2020 at 12:57 PM

Subject: (HuffPost - Media Request): Biden enviro picks

To: Hewitt, Alison ahewitt@stratcomm.ucla.edu>, wyer@law.ucla.edu>

Hi Alison and Kathy,

I hope this email finds you well.

I'm working with a colleague on a piece about President-elect Biden's cabinet picks to date and what those choices say about how he plans to approach climate change and other environmental issues. Hoping to get either Ann Carlson or Cara Horowitz's thoughts.

What are the less obvious through-lines between Biden's environmental nominees to date?

What do these picks say about what Biden's legal strategy is going to be on climate/environmental policy?

How do you think the incoming Biden administration will differ from the Obama administration on these issues?

How can the Biden administration ensure that a future Republican administration doesn't erase its record, if it acts without Congress to address these issues.

Many thanks and feel free to reach me at the # below if you need.

Cheers,

Chris D'Angelo Reporter, <u>HuffPost</u> Washington, DC m: <u>314-580-0191</u> Twitter: <u>@c m dangelo</u>

huffingtonpost.com/chris-dangelo/

From: Stemple, Lara <STEMPLE@law.ucla.edu> Sent: Thursday, January 21, 2021 2:43 PM PST To: Carlson, Ann <carlson@law.ucla.edu>

Subject: FW: Ann Carlson

Hi Ann, congrats! What exciting news. I've been thinking of you lots lately because I've started the walks in the Secret Stairs book you recommended on Facebook a while ago. The east side one through Happy Valley with all the roosters is insane! I felt like I was in another country. I'm sure you don't have time to reminisce about stairs right now, but I wanted to be sure to THANK YOU for the suggestion. Perfect covid activity. Best of luck with the new position, you'll be amazing I'm sure! xo Lara

Lara Stemple Assistant Dean of Graduate Studies & International Student Programs



From: "Mnookin, Jennifer" < MNOOKIN@law.ucla.edu>

Date: Thursday, January 21, 2021 at 8:48 AM **To:** "Mnookin, Jennifer" <MNOOKIN@law.ucla.edu>

Subject: Ann Carlson

Dear Colleagues,

I am writing to let you know that Ann Carlson will be taking a leave from the law school to begin serving in the Biden-Harris Administration effective yesterday, January 20. President Biden has appointed Ann to serve as Chief Counsel of the National Highway Traffic Safety Administration. NHTSA has joint responsibility, together with EPA, for regulating greenhouse gases/fuel economy from the transportation sector, and she is part of the Biden-Harris "whole agency" approach to addressing climate change. She will remain in Los Angeles working remotely in the immediate term but will move to Washington, D.C. when the pandemic eases.

Although we will miss her very much, I admire Ann for her willingness to serve in the new Administration to address climate change. Her new position continues the work she has done for many years on the issue our new President calls "the number one threat to humanity." Please join me in congratulating Ann on her new appointment.

All best,

Jennifer

Jennifer L. Mnookin



From: Biagioli, Mario

Sent: Thursday, January 21, 2021 12:21 PM PST To: Carlson, Ann <carlson@law.ucla.edu>

Subject: Fw: Ann Carlson Congratulations, Ann!!

Sorry to see you go for a while, but it is wonderful that you are doing this.

Best of luck "in the swamp"!

Mario

Mario Biagioli
Distinguished Professor, School of Law and Department of Communication, UCLA

New books:

 Gaming the Metrics: Misconduct and Manipulation in Academic Research (MIT Press, 2020) <u>https://mitpress.mit.edu/books/gaming-metrics</u>

From: Mnookin, Jennifer < MNOOKIN@law.ucla.edu>

Sent: Thursday, January 21, 2021 8:47 AM **To:** Mnookin, Jennifer <MNOOKIN@law.ucla.edu>

Subject: Ann Carlson

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All best,

Jennifer

Jennifer L. Mnookin



From: Glater, Jonathan <glater@law.ucla.edu> Sent: Thursday, January 21, 2021 8:54 AM PST To: Carlson, Ann <carlson@law.ucla.edu>

Subject: Fw: Ann Carlson

Dear Ann,

Congratulations! I am sad that I've only just gotten e-here, at least, getting to know great colleagues like you has been undermined by the pandemic, and now you are off, but I hope we can correct that in the future. Best of luck, this is such an urgent challenge. Thank you.

Best, Jonathan

From: Mnookin, Jennifer <MNOOKIN@law.ucla.edu> Sent: Thursday, January 21, 2021 8:47 AM To: Mnookin, Jennifer <MNOOKIN@law.ucla.edu>

Subject: Ann Carlson

Dear Colleagues,

I am writing to let you know that Ann Carlson will be taking a leave from the law school to begin serving in the Biden-Harris Administration effective yesterday, January 20. President Biden has appointed Ann to serve as Chief Counsel of the National Highway Traffic Safety Administration. NHTSA has joint responsibility, together with EPA, for regulating greenhouse gases/fuel economy from the transportation sector, and she is part of the Biden-Harris "whole agency" approach to addressing climate change. She will remain in Los Angeles working remotely in the immediate term but will move to Washington, D.C. when the pandemic eases.

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All best.

Jennifer

Jennifer L. Mnookin



From: Mackintosh, Kate <mackintosh@law.ucla.edu> Sent: Thursday, January 21, 2021 9:15 AM PST To: Carlson, Ann <carlson@law.ucla.edu>

Subject: FW: Ann Carlson

Amazing news Ann, huge congratulations!

From: Mnookin, Jennifer <MNOOKIN@law.ucla.edu> **Date:** Thursday, January 21, 2021 at 8:48 AM **To:** Mnookin, Jennifer <MNOOKIN@law.ucla.edu>

Subject: Ann Carlson

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All best.

Jennifer

Jennifer L. Mnookin



From: Achiume, Tendayi <ACHIUME@law.ucla.edu> **Sent:** Sunday, January 24, 2021 7:04 PM PST **To:** Carlson, Ann <carlson@law.ucla.edu>

Subject: FW: Ann Carlson

Woop woop! Great news for the country!

E. Tendayi Achiume Professor of Law, UCLA Law School United Nations Special Rapporteur on Racism, Racial Discrimination, Xenophobia and Related Intolerance

From: "Mnookin, Jennifer" < MNOOKIN@law.ucla.edu>

Date: Thursday, January 21, 2021 at 8:48 AM **To:** "Mnookin, Jennifer" <MNOOKIN@law.ucla.edu>

Subject: Ann Carlson

Dear Colleagues,

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All best,

Jennifer

--

Jennifer L. Mnookin



From: Treacy, Sean Pine <SEAN@law.ucla.edu> Sent: Thursday, January 21, 2021 9:11 AM PST To: Carlson, Ann <carlson@law.ucla.edu>

Subject: FW: Ann Carlson

Dear Ann,

Congratulations! I'm thrilled to see that the Biden-Harris Administration is starting off with making great decisions about who to have on their team to address climate change! I know you will be amazing in this role.

I will miss seeing you around the law school, although none of us have done much "seeing" of each other for some time.

Take care and go do great things for our planet © Sean

From: Mnookin, Jennifer <MNOOKIN@law.ucla.edu>

Sent: Thursday, January 21, 2021 8:48 AM **To:** Mnookin, Jennifer <MNOOKIN@law.ucla.edu>

Subject: Ann Carlson

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All best,

Jennifer

Jennifer L. Mnookin



From: Wilson, Bianca <WILSONB@law.ucla.edu> **Sent:** Thursday, January 21, 2021 9:26 AM PST **To:** Carlson, Ann <carlson@law.ucla.edu>

Subject: FW: Ann Carlson

This is fantastic, Ann- For you and the country!

I will miss serving with you on the search committee but wish you well in your new role.

Warm regards,

Bianca

Bianca D.M. Wilson, Ph.D.
Rabbi Barbara Zacky Senior Scholar of Public Policy
Pronouns: She/Her

The Williams Institute | UCLA School of Law 1060 Veteran Ave., Suite 134 Box 957092 Los Angeles, CA 90095-7092

From: Mnookin, Jennifer < MNOOKIN@law.ucla.edu>

Sent: Thursday, January 21, 2021 8:48 AM
To: Mnookin, Jennifer <MNOOKIN@law.ucla.edu>

Subject: Ann Carlson

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All best.

Jennifer

Jennifer L. Mnookin



From: Light, Jason < light@law.ucla.edu> Sent: Friday, January 22, 2021 1:23 PM PST To: Carlson, Ann < carlson@law.ucla.edu>

Subject: FW: Ann Carlson

Congratulations!

From: Mnookin, Jennifer < MNOOKIN@law.ucla.edu>

Sent: Thursday, January 21, 2021 8:48 AM
To: Mnookin, Jennifer <MNOOKIN@law.ucla.edu>

Subject: Ann Carlson

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All best,

Jennifer

Jennifer L. Mnookin



From: Munzer, Stephen <munzer@law.ucla.edu> Sent: Thursday, January 21, 2021 9:22 AM PST To: Carlson, Ann <carlson@law.ucla.edu>

Subject: FW: Ann Carlson

Dear Ann,

Hearty congratulations on your new position! I hope you'll enjoy the work and find this new direction in your career to be interesting.

All the best.

Steve

From: Mnookin, Jennifer <MNOOKIN@law.ucla.edu>

Sent: Thursday, January 21, 2021 8:48 AM **To:** Mnookin, Jennifer <MNOOKIN@law.ucla.edu>

Subject: Ann Carlson

Dear Colleagues,

I am writing to let you know that Ann Carlson will be taking a leave from the law school to begin serving in the Biden-Harris Administration effective yesterday, January 20. President Biden has appointed Ann to serve as Chief Counsel of the National Highway Traffic Safety Administration. NHTSA has joint responsibility, together with EPA, for regulating greenhouse gases/fuel economy from the transportation sector, and she is part of the Biden-Harris "whole agency" approach to addressing climate change. She will remain in Los Angeles working remotely in the immediate term but will move to Washington, D.C. when the pandemic eases.

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All best.

Jennifer

Jennifer L. Mnookin



From: Conron, Kerith <conron@law.ucla.edu> Sent: Thursday, January 21, 2021 8:49 AM PST To: Carlson, Ann <carlson@law.ucla.edu>

Subject: FW: Ann Carlson

Congrats Ann!! Thanks for taking this on! Kerith Williams Institute

From: Mnookin, Jennifer <MNOOKIN@law.ucla.edu> Sent: Thursday, January 21, 2021 11:48 AM To: Mnookin, Jennifer <MNOOKIN@law.ucla.edu>

Subject: Ann Carlson

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All best.

Jennifer

Jennifer L. Mnookin



From: Goldberg, Carole <goldberg@law.ucla.edu> Sent: Thursday, January 21, 2021 8:49 AM PST To: Carlson, Ann <carlson@law.ucla.edu>

Subject: Fw: Ann Carlson

Dear Ann,

How fabulous that you will be in this role. We are blessed by your service. Thank you!

Take special care,

Carole

From: Mnookin, Jennifer < MNOOKIN@law.ucla.edu>

Sent: Thursday, January 21, 2021 8:47 AM **To:** Mnookin, Jennifer <MNOOKIN@law.ucla.edu>

Subject: Ann Carlson

Dear Colleagues,

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All best,

Jennifer

Jennifer L. Mnookin



From: Spillenger, Clyde <SPILLENG@law.ucla.edu> Sent: Thursday, January 21, 2021 9:45 AM PST To: Carlson, Ann <carlson@law.ucla.edu>

Subject: FW: Ann Carlson

Hi Ann,

This is such fantastic news. I'm sorry you'll be on leave but thrilled for you and reassured that NHTSA policy will be guided by you. I hope it's a rewarding experience for you.

Warmly,

Clyde

From: "Mnookin, Jennifer" < MNOOKIN@law.ucla.edu>

Date: Thursday, January 21, 2021 at 8:48 AM **To:** "Mnookin, Jennifer" <MNOOKIN@law.ucla.edu>

Subject: Ann Carlson

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All best,

Jennifer

Jennifer L. Mnookin



From: Schwartz, Joanna <SCHWARTZ@law.ucla.edu> Sent: Thursday, January 21, 2021 8:50 AM PST

To: Carlson, Ann <carlson@law.ucla.edu>

Subject: Fw: Ann Carlson

It's official! Congratulations! I'm so proud of you and so happy for us as a country!

Joanna C. Schwartz Professor of Law UCLA School of Law Box 951476 Los Angeles CA 90095-1476 310-206-4032 schwartz@law.ucla.edu

View my research at: http://ssrn.com/author=146350

From: Mnookin, Jennifer <MNOOKIN@law.ucla.edu>

Sent: Thursday, January 21, 2021 8:47 AM
To: Mnookin, Jennifer <MNOOKIN@law.ucla.edu>

Subject: Ann Carlson

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All best.

Jennifer

Jennifer L. Mnookin



From: Bussel, Daniel <bussel@law.ucla.edu>

Sent: Thursday, January 21, 2021 8:57 AM PST

To: Carlson, Ann <carlson@law.ucla.edu>

CC: Raquelle de la Rocha <raquelle@me.com>

Subject: FW: Ann Carlson

Ann this is terrific! I'm jealous! Good luck with this exciting new set of responsibilities. Dan

From: Mnookin, Jennifer <MNOOKIN@law.ucla.edu> Sent: Thursday, January 21, 2021 8:48 AM To: Mnookin, Jennifer <MNOOKIN@law.ucla.edu>

Subject: Ann Carlson

Dear Colleagues,

I am writing to let you know that Ann Carlson will be taking a leave from the law school to begin serving in the Biden-Harris Administration effective yesterday, January 20. President Biden has appointed Ann to serve as Chief Counsel of the National Highway Traffic Safety Administration. NHTSA has joint responsibility, together with EPA, for regulating greenhouse gases/fuel economy from the transportation sector, and she is part of the Biden-Harris "whole agency" approach to addressing climate change. She will remain in Los Angeles working remotely in the immediate term but will move to Washington, D.C. when the pandemic eases.

Although we will miss her very much, I admire Ann for her willingness to serve in the new Administration to address climate change. Her new position continues the work she has done for many years on the issue our new President calls "the number one threat to humanity." Please join me in congratulating Ann on her new appointment.

All best,

Jennifer

Jennifer L. Mnookin



From: Moeller, Beth <moeller@law.ucla.edu>
Sent: Thursday, January 21, 2021 10:06 AM PST
To: Carlson, Ann <carlson@law.ucla.edu>
CC: John DeGolyer <john@sailsolar.com>

Subject: FW: Ann Carlson

Wow, just wow! I've always been a member of the very large Ann Carlson fan club and I'm delighted to see that our new President is as well.

I couldn't be happier for you, Ann, and I'm grateful that all of us will benefit from your wisdom, expertise, and amazing work in the Biden-Harris Administration. Congratulations and well-deserved! We will miss you at UCLA, but look forward to hearing about it and celebrating your successes. Hopefully we can reunite our Emmett climate hike team sometime in the not too far future too.

Congrats again! Beth

From: "Mnookin, Jennifer" < MNOOKIN@law.ucla.edu>

Date: Thursday, January 21, 2021 at 8:48 AM **To:** "Mnookin, Jennifer" <MNOOKIN@law.ucla.edu>

Subject: Ann Carlson

Dear Colleagues,

I am writing to let you know that Ann Carlson will be taking a leave from the law school to begin serving in the Biden-Harris Administration effective yesterday, January 20. President Biden has appointed Ann to serve as Chief Counsel of the National Highway Traffic Safety Administration. NHTSA has joint responsibility, together with EPA, for regulating greenhouse gases/fuel economy from the transportation sector, and she is part of the Biden-Harris "whole agency" approach to addressing climate change. She will remain in Los Angeles working remotely in the immediate term but will move to Washington, D.C. when the pandemic eases.

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All best.

Jennifer

Jennifer L. Mnookin



From: Berkowitz, Nancy <berkowitz@law.ucla.edu>
Sent: Thursday, January 21, 2021 8:51 AM PST
To: Carlson, Ann <carlson@law.ucla.edu>

Subject: FW: Ann Carlson

Wow, wow wow that is amazing! I am so excited for you. Congrats, Ann. They are making a great choice with this appointment.

From: Mnookin, Jennifer < MNOOKIN@law.ucla.edu>

Sent: Thursday, January 21, 2021 8:48 AM
To: Mnookin, Jennifer <MNOOKIN@law.ucla.edu>

Subject: Ann Carlson

Dear Colleagues,

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All best,

Jennifer

Jennifer L. Mnookin



From: Iwanaga, Leigh <iwanaga@law.ucla.edu> Sent: Thursday, January 21, 2021 9:01 AM PST To: Carlson, Ann <carlson@law.ucla.edu>

Subject: FW: Ann Carlson

Hello Ann,

Congratulations on your appointment! What an amazing, exciting opportunity to address climate change and serve our country. You will be missed here at the law school.

Best, Leigh

From: Mnookin, Jennifer <MNOOKIN@law.ucla.edu>

Sent: Thursday, January 21, 2021 8:48 AM **To:** Mnookin, Jennifer <MNOOKIN@law.ucla.edu>

Subject: Ann Carlson

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All best,

Jennifer

Jennifer L. Mnookin



From: Steinberg, Richard <STEINBER@law.ucla.edu> **Sent:** Thursday, January 21, 2021 8:57 AM PST

To: Carlson, Ann <carlson@law.ucla.edu>
Subject: FW: Ann Carlson

Woo hoo!!!

Congratulations, Ann!

Richard H. Steinberg Jonathan D. Varat Professor of Law & Professor of Political Science University of California (Los Angeles) +1-310-267-2064

https://law.ucla.edu/faculty/faculty-profiles/richard-h-steinberg/

From: Mnookin, Jennifer < MNOOKIN@law.ucla.edu>

Sent: Thursday, January 21, 2021 8:48 AM
To: Mnookin, Jennifer < MNOOKIN@law.ucla.edu>

Subject: Ann Carlson

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All best,

Jennifer

Jennifer L. Mnookin



From: Kim, Sung Hui <SUNG.KIM@law.ucla.edu> **Sent:** Thursday, January 21, 2021 10:32 AM PST **To:** Carlson, Ann <carlson@law.ucla.edu>

Subject: FW: Ann Carlson

Congratulations, Ann! So wonderful that you are addressing the biggest challenge of our era!

Best regards, Sung Hui Kim

From: Mnookin, Jennifer < MNOOKIN@law.ucla.edu>

Sent: Thursday, January 21, 2021 8:48 AM **To:** Mnookin, Jennifer <MNOOKIN@law.ucla.edu>

Subject: Ann Carlson

Dear Colleagues,

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All best,

Jennifer

--Jennifer L. Mnookin



From: Sears, Brad <sears@law.ucla.edu>
Sent: Thursday, January 21, 2021 7:52 PM PST
To: Carlson, Ann <carlson@law.ucla.edu>

Subject: FW: Ann Carlson

Congratulations Ann! Very exciting. Best, Brad

From: Mnookin, Jennifer < MNOOKIN@law.ucla.edu>

Sent: Thursday, January 21, 2021 8:48 AM
To: Mnookin, Jennifer <MNOOKIN@law.ucla.edu>

Subject: Ann Carlson

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All best,

Jennifer

Jennifer L. Mnookin



From: Kim, Lauren < kiml@law.ucla.edu>

Sent: Wednesday, January 20, 2021 9:51 AM PST

To: Carlson, Ann <carlson@law.ucla.edu>

Subject: FW: Draft

HUGE CONGRATS, ANN!!! How very, very exciting!!! What a day....almost in tears watching the inauguration...!

Would noon be ok to send?? Or some time later? Let me know. Thanks!!

From: Mnookin, Jennifer <MNOOKIN@law.ucla.edu>

Sent: Wednesday, January 20, 2021 9:43 AM

To: Carlson, Ann <carlson@law.ucla.edu>; Kim, Lauren <kiml@law.ucla.edu>

Subject: Re: Draft

Yes, fine!

Jennifer L. Mnookin

Dean and Ralph and Shirley Shapiro Professor of Law Co-Director, PULSE@UCLA Law (310) 825-8202



From: Carlson, Ann <<u>carlson@law.ucla.edu</u>>
Date: Wednesday, January 20, 2021 at 9:41 AM
To: Mnookin, Jennifer <<u>MNOOKIN@law.ucla.edu</u>>

Subject: Re: Draft

Me too! Wowza!

I wrote at 5 in the morning in the dark!

Would you wait to send until this afternoon? Thanks!

On Jan 20, 2021, at 9:37 AM, Mnookin, Jennifer MNOOKIN@law.ucla.edu> wrote:

Great! Making very modest changes. (I don't think I should be 'grateful' in role for your willingness to serve, I will change to 'admire'. Otherwise looks great!!! Thank you! And congratulations!!!)

FEELING SO SO SO relieved. And moved too.

Jennifer L. Mnookin

Dean and Ralph and Shirley Shapiro Professor of Law Co-Director, PULSE@UCLA Law (310) 825-8202

<image001.png>

From: Carlson, Ann <<u>carlson@law.ucla.edu</u>>
Date: Wednesday, January 20, 2021 at 5:04 AM
To: Mnookin, Jennifer <<u>MNOOKIN@law.ucla.edu</u>>

Subject: Draft

How's this? (I can't sleep!)

Dear colleagues.

I am writing to let you know that Ann Carlson will be taking a leave from the law school to begin serving in the Biden-Harris Administration effective today, January 20. President Biden has appointed Ann to serve as Chief Counsel of the National Highway Traffic Safety Administration. NHTSA has joint responsibility, together with EPA, for regulating greenhouse gases/fuel economy from the transportation sector, and she is part of the Biden-Harris "whole agency" approach to addressing climate change.

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President calls "the number one threat to humanity." Please join me in congrat	ulating Ann on her new appointment.

From: Daniel Sperling <dsperling@ucdavis.edu>
Sent: Thursday, January 21, 2021 9:29 PM PST
To: Carlson, Ann <carlson@law.ucla.edu>
Subject: FW: January 21 -- Greenwire is ready

Δnn

I've never had the pleasure of meeting you, but have seen you quoted far and wide and heard many compliments about you (including from many journalists). In any case, I'm deilghted to hear of your appointment to NHTSA. I know Steve Cliff well, and former acting director David Friedman was my former student, and of course I've been painfully aware of NHTSA's role on CAFÉ, so all in all I'm happy for you, California, and the country.

Good luck and good wishes Dan

From: E&E News <ealerts@eenews.net>
Sent: Thursday, January 21, 2021 10:49 AM
To: Daniel Sperling <dsperling@ucdavis.edu>
Subject: January 21 -- Greenwire is read

Read today's Greenwire on the web Greenwire AN E&E NEWS PUBLICATION UC Davis now has subscription access to E&E Daily, EnergyWire, ClimateWire, Greenwire, and E&ENews PM! The best way to track environment and energy policy issues. Here are your personal access codes: Username: dsperling@ucdavis.edu Password: eenews GREENWIRE — Thu., January 21, 2021 READ FULL EDITION 1. WHITE HOUSE: Biden signals 'new direction' on regulations President Biden last night signaled he would take a bold approach to federal regulations — giving some hope to the progressive wing of his party. **TOP STORIES** 2. DOE: Trump team burrows loyalists in cushy jobs abroad 3. CHEMICALS: Biden could use TSCA to meet environmental justice goals 4. WHITE HOUSE: Biden review targets 'secret science,' cost-benefit rules TRUMP EXIT 5. INTERVIEW: EPA water chief hoped for 'mild disappointment' on WOTUS 6. INTERVIEW: Deputy touts EPA's 'cost-effective' regs, cleanups

7. WHITE HOUSE:

Biden ethics rules take aim at 'shadow lobbying'

8. LOBBYING:

U.S. Chamber, API announce support of methane regs

CONGRESS

9. NOMINATIONS:

Committee schedules Granholm confirmation hearing

NATURAL RESOURCES

10. PANDEMIC:

What Biden's mask mandate means for national parks

11. NATIONAL MONUMENTS:

Utah officials accuse Biden admin of 'review in name only'

12. INTERIOR:

Tribes stand to gain more legal muscle

13. AGRICULTURE:

Tomato research looks to ancient varieties to fight disease

14. MARINE MAMMALS:

Gray whale population drops by a quarter off West Coast

15. ENDANGERED SPECIES:

N.M. zoo sends wolf pack to Mexico in conservation effort

LAW

16. PEOPLE:

Architect of legal fights against Trump rollbacks joins EPA

17. BIOFUELS:

Appeals court temporarily blocks EPA waivers

18. WILDLIFE:

'Monkey Whisperer,' Fla. man charged in illegal trade

19. <u>MINING:</u>

Former safety director in Ky. pleads guilty to tampering

FEDERAL AGENCIES

20. INTERIOR:

BLM site scrubs Pendley, highlights conservation 'mission'

21. **PEOPLE**:

Biden taps climate experts for DOT, eyes clean car rules

22. ENERGY POLICY:

Biden hands FERC gavel to Richard Glick

ENERGY

23. OIL AND GAS:

Interior imposes 60-day leasing-and-permitting moratorium

STATES

24. WEST VIRGINIA:

Governor appoints new environmental secretary

25. CALIFORNIA:

Winds easing after sparking fires, power outages

26. ILLINOIS:

East St. Louis cleanup highlights environmental racism

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From: Glickfeld, Madelyn <madelyn.glickfeld@ioes.ucla.edu>

Sent: Friday, January 29, 2021 8:57 AM PST

To: Horowitz, Cara < HOROWITZ@law.ucla.edu>; Carlson, Ann < carlson@law.ucla.edu>; Boyd, William

<BOYD@law.ucla.edu>

Subject: FW: January 2021 update

Congratulations on your amicus. Good to know that great legal minds can still sway a panel of judges.

From: Sean Hecht <envirolaw@law.ucla.edu> Sent: Friday, January 29, 2021 8:50 AM

To: Glickfeld, Madelyn <madelyn.glickfeld@ioes.ucla.edu>

Subject: January 2021 update

View this email in your browser

As we look forward to an important year for U.S. climate action, we are also excited that our faculty co-director **Ann Carlson** will be taking a leave of absence to serve in the Biden administration. This week we are welcoming students for spring semester with seven environmental law courses, including, for the first time, a class on renewable energy project finance led by our alumnus **Edward Zaelke, '83**. More below.

Sean Hecht, Co-Executive Director, UCLA Emmett Institute on Climate Change and the Environment

Photo credit: Daniel Melling

D.C. Circuit cites grid experts in vacating Trump administration power pollution rule

Last week, the D.C. Circuit <u>ruled to invalidate</u> the Trump administration's Affordable Clean Energy (ACE) Rule, which weakened Obama-era regulation of climate pollutants from power plants.

The court's ruling extensively cited <u>an amicus brief</u> filed last year by Emmett Institute faculty **Cara Horowitz**, **William Boyd**, **Ann Carlson**, **Charlie Corbett** on behalf of a group of engineers with expertise in the operation, structure, economics, and reliability of the U.S. power system.

Read the brief and a <u>Legal Planet blog post</u> from Horowitz explaining the court's decision.

Ann Carlson speaks at a UCLA Law symposium last year

Ann Carlson, Shirley Shapiro Professor of Environmental Law, speaks at a UCLA Law symposium last year. Photo credit: Todd Chenev

Professor Ann Carlson joins the Biden administration

The Emmett Institute congratulations our faculty co-director and Shirley Shapiro Professor of Environmental Law **Ann Carlson** on her <u>appointment</u> as chief counsel of the National Highway Traffic Safety Administration.

Professor Carlson's vision drove the creation of the Emmett Institute as the first law school center to focus on climate change. Together with faculty co-director **Ted Parson**, she has helped build one of the country's <u>leading environmental law programs</u>.

A nationally renowned scholar, beloved teacher, and dedicated public servant, Professor Carlson has served as an inspiration for students, alumni, and colleagues at UCLA Law, where she has served on the faculty since 1994. We are excited for her new role in this important year for climate action.

New renewable energy development course adds to extensive spring course offerings

UCLA Law will offer a course in <u>Renewable Energy Project Finance</u> for the first time this semester. The course was developed on the initiative of Professor **William Boyd** and will be taught by UCLA Law alumnus**Edward Zaelke '83**, head of global energy project finance at McDermott Will & Emery.

Other UCLA Law classes taught by Emmett Institute faculty this spring include:

- Land Use | Professor Jonathan Zasloff
- <u>Future Law</u> | Dan and Rae Emmett Professor of Environmental Law & Emmett Institute Faculty Co-Director **Edward Parson**
- <u>Natural Resources Law</u> | Donald Bren Distinguished Professor of Environmental Law **James Salzman**
- <u>Climate Change Law and Policy</u> | Evan Frankel Professor of Policy and Practice & Emmett Institute Co-Executive Director Sean Hecht
- <u>Environmental Justice Law</u> | Maya Golden-Krasner, Deputy Director and Senior Attorney, Center for Biological Diversity; Adrian Martinez, Staff Attorney, Earthjustice
- Frank G. Wells Environmental Law Clinic | Andrew Sabin Family
 Foundation Co-Executive Director Cara Horowitz; Emmett Institute
 Supervising Attorney and Project Director Julia Stein

Traffic on Pacific Coast Highway

The transportation sector is the largest source of climate pollution in the country. Photo credit: Geoff/Flickr

Amicus brief filed on behalf of members of Congress in federal auto emissions standards case

Last week, five Emmett Institute faculty members <u>submitted an amicus brief</u> to the U.S. Court of Appeals for the D.C. Circuit challenging the Trump administration's rollback of federal vehicle pollution and fuel economy standards.

Filed on behalf of Sen. Tom Carper, chairman of the Senate Environment and Public Works Committee, and Rep. Frank Pallone Jr., chairman of the House Committee on Energy and Commerce, the brief was written by **Cara Horowitz**, **Julia Stein, Benjamin Harris, Beth Kent**, and **Siyi Shen**.

Read a press release and a Q&A with Horowitz in UCLA Newsroom.

RSVP: Discussion tonight on DDT pollution and other California coastal stories

Join our co-executive director **Sean Hecht** today, January 29, at 4 p.m., for a conversation on ocean pollution and other California coastal stories. The event will feature Rosanna Xia, reporter at the *Los Angeles Times*, Mark Gold, executive director at the California Ocean Protection Council, and Jon Christensen, adjunct assistant professor at UCLA Institute of the Environment and Sustainability. <u>Details/RSVP</u>.

Alumni take on new public interest roles

Crescent Cheng '18 is now the Land Use and Associate Corporate Counsel at Wishtoyo Foundation/Ventura Coastkeeper. Crescent previously served as an associate at Nossaman LLP, a major California law firm.

Heather Leslie '15 joined the California Natural Resources Agency as an Assistant General Counsel. Leslie previously served for five years as a Deputy Attorney General at the California Department of Justice.

Report: Building toward decarbonization

A <u>new report</u> from the Emmett Institute and Berkeley Law's Center for Law, Energy and the Environment explores challenges and policy solutions to building electrification, a key component of California's transition to a carbon neutral economy.

Read the report and RSVP for a webinar on February 23.

Support our work

The Emmett Institute relies on the generous support of donors to fund our educational and research programs. Please consider supporting our work:

Donate

Trivia corner

"It's a big day for Boston every day," quipped one Biden appointee for climate policy in response to a media question this week.

Can you name the official?

Please send responses to Daniel Melling, melling@law.ucla.edu, to win an Emmett Institute t-shirt!

Our previous question asked to the nearest percentage point, how much did global greenhouse gas emissions decline in 2020? The correct answer: 7 percent. We had no correct submissions last month.

Daniel Melling writes the Emmett Institute newsletter with editing from Sean Hecht and Cara Horowitz. Please send any feedback to melling@law.ucla.edu.

About the Emmett Institute on Climate Change and the Environment at UCLA School of Law

The Emmett Institute on Climate Change and the Environment is among the leading environmental law
programs in the country, with faculty members renowned for their public service, teaching excellence, and
scholarship in state, federal, and international law. Located in Los Angeles, a diverse city facing unique
environmental justice and climate change challenges, the Emmett Institute provides J.D. and LL.M.
students unmatched opportunities for mentoring, career placement, and experiential learning. Through
groundbreaking research and public interest initiatives, the Emmett Institute helps shape climate change
and environmental law and policy in California, the United States, and jurisdictions around the
world. <u>law.ucla.edu/emmett</u>

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From: Carlson, Ann (NHTSA) <ann.carlson@dot.gov>
Sent: Saturday, January 30, 2021 7:58 AM PST
To: Carlson, Ann <carlson@law.ucla.edu>

Subject: FW: Personnel Forms and Items Needed

Attachment(s): "State Tax Forms.zip", "SF-61 (Appointment Affadavit).pdf", "2 Ethics Pledge.pdf", "3 Initial Ethics

Orientation.pdf", "EODS, Personnel Form and Items Checklist.docx", "Ann Carlson OF306.pdf"

From: Resources, Executive (OST)
Sent: Friday, January 29, 2021 2:21 PM

To: Carlson, Ann (NHTSA) <ann.carlson@dot.gov> Cc: Wolfe, Angelique (OST) <a.wolfe@dot.gov> Subject: Personnel Forms and Items Needed

Importance: High

Good afternoon Ms. Carlson-

I hope you're having a great week!

Just a friendly reminder we need the attached items from you to process your personnel action, as well as the copies of your passport and driver's license. On the attached OF-306 Declaration for Federal Employment please sign next to 17b. and date with 01/20/2021. Please let me know if you have any questions. Thank you so much!

I will send the password to the 306 in a separate email.



Monique Pollard | HR Advisor

Executive and Political Resources Center (EPRC) U.S. DOT | Departmental Office of Human Resource Management Office of the Secretary of Transportation 1200 New Jersey Ave., SE, Washington, DC 20590 Room W83-447

Staffing and Recruitment

Your feedback is important. Please take a moment to complete the M Customer Service Survey.

From: Resources, Executive (OST) [mailto:Executive.Resources@dot.gov]

Sent: Wednesday, January 27, 2021 4:39 PM

Subject: FRIENDLY REMINDER: State Tax Form, EODS, and Two Forms of ID

Importance: High

Good afternoon everyone-

Just a friendly reminder, if you have not done so already, to please complete and submit the attached personnel forms, the EODS personnel forms and your two forms of ID (passport and driver's license). Thank you!

Best Regards,

The Executive and Political Resources Team

From: Resources, Executive (OST) [mailto:Executive.Resources@dot.gov]

Sent: Tuesday, January 26, 2021 6:31 PM

Subject: State Tax Form and Personnel Items Checklist

Importance: High

Greetings,

Please find the EODS, Personnel Forms and Items Checklist attached. Also attached is the State Tax Forms folder. Please select the State Tax Withholding Form from the folder, complete, sign and return it to us.

Also, if you have not done so already, please ensure to complete your personnel forms in EODS, and submit your personnel forms and items (passport and driver's license) by **Noon, tomorrow January 27**th.

If you have any questions, or need any assistance with completing the forms, or need us to reset your access to EODS please let us know. We greatly appreciate your assistance in completing this information in a timely manner.

Best Regards,

The Executive and Political Resources Team

Type o	or print your Full N	ame					Your Social S	Security Number	
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City o	Town				S	State	ZIP Code		
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□ 2	I elect an Ariz	ona withholding	an extra amount percentage of z current taxable	zero, and I certify	, ,			\$	
		made the election	on marked above	Э.					
SIGN	ATURE						DATE		
			Empl	loyee's Instr	uctions				

Arizona law requires your employer to withhold Arizona income tax from your wages for work done in Arizona. The amount withheld is applied to your Arizona income tax due when you file your tax return. The amount withheld is a percentage of your gross taxable wages from every paycheck. You may also have your employer withhold an extra amount from each paycheck. Complete this form to select a percentage and any extra amount to be withheld from each paycheck.

What are my "Gross Taxable Wages"?

For withholding purposes, your "gross taxable wages" are the wages that will generally be in box 1 of your federal Form W-2. It is your gross wages less any pretax deductions, such as your share of health insurance premiums.

New Employees

Complete this form within the first five days of your employment to select an Arizona withholding percentage. You may also have your employer withhold an extra amount from each paycheck. If you do not give this form to your employer the department requires your employer to withhold 2.7% of your gross taxable wages.

Current Employees

If you want to change your current amount withheld, you must file this form to change the Arizona withholding percentage or to change the extra amount withheld.

What Should I do With Form A-4?

Give your completed Form A-4 to your employer.

Electing a Withholding Percentage of Zero

You may elect an Arizona withholding percentage of zero if you expect to have no Arizona income tax liability for the current year. Arizona tax liability is gross tax liability less any tax credits, such as the family tax credit, school tax credits, or credits for taxes paid to other states. If you make this election, your employer will not withhold Arizona income tax from your wages for payroll periods beginning after the date you file the form. To keep this election for the next calendar year, you must give your employer an updated Form A-4. If you do not, your employer may withhold Arizona income tax from your wages and salary until you submit an updated Form A-4.

Zero withholding does not relieve you from paying Arizona income taxes that might be due at the time you file your Arizona income tax return. If you have an Arizona tax liability when you file your return or if at any time during the current year conditions change so that you expect to have a tax liability, you should promptly file a new Form A-4 and choose a withholding percentage that applies to you.

Voluntary Withholding Election by Certain Nonresident Employees

Compensation earned by nonresidents while physically working in Arizona for temporary periods is subject to Arizona income tax. However, under Arizona law, compensation paid to certain nonresident employees is not subject to Arizona income tax withholding. These nonresident employees need to review their situations and determine if they should elect to have Arizona income taxes withheld from their Arizona source compensation. Nonresident employees may request that their employer withhold Arizona income taxes by completing this form to elect Arizona income tax withholding.

State of Colorado Statement on W-4 Forms

1. Does Colorado have a W-4 form?

The W-4 form is an <u>Internal Revenue Service</u> form. Colorado does not have an equivalent state form to the federal W-4. This is because the state income tax is based on the taxpayer's federal taxable income.

An employer should use the information from the federal W-4 form to calculate the state wage withholding amounts. For employer information regarding Colorado withholding tax, see the Colorado Income Tax Withholding Worksheet For Employers (DR 1098).

Colorado Department of Revenue Taxation Division Website: https://tax.colorado.gov/individual-wage-withholding-w-2-and-1099-statements



EMPLOYEE'S WITHHOLDING ALLOWANCE CERTIFICATE

Complete this form so that your employer can withhold the correct California state income tax from your paycheck.

• • • •	· · · · ·
Enter Personal Information	
First, Middle, Last Name	Social Security Number
Address	Filing Status
City, State, and ZIP Code	SINGLE or MARRIED (with two or more incomes) MARRIED (one income) HEAD OF HOUSEHOLD

- 1. Total Number of Allowances you're claiming (Use Worksheet A for regular withholding allowances. Use other worksheets on the following pages as applicable, Worksheet A+B).
- 2. Additional amount, if any, you want withheld each pay period (if employer agrees), **(Worksheet B and C)**OR

Exemption from Withholding

I claim exemption from withholding for 2020, and I certify I meet both of the conditions for exemption.
 OR

Write "Exempt" here

4. I certify under penalty of perjury that I am **not subject** to California withholding. I meet the conditions set forth under the Service Member Civil Relief Act, as amended by the Military Spouses Residency Relief Act and the Veterans Benefits and Transition Act of 2018.

(Check box here)

Under the penalties of perjury, I certify that the number of withholding allowances claimed on this certificate does not exceed the number to which I am entitled or, if claiming exemption from withholding, that I am entitled to claim the exempt status.

Employee's Signature _____ Date

Employer's Section: Employer's Name and Address	California Employer Payroll Tax Account Number

PURPOSE: This certificate, DE 4, is for **California Personal Income Tax (PIT) withholding** purposes only. The DE 4 is used to compute the amount of taxes to be withheld from your wages, by your employer, to accurately reflect your state tax withholding obligation.

Beginning January 1, 2020, Employee's Withholding Allowance Certificate (Form W-4) from the Internal Revenue Service (IRS) will be used for federal income tax withholding **only**. You must file the state form Employee's Withholding Allowance Certificate (DE 4) to determine the appropriate California Personal Income Tax (PIT) withholding.

If you do not provide your employer with a withholding certificate, the employer must use Single with Zero withholding allowance.

CHECK YOUR WITHHOLDING: After your DE 4 takes effect, compare the state income tax withheld with your estimated total annual tax. For state withholding, use the worksheets on this form.

EXEMPTION FROM WITHHOLDING: If you wish to claim exempt, complete the federal Form W-4 and the state DE 4. You may claim exempt from withholding California income tax if you meet both of the following conditions for exemption:

- 1. You did not owe any federal/state income tax last year, and
- You do not expect to owe any federal/state income tax this year. The exemption is good for one year.

If you continue to qualify for the exempt filing status, a new DE 4 designating EXEMPT must be submitted by February 15 each year to continue your exemption. If you are not having federal/state income tax withheld this year but expect to have a tax liability next year, you are required to give your employer a new DE 4 by December 1.

Member Service Civil Relief Act: Under this act, as provided by the Military Spouses Residency Relief Act and the Veterans Benefits and Transition Act of 2018, you may be exempt from California income tax on your wages if

- your spouse is a member of the armed forces present in California in compliance with military orders;
- (ii) you are present in California solely to be with your spouse; and
- (iii) you maintain your domicile in another state.

If you claim exemption under **this** act, **check the box on Line 4**. You may be required to provide proof of exemption upon request.

The *California Employer's Guide* (DE 44) (PDF, 2.4 MB) (edd.ca.gov/pdf_pub_ctr/de44.pdf) provides the income tax withholding tables. This publication may be found by visiting Forms and Publications (edd.ca.gov/Payroll_Taxes/Forms_and_Publications.htm). To assist you in calculating your tax liability, please visit the Franchise Tax Board (FTB) (ftb.ca.gov).

If you need information on your last *California Resident Income Tax Return* (FTB Form 540), visit the Franchise Tax Board (FTB) (ftb.ca.gov).

NOTIFICATION: The burden of proof rests with the employee to show the correct California income tax withholding. Pursuant to section 4340-1(e) of **Title 22**, **California Code of Regulations (CCR)**, the FTB or the EDD may, by special direction in writing, require an employer to submit a Form W-4 or DE 4 when such forms are necessary for the administration of the withholding tax programs.

PENALTY: You may be fined \$500 if you file, with no reasonable basis, a DE 4 that results in less tax being withheld than is properly allowable. In addition, criminal penalties apply for willfully supplying false or fraudulent information or failing to supply information requiring an increase in withholding. This is provided by section 13101 of the **California Unemployment Insurance Code** and section 19176 of the **Revenue and Taxation Code**.

WORKSHEETS

INSTRUCTIONS — 1 — ALLOWANCES*

When determining your withholding allowances, you must consider your personal situation:

- Do you claim allowances for dependents or blindness?
- Will you itemize your deductions?
- Do you have more than one income coming into the household?

TWO-EARNERS/MULTIPLE INCOMES: When earnings are derived from more than one source, under-withholding may occur. If you have a working spouse or more than one job, it is best to check the box "SINGLE or MARRIED (with two or more incomes)." Figure the total number of allowances you are entitled to claim on all jobs using only one DE 4 form. Claim allowances with **one** employer.

Do **not** claim the same allowances with more than one employer. Your withholding will usually be most accurate when all allowances are claimed on the DE 4 filed for the highest paying job and zero allowances are claimed for the others.

MARRIED BUT NOT LIVING WITH YOUR SPOUSE: You may check the "Head of Household" marital status box if you meet all of the following tests:

- (1) Your spouse will not live with you at any time during the year;
- (2) You will furnish over half of the cost of maintaining a home for the entire year for yourself and your child or stepchild who qualifies as your dependent; and
- (3) You will file a separate return for the year.

HEAD OF HOUSEHOLD: To qualify, you must be unmarried or legally separated from your spouse and pay more than 50% of the costs of maintaining a home for the **entire** year for yourself and your dependent(s) or other qualifying individuals. Cost of maintaining the home includes such items as rent, property insurance, property taxes, mortgage interest, repairs, utilities, and cost of food. It does not include the individual's personal expenses or any amount which represents value of services performed by a member of the household of the taxpayer.

= 3.

- 6.

7.

9.

WC	ORKSHEET A REGULAR WITHHOLDING ALLOWANCES	
(A)	Allowance for yourself — enter 1	(A)
(B)	Allowance for your spouse (if not separately claimed by your spouse) — enter 1	(B)
(C)	Allowance for blindness — yourself — enter 1	(C)
(D)	Allowance for blindness — your spouse (if not separately claimed by your spouse) — enter 1	(D)
(E)	Allowance(s) for dependent(s) — do not include yourself or your spouse	(E)
(F)	Total — add lines (A) through (E) above and enter on line 1 of the DE 4	(F)

INSTRUCTIONS — 2 — (OPTIONAL) ADDITIONAL WITHHOLDING ALLOWANCES

If you expect to itemize deductions on your California income tax return, you can claim additional withholding allowances. Use Worksheet B to determine whether your expected estimated deductions may entitle you to claim **one or more additional** withholding allowances. Use last year's FTB Form 540 as a model to calculate this year's withholding amounts.

Do not include deferred compensation, qualified pension payments, or flexible benefits, etc., that are deducted from your gross pay but are not taxed on this worksheet.

You may reduce the amount of tax withheld from your wages by claiming one additional withholding allowance for each \$1,000, or fraction of \$1,000, by which you expect your estimated deductions for the year to exceed your allowable standard deduction.

WORKSHEET B ESTIMATED DEDUCTIONS

Use this worksheet **only** if you plan to itemize deductions, claim certain adjustments to income, or have a large amount of nonwage income not subject to withholding.

- 1. Enter an estimate of your itemized deductions for California taxes for this tax year as listed in the schedules in the FTB Form 540 1.
- 2. Enter \$9,074 if married filing joint with two or more allowances, unmarried head of household, or qualifying widow(er) with dependent(s) or \$4,537 if single or married filing separately, dual income married, or married with multiple employers —
- 3. Subtract line 2 from line 1, enter difference
- 4. Enter an estimate of your adjustments to income (alimony payments, IRA deposits)
- 5. Add line 4 to line 3, enter sum
- 6. Enter an estimate of your nonwage income (dividends, interest income, alimony receipts)
- 7. If line 5 is greater than line 6 (if less, see below [go to line 9]); Subtract line 6 from line 5, enter difference
- 8. Divide the amount on line 7 by \$1,000, round any fraction to the nearest whole number
 - Add this number to Line F of Worksheet A and enter it on line 1 of the DE 4. Complete Worksheet C, if needed, otherwise stop here.
- 9. If line 6 is greater than line 5;
 - Enter amount from line 6 (nonwage income)
- 10. Enter amount from line 5 (deductions)
- 11. Subtract line 10 from line 9, enter difference

Complete Worksheet C

*Wages paid to registered domestic partners will be treated the same for state income tax purposes as wages paid to spouses for California PIT withholding and PIT wages. This law does not impact federal income tax law. A registered domestic partner means an individual partner in a domestic partner relationship within the meaning of section 297 of the Family Code. For more information, please call our Taxpayer Assistance Center at 1-888-745-3886.

1.	Enter estimate of total wages for tax year 2020.	1.
2.	Enter estimate of nonwage income (line 6 of Worksheet B).	2.
3.	Add line 1 and line 2. Enter sum.	3.
4.	Enter itemized deductions or standard deduction (line 1 or 2 of Worksheet B, whichever is largest).	4.
5.	Enter adjustments to income (line 4 of Worksheet B).	5.
6.	Add line 4 and line 5. Enter sum.	6.
7.	Subtract line 6 from line 3. Enter difference.	7.
8.	Figure your tax liability for the amount on line 7 by using the 2020 tax rate schedules below.	8.
9.	Enter personal exemptions (line F of Worksheet A x \$134.20).	9.
10.	Subtract line 9 from line 8. Enter difference.	10.
11.	Enter any tax credits. (See FTB Form 540).	11.
12.	Subtract line 11 from line 10. Enter difference. This is your total tax liability.	12.
13.	Calculate the tax withheld and estimated to be withheld during 2020. Contact your employer to request the amount that will be withheld on your wages based on the marital status and number of withholding allowances you will claim for 2020. Multiply the estimated amount to be withheld by the number of pay periods left in the year. Add the total to the amount already withheld for 2020.	13.
14.	Subtract line 13 from line 12. Enter difference. If this is less than zero, you do not need to have additional taxes withheld.	14.
15.	Divide line 14 by the number of pay periods remaining in the year. Enter this figure on line 2 of the DE 4.	15.

NOTE: Your employer is not required to withhold the additional amount requested on line 2 of your DE 4. If your employer does not agree to withhold the additional amount, you may increase your withholdings as much as possible by using the "single" status with "zero" allowances. If the amount withheld still results in an underpayment of state income taxes, you may need to file quarterly estimates on Form 540-ES with the FTB to avoid a penalty.

THESE TABLES ARE FOR CALCULATING WORKSHEET C AND FOR 2020 ONLY

SINGLE PERSONS, DUAL INCOME MARRIED WITH MULTIPLE EMPLOYERS

IF THE TAXABLE INCOME IS		CC	IS	
OVER	BUT NOT	OF AMOUNT OVER		PLUS
	OVER			
\$0	\$8,809	1.100%	\$0	\$0.00
\$8,809	\$20,883	2.200%	\$8,809	\$96.90
\$20,883	\$32,960	4.400%	\$20,883	\$362.53
\$32,960	\$45,753	6.600%	\$32,960	\$893.92
\$45,753	\$57,824	8.800%	\$45,753	\$1,738.26
\$57,824	\$295,373	10.230%	\$57,824	\$2,800.51
\$295,373	\$354,445	11.330%	\$295,373	\$27,101.77
\$354,445	\$590,742	12.430%	\$354,445	\$33,794.63
\$590,742	\$1,000,000	13.530%	\$590,742	\$63,166.35
\$1,000,000	and over	14.630%	\$1,000,000	\$118,538.96

UNMARRIED HEAD OF HOUSEHOLD

IF THE TAXABLE INCOME IS		COMPUTED TAX IS		
OVER	BUT NOT OVER	OF AMOUNT OVER		PLUS
\$0	\$17,629	1.100%	\$0	\$0.00
\$17,629	\$41,768	2.200%	\$17,629	\$193.92
\$41,768	\$53,843	4.400%	\$41,768	\$724.98
\$53,843	\$66,636	6.600%	\$53,843	\$1,256.28
\$66,636	\$78,710	8.800%	\$66,636	\$2,100.62
\$78,710	\$401,705	10.230%	\$78,710	\$3,163.13
\$401,705	\$482,047	11.330%	\$401,705	\$36,205.52
\$482,047	\$803,410	12.430%	\$482,047	\$45,308.27
\$803,410	\$1,000,000	13.530%	\$803,410	\$85,253.69
\$1,000,000	and over	14.630%	\$1,000,000	\$111,852.32

MARRIED PERSONS

IF THE TAXABLE INCOME IS		COMPUTED TAX IS		IS
OVER	BUT NOT	OF AMOUNT OVER		PLUS
	OVER			
\$0	\$17,618	1.100%	\$0	\$0.00
\$17,618	\$41,766	2.200%	\$17,618	\$193.80
\$41,766	\$65,920	4.400%	\$41,766	\$725.06
\$65,920	\$91,506	6.600%	\$65,920	\$1,787.84
\$91,506	\$115,648	8.800%	\$91,506	\$3,476.52
\$115,648	\$590,746	10.230%	\$115,648	\$5,601.02
\$590,746	\$708,890	11.330%	\$590,746	\$54,203.55
\$708,890	\$1,000,000	12.430%	\$708,890	\$67,589.27
\$1,000,000	\$1,181,484	13.530%	\$1,000,000	\$103,774.24
\$1,181,484	and over	14.630%	\$1,181,484	\$128,329.03

If you need information on your last California Resident Income Tax Return, FTB Form 540, visit **Franchise Tax Board (FTB)** (ftb.ca.gov).

The DE 4 information is collected for purposes of administering the PIT law and under the authority of Title 22, CCR, section 4340-1, and the California Revenue and Taxation Code, including section 18624. The Information Practices Act of 1977 requires that individuals be notified of how information they provide may be used. Further information is contained in the instructions that came with your last California resident income tax return.



____Year

D-4 Employee Withholding Allowance Certificate

o Add Lines n and i and enter on Line 2 above.

> Detach and give top portion to your employer. Keep bottom portion for your records.

Who must file a Form D-4?

Every new employee who resides in DC and who is required to have taxes withheld, must fill out Form D-4 and file it with his/her employer. If you are not liable for DC taxes because you are a nonresident you must file Form D-4A (Certificate of Nonresidence in the District of Columbia) with your employer.

When should you file?

File Form D-4 whenever you start new employment. Once filed with your employer, it will remain in effect until you file an amended certificate. You may file a new withholding allowance certificate any time if the number of withholding allowances you are entitled to increases. You must file a new certificate within 10 days if the number of withholding allowances you claimed decreases.

How many withholding allowances should you claim?

Use the worksheet on the front of this form to figure the number of withholding allowances you should claim. If you want less money withheld from your paycheck, you may claim additional allowances by completing Section B of the worksheet, Lines j through o. However, if you claim too many allowances, you may owe taxes at the end of the year.

Should I deduct an additional amount from my paycheck?

In some instances, even if you claim zero withholding allowances, you may not have enough tax withheld. You may, upon agreement with your employer, have more tax withheld by entering on Line 3, a dollar amount of your choosing.

What to file

After completing Form D-4, detach the top portion and file it with your employer. Keep the bottom portion for your records.



Form IL-W-4

Employee's Illinois Withholding Allowance Certificate and Instructions

Who must complete Form IL-W-4?

If you are an employee, you must complete this form so your employer can withhold the correct amount of Illinois Income Tax from your pay. The amount withheld from your pay depends, in part, on the number of allowances you claim on this form.

Even if you claimed exemption from withholding on your federal Form W-4, U.S. Employee's Withholding Allowance Certificate, because you do not expect to owe any federal income tax, you may be required to have Illinois Income Tax withheld from your pay (see Publication 130, Who is Required to Withhold Illinois Income Tax). If you are claiming exempt status from Illinois withholding, you must check the exempt status box on Form IL-W-4 and sign and date the certificate. Do not complete Lines 1 through 3.

If you are a resident of lowa, Kentucky, Michigan, or Wisconsin, or a military spouse, see Form W-5-NR, Employees Statement of Nonresidence in Illinois, to determine if you are exempt.

Note If you do not file a completed Form IL-W-4 with your employer, if you fail to sign the form or to include all necessary information, or if you alter the form, your employer must withhold Illinois Income Tax on the entire amount of your compensation, without allowing any exemptions.

When must I file?

You must file Form IL-W-4 when Illinois Income Tax is required to be withheld from compensation that you receive as an employee. You should complete this form and give it to your employer on or before the date you start working for your employer. You may file a new Form IL-W-4 any time your withholding allowances increase. If the number of your previously claimed allowances decreases, you **must** file a new Form IL-W-4 within 10 days. However, the death of a spouse or a dependent does not affect your withholding allowances until the next tax year.

When does my Form IL-W-4 take effect?

If you do not already have a Form IL-W-4 on file with your employer, this form will be effective for the first payment of compensation made to you after this form is filed. If you already have a Form IL-W-4 on file with this employer, your employer may allow any change you file on this form to become effective immediately, but is not required by law to change your withholding until the first payment of compensation is made to you after the first day of the

next calendar quarter (that is, January 1, April 1, July 1, or October 1) that falls at least 30 days after the date you file the change with your employer.

Example: If you have a baby and file a new Form IL-W-4 with your employer to claim an additional exemption for the baby, your employer may immediately change the withholding for all future payments of compensation. However, if you file the new form on September 1, your employer does not have to change your withholding until the first payment of compensation is made to you after October 1. If you file the new form on September 2, your employer does not have to change your withholding until the first payment of compensation made to you after December 31.

How long is Form IL-W-4 valid?

Your Form IL-W-4 remains valid until a new form you have filed takes effect or until your employer is required by the department to disregard it. Your employer is required to disregard your Form IL-W-4 if you claim total exemption from Illinois Income Tax withholding, but you have not filed a federal Form W-4 claiming total exemption. Also, if the Internal Revenue Service (IRS) has instructed your employer to disregard your federal Form W-4, your employer must also disregard your Form IL-W-4. Finally, if you claim 15 or more exemptions on your Form IL-W-4 without claiming at least the same number of exemptions on your federal Form W-4, and your employer is not required to refer your federal Form W-4 to the IRS for review, your employer must refer your Form IL-W-4 to the department for review. In that case, your Form IL-W-4 will be effective unless and until the department notifies your employer to disregard it.

What is an "exemption"?

An "exemption" is a dollar amount on which you do not have to pay Illinois Income Tax. Therefore, your employer will withhold Illinois Income Tax based on your compensation minus the exemptions to which you are entitled.

What is an "allowance"?

The dollar amount that is exempt from Illinois Income Tax is based on the number of allowances you claim on this form. As an employee, you receive one allowance unless you are claimed as a dependent on another person's tax return (e.g., your parents claim you as a dependent on their tax return). If you are married, you may claim additional allowances for your spouse and any dependents that you are entitled to claim for federal income tax purposes. You

also will receive additional allowances if you or your spouse are age 65 or older, or if you or your spouse are legally blind.

How do I figure the correct number of allowances?

Complete the worksheet on the back of this page to figure the correct number of allowances you are entitled to claim. Give your completed Form IL-W-4 to your employer. Keep the worksheet for your records.

If you are a partner in a same-sex civil union, and are subject to federal income tax on health benefits your employer pays for your partner, these benefits are not taxed by Illinois. Your employer will still withhold Illinois tax on these benefits unless you choose to claim additional allowances to reduce your withholding by including the amount of these benefits on Line 6 of the Withholding Allowance Worksheet.

Note If you have more than one job or your spouse works, you should figure the total number of allowances you are entitled to claim. Your withholding usually will be more accurate if you claim all of your allowances on the Form IL-W-4 for the highest-paying job and claim zero on all of your other IL-W-4 forms.

What if I underpay my tax?

If the amount withheld from your compensation is not enough to cover your tax liability for the year, (e.g., you have non-wage income, such as interest or dividends), you may reduce the number of allowances or request that your employer withhold an additional amount from your pay. Otherwise, you may owe additional tax at the end of the year. If you do not have enough tax withheld from your pay, and you owe more than \$500 tax at the end of the year, you may owe a late-payment penalty. You should either increase the amount you have withheld from your pay, or you must make estimated tax payments.

For additional information on penalties, see Publication 103, Uniform Penalties and Interest. Visit our website at **tax.illinois.gov** to obtain a copy.

Where do I get help?

- Visit our website at tax.illinois.gov
- Call our Taxpayer Assistance Division at 1 800 732-8866 or 217 782-3336
- Call our TDD (telecommunications device for the deaf) at 1 800 544-5304
- device for the deaf) at 1 800 544-5304

 Write to

ILLINOIS DEPARTMENT OF REVENUE PO BOX 19044 SPRINGFIELD IL 62794-9044

Illinois Withholding Allowance Worksheet

General Information

Complete this worksheet to figure your total withholding allowances.

Everyone must complete Step 1.

Complete Step 2 if

- you (or your spouse) are age 65 or older or legally blind, or
- you wrote an amount on Line 4 of the Deductions and Adjustments Worksheet for federal Form W-4.

If you have more than one job or your spouse works, you should figure the total number of allowances you are entitled to claim. Your withholding usually will be more accurate if you claim all of your allowances on the Form IL-W-4 for the highest-paying job and claim zero on all of your other IL-W-4 forms.

You may reduce the number of allowances or request that your employer withhold an additional amount from your pay, which may help avoid having too little tax withheld.

Adjustments worksneet for federal Form W-4.	help avoid having too little tax withhel	d.
Step 1: Figure your basic personal allov	vances (including allowances f	or dependents)
Check all that apply:		
No one else can claim me as a dependent.		
☐ I can claim my spouse as a dependent.		
1 Write the total number of boxes you checked.		1
Write the number of dependents (other than you or your spot	use) you will claim on your tax return	2
3 Add Lines 1 and 2. Write the result. This is the total number of		
you are entitled .	or bacio percenar anovarioce to winer	3
4 If you want to have additional Illinois Income Tax withheld from	m your pay, you may reduce the	
number of basic personal allowances or have an additional a		
of basic personal allowances you elect to claim on Line 4 and	d on Form IL-W-4, Line 1.	4
Step 2: Figure your additional allowance	PS	
Check all that apply:		
☐ I am 65 or older. ☐ I am legall	•	
• •	e is legally blind.	_
5 Write the total number of boxes you checked.	145	5
6 Write any amount that you reported on Line 4 of the Deduction for federal Form W-4 plus any additional Illinois subtractions of the Deduction of the Deduction for federal Form W-4 plus any additional Illinois subtractions of the Deduction for federal Form W-4 plus any additional Illinois subtractions of the Deduction for federal Form W-4 plus any additional Illinois subtractions of the Deduction for federal Form W-4 plus any additional Illinois subtractions of the Deduction for federal Form W-4 plus any additional Illinois subtractions of the Deduction for federal Form W-4 plus any additional Illinois subtractions of the Deduction for federal Form W-4 plus any additional Illinois subtractions of the Deduction for federal Form W-4 plus any additional Illinois subtractions of the Deduction for federal Form W-4 plus any additional Illinois subtractions of the Deduction for federal Form W-4 plus any additional Illinois subtractions of the Deduction for federal Form W-4 plus any additional Illinois subtractions of the Deduction for federal Form W-4 plus any additional Illinois subtractions of the Deduction for federal Form W-4 plus any additional Illinois subtraction for federal Form W-4 plus any additional Illinois subtraction for federal Form W-4 plus any additional Illinois subtraction for federal Form W-4 plus any additional Illinois subtraction for federal Form W-4 plus any additional Illinois subtraction for federal Form W-4 plus any additional Illinois subtraction for federal Form W-4 plus any additional Illinois subtraction for federal Form W-4 plus any additional Illinois subtraction for federal Form W-4 plus any additional Illinois subtraction for federal Form W-4 plus any additional Illinois subtraction for federal Form W-4 plus any additional Illinois subtraction for federal Form W-4 plus any additional Illinois subtraction for federal Form W-4 plus any additional Illinois subtraction for federal Form W-4 plus any additional Illinois subtraction for federal Form W-4 plus and Form W-4 plus any additio	•	6
		7
		<i>I</i>
8 Add Lines 5 and 7. Write the result. This is the total number of you are entitled .	or additional allowances to which	8
9 If you want to have additional Illinois Income Tax withheld from	m your nay you may reduce the	
number of additional allowances or have an additional amour		
of additional allowances you elect to claim on Line 9 and on I		9
If you have non-wage income and you expect to owe Illinois amount withheld from your pay. On Line 3 of Form IL-W-4, write the certificate to your pay. Cut here and give the certificate to your pay. Illinois Department of Revenue IL-W-4 Employee's Illinois Withholding All	he additional amount you want your employ ur employer. Keep the top portion for your records. — –	
w p	Write the total number of basic allowance	ses that you
Social Security number	are claiming (Step 1, Line 4, of the work	
•	2 Write the total number of additional allow	
Name	you are claiming (Step 2, Line 9, of the	
	3 Write the additional amount you want w	
Street address	(deducted) from each pay.	3
City State ZIP	I certify that I am entitled to the number of wi this certificate.	thholding allowances claimed on
Check the box if you are exempt from federal and Illinois	tillo continicato.	
Income Tax withholding and sign and date the certificate.	Your signature	Date

This form is authorized under the Illinois Income Tax Act. Disclosure of this information is required. Failure to provide information may result in this form not being processed and may result in a penalty.

Employer: Keep this certificate with your records. If you have referred the employee's federal certificate to the IRS and the IRS has notified you to disregard it, you may also be required to disregard this certificate. Even if you are not required to refer the employee's federal certificate to the IRS, you still may be required to refer this certificate to the Ilmions Department of Revenue for inspection. See Illinois Income Tax Regulations 86 Ill. Adm. Code 100.7110.

State of Indiana

Form WH-4
State Form 48845
(R7 / 9-20)

Employee's Withholding Exemption and County Status Certificat
This form is for the employer's records. Do not send this form to the Department of Revenue.
The completed form should be returned to your employer.

Name Social Security Number or ITIN						
Home Address	ity State	Zip Code				
Indiana County of Residence as of January 1:		(See instructions)				
Indiana County of Principal Employment as of Janu	ary 1:	(See instructions)				
How to	Claim Your Withholding Exemptions					
 You are entitled to one exemption. If you wish to claim the Nonresident aliens must skip lines 2 through 6. See inst 						
2. If you are married and your spouse does not claim his/he	exemption, you may claim it, enter "1"					
3. You are allowed one (1) exemption for each dependent. E	nter number claimed					
4. Additional exemptions are allowed if: (a) you and/or your	spouse are over the age of 65 and/or					
(b) if you and/or yo	ır spouse are legally blind.					
Check box(es) for additional exemptions: You are 65 or o Enter the total number of boxes checked	•					
5. Add lines 1, 2, 3, and 4. Enter the total here						
6. You are entitled to claim an additional exemption for each						
7. Enter the amount of additional state withholding (if any) y	ou want withheld each pay period	\$				
8. Enter the amount of additional county withholding (if any)	you want withheld each pay period	\$				
I hereby declare that to the best of my knowledge the abo	ve statements are true.					
Signature:		Date:				

Instructions for Completing Form WH-4

This form should be completed by all resident and nonresident employees having income subject to Indiana state and/or county income tax.

Print or type your full name, Social Security number or ITIN and home address. Enter your Indiana county of residence and county of principal employment as of January 1 of the current year. If you neither lived nor worked in Indiana on January 1 of the current year, enter 'not applicable' on the line(s). If you move to (or work in) another county after January 1, your county status will not change until the next calendar tax year.

Nonresident alien limitation. A nonresident alien is allowed to claim only one exemption for withholding tax purposes. If you are a nonresident alien, enter "1" on line 1, then skip to line 7. You are considered to be a nonresident alien if you are not a citizen of the United States and do not meet the green card test and the substantial presence test (get Publication 519 from www.irs.gov for information about these tests).

All other employees should complete lines 1 through 7.

- Lines 1 & 2 You are allowed to claim one exemption for yourself and one for your spouse (if he/she does not claim the exemption for him/herself). If a parent or legal guardian claims you on their federal tax return, you may still claim an exemption for yourself for Indiana purposes. You cannot claim more than the correct number of exemptions; however, you are permitted to claim a lesser number of exemptions if you wish additional withholding to be deducted.
- Line 3 Dependent Exemptions: You are allowed one exemption for each of your dependents based on state guidelines. To qualify as your dependent, a person must receive more than one-half of his/her support from you for the tax year and must have less than \$4,300 gross income during the tax year (unless the person is your child and is under age 19 or under age 24 and a full-time student at least during 5 months of the tax year at a qualified educational institution).
- Line 4 Additional Exemptions. You are also allowed one exemption each for you and/or your spouse if either is 65 or older and/or blind.
- Line 5 Add the total of exemptions claimed on lines 1, 2, 3, and 4. Enter the total in the box provided.
- Line 6 Additional Dependent Exemptions. An additional exemption is allowed for certain dependent children that are included on line 3. The dependent child must be a son, stepson, daughter, stepdaughter, foster child, and/or child for whom you are a legal guardian.
- Lines 7 & 8 If you would like an additional amount to be withheld from your wages each pay period, enter the amount on the line provided. **NOTE:** An entry on this line does not obligate your employer to withhold the amount. You are still liable for any additional taxes due at the end of the tax year. If the employer does withhold the additional amount, it should be submitted along with the regular state and county tax withholding.

You may file a new Form WH-4 at any time if the number of exemptions **increases**. You must file a new Form WH-4 within 10 days if the number of exemptions previously claimed by you **decreases** for any of the following reasons:

- (a) you divorce (or are legally separated from) your spouse for whom you have been claiming an exemption or your spouse claims him/herself on a separate Form WH-4; or (b) someone else takes over the support of a dependent you claim or you no longer provide more than one-half of the person's support for the tax year.
- Penalties are imposed for willingly supplying false information or information which would reduce the withholding exemption.



KENTUCKY'S WITHHOLDING CERTIFICATE

2021

	Instructions	to Employees
Signature		Date
it is true, correct, and complete.		
	t I have examined	this certificate and, to the best of my knowledge and belief,
Additional withholding per pay period u	nder agreement w	ith employer \$
$\hfill \Box$ 4. You work in Kentucky and reside	in a reciprocal sta	te
$\ \square$ 3. You qualify for the nonresident r	nilitary spouse ex	emption State
$\hfill \square$ 2. You qualify for the Fort Campbel	l Exemption Certif	
$\ \square$ 1. Kentucky income tax liability is r	ot expected this y	ear (see instructions)
Check if exempt:		
All Kentucky wage earners are taxed at a of Revenue annually adjust the standard		a standard deduction allowance of \$2,690. The Department rdance with KRS 141.081(2)(a).
City, Town or Post Office	State ZIP Co	<u> </u>
Mailing Address (Number and Street including Apartment Numb	er or P.O. Box)	
Name—Last, First, Middle Initial		

All Kentucky wage earners are taxed at a flat 5% tax rate with an allowance for the standard deduction.

You may be exempt from withholding if any of the four conditions below are met:

Social Security Number

- 1. You may be exempt from withholding for 2021 if both the following apply:
 - For 2020, you had a right to a refund of all Kentucky income tax withheld because you had no Kentucky income tax liability, and
 - For 2021, you expect a refund of all your Kentucky income tax withheld.

Income Tax Liability Thresholds—The 2020 filing threshold amount based upon federal poverty level is expected to be \$12,760 for a family size of one (singe, or married living apart from your spouse for the entire year), \$17,240 for a family of two (single with one dependent child or a married couple), \$21,720 for a family of three (single with two dependent children or a married couple with one dependent child) and \$26,200 for a family of four or more (single with three dependent children or a married couple with two or more dependent children). Modified gross income is equal to your federal adjusted gross income plus any interest income from other states municipal bonds and pension income from a qualifying lump-sum distribution. If your combined modified gross income is expected to be less than the threshold amount for your family size, then you (and your spouse, if applicable) may not have an income tax liability.

If both the above statements apply, you are exempt and may check box 1. Your exemption for 2021 expires February 15, 2022.

2. Under the provisions of Public Law 105–261, pay and compensation earned at the Fort Campbell, Kentucky, military base is exempt from Kentucky income tax if you are not a resident of Kentucky. KRS 141.010(17) defines "resident" as an individual domiciled within this state or an individual who is not domiciled in this state, but maintains a place of abode in this state and spends in the aggregate more than one hundred eighty-three (183) days of the taxable year in this state.

Check box 2 if you certify that you are not a resident of Kentucky and only earn wages as an employee at Fort Campbell, Kentucky. This exemption must be revoked within 10 days of a move or change of address to Kentucky.

amended by the Military Spouses Residence Relief Act. You must complete the we eligible.	orksheet below to	determir	ne if you are
In order to qualify you must complete this form in full, certify that the you are not subject you met the conditions set forth below, and provide a copy of your spouse's military pit. U.S. Department of Defense.			
My spouse is a military servicemember	(check one)	□ YES	□ NO
2. I am NOT a military servicemember			□ NO
My military servicemember spouse has a current military order assigning him or her to a military location in Kentucky	(abaak ana)	□ VEQ	□ NO
4. I and my military servicemember spouse live at the same address			□ NO
5. My military servicemember's state of domicile is a state other than Kentucky and I am	1	- \/-C	E NO
electing to use that state of domicile	(check one)	□ YES	⊔ NO
6. I am present in Kentucky solely to be with my military servicemember spouse	(check one)	□ YES	□ NO
If you checked "YES" to all the statements above, your earned income is exempt from Kentu	ıcky withholding tax	C.	
Check box 3 if you checked "YES" to all the statements listed in the worksheet. You a withholding. This exemption will terminate if any of the answers to the questions chan termination date will be the earlier of: • The day the military servicemember is no longer in the military; • The day the employee enlists in the military; • The day the employee and the military servicemember no longer live at the sam • The day the military servicemember's permanent duty station changes to a local	ges to "NO". In ger ne address; or	eral, the	
4. You may be exempt from withholding if you work in Kentucky but reside in on nois, Indiana, Michigan, West Virginia, Wisconsin, Virginia and you commute dail er–employee who is a "twenty (20) percent or greater" direct or indirect equity i	y or Ohio and you	are not a	
In order to qualify you must complete the worksheet below:			
I have not been a resident of Kentucky during the year. (Check block in front of applicable statement.) I	work in Kentucky and	reside in:	
 □ Illinois, □ Indiana, □ Michigan, □ West Virginia, □ Wisconsin □ Virginia and commute daily to my place of employment in Kentucky. (Must commute daily to appl) □ Ohio and I am not a shareholder-employee who is a "twenty (20) percent or greater" direct or indirect or indirect. 		S corpora	ation.
Check box 4 if you certify you work in Kentucky and reside in a reciprocal state.			
If you meet any of the four exemptions you are exempted from Kentucky withholding. and file it with your employer before withholding can be stopped. You will need to maintarecords.			
Instructions to Employers			

You may be exempt from withholding, if you meet the conditions set for under the Servicemember Civil Relief Act as

Form K-4 is only required to document that an employee has requested an exemption from withholding OR to document that an employee has requested additional withholding in excess of the amounts calculated using the formula or tables. If neither situation applies, then an employer is not required to maintain Form K-4.

Upon receipt of this form, properly completed, you are authorized to discontinue withholding for an employee who qualifies for one of the four exemptions. Retain a copy of all K-4's received from employees.

3.



Purpose. Complete Form MW507 so that your employer can withhold the correct Maryland income tax from your pay. Consider completing a new Form MW507 each year and when your personal or financial situation changes.

Basic Instructions. Enter on line 1 below, the number of personal exemptions you will claim on your tax return. However, if you wish to claim more exemptions, or if your adjusted gross income will be more than \$100,000 if you are filing single or married filing separately (\$150,000, if you are filing jointly or as head of household), you must complete the Personal Exemption Worksheet on page 2. Complete the Personal Exemption Worksheet on page 2 to further adjust your Maryland withholding based on itemized deductions, and certain other expenses that exceed your standard deduction and are not being claimed at another job or by your spouse. However, you may claim fewer (or zero) exemptions.

Additional withholding per pay period under agreement with employer. If you are not having enough tax withheld, you may ask your employer to withhold more by entering an additional amount on line 2.

Exemption from withholding. You may be entitled to claim an exemption from the withholding of Maryland income tax if:

- a. Last year you did not owe any Maryland Income tax and had a right to a full refund of any tax withheld; AND,
- b. This year you do not expect to owe any Maryland income tax and expect to have a right to a full refund of all income tax withheld.

If you are eligible to claim this exemption, complete Line 3 and your employer will not withhold Maryland income tax from your wages.

Students and Seasonal Employees whose annual income will be below the minimum filing requirements should claim exemption from withholding. This provides more income throughout the year and avoids the necessity of filing a Maryland income tax return.

Certification of nonresidence in the State of Maryland. Complete Line 4. This line is to be completed by residents of the District of Columbia, Virginia or West Virginia who are employed in Maryland and who do not maintain a place of abode in Maryland for 183 days or more.

Residents of Pennsylvania who are employed in Maryland and who do not maintain a place of abode in Maryland for 183 days or more, should complete line 5 to exempt themselves from the state portion of the withholding tax. These employees are still liable for withholding tax at the rate in effect for the Maryland county in which they are employed, unless they qualify for an exemption on either line 6 or line 7. Pennsylvania residents of York and Adams counties may claim an exemption from the local withholding tax by completing line 6. Pennsylvania residents living in other local jurisdictions which do not impose an earnings or income tax on Maryland residents may claim an exemption by completing line 7. Employees qualifying for exemption under 6 or 7, should also write "EXEMPT" on line 4.

Line 4 is **NOT** to be used by residents of other states who are working in Maryland, because such persons are liable for Maryland income tax and withholding from

their wages is required.

If you are domiciled in the District of Columbia, Pennsylvania or Virginia and maintain a place of abode in Maryland for 183 days or more, you become a statutory resident of Maryland and you are required to file a resident return with Maryland reporting your total income. You must apply to your domicile state for any tax credit to which you may be entitled under the reciprocal provisions of the law. If you are domiciled in West Virginia, you are not required to pay Maryland income tax on wage or salary income, regardless of the length of time you may have spent in Maryland.

Under the Servicemembers Civil Relief Act, as amended by the Military Spouses Residency Relief Act, you may be exempt from Maryland income tax on your wages if (i) your spouse is a member of the armed forces present in Maryland in compliance with military orders; (ii) you are present in Maryland solely to be with your spouse; and (iii) you maintain your domicile in another state. If you claim exemption under the SCRA enter your state of domicile (legal residence) on Line 8; enter "EXEMPT" in the box to the right on Line 8; and attach a copy of your spousal military identification card to Form MW507. In addition, you must also complete and attach Form MW507M.

Duties and responsibilities of employer. Retain this certificate with your records. You are required to submit a copy of this certificate and accompanying attachments to the Compliance Division, Compliance Programs Section, 301 West Preston Street, Baltimore, MD 21201, when received if:

- 1. You have any reason to believe this certific te is incorrect;
- 2. The employee claims more than 10 exemptions;
- The employee claims an exemption from withholding because he/she had no tax liability for the preceding tax year, expects to incur no tax liability this year and the wages are expected to exceed \$200 a week;
- The employee claims an exemption from withholding on the basis of nonresidence; or
- The employee claims an exemption from withholding under the Military Spouses Residency Relief Act.

Upon receipt of any exemption certific te (Form MW507), the Compliance Division will make a determination and notify you if a change is required.

Once a certificate is revoked by the Comptroller, the employer must send any new certificate from the employee to the Comptroller for approval before implementing the new certificate

If an employee claims exemption under 3 above, a new exemption certificate must be filed by February 15th of the following year.

Duties and responsibilities of employee. If, on any day during the calendar year, the number of withholding exemptions that the employee is entitled to claim is less than the number of exemptions claimed on the withholding exemption certificate in effect, the employee must file a new withholding exemption certificate with the employer within 10 days after the change occurs.

FORM MW507

Employee's Maryland Withholding Exemption Certificate

Print full name	Social Security Number
Street Address, City, State, ZIP	County of residence (Nonresidents enter Maryland county (or Baltimore City) where you are employed.)
☐ Single ☐ Married (surviving spouse or unmarried Head of	Household) Rate
1. Total number of exemptions you are claiming not to exceed line f in Personal Ex	remption Worksheet on page 2
2. Additional withholding per pay period under agreement with employer	
3. I claim exemption from withholding because I do not expect to owe Maryland to	ax. See instructions above and check boxes that apply.
a. Last year I did not owe any Maryland income tax and had a right to a fu	ıll refund of all income tax withheld and
b. This year I do not expect to owe any Maryland income tax and expect to (This includes seasonal and student employees whose annual income w If both a and b apply, enter year applicable (year effective feet)	
4. I claim exemption from withholding because I am domiciled in one of the follow District of Columbia Virginia West Virginia I further certify that I do not maintain a place of abode in Maryland as described	
5. I claim exemption from Maryland state withholding because I am domiciled in t	
maintain a place of abode in Maryland as described in the instructions on Form	MW507. Enter "EXEMPT" here
6. I claim exemption from Maryland local tax because I live in a local Pennysylvan	
Enter "EXEMPT" here and on line 4 of Form MW507	
 I claim exemption from Maryland local tax because I live in a local Pennsylvania tax on Maryland residents. Enter "EXEMPT" here and on line 4 of Form MW507. 	a jurisdiction that does not impose an earnings or income
8. I certify that I am a legal resident of the state of and am not sul ments set forth under the Servicemembers Civil Relief Act, as amended by the I	bject to Maryland withholding because I meet the require- Military Spouses Residency Relief Act. Enter "EXEMPT" here 8
Under the penalty of perjury, I further certify that I am entitled to the number from withholding, that I am entitled to claim the exempt status on whichever line	
Employee's signature	Date
Employer's name and address including ZIP code (For employer use only)	Federal Employer Identification Numbe

MW507

Personal Exemptions Worksheet

Line 1

a.	Multiply the number of your personal exemptions by the value of each exemption from the table below. (Generally the value of your exemption will be \$3,200; however, if your federal adjusted gross income is expected to be over \$100,000, the value of your exemption may be reduced. Do not claim any personal exemptions you currently claim at another job, or any exemptions being claimed by your spouse. To qualify as your dependent, you must be entitled to an exemption for the dependent on your federal income tax return for the corresponding tax year. NOTE: Dependent taxpayers may not claim themselves as an exemption	
b.	Multiply the number of additional exemptions you are claiming for dependents age 65 or over by the value of each exemption from the table below	
c.	Enter the estimated amount of your itemized deductions (excluding state and local income taxes) that exceed the amount of your standard deduction, alimony payments, allowable childcare expenses, qualified retirement contributions, business losses and employee business expenses for the year. Do not claim any additional amounts you currently claim at another job or any amounts being claimed by your spouse. NOTE: Standard deduction allowance is 15% of Maryland adjusted gross income with a minimum of \$1,550 and a maximum of \$2,300.	
d.	Enter \$1,000 for additional exemptions for taxpayer and/or spouse age 65 or over and/or blind d.	
e.	Add total of lines a through d e	
f.	Divide the amount on line e by \$3,200. Drop any fraction. Do not round up. This is the maximum number of exemptions you may claim for withholding tax purposes	

If your fed	leral AGI is	If you will file your tax return					
		Single or Married Filing Separately Your Exemption is	Joint, Head of Household or Qualifying Widow(er) Your Exemption is				
\$100,00	0 or less	\$3,200	\$3,200				
Over	But not over						
\$100,000	\$125,000	\$1,600	\$3,200				
\$125,000	\$150,000	\$800	\$3,200				
\$150,000	\$175,000	\$0	\$1,600				
\$175,000	\$200,000	\$0	\$800				
In excess	of \$200,000	\$0	\$0				

FEDERAL PRIVACY ACT INFORMATION

Social Security numbers must be included. The mandatory disclosure of your Social Security number is authorized by the provisions set forth in the Tax-General Article of the Annotated Code of Maryland. Such numbers are used primarily to administer and enforce the individual income tax laws and to exchange income tax information with the Internal Revenue Service, other states and other tax officials of this state. Information furnished to other agencies or persons shall be used solely for the purpose of administering tax laws or the specific laws administered by the person having statutory right to obtain it.

FORM MASSACHUSETTS EMPLOYEE'S WITHHOLDING EXEMPTION CERTIFICATION M-4 Print full name Social Security no. Print home address City State.	THE PROPERTY OF THE PROPERTY O
Employee: File this form with your employer. Otherwise, Massachusetts Income Taxes will be withheld from your wages without exemptions. Employer: Keep this certificate with your records. If the employee is believed to have claimed excessive exemptions, the Massachusetts Department of Revenue should be so advised. 1. Your personal exemption. Write the figure "1." If you are age 65 or over or will be before next year stage 65 or over or will be before next year stage 65 or over or will be before next year and if otherwise qualified, write "5." See Instruction C. 3. Write the number of your qualified dependents. See Instruction D. 4. Add the number of exemptions which you have claimed above and write the total. 5. Additional withholding per pay period under agreement with employer \$ A. Check if you will file as head of household on your tax return. B. Check if you are a full-time student engaged in seasonal, part-time or temporary employme will not exceed \$8,000. EMPLOYER: DO NOT withhold if Box D is checked.	over or will ding.
I certify that the number of withholding exemptions claimed on this certificate does not exceed the number to which I am entitled. Date	
THIS FORM MAY BE REPRODUCED	

THE COMMONWEALTH OF MASSACHUSETTS, DEPARTMENT OF REVENUE

A. Number. The more exemptions you claim on this certificate, the less tax withheld from your employer. If you claim more exemptions than you are entitled to, civil and criminal penalties may be imposed. However, you may claim a smaller number of exemptions without penalty. If you do not file a certificate, your employer must withhold on the basis of no exemptions.

If you expect to owe more income tax than will be withheld, you may either claim a smaller number of exemptions or enter into an agreement with your employer to have additional amounts withheld.

You should claim the total number of exemptions to which you are entitled to prevent excessive overwithholding, unless you have a significant amount of other income. Underwithholding may result in owing additional taxes to the Commonwealth at the end of the year.

If you work for more than one employer at the same time, you must not claim any exemptions with employers other than your principal employer.

If you are married and if your spouse is subject to withholding, each may claim a personal exemption.

B. Changes. You may file a new certificate at any time if the number of exemptions increases. You must file a new certificate within 10 days if the number of exemptions previously claimed by you decreases. For example, if during the year your dependent son's income indicates that you will not

provide over half of his support for the year, you must file a new certificate.

C. Spouse. If your spouse is not working or if she or he is working but not claiming the personal exemption or the age 65 or over exemption, generally you may claim those exemptions in line 2. However, if you are planning to five separate annual tax returns, you should not claim withholding exemptions for your spouse or for any dependents that will not be claimed on your annual tax return.

If claiming a spouse, write "4" in line 2. Entering "4" makes a withholding system adjustment for the \$4,400 exemption for a spouse.

D. Dependent(s). You may claim an exemption in line 3 for each individual who qualifies as a dependent under the Federal Income Tax Law. In addition, if one or more of your dependents will be under age 12 at year end, add "1" to your dependents total for line 3.

You are not allowed to claim "federal withholding deductions and adjustments" under the Massachusetts withholding system.

If you have income not subject to withholding, you are urged to have additional amounts withheld to cover your tax liability on such income. See line 5.



2021 W-4MN, Minnesota Employee Withholding Allowance/Exemption Certificate

Employees

Complete Form W-4MN so that your employer can withhold the correct Minnesota income tax from your pay. Consider completing a new Form W-4MN each year or when your personal or financial situation changes. Employee's First Name and Initial Employee's Social Security Number Marital Status (Check one): Permanent Address Single: Married, but legally separated: or Spouse is a nonresident alien City State 7IP Code Married, but withhold at higher Single rate Read instructions on back. Complete Section 1 OR Section 2, then sign and give the completed form to your employer. Do not complete both Section 1 and Section 2. Completing both sections will make the form invalid. □ Section 1 — Determining Minnesota Allowances You are single and have only one job • You are married, have only one job, and your spouse does not work • Your wages from a second job or your spouse's wages are \$1500 or less C Enter "1" if you are married. You may choose to enter "0" if you are married and have either a working spouse or more than one job. (Entering "0" may help you avoid having too little tax withheld.) C ____ **D** Enter the number of dependents (other than your spouse or yourself) you will claim on your tax return. . . . **D** E Enter "1" if you will use the filing status Head of Household (see instructions)..... E F Total number of allowances claimed. Add steps A through E. If you plan to itemize deductions on your 2021 Minnesota income tax return, you may also complete the ■ Section 2 — Exemption From Minnesota Withholding Complete Section 2 if you claim to be exempt from Minnesota income tax withholding (see Section 2 instructions for qualifications). If applicable, check one box below to indicate why you believe you are exempt: oxdot A I meet the requirements and claim exempt from both federal and Minnesota income tax withholding ☐ B Even though I did not claim exempt from federal withholding, I claim exempt from Minnesota withholding, because: • I had no Minnesota income tax liability last year • I received a refund of all Minnesota income tax withheld • I expect to have no Minnesota income tax liability this year C All of these apply: • My spouse is a military service member assigned to a military location in Minnesota • My domicile (legal residence) is in another state • I am in Minnesota solely to be with my spouse. My state of domicile is __ D I am an American Indian that resides and works on a reservation ☐ E I am a member of the Minnesota National Guard or an active duty U.S. military member and claim exempt from Minnesota withholding Fireceive a military pension or other military retirement pay as calculated under U.S. Code, title 10, sections 1401 through 1414, 1447 through 1455, and 12733, and I claim exempt from Minnesota withholding on this retirement pay Minnesota Allowances and Additional Withholding 1 Minnesota Allowances. Enter Step F from Section 1 above or Step 10 of the Itemized Deductions Worksheet . . 1 ___ I certify that all information provided in Section 1 OR Section 2 is correct. I understand there is a \$500 penalty for filing a false Form W-4MN. Daytime Phone Number **Employees:** Give the completed form to your employer. **Employers** See the employer instructions to determine if you must send a copy of this form to the Minnesota Department of Revenue. If required, enter your information below and mail this form to the address in the instructions. (Incomplete forms are considered invalid.) We may assess a \$50 penalty for each required Form W-4MN not filed with us. Keep a copy for your records. Name of Employer Federal Employer ID Number (FEIN) Minnesota Tax ID Number Address ZIP Code



Form W-4MN Employee Instructions

Complete this form for your employer to calculate the amount of Minnesota income tax to be withheld from your pay.

When should I complete Form W-4MN?

Complete Form W-4MN if any of these apply:

- · You begin employment
- · You change your filing status
- · You reasonably expect to change your filing status in the next calendar year
- · Your personal or financial situation changes
- You claim exempt from Minnesota withholding (see Section 2 instructions for qualifications)

If you have not had sufficient Minnesota income tax withheld from your wages, we may assess penalty and interest when you file your state income tax return.

Note: Your employer may be required to submit a copy of your Form W-4MN to the Minnesota Department of Revenue. You may be subject to a \$500 penalty if you provide a false Form W-4MN.

What if I have completed federal Form W-4?

If you completed a 2021 Form W-4, you must complete Form W-4MN to determine your Minnesota withholding allowances.

What if I am exempt from Minnesota withholding?

If you claim exempt from Minnesota withholding, complete only Section 2 of Form W-4MN and sign the form to validate it. If you complete Section 2, you must complete a new Form W-4MN by February 15 in each following year.

You cannot claim exempt from withholding if all of these apply:

- Another person can claim you as a dependent on their federal tax return
- Your annual income exceeds \$1,100
- Your annual income includes more than \$350 of unearned income

What if I am a nonresident alien for U.S. income taxes?

If you are a nonresident alien, you are not allowed to claim exempt from withholding. You will check the single box for marital status regardless of your actual marital status and may enter one personal allowance on Step A. Enter zero on steps B, C, and E.

If you are resident of Canada, Mexico, South Korea, or India, and are allowed to claim dependents, you may enter the number of dependents on Step D.

Section 1 — Minnesota Allowances Worksheet

Complete Section 1 to find your allowances for Minnesota withholding tax. For regular wages, withholding must be based on allowances you claimed and may not be a flat amount or percentage of wages.

If you expect to owe more income tax for the year than will be withheld, you can claim fewer allowances or request additional Minnesota withholding from your wages. Enter the amount of additional Minnesota income tax you want withheld on line 2 of Section 1.

Nonwage Income

Consider making estimated payments if you have a large amount of "nonwage income." Nonwage income (other than tax-exempt income) includes interest, dividends, net rental income, unemployment compensation, gambling winnings, prizes and awards, hobby income, capital gains, royalties, and partnership income.

Two Earners or Multiple Jobs

If your spouse works or you have more than one job, figure the total number of allowances you are entitled to claim on all jobs using worksheets from only one Form W-4MN. Usually, your withholding will be more accurate when all allowances are claimed on the Form W-4MN for the highest paying job and zero allowances are claimed on the others.

Head of Household Filing Status

You may claim Head of Household as your filing status if you are unmarried and pay more than 50% of the costs of keeping up a home for yourself, your dependents, and other qualifying individuals. Enter "1" on Step E if you may claim Head of Household as your filing status on your tax return.

What if I itemize deductions on my Minnesota return or have other nonwage income?

Use the Itemized Deductions and Additional Income Worksheet to find your Minnesota withholding allowances. Complete Section 1 on page 1, then follow the steps in the worksheet on the next page to find additional allowances.

Section 2 — Minnesota Exemption

Your employer will not withhold Minnesota taxes from your pay if you are exempt from Minnesota withholding. You cannot claim exempt from withholding if all of these apply:

- Another person can claim you as a dependent on their federal tax return
- Your annual income exceeds \$1,100
- Your annual income includes more than \$350 of unearned income

Ite	mized Deductions and Additional Income Worksheet
1	Enter an estimate of your 2021 Minnesota itemized deductions. For 2021, you may have to reduce your itemized deductions
	if your income is over \$199,850 (\$99,925 for Married Filing Separately).
2	Enter one of the following based on your filing status:
	a. \$25,050 if Married Filing Jointly
	b. \$18,800 if Head of Household
	c. \$12,525 if Single or Married Filing Separately
3	Subtract step 2 from step 1. If zero or less, enter 0
4	Enter an estimate of your 2021 additional standard deduction (from page 11 of the Form M1 instructions)
5	Add steps 3 and 4
6	Enter an estimate of your 2021 taxable nonwage income
7	Subtract step 6 from step 5. If zero, enter 0. If less than zero, enter the amount in parentheses
8	Divide the amount on step 7 by \$4,350. If a negative amount, enter in parentheses. Do not include fractions
9	Enter the number on step F of Section 1 on page 1
10	Add step 8 and 9 and enter the total here. If zero or less, enter 0. Enter this amount on line 1 of page 1

Box A

Check box A of Section 2 to claim exempt if all of these apply:

- You meet the requirements to be exempt from federal withholding
- You had no Minnesota income tax liability in the prior year and received a full refund of Minnesota tax withheld
- · You expect to have no Minnesota income tax liability for the current year

Box B

Check box B of Section 2 if you are not claiming exempt from federal withholding, but meet the second and third requirements for box A.

Box C

Check box C in Section 2 to claim exempt if all of these apply:

- · You are the spouse of a military member assigned to duty in Minnesota
- You and your spouse are domiciled in another state
- · You are in Minnesota solely to be with your active duty military spouse member

Boxes D-F

If you receive income from the following sources, it is exempt from Minnesota withholding. Your employer will not withhold Minnesota tax from that income when you check the appropriate box in Section 2.

- Box D: You receive wages as a member of an American Indian tribe living and working on the reservation of which you are an enrolled member.
- Box E: You receive wages for Minnesota National Guard (MNG) pay or for active duty U.S. military pay. MNG and active duty U.S. military members can claim exempt from Minnesota withholding on these wages, even if they are taxable federally. For more information, see Income Tax Fact Sheet 5, Military Personnel.
- Box F: You receive a military pension or other military retirement pay calculated under U.S. Code title 10, sections 1401 through 1414, 1447 through 1455, and 12733. You may claim exempt from Minnesota withholding on this income even if it is taxable federally.

Note: You may not want to claim exempt if you (or your spouse if filing a joint return) expect to have other forms of income subject to Minnesota tax and you want to avoid owing tax at the end of the year.

If you complete Section 2, you must complete a new Form W-4MN by February 15 in each following year.

Nonresident Alien

If you are a nonresident alien for federal tax purposes, do not complete Section 2.

Additional Minnesota Withholding

If you would like an additional amount of tax to be deducted per payment period, enter the amount on line 2. Do not enter a percentage of the payment you want to be deducted.

Use of Information

All information on Form W-4MN is private by state law. It cannot be given to others without your consent, except to the Internal Revenue Service, to other states that guarantee the same privacy, and by court order. Your name, address, and Social Security Number are required for identification. Information about your allowances is required to determine your correct tax. We ask for your phone number so we can call if we have a question.

Questions?

- Website: www.revenue.state.mn.us
- Email: withholding.tax@state.mn.us
- Phone: 651-282-9999 or 1-800-657-3594 (toll-free)

Form W-4MN Employer Instructions

Form W-4MN Requirement

Federal Form W-4 will not determine withholding allowances used to determine the amount of Minnesota withholding. Employees completing a 2021 Form W-4 will need to complete 2021 Form W-4MN to determine the appropriate amount of Minnesota withholding.

Lock-In Letters

Internal Revenue Service (IRS) Letter 2800C tells you when the IRS believes your employee may have filed an incorrect federal Form W-4. If you receive this letter, you must provide the Minnesota Department of Revenue with a copy of the employee's Form W-4MN. We will verify the number of allowances that the employee may claim for Minnesota purposes. Continue using the Form W-4MN you were using at the time you received Letter 2800C from the IRS, until we notify you to change the amount of allowances on the employee's Form W-4MN. If the employee has not completed a Form W-4MN, have them complete the form and use the allowances calculated on that form until notified by the department.

Use the amount on line 1 of page 1 for calculating the withholding tax for your employees.

When does an employee complete Form W-4MN?

Employees complete Form W-4MN when they begin employment or when their personal or financial situation changes.

How should I determine Minnesota withholding for an employee that does not complete Form W-4MN?

If an employee does not complete Form W-4MN and they have a federal Form W-4 (from 2019 or prior years) on file, use the allowances on their federal Form W-4. Otherwise, withhold Minnesota tax as if the employee is single with zero withholding allowances.

What if my employee claims to be exempt from Minnesota withholding?

If your employee claims exempt from Minnesota withholding, they must complete Section 2 of Form W-4MN. They must provide you with a new Form W-4MN by February 15 of each year. If you are paying an employee for wages that are exempt from withholding, such as Medicaid Waiver Payments or wages to H-2A visa workers, do not send us Form W-4MN.

When do I need to submit copies of a Form W-4MN to the department?

You must send copies of Form W-4MN to us if any of these apply:

- The employee claims more than 10 Minnesota withholding allowances
- The employee checked box A or B under Section 2, and you reasonably expect the employee's wages to exceed \$200 per week
- You believe the employee is not entitled to the number of allowances claimed

You do not need to submit Form W-4MN to us if the employee is asking to have additional Minnesota withholding deducted from their pay.

We may assess a \$50 penalty for each Form W-4MN you do not file with us when required.

Mail Forms W-4MN to:

Minnesota Department of Revenue Mail Station 6501 600 N. Robert St. St. Paul, MN 55146-6501

What if my employee is a resident of a reciprocity state?

If your employee is a resident of North Dakota or Michigan and they do not want you to withhold Minnesota tax from their wages, they must complete Form MWR, *Reciprocity Exemption/Affidavit of Residency*. They must complete a Form MWR by February 28 of each year, or within 30 days after they begin working or change their permanent residence. See Withholding Fact Sheet 20, *Reciprocity - Employee Withholding*, for more information.

What is an invalid Form W-4MN?

A Form W-4MN is considered invalid if any of these apply:

- · There is any unauthorized change or addition to the form, including any change to the language certifying the form is correct
- The employee indicates in any way the form is false by the date they provide you with the form
- The form is incomplete or lacks the necessary signatures
- Both Section 1 and Section 2 were completed
- · The employer information is incomplete

What if I receive an invalid form?

Do not use the invalid form to calculate Minnesota income tax withholding. Have the employee complete and submit a new Form W-4MN. If the employee does not give you a valid form, and you have an earlier Form W-4MN from them, use the earlier form to calculate their withholding.

If a valid Form W-4MN is not completed by the employee, withhold taxes as if the employee is single and claiming zero withholding allowances.

What if my employee is a nonresident alien of the United States?

If the wages to this employee are subject to income tax withholding, you will use Table 1 and the procedure under **Withholding Adjustment for Nonresident Alien Employees** in IRS Publication 15-T to determine the correct Minnesota withholding tax. Do not use this procedure for nonresident alien students from India and business apprentices from India. See IRS Notice 1392 for special instructions and withholding exceptions.

Form **NJ-W4** (1-21)

State of New Jersey – Division of Taxation Employee's Withholding Allowance Certificat

1. SS#	2. Filing Status: (Check only one box)				
Name	 Single Married/Civil Union Couple Joint 				
Address	Married/Civil Union Partner Separate Head of Household				
City	State	Zip		r)/Surviving Civil Union Partner	
3. If you have chosen to use the chart from instruction A	A, enter the appr	opriate letter here		3.	
4. Total number of allowances you are claiming (see ins	structions)			4.	
5. Additional amount you want deducted from each pay	·			5. \$	
I claim exemption from withholding of NJ Gross Incomments instructions of the NJ-W4. If you have met the conditions of the NJ-W4.				6.	
7. Under penalties of perjury, I certify that I am entitled	to the number of	withholding allowances	claimed on this certificat or enti	itled to claim exempt status.	
Formula we also Olive at war			Dete		
Employee's Signature			Date		
Employer's Name and Address			Employer Identificatio Numb	per	

BASIC INSTRUCTIONS

- Line 1 Enter your name, address, and Social Security number in the spaces provided.
- Line 2 Check the box that indicates your filin status. If you checked Box 1 (Single) or Box 3 (Married/Civil Union Partner Separate) you will be withheld at Rate A.

 Note: If you have checked Box 2 (Married/Civil Union Couple Joint), Box 4 (Head of Household) or Box 5 (Qualifying Widow(er) Surviving Civil Union Partner) and either your spouse/civil union partner works or you have more than one job or more than one source of income and the combined total of all wages is greater than \$50,000, see instruction A below. If you do not complete Line 3, you will be withheld at Rate B.
- Line 3 If you have chosen to use the wage chart below, enter the appropriate letter.
- Line 4 Enter the number of allowances you are claiming. Entering a number on this line will decrease the amount of withholding and could result in an underpayment on your return.
- Line 5 Enter the amount of additional withholdings you want deducted from each pay.
- Line 6 Enter "EXEMPT" to indicate that you are exempt from New Jersey Gross Income Tax Withholdings, if you meet one of the following conditions:
 - Your filin status is SINGLE or MARRIED/CIVIL UNION PARTNER SEPARATE and your wages plus your taxable nonwage income will be \$10,000 or less for the current year.
 - Your filin status is MARRIED/CIVIL UNION COUPLE JOINT, and your wages combined with your spouse's/civil union partner's wages plus your taxable nonwage income will be \$20,000 or less for the current year.
 - Your filin status is HEAD OF HOUSEHOLD or QUALIFYING WIDOW(ER)/SURVIVING CIVIL UNION PARTNER and your wages plus your taxable nonwage income will be \$20,000 or less for the current year.

Your exemption is good for ONE year only. You must complete and submit a form each year certifying you have no New Jersey Gross Income Tax liability and claim exemption from withholding. If you have questions about eligibility, filin status, withholding rates, etc. when completing this form, call the Division of Taxation's Customer Service Center at (609) 292-6400.

Instruction A - Wage Chart

This chart is designed to increase withholdings on your wages, if these wages will be taxed at a higher rate due to inclusion of other wages or income on your NJ-1040 return. It is not intended to provide withholding for other income or wages. If you need additional withholdings for other income or wages, use Line 5 on the NJ-W4. This Wage Chart applies to taxpayers who are married/civil union couple filin jointly, heads of households, or qualifying widow(er)/surviving civil union partner. Single individuals or married/civil union partners filing separate returns do not need to use this chart. If you have indicated filin status #2, 4 or 5 on the above NJ-W4 and your taxable income is greater than \$50,000, you should strongly consider using the Wage Chart. (See the Rate Tables on the reverse side to estimate your withholding amount.)

HOW TO USE THE CHART

- 1) Find the amount of your wages in the left-hand column.
- Find the amount of the total for all other wages (including your spouse's/civil union partner's wages) along the top
- Follow along the row that contains your wages until you come to the column that contains the other wages.
- This meeting point indicates the Withholding Table that best reflect your income situation.
- 5) If you have chosen this method, enter the "letter" of the withholding rate table on Line 3 of the NJ-W4.

NOTE: If your income situation substantially increases (or decreases) in the future, you should resubmit a revised NJ-W4 to your employer.

THIS FORM MAY BE REPRODUCED

WAGE CHART

Other Wages 10,000 20,000 30,000 40,000 50,000 60,000 70,000 80,000 90,000 00,0						· OHAIN					
										80,001 90,000	OVER 90,000
	0 10,000	В	В	В	В	В	В	В	В	В	В
	10,001 20,000	В	В	В	В	С	С	С	С	С	С
Y	20,001 30,000	В	В	В	А	А	D	D	D	D	D
U	30,001 40,000	В	В	А	А	А	А	А	E	E	E
R	40,001 50,000	В	С	А	А	А	А	А	E	E	E
W	50,001 60,000	В	C D	А	А	А	E	E	E	E	
G	60,001 70,000	В	С	D	А	А	E	E	E	E	E
S	70,001 80,000	В	С	D	E	E	E	E	E	E	E
	80,001 90,000	В	С	D	Е	Е	E	Е	Е	Е	Е
	OVER 90,000	В	С	D	Е	Е	Е	Е	Е	Е	Е

RATE TABLES FOR WAGE CHART

The rate tables listed below correspond to the letters in the Wage Chart on the front page. Use these to estimate the amount of withholding that will occur if you choose to use the wage chart. Compare this to your estimated income tax liability for your New Jersey Income Tax return to see if this is the correct amount of withholding that you should have.

Wages is: Withher Over But Not Over \$ 0 \$ 385 \$ 385 \$ 673 \$ 5.77 \$ \$ 673 \$ 769 \$ 11.54 \$ \$ 769 \$ 1,442 \$ 15.29 \$ \$ 1,442 \$ 9,615 \$ 56.35 \$ \$ 9,615 \$ 19,231 \$ 628.46 \$ \$ 19,231 \$ 1,580.38 \$ WEEKLY PAYROLL PERIOD (Allowance \$19.20)	mount of eld is: 1.5 + 2.0 + 3.9 + 6.1 + 7.0 + 9.9 + 11.8) mount of eld is: 1.5 + 2.0	Of Exc 6 \$ 6 \$ 6 \$ 6 \$ 6 \$ 6 \$ 7 income	e tax to be ess Over 0 385 673 769 1,442 9,615 19,231 RAT	## If the wag ## \$ ##	out the series of the series of the series out the	But \$ \$ \$ \$ \$	Not Over 20,000 35,000 40,000 75,000 500,000 1,000,000 over	\$ \$ \$ \$ \$	300.00 + 600.00 + 795.00 + 2,930.00 + 32,680.00 + 82,180.00 +	1. + 2. + 3. + 6. + 7. + 9.	Of 5% 0% 9% 1% 0%	Excess Over 5 0 5 20,000 6 35,000 6 40,000 75,000 75,000 71,000,000
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Department of Taxation and Finance

IT-2104

Employee's Withholding Allowance Certificat

New York State • New York City • Yonkers

First name and middle initial	Last name		Your Social Secur	Your Social Security number	
Permanent home address (number and street or rural route)		Apartment number	Single or Head of ho	usehold Married I	
City, village, or post offic	State	ZIP code	Note: If married but legally separated, mark an X in the Single or Head of household box.		
Are you a resident of New York City? Yes Are you a resident of Yonkers? Yes	□ No □				
 Complete the worksheet on page 4 before mal 1 Total number of allowances you are claiming for 2 Total number of allowances for New York City (or New York State and		,	1 2	
Use lines 3, 4, and 5 below to have additional	withholding per pay ı	period under special a	agreement with yo	ur employer.	
3 New York State amount				3 4	
5 Yonkers amount				5	
I certify that I am entitled to the number of withhol	lding allowances claim	ed on this certificate			
Employee's signature	Date				
Penalty – A penalty of \$500 may be imposed for a from your wages. You may also be subject to crimi Employee: detach this page and give it to your	inal penalties.		the amount of mon	ey you have withheld	
Employer: Keep this certificate with your recor Mark an X in box A and/or box B to indicate why you		of this form to New Yor	rk State (see instructi	ions):	
A Employee claimed more than 14 exemption allo	owances for NYS	А			
B Employee is a new hire or a rehire B First date employee performed services for pay (mm-dd-yyyy) (see instr.):					
Are dependent health insurance benefit ava		e?Yes	No 🗌		
Employer's name and address (Employer: complete this section only		orm to the NYS Tax Department.)	Employer identificatio	number	

Instructions

Changes effective for 202

Form IT-2104 has been revised for tax year 2021. The worksheet on page 4 and the charts beginning on page 5, used to compute withholding allowances or to enter an additional dollar amount on line(s) 3, 4, or 5, have been revised. If you previously file a Form IT-2104 and used the worksheet or charts, you should complete a new 2021 Form IT-2104 and give it to your employer.

Who should file this form

This certificate Form IT-2104, is completed by an employee and given to the employer to instruct the employer how much New York State (and New York City and Yonkers) tax to withhold from the employee's pay. The more allowances claimed, the lower the amount of tax withheld.

If the federal Form W-4 you most recently submitted to your employer was for tax year 2019 or earlier, and you did not fil Form IT-2104, your employer may use the same number of allowances you claimed on your federal Form W-4. Due to difference in federal and New York State tax law, this may result in the wrong amount of tax withheld for New York State, New York City, and Yonkers.

For tax years 2020 or later, withholding allowances are no longer reported on federal Form W-4. Therefore, if you submit a federal Form W-4 to your

employer for tax year 2020 or later, and you do not fil Form IT-2104, your employer may use zero as your number of allowances. This may result in the wrong amount of tax withheld for New York State, New York City, and Yonkers.

Complete Form IT-2104 each year and fil it with your employer if the number of allowances you may claim is differen from federal Form W-4 or has changed. Common reasons for completing a new Form IT-2104 each year include the following:

- · You started a new job.
- You are no longer a dependent.
- Your individual circumstances may have changed (for example, you were married or have an additional child).
- You moved into or out of NYC or Yonkers.
- · You itemize your deductions on your personal income tax return.
- · You claim allowances for New York State credits.
- You owed tax or received a large refund when you file your personal income tax return for the past year.
- Your wages have increased and you expect to earn \$107,650 or more during the tax year.

Page 2 of 8 IT-2104 (2021)

- The total income of you and your spouse has increased to \$107,650 or more for the tax year.
- You have significantl more or less income from other sources or from another job.
- · You no longer qualify for exemption from withholding.
- You have been advised by the Internal Revenue Service that you
 are entitled to fewer allowances than claimed on your original federal
 Form W-4 (submitted to your employer for tax year 2019 or earlier),
 and the disallowed allowances were claimed on your original
 Form IT-2104.
- You are a covered employee of an employer that has elected to participate in the Employer Compensation Expense Program.

Exemption from withholding

You cannot use Form IT-2104 to claim exemption from withholding. To claim exemption from income tax withholding, you **must** fil Form IT-2104-E, *Certificate of Exemption from ithholding*, with your employer. You must fil a new certificat each year that you qualify for exemption. This exemption from withholding is allowable only if you had no New York income tax liability in the prior year, you expect none in the current year, **and** you are over 65 years of age, under 18, or a full-time student under 25. You may also claim exemption from withholding if you are a military spouse and meet the conditions set forth under the Servicemembers Civil Relief Act as amended by the Military Spouses Residency Relief Act and the Veterans Benefit and Transition Act. If you are a dependent who is under 18 or a full-time student, you may owe tax if your income is more than \$3,100.

Withholding allowances

You may **not** claim a withholding allowance for yourself or, if married, your spouse. Claim the number of withholding allowances you compute in Part 1 and Part 4 of the worksheet on page 4. If you want more tax withheld, you may claim fewer allowances. **If you claim more than 14 allowances**, your employer **must send** a copy of your **Form IT-2104** to the New York State Tax Department. You may then be asked to verify your allowances. If you arrive at negative allowances (less than zero) on lines 1 or 2 and your employer cannot accommodate negative allowances, **enter 0** and see *Additional dollar amount(s)* below.

Income from sources other than wages – If you have more than \$1,000 of income from sources other than wages (such as interest, dividends, or alimony received), reduce the number of allowances claimed on line 1 and line 2 (if applicable) of the IT-2104 certificat by one for each \$1,000 of nonwage income. If you arrive at negative allowances (less than zero), see *Withholding allowances* above. You may also consider making estimated tax payments, especially if you have significan amounts of nonwage income. Estimated tax requires that payments be made by the employee directly to the Tax Department on a quarterly basis. For more information, see the instructions for Form IT-2105, *Estimated Tax Payment Voucher for Individuals*, or see *Need help?* on page 7.

Other credits (Worksheet line 14) – If you will be eligible to claim any credits other than the credits listed in the worksheet, such as an investment tax credit, you may claim additional allowances.

Find your filin status and your New York adjusted gross income (NYAGI) in the chart below, and divide the amount of the expected credit by the number indicated. Enter the result (rounded to the nearest whole number) on line 14.

Single and NYAGI is:	Head of household and NYAGI is:	Married and NYAGI is:	Divide amount of expected credit by:
Less than	Less than	Less than	65
\$215,400	\$269,300	\$323,200	
Between	Between	Between	68
\$215,400 and	\$269,300 and	\$323,200 and	
\$1,077,550	\$1,616,450	\$2,155,350	
Over	Over	Over	88
\$1,077,550	\$1,616,450	\$2,155,350	

Example: You are married and expect your New York adjusted gross income to be less than \$323,200. In addition, you expect to receive a flow-through of an investment tax credit from the corporation of which you are a shareholder. The investment tax credit will be \$160. Divide the expected credit by 65. 160/65 = 2.4615. The additional withholding allowance(s) would be 2. Enter **2** on line 14.

Married couples with both spouses working – If you and your spouse both work, you should each fil a separate IT-2104 certificat with your respective employers. Your withholding will better match your total tax if the higher wage-earning spouse claims all of the couple's allowances and the lower wage-earning spouse claims zero allowances. **Do not** claim more total allowances than you are entitled to. If your combined wages are:

- less than \$107,650, you should each mark an X in the box Married, but withhold at higher single rate on the certificat front, and divide the total number of allowances that you compute on line 19 and line 31 (if applicable) between you and your working spouse.
- \$107,650 or more, use the chart(s) in Part 5 and enter the additional withholding dollar amount on line 3.

Taxpayers with more than one job – If you have more than one job, fil a separate IT-2104 certificat with each of your employers. Be sure to claim only the total number of allowances that you are entitled to. Your withholding will better match your total tax if you claim all of your allowances at your higher-paying job and zero allowances at the lower-paying job. In addition, to make sure that you have enough tax withheld, if you are a single taxpayer or head of household with two or more jobs, and your combined wages from all jobs are under \$107,650, reduce the number of allowances by seven on line 1 and line 2 (if applicable) on the certificat you fil with your higher-paying job employer. If you arrive at negative allowances (less than zero), see Withholding allowances above.

If you are a single or a head of household taxpayer, and your combined wages from all of your jobs are between \$107,650 and \$2,263,265, use the chart(s) in Part 6 and enter the additional withholding dollar amount from the chart on line 3.

If you are a married taxpayer, and your combined wages from all of your jobs are \$107,650 or more, use the chart(s) in Part 5 and enter the additional withholding dollar amount from the chart on line 3 (Substitute the words *Higher-paying job* for *Higher earner's wages* within the chart).

Dependents – If you are a dependent of another taxpayer and expect your income to exceed \$3,100, you should reduce your withholding allowances by one for each \$1,000 of income over \$2,500. This will ensure that your employer withholds enough tax.

Following the above instructions will help to ensure that you will not owe additional tax when you fil your return.

Heads of households with only one job – If you will use the head-of-household filin status on your state income tax return, mark the *Single or Head of household* box on the front of the certificate If you have only one job, you may also wish to claim two additional withholding allowances on line 15.

Additional dollar amount(s)

You may ask your employer to withhold an additional dollar amount each pay period by completing lines 3, 4, and 5 on Form IT-2104. In most instances, if you compute a negative number of allowances and your employer cannot accommodate a negative number, for each negative allowance claimed you should have an additional \$1.85 of tax withheld per week for New York State withholding on line 3, and an additional \$0.80 of tax withheld per week for New York City withholding on line 4. Yonkers residents should use 16.75% (.1675) of the New York State amount for additional withholding for Yonkers on line 5.

Note: If you are requesting your employer to withhold an additional dollar amount on lines 3, 4, or 5 of this allowance certificate the additional dollar amount, as determined by these instructions or by using the chart(s) in Part 5 or Part 6, is accurate for a weekly payroll. Therefore, if you are not paid on a weekly basis, you will need to adjust the dollar amount(s) that you compute. For example, if you are paid biweekly, you must double the dollar amount(s) computed.

Avoid underwithholding

Form IT-2104, together with your employer's withholding tables, is designed to ensure that the correct amount of tax is withheld from your pay. If you fail to have enough tax withheld during the entire year, you may owe a large tax liability when you fil your return. The Tax Department must assess interest and may impose penalties in certain situations in addition to the tax liability. Even if you do not fil a return, we may determine that you owe personal income tax, and we may assess interest and penalties on the amount of tax that you should have paid during the year.

Employers

Box A – If you are required to submit a copy of an employee's Form IT-2104 to the Tax Department because the employee claimed more than 14 allowances, mark an **X** in box A and send a copy of Form IT-2104 to: **NYS Tax Department, Income Tax Audit Administrator, Withholding Certificate Coordinato**, **W A Harriman Campus, Albany NY 12227-0865.** If the employee is also a new hire or rehire, see *Box B* instructions. See Publication 55, *Designated Private Delivery Services*, if not using U.S. Mail.

Due dates for sending certificate received from employees claiming more than 14 allowances are:

Quarter	Due date	Quarter	Due date
January - March	April 30	July – September	October 31
April – June	July 31	October – December	January 31

Box B – If you are submitting a copy of this form to comply with New York State's New Hire Reporting Program, mark an X in box B. Enter the firs day any services are performed for which the employee will be paid wages, commissions, tips and any other type of compensation. For services based solely on commissions, this is the firs day an employee working for commissions is eligible to earn commissions. Also, mark an X in the Yes or No box indicating if dependent health insurance benefit are available to this employee. If Yes, enter the date the employee qualifie for coverage. Mail the completed form, within 20 days of hiring, to: NYS Tax Department, New Hire Notification, PO Box 15 19, Albany NY 12212-5119. To report newly-hired or rehired employees online instead of submitting this form, go to https://www.nynewhire.com.

(continued)

Worksheet

See the instructions before completing this worksheet.

Part 1 – Complete this part to compute your withholding allowances for New York State and Yonkers (line 1).

		6
6	Enter the number of dependents that you will claim on your state return (do not include yourself or, if married, your spouse)	. •
or li	nes 7, 8, and 9, enter 1 for each credit you expect to claim on your state return.	
7	College tuition credit	. 7
8	New York State household credit	. 8
9	Real property tax credit	. 9
or li	nes 10, 11, and 12, enter 3 for each credit you expect to claim on your state return.	
10	Child and dependent care credit	10
11	Earned income credit	. 11
	Empire State child credit	
13	New York City school tax credit: If you expect to be a resident of New York City for any part of the tax year, enter 2	13
14	Other credits (see instructions)	14
15	Head of household status and only one job (enter 2 if the situation applies)	15
16	Enter an estimate of your federal adjustments to income, such as deductible IRA contributions you will make for the	
	tax year. Total estimate \$ Divide this estimate by \$1,000. Drop any fraction and enter the number	16
17	If you expect to be a covered employee of an employer who elected to pay the employer compensation expense tax in	
	2021, complete Part 3 below and enter the number from line 28	17
18	If you expect to itemize deductions on your state tax return, complete Part 2 below and enter the number from line 23.	
	All others enter 0	18
19	Add lines 6 through 18. Enter the result here and on line 1. If you have more than one job, or if you and your spouse both	
	work, see instructions for Taxpayers with more than one job or Married couples with both spouses working	19
	2 – Complete this part only if you expect to itemize deductions on your state return. Enter your estimated NY itemized deductions for the tax year (see Form IT-196 and its instructions; enter the amount from line 49)	20
20		
20	Enter your estimated NY itemized deductions for the tax year (see Form IT-196 and its instructions; enter the amount from line 49)	
20	Enter your estimated NY itemized deductions for the tax year (see Form IT-196 and its instructions; enter the amount from line 49) Based on your federal filin status, enter the applicable amount from the table below	
20 21	Enter your estimated NY itemized deductions for the tax year (see Form IT-196 and its instructions; enter the amount from line 49) Based on your federal filin status, enter the applicable amount from the table below	
20 21	Enter your estimated NY itemized deductions for the tax year (see Form IT-196 and its instructions; enter the amount from line 49) Based on your federal filin status, enter the applicable amount from the table below	
20	Enter your estimated NY itemized deductions for the tax year (see Form IT-196 and its instructions; enter the amount from line 49) Based on your federal filin status, enter the applicable amount from the table below	21
20 21 22	Enter your estimated NY itemized deductions for the tax year (see Form IT-196 and its instructions; enter the amount from line 49) Based on your federal filin status, enter the applicable amount from the table below Standard deduction table Single (cannot be claimed as a dependent) \$ 8,000 Qualifying widow(er) \$16,050 Single (can be claimed as a dependent) \$ 3,100 Married filin jointly \$16,050 Head of household \$11,200 Married filin separate returns \$8,000 Subtract line 21 from line 20 (if line 21 is larger than line 20, enter 0 here and on line 18 above)	21
20 21	Enter your estimated NY itemized deductions for the tax year (see Form IT-196 and its instructions; enter the amount from line 49) Based on your federal filin status, enter the applicable amount from the table below Standard deduction table Single (cannot be claimed as a dependent) \$ 8,000 Qualifying widow(er) \$16,050 Single (can be claimed as a dependent) \$ 3,100 Married filin jointly \$16,050 Head of household \$11,200 Married filin separate returns \$8,000 Subtract line 21 from line 20 (if line 21 is larger than line 20, enter 0 here and on line 18 above)	21
20 21 22 23 rt :	Enter your estimated NY itemized deductions for the tax year (see Form IT-196 and its instructions; enter the amount from line 49) Based on your federal filin status, enter the applicable amount from the table below	22 23 d to particip
20 21 22 23 rt :	Enter your estimated NY itemized deductions for the tax year (see Form IT-196 and its instructions; enter the amount from line 49) Based on your federal filin status, enter the applicable amount from the table below	21
20 21 22 23 1 3	Enter your estimated NY itemized deductions for the tax year (see Form IT-196 and its instructions; enter the amount from line 49) Based on your federal filin status, enter the applicable amount from the table below Standard deduction table Single (cannot be claimed as a dependent)\$ 8,000 Qualifying widow(er)\$ \$16,050 Single (can be claimed as a dependent)\$ 3,100 Married filin jointly\$ \$16,050 Head of household	22 23 d to particip
20 21 22 23 t :	Enter your estimated NY itemized deductions for the tax year (see Form IT-196 and its instructions; enter the amount from line 49) Based on your federal filin status, enter the applicable amount from the table below Standard deduction table Single (cannot be claimed as a dependent)\$ 8,000 Qualifying widow(er)\$ \$16,050 Single (can be claimed as a dependent)\$ 3,100 Married filin jointly\$ \$16,050 Head of household	22 23 d to particip
20 21 22 23 24 25 26 27	Enter your estimated NY itemized deductions for the tax year (see Form IT-196 and its instructions; enter the amount from line 49) Based on your federal filin status, enter the applicable amount from the table below Standard deduction table Single (cannot be claimed as a dependent) \$ 8,000 Qualifying widow(er)	22
20 21 22 23 1 :	Enter your estimated NY itemized deductions for the tax year (see Form IT-196 and its instructions; enter the amount from line 49) Based on your federal filin status, enter the applicable amount from the table below Standard deduction table Single (cannot be claimed as a dependent)\$ 8,000 Qualifying widow(er)\$ \$16,050 Single (can be claimed as a dependent)\$ 3,100 Married filin jointly\$ \$16,050 Head of household	22
20 21 22 23 1 25 26 27 28	Enter your estimated NY itemized deductions for the tax year (see Form IT-196 and its instructions; enter the amount from line 49) Based on your federal filin status, enter the applicable amount from the table below Standard deduction table Single (cannot be claimed as a dependent) \$ 8,000 Qualifying widow(er)	22
20 21 22 23 1 24 25 26 27 28	Enter your estimated NY itemized deductions for the tax year (see Form IT-196 and its instructions; enter the amount from line 49) Based on your federal filin status, enter the applicable amount from the table below Standard deduction table Single (cannot be claimed as a dependent) \$ 8,000 Qualifying widow(er)	22
20 21 22 23 24 25 26 27 28 27	Enter your estimated NY itemized deductions for the tax year (see Form IT-196 and its instructions; enter the amount from line 49) Based on your federal filin status, enter the applicable amount from the table below	22

Part 5 – These charts are only for married couples with both spouses working or married couples with one spouse working more than one job, and whose combined wages are between \$107,650 and \$2,263,265.

Enter the additional withholding dollar amount on line 3.

The additional dollar amount, as shown below, is accurate for a weekly payroll. If you are not paid on a weekly basis, you will need to adjust these dollar amount(s). For example, if you are paid biweekly, you must double the dollar amount(s) computed.

			Combined wages between \$107,650 and \$538,749										
Higher earn	er's wages	\$107,650 \$129,249	\$129,250 \$150,749	\$150,750 \$172,299	\$172,300 \$193,849	\$193,850 \$236,949	\$236,950 \$280,099	\$280,100 \$323,199	\$323,200 \$377,099	\$377,100 \$430,949	\$430,950 \$484,899	\$484,900 \$538,749	
\$53,800	\$75,299	\$12	\$18										
\$75,300	\$96,799	\$12	\$19	\$27	\$29								
\$96,800	\$118,399	\$8	\$16	\$23	\$32	\$40							
\$118,400	\$129,249	\$2	\$10	\$18	\$26	\$36	\$35						
\$129,250	\$139,999		\$4	\$14	\$22	\$33	\$32						
\$140,000	\$150,749		\$2	\$10	\$19	\$30	\$32	\$27					
\$150,750	\$161,549			\$4	\$15	\$27	\$31	\$24					
\$161,550	\$172,499			\$2	\$11	\$23	\$28	\$24	\$22				
\$172,500	\$193,849				\$4	\$16	\$23	\$23	\$34	\$45			
\$193,850	\$236,949					\$6	\$12	\$17	\$34	\$43	\$44		
\$236,950	\$280,099						\$6	\$12	\$38	\$52	\$46	\$48	
\$280,100	\$323,199							\$6	\$33	\$59	\$55	\$49	
\$323,200	\$377,099								\$17	\$34	\$44	\$40	
\$377,100	\$430,949									\$8	\$19	\$29	
\$430,950	\$484,899										\$8	\$19	
\$484,900	\$538,749											\$8	

			Combined wages between \$538,750 and \$1,185,399										
Higher ear	ner's wages	\$538,750 \$592,649	\$592,650 \$646,499	\$646,500 \$700,399	\$700,400 \$754,299	\$754,300 \$808,199	\$808,200 \$862,049	\$862,050 \$915,949	\$915,950 \$969,899			\$1,077,550 \$1,131,499	
\$236,950	\$280,099	\$51											
\$280,100	\$323,199	\$54	\$50										
\$323,200	\$377,099	\$34	\$39	\$45	\$29								
\$377,100	\$430,949	\$25	\$19	\$24	\$30	\$5	\$5						
\$430,950	\$484,899	\$29	\$25	\$19	\$24	\$30	\$5	\$5	\$5				
\$484,900	\$538,749	\$19	\$29	\$25	\$19	\$24	\$30	\$5	\$5	\$5	\$5		
\$538,750	\$592,649	\$8	\$19	\$29	\$25	\$19	\$24	\$30	\$5	\$5	\$5	\$3	\$2
\$592,650	\$646,499		\$8	\$19	\$29	\$25	\$19	\$24	\$30	\$5	\$5	\$3	\$2
\$646,500	\$700,399			\$8	\$19	\$29	\$25	\$19	\$24	\$30	\$5	\$3	\$2
\$700,400	\$754,299				\$8	\$19	\$29	\$25	\$19	\$24	\$30	\$3	\$2
\$754,300	\$808,199					\$8	\$19	\$29	\$25	\$19	\$24	\$31	\$2
\$808,200	\$862,049						\$8	\$19	\$29	\$25	\$19	\$26	\$34
\$862,050	\$915,949							\$8	\$19	\$29	\$25	\$20	\$29
\$915,950	\$969,899								\$8	\$19	\$29	\$26	\$24
\$969,900	\$1,023,749									\$8	\$19	\$31	\$29
\$1,023,750	\$1,077,549										\$8	\$20	\$34
\$1,077,550	\$1,131,499											\$9	\$22
\$1,131,500	\$1,185,399												\$9

			C	ombine	d wages	between	\$1,185,4	00 and \$	1,724,29	9	
Higher earn	er's wages	\$1,185,400 \$1,239,249	\$1,239,250 \$1,293,199	\$1,293,200	\$1,347,050	\$1,400,950	\$1,454,850	\$1,508,700	\$1,562,550	\$1,616,450	\$1,670,400 \$1,724,299
\$592,650	\$646,499	\$5	\$8								
\$646,500	\$700,399	\$5	\$8	\$11	\$14						
\$700,400	\$754,299	\$5	\$8	\$11	\$14	\$17	\$21				
\$754,300	\$808,199	\$5	\$8	\$11	\$14	\$17	\$21	\$24	\$27		
\$808,200	\$862,049	\$5	\$8	\$11	\$14	\$17	\$21	\$24	\$27	\$30	\$33
\$862,050	\$915,949	\$37	\$8	\$11	\$14	\$17	\$21	\$24	\$27	\$30	\$33
\$915,950	\$969,899	\$32	\$40	\$11	\$14	\$17	\$21	\$24	\$27	\$30	\$33
\$969,900	\$1,023,749	\$27	\$35	\$44	\$14	\$17	\$21	\$24	\$27	\$30	\$33
\$1,023,750	\$1,077,549	\$32	\$30	\$38	\$47	\$17	\$21	\$24	\$27	\$30	\$33
\$1,077,550	\$1,131,499	\$35	\$34	\$31	\$40	\$48	\$19	\$22	\$25	\$28	\$32
\$1,131,500	\$1,185,399	\$22	\$35	\$34	\$31	\$40	\$48	\$19	\$22	\$25	\$28
\$1,185,400	\$1,239,249	\$9	\$22	\$35	\$34	\$31	\$40	\$48	\$19	\$22	\$25
\$1,239,250	\$1,293,199		\$9	\$22	\$35	\$34	\$31	\$40	\$48	\$19	\$22
\$1,293,200	\$1,347,049			\$9	\$22	\$35	\$34	\$31	\$40	\$48	\$19
\$1,347,050	\$1,400,949				\$9	\$22	\$35	\$34	\$31	\$40	\$48
\$1,400,950	\$1,454,849					\$9	\$22	\$35	\$34	\$31	\$40
\$1,454,850	\$1,508,699						\$9	\$22	\$35	\$34	\$31
\$1,508,700	\$1,562,549							\$9	\$22	\$35	\$34
\$1,562,550	\$1,616,449								\$9	\$22	\$35
\$1,616,450	\$1,670,399									\$9	\$22
\$1,670,400	\$1,724,299										\$9

		Combined wages between \$1,724,300 and \$2,263,265										
Higher earn	er's wages		\$1,778,150 \$1,832,049									
\$862,050	\$915,949	\$36	\$39									
\$915,950	\$969,899	\$36	\$39	\$42	\$45							
\$969,900	\$1,023,749	\$36	\$39	\$42	\$45	\$49	\$52					
\$1,023,750	\$1,077,549	\$36	\$39	\$42	\$45	\$49	\$52	\$55	\$58			
\$1,077,550	\$1,131,499	\$35	\$38	\$41	\$44	\$47	\$50	\$53	\$56	\$490	\$906	
\$1,131,500	\$1,185,399	\$32	\$35	\$38	\$41	\$44	\$47	\$50	\$53	\$487	\$906	
\$1,185,400	\$1,239,249	\$28	\$32	\$35	\$38	\$41	\$44	\$47	\$50	\$484	\$903	
\$1,239,250	\$1,293,199	\$25	\$28	\$32	\$35	\$38	\$41	\$44	\$47	\$480	\$900	
\$1,293,200	\$1,347,049	\$22	\$25	\$28	\$32	\$35	\$38	\$41	\$44	\$477	\$897	
\$1,347,050	\$1,400,949	\$19	\$22	\$25	\$28	\$32	\$35	\$38	\$41	\$474	\$894	
\$1,400,950	\$1,454,849	\$48	\$19	\$22	\$25	\$28	\$32	\$35	\$38	\$471	\$891	
\$1,454,850	\$1,508,699	\$40	\$48	\$19	\$22	\$25	\$28	\$32	\$35	\$468	\$888	
\$1,508,700	\$1,562,549	\$31	\$40	\$48	\$19	\$22	\$25	\$28	\$32	\$465	\$884	
\$1,562,550	\$1,616,449	\$34	\$31	\$40	\$48	\$19	\$22	\$25	\$28	\$462	\$881	
\$1,616,450	\$1,670,399	\$35	\$34	\$31	\$40	\$48	\$19	\$22	\$25	\$459	\$878	
\$1,670,400	\$1,724,299	\$22	\$35	\$34	\$31	\$40	\$48	\$19	\$22	\$456	\$875	
\$1,724,300	\$1,778,149	\$9	\$22	\$35	\$34	\$31	\$40	\$48	\$19	\$452	\$872	
\$1,778,150	\$1,832,049		\$9	\$22	\$35	\$34	\$31	\$40	\$48	\$449	\$869	
\$1,832,050	\$1,885,949			\$9	\$22	\$35	\$34	\$31	\$40	\$479	\$866	
\$1,885,950	\$1,939,799				\$9	\$22	\$35	\$34	\$31	\$470	\$895	
\$1,939,800	\$1,993,699					\$9	\$22	\$35	\$34	\$462	\$887	
\$1,993,700	\$2,047,599						\$9	\$22	\$35	\$464	\$878	
\$2,047,600	\$2,101,499							\$9	\$22	\$466	\$881	
\$2,101,500	\$2,155,349								\$9	\$452	\$882	
\$2,155,350	\$2,209,299									\$235	\$438	
\$2,209,300	\$2,263,265										\$14	

Note: These charts do not account for additional withholding in the following instances:

- a married couple with both spouses working, where one spouse's wages are more than \$1,131,632 but less than \$2,263,265, and the other spouse's wages are also more than \$1,131,632 but less than \$2,263,265;
- married taxpayers with only one spouse working, and that spouse works more than one job, with wages from each job under \$2,263,265, but combined wages from all jobs is over \$2,263,265.

If you are in one of these situations and you would like to request an additional dollar amount of withholding from your wages, contact the Tax Department for assistance (see *Need help?* on page 7).

Part 6 – These charts are only for single taxpayers and head of household taxpayers with more than one job, and whose combined wages are between \$107,650 and \$2,263,265.

Enter the additional withholding dollar amount on line 3.

The additional dollar amount, as shown below, is accurate for a weekly payroll. If you are not paid on a weekly basis, you will need to adjust these dollar amount(s). For example, if you are paid biweekly, you must double the dollar amount(s) computed.

			Combined wages between \$107,650 and \$538,749											
Higher	wage	\$107,650 \$129,249	\$129,250 \$150,749	\$150,750 \$172,299	\$172,300 \$193,849	\$193,850 \$236,949	\$236,950 \$280,099	\$280,100 \$323,199	\$323,200 \$377,099	\$377,100 \$430,949	\$430,950 \$484,899	\$484,900 \$538,749		
\$53,800	\$75,299	\$13	\$18											
\$75,300	\$96,799	\$12	\$20	\$27	\$28									
\$96,800	\$118,399	\$8	\$16	\$24	\$27	\$28								
\$118,400	\$129,249	\$2	\$10	\$18	\$21	\$26	\$37							
\$129,250	\$139,999		\$4	\$14	\$17	\$23	\$43							
\$140,000	\$150,749		\$2	\$10	\$13	\$19	\$43	\$43						
\$150,750	\$161,549			\$3	\$9	\$15	\$42	\$41						
\$161,550	\$172,499			\$1	\$7	\$13	\$42	\$43	\$41					
\$172,500	\$193,849				\$3	\$10	\$40	\$46	\$43	\$46				
\$193,850	\$236,949					\$11	\$35	\$49	\$48	\$49	\$40			
\$236,950	\$280,099						\$10	\$19	\$31	\$28	\$31	\$16		
\$280,100	\$323,199							\$7	\$17	\$29	\$24	\$29		
\$323,200	\$377,099								\$8	\$19	\$29	\$24		
\$377,100	\$430,949									\$8	\$19	\$29		
\$430,950	\$484,899										\$8	\$19		
\$484,900	\$538,749											\$8		

			Combined wages between \$538,750 and \$1,185,399										
Higher	wage	\$538,750 \$592,649	\$592,650 \$646,499	\$646,500 \$700,399	\$700,400 \$754,299	\$754,300 \$808,199	\$808,200 \$862,049	\$862,050 \$915,949	\$915,950 \$969,899	\$969,900 \$1,023,749		\$1,077,550 \$1,131,499	
\$236,950	\$280,099	\$11											
\$280,100	\$323,199	\$9	\$8										
\$323,200	\$377,099	\$30	\$8	\$8	\$8								
\$377,100	\$430,949	\$24	\$30	\$8	\$8	\$8	\$8						
\$430,950	\$484,899	\$29	\$24	\$30	\$8	\$8	\$8	\$8	\$8				
\$484,900	\$538,749	\$19	\$29	\$24	\$30	\$8	\$8	\$8	\$8	\$8	\$8		
\$538,750	\$592,649	\$8	\$19	\$29	\$24	\$30	\$8	\$8	\$8	\$8	\$8	\$236	\$452
\$592,650	\$646,499		\$8	\$19	\$29	\$24	\$30	\$8	\$8	\$8	\$8	\$236	\$452
\$646,500	\$700,399			\$8	\$19	\$29	\$24	\$30	\$8	\$8	\$8	\$236	\$451
\$700,400	\$754,299				\$8	\$19	\$29	\$24	\$30	\$8	\$8	\$236	\$452
\$754,300	\$808,199					\$8	\$19	\$29	\$24	\$30	\$8	\$236	\$452
\$808,200	\$862,049						\$8	\$19	\$29	\$24	\$30	\$236	\$452
\$862,050	\$915,949							\$8	\$19	\$29	\$24	\$258	\$451
\$915,950	\$969,899								\$8	\$19	\$29	\$252	\$473
\$969,900	\$1,023,749									\$8	\$19	\$257	\$468
\$1,023,750	\$1,077,549										\$8	\$247	\$472
\$1,077,550	\$1,131,499											\$123	\$234
\$1,131,500	\$1,185,399												\$14

(Part 6 continued on page 8)

Privacy notificatio

See our website or Publication 54, Privacy Notificatio .

Need help?



Visit our website at www.tax.ny.gov

- · get information and manage your taxes online
- · check for new online services and features

Telephone assistance

Automated income tax refund status: 518-457-5149

Personal Income Tax Information Center: 518-457-5181

To order forms and publications: 518-457-5431

Text Telephone (TTY) or TDD Dial 7-1-1 for the equipment users New York Relay Service

Page 8 of 8 IT-2104 (2021)

			C	ombine	d wages	between	\$1,185,4	00 and \$	1,724,29	9	
Higher	r wage	\$1,185,400 \$1,239,249	\$1,239,250 \$1,293,199	\$1,293,200 \$1,347,049	\$1,347,050 \$1,400,949	\$1,400,950 \$1,454,849	\$1,454,850 \$1,508,699	\$1,508,700 \$1,562,549	\$1,562,550 \$1,616,449	\$1,616,450 \$1,670,399	\$1,670,400 \$1,724,299
\$592,650	\$646,499	\$475	\$499								
\$646,500	\$700,399	\$475	\$499	\$522	\$546						
\$700,400	\$754,299	\$475	\$499	\$522	\$546	\$569	\$593				
\$754,300	\$808,199	\$475	\$499	\$522	\$546	\$569	\$593	\$616	\$640		
\$808,200	\$862,049	\$475	\$499	\$522	\$546	\$569	\$593	\$616	\$640	\$663	\$687
\$862,050	\$915,949	\$475	\$499	\$522	\$546	\$569	\$593	\$616	\$640	\$663	\$687
\$915,950	\$969,899	\$475	\$499	\$522	\$546	\$569	\$593	\$616	\$640	\$663	\$687
\$969,900	\$1,023,749	\$497	\$499	\$522	\$546	\$569	\$593	\$616	\$640	\$663	\$687
\$1,023,750	\$1,077,549	\$491	\$520	\$522	\$546	\$569	\$593	\$616	\$640	\$663	\$687
\$1,077,550	\$1,131,499	\$268	\$287	\$316	\$318	\$341	\$365	\$388	\$412	\$435	\$459
\$1,131,500	\$1,185,399	\$42	\$76	\$95	\$124	\$126	\$149	\$173	\$196	\$220	\$243
\$1,185,400	\$1,239,249	\$14	\$42	\$76	\$95	\$124	\$126	\$149	\$173	\$196	\$220
\$1,239,250	\$1,293,199		\$14	\$42	\$76	\$95	\$124	\$126	\$149	\$173	\$196
\$1,293,200	\$1,347,049			\$14	\$42	\$76	\$95	\$124	\$126	\$149	\$173
\$1,347,050	\$1,400,949				\$14	\$42	\$76	\$95	\$124	\$126	\$149
\$1,400,950	\$1,454,849					\$14	\$42	\$76	\$95	\$124	\$126
\$1,454,850	\$1,508,699						\$14	\$42	\$76	\$95	\$124
\$1,508,700	\$1,562,549							\$14	\$42	\$76	\$95
\$1,562,550	\$1,616,449								\$14	\$42	\$76
\$1,616,450	\$1,670,399									\$14	\$42
\$1,670,400	\$1,724,299										\$14

			С	ombine	d wages	between	\$1,724,3	00 and \$	2,263,26	5	
Higher	wage		\$1,778,150 \$1,832,049								
\$862,050	\$915,949	\$710	\$734								
\$915,950	\$969,899	\$710	\$734	\$757	\$781						
\$969,900	\$1,023,749	\$710	\$734	\$757	\$781	\$804	\$828				
\$1,023,750	\$1,077,549	\$710	\$734	\$757	\$781	\$804	\$828	\$851	\$875		
\$1,077,550	\$1,131,499	\$482	\$506	\$529	\$553	\$576	\$600	\$623	\$647	\$670	\$262
\$1,131,500	\$1,185,399	\$267	\$290	\$314	\$337	\$361	\$384	\$408	\$431	\$455	\$478
\$1,185,400	\$1,239,249	\$243	\$267	\$290	\$314	\$337	\$361	\$384	\$408	\$431	\$455
\$1,239,250	\$1,293,199	\$220	\$243	\$267	\$290	\$314	\$337	\$361	\$384	\$408	\$431
\$1,293,200	\$1,347,049	\$196	\$220	\$243	\$267	\$290	\$314	\$337	\$361	\$384	\$408
\$1,347,050	\$1,400,949	\$173	\$196	\$220	\$243	\$267	\$290	\$314	\$337	\$361	\$384
\$1,400,950	\$1,454,849	\$149	\$173	\$196	\$220	\$243	\$267	\$290	\$314	\$337	\$361
\$1,454,850	\$1,508,699	\$126	\$149	\$173	\$196	\$220	\$243	\$267	\$290	\$314	\$337
\$1,508,700	\$1,562,549	\$124	\$126	\$149	\$173	\$196	\$220	\$243	\$267	\$290	\$314
\$1,562,550	\$1,616,449	\$95	\$124	\$126	\$149	\$173	\$196	\$220	\$243	\$267	\$290
\$1,616,450	\$1,670,399	\$76	\$95	\$124	\$126	\$149	\$173	\$196	\$220	\$243	\$267
\$1,670,400	\$1,724,299	\$42	\$76	\$95	\$124	\$126	\$149	\$173	\$196	\$220	\$243
\$1,724,300	\$1,778,149	\$14	\$42	\$76	\$95	\$124	\$126	\$149	\$173	\$196	\$220
\$1,778,150	\$1,832,049		\$14	\$42	\$76	\$95	\$124	\$126	\$149	\$173	\$196
\$1,832,050	\$1,885,949			\$14	\$42	\$76	\$95	\$124	\$126	\$149	\$173
\$1,885,950	\$1,939,799				\$14	\$42	\$76	\$95	\$124	\$126	\$149
\$1,939,800	\$1,993,699					\$14	\$42	\$76	\$95	\$124	\$126
\$1,993,700	\$2,047,599						\$14	\$42	\$76	\$95	\$124
\$2,047,600	\$2,101,499							\$14	\$42	\$76	\$95
\$2,101,500	\$2,155,349								\$14	\$42	\$76
\$2,155,350	\$2,209,299									\$14	\$42
\$2,209,300	\$2,263,265										\$14

2021 Form OR-W-4



2021 Form OR-W-4			Office use only
Page 1 of 1, 150-101-402 (Rev. 08-14-20, ver. 01)	Oregon Department of Revenue	19612101010000	
Oregon Employee's Withhole	ding Statement and Exer	nption Certificate	

First	name	Initial	Last name	Social Security number (SSN)	Red	eterminatio	n
Addı	ress			City		State	ZIP code
	gon Department of		a certain number of allowances or nue. Your employer may be required Married Married,	•	to the depart	-	•
2.	Allowances. Tota	l num	e" box if you're married and you're l ber of allowances you're claiming o worksheets and you aren't exempt.	n line A4, B15, or C5. If you	meet a		alien.
3.							.00
4.	 4. Exemption from withholding. I certify that my wages are exempt from withholding and I meet the conditions for exemption as stated on page 2 of the instructions. Complete both lines below: Enter the corresponding exemption code. (See instructions)						
	<u> </u>		false swearing, I declare that the inf	formation provided is true, c		mplete.	
Emp	loyee's signature (This for	rm isn't	valid unless signed.)		Date		
Emp	loyer use only.						
Emp	loyer's name			Federal employer identification nu	mber (FEIN)		
Employer's address			City		State	ZIP code	

-Provide this form to your employer-

2021 Texas State Tax Withholding Form Statement

I, First and Last Name am a resident of Texas.	There is no state tax withholding
form to complete.	
Signature and Date	

FORM VA-4

COMMONWEALTH OF VIRGINIA DEPARTMENT OF TAXATION PERSONAL EXEMPTION WORKSHEET

(See back for instructions)

2.	If you wish to claim yourself, write "1" If you are married and your spouse is not cloon his or her own certificate write "1" Write the number of dependents you will be on your income tax return (do not include your income tax return)	laimed allowed to claim		_		
4.	Subtotal Personal Exemptions (add lines 1	through 3)		_		
5.	Exemptions for age					
(a) If you will be 65 or older on January 1, write "1"						
7.	Subtotal exemptions for age and blindness	(add lines 5 through 6)				
8.	Total of Exemptions - add line 4 and line 7.					
Yo		ificate to your employe . Keep the top po				
Cit	tv	State	Zip Cod	de		
0	9		p			
	OMPLETE THE APPLICABLE LINES BELOW If subject to withholding, enter the number of (a) Subtotal of Personal Exemptions - Personal Exemption Worksheet	of exemptions claimed on: line 4 of the	, , , , , , , , , , , , , , , , , , ,			
	(b) Subtotal of Exemptions for Age and line 7 of the Personal Exemption W					
	(c) Total Exemptions - line 8 of the Per	sonal Exemption Worksheet				
2.	Enter the amount of additional withholding i	requested (see instructions)				
3.	I certify that I am not subject to Virginia with set forth in the instructions		. (check here)			
4.	I certify that I am not subject to Virginia with Under the Service member Civil Relief Act,	•				
	Residency Relief Act		(check here)			
Siai	ınature		Date			

601064 Rev 08/1

FORM VA-4 INSTRUCTIONS

Use this form to notify your employer whether you are subject to Virginia income tax withholding and how many exemptions you are allowed to claim. You must fil this form with your employer when your employment begins. If you do not fil this form, your employer must withhold Virginia income tax as if you had no exemptions.

PERSONAL EXEMPTION WORKSHEET

You may not claim more personal exemptions on form VA-4 than you are allowed to claim on your income tax return unless you have received written permission to do so from the Department of Taxation.

- Line 1. You may claim an exemption for yourself.
- Line 2. You may claim an exemption for your spouse if he or she is not already claimed on his or her own certificate
- Line 3. Enter the number of dependents you are allowed to claim on your income tax return. **NOTE:** A spouse is not a dependent.
- Line 5. If you will be age 65 or over by January 1, you may claim one exemption on Line 5(a). If you claim an exemption for your spouse on Line 2, and your spouse will also be age 65 or over by January 1, you may claim an additional exemption on Line 5(b).
- Line 6. If you are legally blind, you may claim an exemption on Line 6(a). If you claimed an exemption for your spouse on Line 2, and your spouse is legally blind, you may claim an exemption on Line 6(b).

FORM VA-4

Be sure to enter your social security number, name and address in the spaces provided.

- Line 1. If you are subject to withholding, enter the number of exemptions from:
 - (a) Subtotal of Personal Exemptions line 4 of the Personal Exemption Worksheet
 - (b) Subtotal of Exemptions for Age and Blindness line 7 of the Personal Exemption Worksheet
 - (c) Total Exemptions line 8 of the Personal Exemption Worksheet
- Line 2. If you wish to have additional tax withheld, and your employer has agreed to do so, enter the amount of additional tax on this line.
- Line 3. If you are not subject to Virginia withholding, check the box on this line. You are not subject to withholding if you meet any one of the conditions listed below. Form VA-4 must be file with your employer for each calendar year for which you claim exemption from Virginia withholding.
 - (a) You had no liability for Virginia income tax last year and you do not expect to have any liability for this year.
 - (b) You expect your Virginia adjusted gross income to be less than the amount shown below for your filing status:

	Taxable Years 2005, 2006 and 2007	Taxable Years 2008 and 2009	Taxable Years 2010 and 2011	Taxable Years 2012 and Beyond
Single	\$7,000	\$11,250	\$11,650	\$11,950
Married	\$14,000	\$22,500	\$23,300	\$23,900
Married, filin a separate return	\$7,000	\$11,250	\$11,650	\$11,950

- (c) You live in Kentucky or the District of Columbia and commute on a daily basis to your place of employment in Virginia.
- (d) You are a domiciliary or legal resident of Maryland, Pennsylvania or West Virginia whose only Virginia source income is from salaries and wages and such salaries and wages are subject to income taxation by your state of domicile.
- Line 4. Under the Servicemember Civil Relief Act, as amended by the Military Spouses Residency Relief Act, you may be exempt from Virginia income tax on your wages if (i) your spouse is a member of the armed forces present in Virginia in compliance with military orders; (ii) you are present in Virginia solely to be with your spouse; and (iii) you maintain your domicile in another state. If you claim exemption under the SCRA check the box on Line 4 and attach a copy of your spousal military identificatio card to Form VA-4.

Employee's Wisconsin Withholding Exemption Certificate/New Hire Reportin

Employee's Section (Print clearly)

Employee's legal name (first name, middle initial, last name			Social security number			
			Social occurry frumbor	Single		
Employee's address (number and street)			Date of birth	Married		
Employee's address (number and street)			Date of birth	Married, but withhold at higher Single		
				rate.		
City State Zip code			Date of hire	Note: If married, but legally separated, check the Single box.		
FIGURE YOUR TOTAL WITHHOLDING EXEN Complete Lines 1 through 3 1. (a) Exemption for yourself – enter 1						
(b) Exemption for your spouse – enter 1						
		nption for each dependent				
(d) Total – add lines (a) through (c)						
2. Additional amount per pay period you want d	educted	(if your employe	agrees)			
3. I claim complete exemption from withholding	(see inst	ructions). Enter	"Exempt"			
I CERTIFY that the number of withholding exemptions of withholding, I certify that I incurred no liability for Wiscon						
Signature			Date Signed	, _		

EMPLOYEE INSTRUCTIONS:

WHO MUST COMPLETE:

Effective on or after January 1, 2020, every newly-hired employee is required to provide a completed Form WT-4 to each of his or her employers. Form WT-4 will be used by your employer to determine the amount of Wisconsin income tax to be withheld from your paychecks. If you have more than one employer, you should claim a smaller number or no exemptions on each Form WT-4 provided to employers other than your principal employer so that the total amount withheld will be closer to your actual income tax liability.

You must complete and provide your employer a new Form WT-4 within 10 days if the number of exemptions previously claimed DECREASES.

You may complete and provide to your employer a new form WT-4 at any time if the number of your exemptions INCREASES.

Your employer may also require you to complete this form to report your hiring to the Department of Workforce Development.

• UNDER WITHHOLDING:

If sufficient tax is not withheld from your wages, you may incur additional interest charges under the tax laws. In general, 90% of the net tax shown on your income tax return should be withheld.

• OVER WITHHOLDING:

If you are using Form WT-4 to claim the maximum number of exemptions to which you are entitled and your withholding exceeds your expected income tax liability, you may use Form WT-4A to minimize the over withholding.

WT-4 Instructions – Provide your information in the employee section.

LINE 1

(a)-(c) Number of exemptions – Do not claim more than the correct number of exemptions. If you expect to owe more income tax for the year than will

be withheld if you claim every exemption to which you are entitled, you may increase your withholding by claiming a smaller number of exemptions on lines 1(a)-(c) or you may enter into an agreement with your employer to have additional amounts withheld (see instruction for line 2).

(c) Dependents – Those persons who qualify as your dependents for federal income tax purposes may also be claimed as dependents for Wisconsin purposes. The term "dependents" does not include you or your spouse. Indicate the number of dependents that you are claiming in the space provided.

LINE 2:

Additional withholding — If you have claimed "zero" exemptions on line 1, but still expect to have a balance due on your tax return for the year, you may wish to request your employer to withhold an additional amount of tax for each pay period. If your employer agrees to this additional withholding, enter the additional amount you want deducted from each of your paychecks on line 2.

LINE 3

Exemption from withholding – You may claim exemption from withholding of Wisconsin income tax if you had no liability for income tax for last year, and you expect to incur no liability for income tax for this year. You may not claim exemption if your return shows tax liability before the allowance of any credit for income tax withheld. If you are exempt, your employer will not withhold Wisconsin income tax from your wages.

You must revoke this exemption (1) within 10 days from the time you expect to incur income tax liability for the year or (2) on or before December 1 if you expect to incur Wisconsin income tax liabilities for the next year. If you want to stop or are required to revoke this exemption, you must complete and provide a new Form WT-4 to your employer showing the number of withholding exemptions you are entitled to claim. This certificate for exemption from withholding will expire on April 30 of next year unless a new Form WT-4 is completed and provided to your employer before that date.

Employer's Section

=pioyo: 0 000					
Employer's name	Federal Employer ID Number				
Employer's payroll address (number and street)	City	State	Zip code		
Completed by Title		Phone number	Email		
		()			

EMPLOYER INSTRUCTIONS for Department of Revenue:

- If you do not have a Federal Employer Identification Number (FEIN), contact the Internal Revenue Service to obtain a FEIN.
- If the Employee has claimed more than 10 exemptions OR has claimed complete exemption from withholding and earns more than \$200.00 a week or is believed to have claimed more exemptions than he or she is entitled to, mail a copy of this certificate to: Wisconsin Department of Revenue, Audit Bureau, PO Box 8906, Madison WI 53708 or fax (608) 267-0834.
- Keep a copy of this certificat with your records. If you have questions about the Department of Revenue requirements, call (608) 266-2772 or (608) 266-2776.

EMPLOYER INSTRUCTIONS for New Hire Reporting:

- This report contains the required information for reporting a New Hire to Wisconsin. If you are reporting new hires electronically, you do not need to forward a copy of this report to the Department of Workforce Development. Visit https://dwd.wi.gov/uinh/ to report new hires.
- If you do not report new hires electronically, mail the original form to the Department of Workforce Development, New Hire Reporting, PO Box 14431, Madison WI 53708-0431 or fax toll free to 1-800-277-8075.
- If you have questions about New Hire requirements, call toll free (888) 300-HIRE (888-300-4473). Visit dwd.wi.gov/uinh/ for more information.

Applicable Laws and Rules

This document provides statements or interpretations of the following laws and regulations in effec as of June 5, 2020: Section 71.66, Wis. Stats., and Section Tax 2.92, Wis. Adm. Code.

The address will be displayed appropriately in a left window envelope.

DEPARTMENT OF WORKFORCE DEVELOPMENT NEW HIRE REPORTING PO BOX 14431 MADISON WI 53708-0431

Initial Ethics Orientation

As a part of your Entry onto Duty packet, you have received a copy of the STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE EXECUTIVE BRANCH, (Ethics Regulations).

You are entitled to one hour of official duty time to review the Ethics Regulations.

When you have completed your review, please sign below to indicate that you have done so, and return the signed form (in person or by email) to:

Office of the General Counsel (C-10)
Office of the Secretary
ethicsoffice@dot.gov

If you have questions about the ethics regulations, please feel free to email ethicsoffice@dot.gov

Thank you.	
/s/	Date:
print name here please	
Office Telephone Number:	
Office Routing Symbol:	<u> </u>
Office Location:	

ETHICS PLEDGE

I recognize that this pledge is part of a broader ethics in government plan designed to restore and maintain public trust in government, and I commit myself to conduct consistent with that plan. I commit to decision-making on the merits and exclusively in the public interest, without regard to private gain or personal benefit. I commit to conduct that upholds the independence of law enforcement and precludes improper interference with investigative or prosecutorial decisions of the Department of Justice. I commit to ethical choices of post-Government employment that do not raise the appearance that I have used my Government service for private gain, including by using confidential information acquired and relationships established for the benefit of future clients.

Accordingly, as a condition, and in consideration, of my employment in the United States Government in a position invested with the public trust, I commit myself to the following obligations, which I understand are binding on me and are enforceable under law:

- 1. Lobbyist Gift Ban. I will not accept gifts from registered lobbyists or lobbying organizations for the duration of my service as an appointee.
- 2. Revolving Door Ban All Appointees Entering Government. I will not for a period of 2 years from the date of my appointment participate in any particular matter involving specific parties that is directly and substantially related to my former employer or former clients, including regulations and contracts.
- 3. Revolving Door Ban Lobbyists and Registered Agents Entering Government. If I was registered under the Lobbying Disclosure Act, 2 U.S.C. 1601 et seq., or the Foreign Agents Registration Act (FARA), 22 U.S.C. 611 et seq., within the 2 years before the date of my appointment, in addition to abiding by the limitations of paragraph 2, I will not for a period of 2 years after the date of my appointment:
 - (a) participate in any particular matter on which I lobbied, or engaged in registrable activity under FARA, within the 2 years before the date of my appointment;
 - (b) participate in the specific issue area in which that particular matter falls; or
 - (c) seek or accept employment with any executive agency with respect to which I lobbied, or engaged in registrable activity under FARA, within the 2 years before the date of my appointment.
- 4. Revolving Door Ban Appointees Leaving Government. If, upon my departure from the Government, I am covered by the post-employment restrictions on communicating with employees of my former executive agency set forth in section 207(c) of title 18, United States Code, and its implementing regulations, I agree that I will abide by those restrictions for a period of 2 years following the end of my appointment. I will abide by these same restrictions with respect to communicating with the senior White House staff.
- 5. Revolving Door Ban Senior and Very Senior Appointees Leaving Government. If, upon my departure from the Government, I am covered by the post-employment restrictions set forth in sections 207(c) or 207(d) of title 18, United States Code, and those sections' implementing regulations, I agree that, in addition, for a period of 1 year following the end of my appointment, I will not materially assist others in making communications or appearances that I am prohibited from undertaking myself by (a) holding myself out as being available to engage in lobbying activities in support of any such communications or appearances; or (b) engaging in any such lobbying activities.
- 6. Revolving Door Ban Appointees Leaving Government to Lobby. In addition to abiding by the limitations of paragraph 4, I also agree, upon leaving Government service, not to lobby any covered executive branch official or non-career Senior Executive Service appointee, or engage in any activity on behalf of any foreign government or foreign political party which, were it undertaken on January 20, 2021, would require that I register under FARA, for the remainder of the Administration or 2 years following the end of my appointment, whichever is later.
- 7. *Golden Parachute Ban.* I have not accepted and will not accept, including after entering Government, any salary or other cash payment from my former employer the eligibility for and payment of which is limited to individuals accepting a position in the United States Government. I also have not accepted and will not accept any non-cash benefit from my former employer that is provided in lieu of such a prohibited cash payment.
- 8. *Employment Qualification Commitment*. I agree that any hiring or other employment decisions I make will be based on the candidate's qualifications, competence, and experience.
- 9. Assent to Enforcement. I acknowledge that the Executive Order entitled "Ethics Commitments by Executive Branch Personnel," issued by the President on January 20, 2021, which I have read before signing this document, defines certain of the terms applicable to the foregoing obligations and sets forth the methods for enforcing them. I expressly accept the provisions of that Executive Order as a part of this agreement and as binding on me. I understand that the terms of this pledge are in addition to any statutory or other legal restrictions applicable to me by virtue of Federal Government service.

	. 20
Signature	Date
Name (Type or Print):	

Additional Personnel Forms and Items Needed

Personnel Forms:

- SF-61 Appointment Affidavit (please sign above Signature of Appointee)
- Initial Ethics Orientation Form (in the Ethics folder)
- Ethics Pledge (in the Ethics folder)
- State Tax Form (in the State Tax Form Folder)

Personnel Form (will be sent to you in a separate email):

• OF-306 Declaration for Federal Employment (please sign next to 17b. "Appointee" and date 01/20/2021).

Two Forms of ID Needed to Verify Your Identity and Employment Eligibility:

- Copy of your current Passport AND copy of your current Driver's License OR
- Copy of your current Driver's License **AND** copy of your Social Security Card

Entrance On Duty (EODS Forms)

For New Employees and Employees Transferring from the U.S. Senate or House of Representatives, please complete the following forms in EODS

- DOT-1681 Identification Card Credential Application
- Educational Data Form
- Emergency Notification Form Revised
- I-9 Employment Eligibility Verification
- SF-1152 Designation of Beneficiary Unpaid Compensation Revised
- SF-1199A Direct Deposit Signup Form
- SF-144 Statement of Prior Federal Service
- SF-181 Ethnicity and Race Identification
- SF-256 Self Identification of Disability
- Selective Service Registration
- W-4 Form 2021 Federal Income Tax

Federal Employee Benefits Forms

- DG-60 FEHB Premium Conversion Waiver (*Please ONLY submit this form if* you are electing to waive premium conversion on your health coverage, if you are not, no action is needed)
- FEGLI FEHB FEDVIP FSA LTC Benefits Information
- FEGLI, FEHB, FEDVIP, TSP, FSA, LTC Benefits Election/Acknowledgement Notice View PDF
- SF-2809 Health Benefits Election Form
- SF-2809 Health Benefits Information
- SF-2817 Life Insurance Election FEGLI Revised November
- SF-2817 Life Insurance Election Information
- SF-2823 Designation of Beneficiary FEGLI
- SF-3102 Designation of Beneficiary FERS Revised February
- TSP Information
- TSP-1 Thrift Savings Plan Election Form Revised

For employees transferring from the U.S. Senate or House of Representatives, your benefits information will transfer to DOT.

APPOINTMENT AFFIDAVITS

		01/20/2021	
(Position to which Appointed)		(Date Appointed)	
Department of Transportation		Washington, DC	
(Department or Agency)	(Bureau or Division)	(Place of Employment)	
l,		, do solemnly swear (or aff	irm) that
A. OATH OF OFFICE			
I will support and defend the C that I will bear true faith and alleg reservation or purpose of evasion I am about to enter. So help me	n; and that I will well and faithfu	his obligation freely, without a	ny mental
B. AFFIDAVIT AS TO I am not participating in any st and I will not so participate while thereof.	rike against the Government of	the United States or any ager	ncy thereof,
C. AFFIDAVIT AS TO	THE PURCHASE AND	SALE OF OFFICE	
I have not, nor has anyone act for or in expectation or hope of re	ting in my behalf, given, transfe ecelving assistance in securing		nsideration
		(Signature of Appoin	tee)
Subscribed and sworn (or affirme	ed) before me this 20 day of _	January	
at Washington	DC		
(City)	(State)	***************************************	
(SEAL)		(Signature of Officer)	
Commission expires		Executive and Political Res	ources Center
(If by a Notary Public, the date of his/her	Commission should be shown)	(Title)	
Note - If the appointee objects to the form Religious Freedom Restoration Act. Plea	n of the oath on religious grounds, certa se contact your agency's legal counsel	nin modifications may be permitted puter for advice.	ırsuant to the

Standard Form 61 Revised August 2002 NSN 7540-00-634-4015 Previous editions not usable From: Magid, Helen hmagid@support.ucla.edu Sent: Wednesday, January 27, 2021 4:27 PM PST

To: Carlson, Ann <carlson@law.ucla.edu>

Subject: Fw: Professor Ann Carlson Joins Biden Administration

Dear Prof. Carlson, congratulations!

As I'm now in development in Engineering, I hope to connect you to Prof. Rajit Gadh, faculty and also Founder & Director, UCLA Smart Grid Energy Research Center. Rajit, who met you long ago, is developing a Research Hub for Electric Technologies in Truck Applications for a grant from the California Energy Commission. Might I put him in touch with you in that regard?

Take care, Helen

Helen Magid | Corporate & Foundation Relations UCLA SAMUELI SCHOOL OF ENGINEERING M: 310-913-3339

From: UCLA Emmett Institute <envirolaw@law.ucla.edu>

Sent: Wednesday, January 27, 2021 3:08 PM **To:** Magid, Helen hmagid@support.ucla.edu>

Subject: Professor Ann Carlson Joins Biden Administration

View this email in your browser

Amid the historic transition to a new federal administration last week, the Emmett Institute also marked a big change, as our faculty co-director and Shirley Shapiro Professor of Environmental Law **Ann Carlson** was sworn in (virtually) as chief counsel of the National Highway Traffic Safety Administration, an agency responsible for a wide range of transportation-sector regulatory activities with major implications for greenhouse-gas emissions, including national fuel economy standards.

Professor Carlson's appointment was <u>announced</u> last week among other key leadership appointments at U.S. Department of Transportation. She will take a leave of absence from UCLA Law while working for the Biden administration.

While we will miss her role in the leadership of our program, it is hard to imagine a more perfect person for this job.

Ann Carlson speaks at 2019 symposium at UCLA Law

Shirley Shapiro Professor of Environmental Law Ann Carlson speaks at a recent symposium at UCLA Law. Photo credit: UCLA Emmett Institute

Professor Carlson's vision drove the creation of the Emmett Institute as the first law school center to focus on climate change.

Together with faculty co-director Ted Parson, she has helped build one of the country's leading environmental law programs. Today, the Emmett Institute is home to nine core faculty members and six fellows who lead an extensive environmental law curriculum at UCLA Law, publish groundbreaking scholarship, and serve our state and country through public interest projects.

In her dedication to research, teaching, and public service, Professor Carlson has been a source of inspiration for our students, faculty, and alumni since she joined the law school in 1994.

A nationally renowned legal scholar, she co-authored the top casebook Environmental Law (West, 2019) with Dan Farber and William Boyd, co-edited the book Lessons from the Clean Air Act: Building Durability and Flexibility into U.S. Climate and Energy Policy (Cambridge University Press, 2019) with Dallas Burtraw, and is the author of a forthcoming book on the history of air pollution in Southern California.

She is a beloved leader in the classroom and has received UCLA's Distinguished Teaching Award and Eby Award for the Art of Teaching, and UCLA Law's Rutter Award for Excellence in Teaching. Her work on the UC system's plan to achieve carbon neutrality by 2025 earned her the University of California Sustainability Champion Award in 2017.

We're excited that she is taking on this key role in this important year for climate action, and we look forward to working with Ted Parson and our stellar faculty to continue to push for progress.

Sean Hecht & Cara Horowitz Co-Executive Directors	
UCLA Emmett Institute on Climate Change and the En	nvironment

About the Emmett Institute on Climate Change and the Environment at UCLA School of Law

The Emmett Institute on Climate Change and the Environment is among the leading environmental law programs in the country, with faculty members renowned for their public service, teaching excellence, and scholarship in state, federal, and international law. Located in Los Angeles, a diverse city facing unique environmental justice and climate change challenges, the Emmett Institute provides J.D. and LL.M. students unmatched opportunities for experiential learning, mentoring, and career placement. Through groundbreaking research and public interest initiatives, the Emmett Institute helps shape climate change and environmental law and policy in California, the United States, and jurisdictions around the world. leav.ucla.edu/emmett

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Emmett Institute on Climate Change and the Environment at UCLA School of Law 385 Charles E Young Dr. E Los Angeles, CA 90095-0001

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From: Sierra Dakin Kuiper <dakinkuiper@eli.org> Sent: Thursday, January 21, 2021 10:24 AM PST

To: Carlson, Ann <carlson@law.ucla.edu>

CC: Melodie DeMulling <demulling@eli.org>; Molly Krawczyk <krawczyk@eli.org>

Subject: FW: Some news about me, thank you to all of you

Attachment(s): "image001.jpg"

Dear Ann,

Congratulations on your appointment! May we continue to list you as a member of ELI's Leadership Council?

If so, please let us know the new webpage you'd like us to hyperlink with your name, when possible, so that we can update our website. At the moment, the hyperlink associated with your name goes to https://law.ucla.edu/faculty/faculty-profiles/ann-e-carlson, but we can remove this hyperlink now if you'd prefer and replace at a later date.

Thank you, Sierra



Sierra Dakin Kuiper (she/her/hers) Senior Manager, Foundations and Donor Relationships Environmental Law Institute 1730 M Street NW, Suite 700 | Washington, DC | 20036 Contact for remote phone number | dakinkuiper@eli.org | www.eli.org

From: C. Scott Fulton <fulton@eli.org> Sent: Thursday, January 21, 2021 12:51 PM

To: OnSite Staff <OnSite-Staff@eli.org>; Offsite staff <offsite@eli.org>; Onsite Volunteers <OnsiteVolunteers@eli.org>

Subject: Fwd: Some news about me, thank you to all of you

Hi Everyone — Here's one of the appointments of Board members I mentioned. Best, Scott

Scott Fulton President Environmental Law Institute (ELI) www.eli.org

Begin forwarded message:

From: "Thomson, Katie" < <u>kathomso@amazon.com</u>>

Date: 21 January 2021 at 6:48:43 pm CET

To: "Carlson, Ann" carlson@law.ucla.edu, "Benjamin F. Wilson" BWilson@bdlaw.com, "C. Scott Fulton" < fulton@eli.org>, Margaret Spring < mspring@mbayaq.org>, Brenda Mallory < bmallory@selcdc.org>, "Brenda com>"

Cc: "amurgier@beccarvarela.com" , "beth.deane@firstsolar.com"

<beth.deane@firstsolar.com>, "bobperciasepe@c2es.org"
bobperciasepe@c2es.org>, "bmarten@martenlaw.com"

<bmarten@martenlaw.com>, "Carlton.waterhouse@howard.edu" <Carlton.waterhouse@howard.edu>,

"cjenks@mjbradley.com" <cjenks@mjbradley.com>, "christopher.reynolds@toyota.com"

<a href="mailto:schristopher.reynolds@toyota.c

< Rachel.Jacobson@wilmerhale.com >, "jcolopy@fbm.com" < jcolopy@fbm.com >, "jcannon@law.virginia.edu"

<<u>jcannon@law.virginia.edu</u>>, "<u>kpoloncarz@cov.com</u>" <<u>kpoloncarz@cov.com</u>>, "<u>lg@nijmanfranzetti.com</u>"

<lg@nijmanfranzetti.com>, "john.lovenburg@bnsf.com" <john.lovenburg@bnsf.com>,

"Marisa.Blackshire@bloomenergy.com" < Marisa.Blackshire@bloomenergy.com>, "mmarrapese@wileyrein.com"

<mmarrapese@wileyrein.com>, "Mason.Emnett@exeloncorp.com" <Mason.Emnett@exeloncorp.com>,

"<u>Michael.G.Mahoney@pfizer.com</u>" < <u>Michael.G.Mahoney@pfizer.com</u>>,

, "nadira.clarke@bakerbotts.com" <nadira.clarke@bakerbotts.com>,

"nrobinson@law.pace.edu" <nrobinson@law.pace.edu>, "pam.giblin@bakerbotts.com" <pam.giblin@bakerbotts.com>,

"Paul.Davies@lw.com" < Paul.Davies@lw.com>, "peggy.otum@wilmerhale.com" < peggy.otum@wilmerhale.com>,

"rludwiszewski@gibsondunn.com" <rul>rludwiszewski@gibsondunn.com, "Richard.Leahy@walmartlegal.com"

< <u>Richard.Leahy@walmartlegal.com</u>>, "<u>rob.kirsch@wilmerhale.com</u>" < <u>rob.kirsch@wilmerhale.com</u>>,

"roger.martella@ge.com" <roger.martella@ge.com>, "Sally.Fisk@pfizer.com" < Sally.Fisk@pfizer.com>, "Stacey J. Halliday"

<<u>SHalliday@bdlaw.com</u>>, "<u>stephen.rahaim@dupont.com</u>" <<u>stephen.rahaim@dupont.com</u>>,

"hilary.tompkins@hoganlovells.com" < hilary.tompkins@hoganlovells.com", "vpatton@edf.org" < vpatton@edf.org",

"Wang, Alex" sleen sleen s

<pendergrass@eli.org>, Loretta Reinersmann <reinersmann@eli.org>, Melodie DeMulling <demulling@eli.org>

Subject: RE: Some news about me, thank you to all of you

External Email - If suspicious, please contact blain@eli.org

Congratulations, Ann! Transportation safety and sustainability are two of my passions, and NHTSA plays such a vital role in both areas. I am delighted to see you appointed to NHTSA Chief Counsel and so many others with sustainability experienced named to other significant roles at DOT. It is great to see American government back in the lead on sustainability. Best wishes!

Katie

From: Carlson, Ann <<u>carlson@law.ucla.edu</u>>
Sent: Thursday, January 21, 2021 9:18 AM

To: Benjamin F. Wilson <<u>BWilson@bdlaw.com</u>>; C. Scott Fulton <<u>fulton@eli.org</u>>; Margaret Spring
<<u>mspring@mbayaq.org</u>>; Brenda Mallory <<u>bmallory@selcdc.org</u>>; Brenda com>
Cc: amurgier@beccarvarela.com; beth.deane@firstsolar.com; bobperciasepe@c2es.org; bmarten@martenlaw.com; Carlton.waterhouse@howard.edu; cjenks@mjbradley.com; christopher.reynolds@toyota.com; gfleming@vnf.com; Rachel.Jacobson@wilmerhale.com; jcolopy@fbm.com; jcannon@law.virginia.edu; Thomson, Katie
<kathomso@amazon.com>; kpoloncarz@cov.com; lg@nijmanfranzetti.com; john.lovenburg@bnsf.com; Marisa.Blackshire@bloomenergy.com; mmarrapese@wileyrein.com; Mason.Emnett@exeloncorp.com; Michael.G.Mahoney@pfizer.com;
mrobinson@law.pace.edu; pam.giblin@bakerbotts.com; Paul.Davies@lw.com; peggy.otum@wilmerhale.com; rludwiszewski@gibsondunn.com; Richard.Leahy@walmartlegal.com; rob.kirsch@wilmerhale.com; Sally.Fisk@pfizer.com; Stacey J. Halliday

<<u>SHalliday@bdlaw.com</u>>; <u>stephen.rahaim@dupont.com</u>; <u>hilary.tompkins@hoganlovells.com</u>; <u>vpatton@edf.org</u>; Wang, Alex <<u>alex.wang@law.ucla.edu</u>>; <u>kevin.wei@bayeco.cn</u>; Jay Pendergrass <<u>pendergrass@eli.org</u>>; Loretta Reinersmann <<u>reinersmann@eli.org</u>>; Melodie DeMulling <<u>demulling@eli.org</u>>

Subject: [EXTERNAL] Some news about me, thank you to all of you

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you can confirm the sender and know the content is safe.

Dear colleagues,

I am writing to let you know that I am taking on a new role and, as a result, will have to resign from the ELI Board. Yesterday, I was sworn in as Chief Counsel of NHTSA. As you of course know, NHTSA plays a key role in reducing carbon emissions from the transportation sector and my appointment is, I think, an indication that President Biden is serious about a "whole government" approach to climate change.

I'm incredibly excited about my new role but very sad that I will no longer be able to serve on the ELI board. Serving with all of you has been a remarkably enriching experience and seeing ELI's influence and effectiveness grow under Scott's leadership has been so rewarding. I will miss all of you, though can perhaps see more of some of you once I move east when the pandemic recedes and the Department of Transportation brings more of its workforce back into the building. For now I'll remain in L.A. working remotely.

Thank you all for your friendship, environmental commitment and work for ELI. Let's remain in touch.

All best,

Ann

Ann Carlson Shirley Shapiro Professor of Environmental Law Faculty Co-Director, Emmett Institute on Climate Change and the Environment UCLA School of Law (310) 206-9496 From: Carlson, Ann on behalf of Carlson, Ann <carlson@law.ucla.edu>

Sent: Tuesday, January 12, 2021 3:34 PM PST To: Boyd, William <BOYD@law.ucla.edu>

Subject: Fw: workshop invitation?

Looks like she'll be doing something in the Biden Administration?

Do you want me to invite someone else? No word back from Carlton.

Shirley Shapiro Professor of Environmental Law Faculty Co-Director, Emmett Institute on Climate Change and the Environment UCLA School of Law (310) 206-9496

From: Carlson, Ann <carlson@law.ucla.edu> Sent: Tuesday, January 12, 2021 3:33 PM To: Baker, Shalanda <s.baker@northeastern.edu> Cc: Boyd, William <BOYD@law.ucla.edu>

Subject: Re: workshop invitation?

Thanks, Shalanda. Hope you'll be doing something interesting on your leave!

Another year.

Best,

Ann

Ann Carlson Shirley Shapiro Professor of Environmental Law Faculty Co-Director, Emmett Institute on Climate Change and the Environment UCLA School of Law (310) 206-9496

From: Baker, Shalanda <s.baker@northeastern.edu>

Sent: Tuesday, January 12, 2021 2:50 PM To: Carlson, Ann <carlson@law.ucla.edu> Cc: Boyd, William <BOYD@law.ucla.edu> Subject: Re: workshop invitation?

Dear Ann,

This is such a delightful email to receive! You mentioned this workshop in Vermont last fall, and it sounded great. Unfortunately, on my end, the timing could not be more inopportune. I will be on an extended professional leave starting next week, and I am severely limiting my speaking engagements due to the commitments I have agreed to in the coming year. I will be unable to participate, despite what looks like a wonderful workshop.

Will you kindly accept my apologies and please keep me in mind for future workshops?

Warmly, Shalanda

Shalanda H. Baker (she/her) Professor of Law, Public Policy and Urban Affairs Co-Founder and Co-Director, <u>Initiative for Energy Justice</u>

Office: 37 Cargill Hall Mail: 416 Huntington Avenue

Boston, MA 02115 Tel: (617) 373-4070

E-mail: s.baker@northeastern.edu View my recent publications here.

Read my latest article, Fighting for a Just Transition, here.

From: Carlson, Ann <carlson@law.ucla.edu> Sent: Monday, January 11, 2021 4:10 PM To: Baker, Shalanda <s.baker@northeastern.edu> Cc: Boyd, William <BOYD@law.ucla.edu>

Subject: workshop invitation?

Dear Shalanda,

We are writing to see if you'd be interested in presenting a work-in-progress to our Climate and Energy workshop this semester. The general idea is that students read a draft of an author's work and then two weeks later meet with the author (typically in person but of course virtually right now) and ask questions and comment on the draft. It's a fun experience and the students get a ton out of it. Half of them write a response paper to the draft, so you get detailed feedback from them, much (though not all!) of it helpful.

We are juggling dates right now but have February 11 and 25th along with April 1 available. If you can participate, can you give us two of the three dates that would work? The class meets with the author at 6:00 p.m.PST, so 9:00 your time (sorry it's so late) for an hour and a half.

We very much hope you can participate. We know the students will be eager to read your work and meet with you. And we hope you are hanging in.

All best.

Ann and William

Ann Carlson Shirley Shapiro Professor of Environmental Law Faculty Co-Director, Emmett Institute on Climate Change and the Environment UCLA School of Law (310) 206-9496 **From:** Dolovich, Sharon <Dolovich@law.ucla.edu> **Sent:** Thursday, January 21, 2021 11:15 AM PST **To:** Carlson, Ann <carlson@law.ucla.edu>

Subject: Fwd: Ann Carlson

Ann, this is such exciting news! Many congratulations and thank you for going to Washington to help save the world!

Sharon Dolovich
Professor of Law
Director, UCLA Covid-19 Behind Bars Data Project
Director, Prison Law and Policy Program
UCLA School of Law
385 Charles E. Young Drive East
Los Angeles, CA 90095-1476
(310) 206-5568

ssrn page: http://papers.ssrn.com/sol3/cf_dev/AbsByAuth.cfm?per_id=95087

Begin forwarded message:

From: "Mnookin, Jennifer" < MNOOKIN@law.ucla.edu>

Date: January 21, 2021 at 8:48:08 AM PST

To: "Mnookin, Jennifer" < MNOOKIN@law.ucla.edu>

Subject: Ann Carlson

Dear Colleagues,

I am writing to let you know that Ann Carlson will be taking a leave from the law school to begin serving in the Biden-Harris Administration effective yesterday, January 20. President Biden has appointed Ann to serve as Chief Counsel of the National Highway Traffic Safety Administration. NHTSA has joint responsibility, together with EPA, for regulating greenhouse gases/fuel economy from the transportation sector, and she is part of the Biden-Harris "whole agency" approach to addressing climate change. She will remain in Los Angeles working remotely in the immediate term but will move to Washington, D.C. when the pandemic eases.

Although we will miss her very much, I admire Ann for her willingness to serve in the new Administration to address climate change. Her new position continues the work she has done for many years on the issue our new President calls "the number one threat to humanity." Please join me in congratulating Ann on her new appointment.

All best,

Jennifer

Jennifer L. Mnookin

Dean and Ralph and Shirley Shapiro Professor of Law Co-Director, PULSE@UCLA Law (310) 825-8202

<image001.png>

From: Gomez, Laura <GOMEZ@law.ucla.edu> Sent: Thursday, January 21, 2021 4:28 PM PST To: Carlson, Ann <carlson@law.ucla.edu>

Subject: Fwd: Ann Carlson

Congratulations, Ann! How exciting for you and wonderful for the nation!

Best, Laura

Get Outlook for Android

From: Mnookin, Jennifer <MNOOKIN@law.ucla.edu> Sent: Thursday, January 21, 2021 8:47:31 AM To: Mnookin, Jennifer <MNOOKIN@law.ucla.edu>

Subject: Ann Carlson

Dear Colleagues,

I am writing to let you know that Ann Carlson will be taking a leave from the law school to begin serving in the Biden-Harris Administration effective yesterday, January 20. President Biden has appointed Ann to serve as Chief Counsel of the National Highway Traffic Safety Administration. NHTSA has joint responsibility, together with EPA, for regulating greenhouse gases/fuel economy from the transportation sector, and she is part of the Biden-Harris "whole agency" approach to addressing climate change. She will remain in Los Angeles working remotely in the immediate term but will move to Washington, D.C. when the pandemic eases.

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Jennifer

Jennifer L. Mnookin

Dean and Ralph and Shirley Shapiro Professor of Law Co-Director, PULSE@UCLA Law (310) 825-8202



From: Winkler, Adam <winkler@law.ucla.edu> Sent: Thursday, January 21, 2021 9:59 AM PST To: Carlson, Ann <carlson@law.ucla.edu>

Subject: Fwd: Ann Carlson

Awesome news! Congratulations. Although I don't imagine this is good for the book in the short term!

Begin forwarded message:

From: "Mnookin, Jennifer" < MNOOKIN@law.ucla.edu>

Date: January 21, 2021 at 8:48:09 AM PST

To: "Mnookin, Jennifer" < MNOOKIN@law.ucla.edu>

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Jennifer

Jennifer L. Mnookin

Dean and Ralph and Shirley Shapiro Professor of Law Co-Director, PULSE@UCLA Law (310) 825-8202



From: Oh, Jason <OH@law.ucla.edu>

Sent: Thursday, January 21, 2021 10:18 AM PST

To: Carlson, Ann <carlson@law.ucla.edu>
Subject: Fwd: Ann Carlson

What fantastic news! Congrats!!

Sent from my iPhone

Begin forwarded message:

From: "Mnookin, Jennifer" < MNOOKIN@law.ucla.edu>

Date: January 21, 2021 at 8:48:08 AM PST

To: "Mnookin, Jennifer" < MNOOKIN@law.ucla.edu>

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Dean and Ralph and Shirley Shapiro Professor of Law Co-Director, PULSE@UCLA Law (310) 825-8202

<image001.png>

From: Mark A. Peterson <markap@g.ucla.edu> Sent: Thursday, January 21, 2021 10:20 AM PST To: Carlson, Ann <carlson@law.ucla.edu>

Subject: Fwd: Ann Carlson

Hi Ann,

This is fabulous news! Thanks for taking on this important role. It is so comforting to know that we now have an administration populated with smart, knowledgeable experts, thoughtful, and ethical, all especially important for this government-wide dedication to addressing climate change.

I imagine that you were among the 1,000+ people on the Zoom call with the President yesterday taking the oath of office.

Best, Mark

--M---l-

Mark A. Peterson
Professor of Public Policy, Political Science, and Law
Department of Public Policy
UCLA Meyer and Renee Luskin School of Public Affairs
6315 Public Affairs Building
Los Angeles, CA 90095-1656
310-794-4270
310-206-0337 (fax)
markap@ucla.edu

https://luskin.ucla.edu/person/mark-a-peterson/

UCLA Luskin Public Policy acknowledges the Gabrielino/Tongva peoples as the traditional land caretakers of Tovaangar (Los Angeles basin, South Channel Islands).

----- Forwarded Message -----Subject:Ann Carlson

Resent-Date: Thu, 21 Jan 2021 08:48:19 -0800 Resent-From: PETERSON@law.ucla.edu

Date: Thu, 21 Jan 2021 16:47:31 +0000

From:Mnookin, Jennifer MNOOKIN@law.ucla.edu
To:Mnookin, Jennifer MNOOKIN@law.ucla.edu

Dear Colleagues,

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All best.

Jennifer

Jennifer L. Mnookin

Dean and Ralph and Shirley Shapiro Professor of Law Co-Director, PULSE@UCLA Law (310) 825-8202



From: Abrams, Norman <abrams@law.ucla.edu> Sent: Thursday, January 21, 2021 8:56 AM PST To: Carlson, Ann <carlson@law.ucla.edu>

Subject: Fwd: Ann Carlson

Hi Ann,

Wonderful news. Congratulations!

Tells me the new Administration is really serious about their climate goals and are choosing the very best people.

Best,

Norm

Begin forwarded message:

From: "Mnookin, Jennifer" <MNOOKIN@law.ucla.edu>

Date: January 21, 2021 at 8:48:08 AM PST

To: "Mnookin, Jennifer" <MNOOKIN@law.ucla.edu>

Subject: Ann Carlson

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All best,

Jennifer

Jennifer L. Mnookin

Dean and Ralph and Shirley Shapiro Professor of Law Co-Director, PULSE@UCLA Law (310) 825-8202



From: Anderson, Alison <Anderson@law.ucla.edu> Sent: Thursday, January 21, 2021 12:07 PM PST To: Carlson, Ann <carlson@law.ucla.edu>

Subject: Fwd: Ann Carlson

Congratulations Ann, that's great! Alison

Sent from my iPhone

Begin forwarded message:

From: "Mnookin, Jennifer" < MNOOKIN@law.ucla.edu >

Date: January 21, 2021 at 8:47:31 AM PST

To: "Mnookin, Jennifer" < MNOOKIN@law.ucla.edu>

Subject: Ann Carlson

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All best,

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Dean and Ralph and Shirley Shapiro Professor of Law Co-Director, PULSE@UCLA Law (310) 825-8202

<image001.png>

From: Ethan Elkind <elkind@berkeley.edu>
Sent: Thursday, January 21, 2021 12:03 PM PST
To: Carlson, Ann <carlson@law.ucla.edu>

Subject: Fwd: Congratulations!

Hi Ann

I just wanted to follow up with a separate note of congratulations -- it's a well-deserved honor, and we're very lucky to have you working on these crucial transportation issues at the federal level!

I'm still bummed that Mary got passed over at EPA for such unfortunate and unfair reasons, but this helps make up for it!

If I can do anything to help you in your new role, please don't hesitate to let me know.

Best, Ethan

----- Forwarded Message ------

Subject:Congratulations!

Date: Thu, 21 Jan 2021 10:06:39 -0800

From:H. Jordan Diamond <idiamond@law.berkeley.edu>

Reply-To:jdiamond@law.berkeley.edu

To:Carlson, Ann (carlson@law.ucla.edu) <carlson@law.ucla.edu>

CC:Daniel FARBER <cdfarber@law.berkeley.edu, Holly Doremus , Ted Lamm <a hre

Ann,

We just learned of your appointment as Chief Counsel of NHTSA, and simply wanted to send a note of heartfelt excitement and congratulations from all of your Berkeley E&E colleagues. We will miss having you "next door" but the administration is immensely lucky to get your expertise and dedication, and we can't wait to see the changes you drive.

Congratulations, Ann!

All the best, Dan, Holly, Eric, Claudia, Ken, Ethan, Ted, and Jordan

H. Jordan Diamond (she/her/hers)
Executive Director, Center for Law, Energy & the Environment
School of Law, University of California, Berkeley
clee.berkeley.edu

From: Marc Fisher <marcfisher@berkeley.edu> Sent: Saturday, November 14, 2020 5:38 PM PST

To: Carlson, Ann <carlson@law.ucla.edu>

Subject: Fwd: Jim Salzman

Let's get both of you to DC- please see below.

Marc

Sent from my iPhone

Begin forwarded message:

From: Christine TREADWAY <ctreadway@berkeley.edu>

Date: November 14, 2020 at 4:58:45 PM PST **To:** Marc Fisher <marcfisher@berkeley.edu>

Subject: Re: Jim Salzman

Hi Marc--WE can actually work through a couple of different channels. I sent around a note to cabinet with APLU's ask for submissions by this monday. So, I'm happy to send along both of those names!

We also have more informal staff connections that we can also send these names into.

I'll keep you posted!

Thanks Chris

Christine Treadway

Assistant Chancellor Government and Community Relations Office of the Chancellor University of California, Berkeley 200 California Hall, Room 215A Berkeley, CA 94720 510-643-4107

On Sat, Nov 14, 2020 at 2:15 PM Marc Fisher <u>≪narcfisher@berkeley.edu</u>> wrote:

What is the nomination process for political appointments? Ann Carlson is a law professor at UCLA. She managed the Carbon Neutrality Initiative for the UC. She is smart, easy to work with, and is very pragmatic. I can imagine that a Biden administration would really like her.

Jim Saltzman teaches at both UCLA and UCSB. I don't really know him but I always trust Ann's judgement.

Thanks,

Marc

Marc Fisher Vice Chancellor Administration (510) 642-3100 marcfisher@berkeley.edu

----- Forwarded message ------

From: Carlson, Ann < carlson@law.ucla.edu>

Date: Fri, Nov 13, 2020 at 2:44 PM

Subject: Jim Salzman

To: Marc Fisher <marcfisher@berkeley.edu>

Hey Marc,

Jim Saltzman is interested in being considered for a position at EPA. Would you be comfortable submitting his name? He's interested in being assistant administrator for water

From: Carlson, Ann

Sent: Wednesday, November 04, 2020 1:25 PM PST

To: Melling, Daniel <melling@law.ucla.edu>

CC: Hecht, Sean <hecht@law.ucla.edu>; Horowitz, Cara <HOROWITZ@law.ucla.edu> **Subject:** Fwd: Media Inquiry: What Biden can do without Congress on climate change

Daniel if this helps this is what I wrote to a Vox reporter this am.

Begin forwarded message:

From: "Carlson, Ann" <carlson@law.ucla.edu> Date: November 4, 2020 at 12:38:09 PM PST

To: Umair Irfan <umair@vox.com>

Subject: Re: Media Inquiry: What Biden can do without Congress on climate change

Good questions. If you have the patience to read it, I'm sending along a blog post we wrote recently with somewhat general responses to your questions but I'll also answer them specifically.

I think one big strategy that will be important for a Biden Administration without a Democratic Senate is to have a suite of climate policies rather than relying too heavily on any single policy -- think of it as the "don't place all your eggs in the same basket" approach. Many climate policies don't face the kind of legal vulnerability the Clean Power Plan did. This includes tightening efficiency standards, tighter fuel economy standards, limiting drilling on public lands, investing in infrastructure, appointing FERC commissioners who can factor carbon into their decisionmaking, continuing tax incentives to encourage renewable energy and R & D investments, and many international efforts (obviously rejoining the Paris Agreement, reasserting U.S. diplomacy on climate, trying to tackle global problems like deforestation, etc.). Much of this can be done without Congress. Biden should also use his Clean Air Act authority to regulate greenhouse gas emissions even given legal uncertainty. Doing so is, after all, required by Mass v. EPA. As we say in the blog post, there are some guidelines that might help insulate the regulations from legal vulnerabilities -- standard regulations like limiting methane emissions, car standards, and so forth should be upheld unless the Court decides to overturn Mass v EPA. It is also worth stressing that any challenges to Biden policies under the CAA will take a long time to work their way to the Supreme Court -probably three or four years. A lot can change during that time, including the composition of the Court. So I think it's important to utilize the power that the Mass v EPA Court has made clear EPA possesses. And it should do so aggressively given the climate crisis we face. Using that power in a way that looks similar to the kinds of regulations EPA has adopted in the past might be a smart way to reduce litigation risk but the agency shouldn't sacrifice ambition out of fear.

In addition, there may be some climate policies that could get through a Republican controlled Senate. Maybe a renewable energy standard? Big investment in R & D and infrastructure? Tax incentives? The politics on climate are changing, even if slowly, and there may be some opportunity to advance policies that attract Republican support.

I don't think there's much Congress can do to thwart rejoining the Paris Agreement or engaging in extensive diplomacy. I'm not a trade expert so don't know enough to say any thing intelligent!

Happy to talk more if you'd find it helpful even though I'm operating on only a few hours of fitful sleep! Hope you're hanging in.

here's the post: https://legal-planet.org/2020/10/27/climate-policymaking-in-the-shadow-of-the-supreme-court/

Ann Carlson Shirley Shapiro Professor of Environmental Law Faculty Co-Director, Emmett Institute on Climate Change and the Environment UCLA School of Law (310) 206-9496

From: Umair Irfan <umair@vox.com>

Sent: Wednesday, November 4, 2020 12:07 PM To: Carlson, Ann <carlson@law.ucla.edu>

Subject: Re: Media Inquiry: What Biden can do without Congress on climate change

Sure, here's what I'm looking at:

What have we learned since the Obama era about making durable environmental policies from the White House? Given how much Obama's climate policies were litigated (Clean Power Plan, CAFÉ standards), would Biden's domestic policies be doomed to similar challenges, or have we actually made some progress in the legal case for such policies?

Since the president has a lot of leeway on foreign affairs, is there anything Congress could do to thwart Biden's plans for, say, rejoining the Paris agreement or signing a trade deal with a focus on emissions reductions?

Thanks, Umair

From: "Carlson, Ann" <carlson@law.ucla.edu> Date: Wednesday, November 4, 2020 at 2:10 PM

To: Umair Irfan <umair@vox.com>

Subject: Re: Media Inquiry: What Biden can do without Congress on climate change

Hi Umair,

Would be great to get a couple of questions from you if that works. Thanks!

On Nov 4, 2020, at 10:43 AM, Umair Irfan <umair@vox.com> wrote:

Hi Professor Carlson,

I'm working on a piece on what Joe Biden might be able to do on climate change if he wins the White House but only has a tiny majority or a minority in the Senate.

I wanted to see if you had any thoughts as to what durable changes he could make, or if everything he does could be undermined through litigation and undone by a future administration.

Feel free to give me a call, or I can send a couple specific questions by email. I'm at 217 721 4377

Thanks

Umair Irfan | @umairfan Staff Writer | Mobile/Signal: (217) 721-4377 Washington, DC 20036

<image001.png>

Vox.com is part of <u>Vox Media</u>, home of <u>SB Nation</u>, <u>The Verge</u>, <u>Polygon</u>, <u>Recode</u>, <u>Eater</u>, and <u>Curbed</u>.

Visit The Goods by Vox, Vox.com's new section on consumer culture.

From: Carlson, Ann

Sent: Monday, November 09, 2020 11:40 AM PST

To: Melling, Daniel <melling@law.ucla.edu>; Wyer, Kathy <WYER@law.ucla.edu>; Horowitz, Cara

<HOROWITZ@law.ucla.edu>; Parson, Edward <PARSON@law.ucla.edu>; Hecht, Sean <hecht@law.ucla.edu>

Subject: Fwd: Media Inquiry: What Biden can do without Congress on climate change

Quoted in this

Begin forwarded message:

From: Umair Irfan <umair@vox.com>

Date: November 9, 2020 at 11:33:10 AM PST **To:** "Carlson, Ann" <carlson@law.ucla.edu>

Subject: Re: Media Inquiry: What Biden can do without Congress on climate change

Just wanted to let you know my article posted: https://www.vox.com/21549521/joe-biden-transition-climate-change-senate-runoff

Thanks again

From: "Carlson, Ann" <carlson@law.ucla.edu> Date: Wednesday, November 4, 2020 at 3:38 PM

To: Umair Irfan <umair@vox.com>

Subject: Re: Media Inquiry: What Biden can do without Congress on climate change

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here's the post: https://legal-planet.org/2020/10/27/climate-policymaking-in-the-shadow-of-the-supreme-court/

Ann Carlson
Shirley Shapiro Professor of Environmental Law
Faculty Co-Director, Emmett Institute on Climate Change and the Environment
UCLA School of Law
(310) 206-9496

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From: "Carlson, Ann" <carlson@law.ucla.edu>
Date: Wednesday, November 4, 2020 at 2:10 PM

To: Umair Irfan <umair@vox.com>

Subject: Re: Media Inquiry: What Biden can do without Congress on climate change

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Umair Irfan | @umairfan Staff Writer | Mobile/Signal: (217) 721-4377 Washington, DC 20036

<image001.png>

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Visit The Goods by Vox, Vox.com's new section on consumer culture

From: Jim Salzman

Sent: Friday, January 15, 2021 8:53 AM PST **To:** Carlson, Ann <carlson@law.ucla.edu>

Subject: Fwd: Model Y Earns 5-Star Safety Rating From NHTSA

Does this come with the job?

-------Forwarded message ---------From: **Tesla** <<u>newsletter@tesla.com</u>>
Date: Fri, Jan 15, 2021 at 8:01 AM

Subject: Model Y Earns 5-Star Safety Rating From NHTSA

To:

Logo

This week, Model Y earned a 5-star safety rating in every category from the National Highway Traffic Safety Administration (NHTSA), including the lowest rollover risk of any SUV tested to date by the organization. Learn more

Active Safety Included

Active safety features come standard with every Tesla, and can help reduce the severity of impact or avoid some accidents altogether.

360-Degree Visibility

Ultrasonic sensors and advanced cameras enable 360 degrees of visibility, detecting hard and soft objects even in adverse weather conditions.

Safer Over Time

Every mile you drive can help improve safety for you and others. With over-the-air software updates, our latest features and enhancements are available instantly.

Impact Protection

Engineered with safety as the primary goal, Model Y's all-electric architecture provides a very low probability of cabin intrusion, occupant injury and rollover risk.

ORDER NOW

Tesla | All Rights Reserved | 3500 Deer Creek Rd. Palo Alto CA 94304 Privacy | Unsubscribe

Government 5-Star Safety Ratings are part of the National Highway Traffic Safety Administration's (NHTSA's) New Car
Assessment Program (http://www.SaferCar.gov).

This is promotional material for Tesla, Inc.

AL 05500, AR M-8937, AZ ROC 243771/ROC 245450, CA CSLB 888104, CO EC8041, CT HIC 0632778/ELC 0125305, DC 410514000080/ECC902585, DE 2011120386/ T1-6032, FL EC13006226, HI CT-29770, IL 15-0052, MA HIC 168572/EL-1136MR, MD HIC 128948/11805, NC 30801-U, NH 0347C/12523M, NJ NJHIC#13VH06160600/34E801732700, NM EE98-379590, NV NV20121135172/C2-0076848/B2-0079719, OH EL47707, OR CB180498/C562, PA HICPA077343, RI AC004714/Reg 38313, TX TECL27006, UT 8726950-5501, VA ELEZ705153278, VT EM-05829, WA SOLARC*9051/SOLARC*90597, Albany 439, Greene A-486, Nassau H2409710000, Putnam PC6041, Rockland H-11864-40-00-00, Suffolk 52057-H, Westchester WC-26088-H13, NY.C #2001384-DCA. SCENYC: NY.C. Licensed Electrician, #12610, #004485, 155 Water St, 6th FL, Unit 10, Brooklyn, NY.11201, #2013966-DCA.

From:

Sent: Wednesday, January 27, 2021 3:33 PM PST

To: Carlson, Ann <carlson@law.ucla.edu>

Subject: Fwd: Professor Ann Carlson Joins Biden Administration

Congratulations, Professor Carlson!

I am so happy for you and proud to say I had you as one of my law school professors; I hope you and your family are doing well and wish you best in your new, exciting role!

Best,

------ Forwarded message ------

From: UCLA Emmett Institute < envirolaw@law.ucla.edu>

Date: Wed, Jan 27, 2021 at 3:08 PM

Subject: Professor Ann Carlson Joins Biden Administration

To:

View this email in your browser

Amid the historic transition to a new federal administration last week, the Emmett Institute also marked a big change, as our faculty co-director and Shirley Shapiro Professor of Environmental Law **Ann Carlson** was sworn in (virtually)) as chief counsel of the National Highway Traffic Safety Administration, an agency responsible for a wide range of transportation-sector regulatory activities with major implications for greenhouse-gas emissions, including national fuel economy standards.

Professor Carlson's appointment was <u>announced</u> last week among other key leadership appointments at U.S. Department of Transportation. She will take a leave of absence from UCLA Law while working for the Biden administration.

While we will miss her role in the leadership of our program, it is hard to imagine a more perfect person for this job.

Ann Carlson speaks at 2019 symposium at UCLA Law

Shirley Shapiro Professor of Environmental Law Ann Carlson speaks at a recent symposium at UCLA Law. Photo credit: UCLA Emmett Institute

Professor Carlson's vision drove the creation of the Emmett Institute as the first law school center to focus on climate change.

Together with faculty co-director **Ted Parson**, she has helped build one of the country's <u>leading environmental law programs</u>. Today, the Emmett Institute is home to nine core faculty members and six fellows who lead an extensive environmental law curriculum at UCLA Law, publish groundbreaking scholarship, and serve our state and country through public interest projects.

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-- She is a beloved leader in the classroom and has received UCLA's Distinguished Teaching Award and Eby Award J.D. | Class of 2025 of Teaching, and UCLA Law's Rutter Award for Excellence in Teaching. Her work on the UC system's UCLA plant to achieve carbon neutrality by 2025 earned her the University of California Sustainability Champion Award in 2017.

We're excited that she is taking on this key role in this important year for climate action, and we look forward to working with Ted Parson and our stellar faculty to continue to push for progress.

Sean Hecht & Cara Horowitz

Co-Executive Directors
UCLA Emmett Institute on Climate Change and the Environment

About the Emmett Institute on Climate Change and the Environment at UCLA School of Law

The Emmett Institute on Climate Change and the Environment is among the leading environmental law programs in the country, with faculty members renowned for their public service, teaching excellence, and scholarship in state, federal, and international law. Located in Los Angeles, a diverse city facing unique environmental justice and climate change challenges, the Emmett Institute provides J.D. and LL.M. students unmatched opportunities for experiential learning, mentoring, and career placement. Through groundbreaking research and public interest initiatives, the Emmett Institute helps shape climate change and environmental law and policy in California, the United States, and jurisdictions around the world. leaw.ucla.edu/emmett

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From: Braunson Virjee

Sent: Wednesday, January 27, 2021 3:16 PM PST

To: Carlson, Ann <carlson@law.ucla.edu>

Subject: Fwd: Professor Ann Carlson Joins Biden Administration

Many congratulations and best wishes on the appointment!

--BCV

Braunson C. Virjee
Deputy City Attorney
Los Angeles City Attorney's Office
Environmental Justice Unit
200 North Main Street, 500 City Hall East

Los Angeles, California 90012 Telephone: 213.473.9972 Fax: 213.978.8111

braunson.virjee@lacity.org

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From: UCLA Emmett Institute < envirolaw@law.ucla.edu >

Date: Wed, Jan 27, 2021 at 3:08 PM

Subject: Professor Ann Carlson Joins Biden Administration

To: < braunson.virjee@lacity.org >

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Amid the historic transition to a new federal administration last week, the Emmett Institute also marked a big change, as our faculty co-director and Shirley Shapiro Professor of Environmental Law **Ann Carlson** was sworn in (virtually)) as chief counsel of the National Highway Traffic Safety Administration, an agency responsible for a wide range of transportation-sector regulatory activities with major implications for greenhouse-gas emissions, including national fuel economy standards.

Professor Carlson's appointment was <u>announced</u> last week among other key leadership appointments at U.S. Department of Transportation. She will take a leave of absence from UCLA Law while working for the Biden administration.

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Ann Carlson speaks at 2019 symposium at UCLA Law

Shirley Shapiro Professor of Environmental Law Ann Carlson speaks at a recent symposium at UCLA Law. Photo credit: UCLA Emmett Institute

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From: Sork, Victoria <vlsork@ucla.edu>

Sent: Thursday, January 28, 2021 5:51 AM PST **To:** Carlson, Ann <carlson@law.ucla.edu>

Subject: Fwd: Professor Ann Carlson Joins Biden Administration

CONGRATS!! I am happy for you and proud of you. What great news!

Victoria

Begin forwarded message:

From: UCLA Emmett Institute <<u>envirolaw@law.ucla.edu</u>>
Subject: Professor Ann Carlson Joins Biden Administration

Date: January 27, 2021 at 3:08:20 PM PST

To: <vlsork@ucla.edu>

Reply-To: UCLA Emmett Institute <envirolaw@law.ucla.edu>

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From: Buzz Thompson

Sent: Wednesday, January 27, 2021 4:48 PM PST

To: Carlson, Ann <carlson@law.ucla.edu>

Subject: Fwd: Professor Ann Carlson Joins Biden Administration

I had not heard about your appointment before getting the UCLA announcement. That's awesome news. Congratulations!

Buzz

Barton H. "Buzz" Thompson, Jr.
Robert E. Paradise Professor of Natural Resources Law
Stanford Law School
Senior Fellow & Founding Perry L. McCarty Director
Stanford Woods Institute for the Environment

buzzt@stanford.edu office: (650) 723-2518

https://law.stanford.edu/directory/barton-thompson/https://www.omm.com/professionals/thompson-barton/

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From: UCLA Emmett Institute < envirolaw@law.ucla.edu>

Date: Wed, Jan 27, 2021 at 3:08 PM

Subject: Professor Ann Carlson Joins Biden Administration

To: <buzzt@stanford.edu>

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From: Carlson, Ann

Sent: Thursday, December 10, 2020 1:24 PM PST To: Melling, Daniel <melling@law.ucla.edu>

CC: Hecht, Sean <hecht@law.ucla.edu>; Horowitz, Cara <HOROWITZ@law.ucla.edu>; Parson, Edward

<PARSON@law.ucla.edu>

Subject: Fwd: The Biden Administration: Climate and the Environment at a Critical Juncture

On this panel next week and would be great to get some extra PR for it

Thanks!

Begin forwarded message:

From: Environmental Law Institute <law@eli.org> Date: December 9, 2020 at 2:06:57 PM PST To: "Carlson, Ann" <carlson@law.ucla.edu>

Subject: The Biden Administration: Climate and the Environment at a Critical Juncture

Reply-To: Environmental Law Institute <law@eli.org>

The Biden Administration:

Climate and the Environment at a Critical Juncture	
December 17, 2020, 12:00 pm - 1:30 pm ET	

JOIN US

Webinar only

REGISTRATION

This event is open to the public but you must register by December 15th (there is a \$50 fee for those who are not members of ELI; Press/Full-Time Students, \$0).

An ELI Breaking News Webinar

The results of the 2020 Presidential Election are in and Joe Biden will become the 46th President of the United States. Biden's transition team has introduced sweeping environmental proposals that include rejoining the Paris Agreement, setting a goal of net-zero greenhouse gas (GHG) emissions by 2050, prioritizing environmental justice as a key consideration in rulemaking and new legislation, regulating methane emissions from the oil and natural gas industry, implementing higher greenhouse gas standards for vehicles, halting permits for extracting fossil fuels on federal lands, and investing \$2 trillion in clean energy and infrastructure.

Yet, in pursuing these goals, the new administration is likely to face numerous obstacles. The incoming administration is proposing new regulatory action to address climate and environmental issues, but they are also inheriting the challenge of undoing the previous administration's deregulatory agenda. Additionally, regardless of which major party controls the Senate, bringing ideas requiring significant legislation to fruition will require obtaining bipartisan support in Congress, an increasingly challenging feat in a hyper-partisan era. Finally, the administration will need to find a balance between opponents and proponents of hydraulic fracturing as natural gas is viewed by some as a prized bridge fuel while society transitions to renewables, but by others as a potential threat to securing a low carbon economy and harmful to local environments.

What are the most immediate environmental priorities of the incoming Biden administration? What opportunities and obstacles could the Biden administration likely encounter in pursuing these policy goals? How will a divided Congress affect the new administration's plans on climate, the environment, and environmental justice? How will the Biden administration transition from the current deregulatory environment? Join ELI and expert panelists to explore this new chapter of environmental governance in the United States.

Panelists:

- James M. McElfish, Director of Sustainable Use of Land Program and Senior Attorney, Environmental Law Institute, Moderator
- Ann E. Carlson, Shirley Shapiro Professor of Environmental Law Faculty, and Co-Director, Emmett Institute on Climate Change and the Environment, UCLA School of Law (invited)
- John Cruden, Principal, Beveridge & Diamond PC, formerly Assistant Attorney General, Environment and Natural Resources Division, Department of Justice
- Alexandra Dapolito Dunn, Assistant Administrator, Office of Chemical Safety and Pollution Prevention, Environmental Protection Agency (EPA) (invited)
- Monique Harden, Assistant Director of Law and Public Policy, and Community Engagement Program Manager, Deep South Center for Environmental Justice (invited)

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From: Eric M. V. Hoek <emvhoek@ucla.edu> Sent: Friday, January 22, 2021 10:03 AM PST To: Carlson, Ann <carlson@law.ucla.edu>

Subject: Fwd: UCLA's Ann Carlson tapped to be General Counsel at DoT's National Hwy Traffic Safety Administration Attachment(s): "PEOPLE_ Biden taps climate experts for DOT, eyes clean car rules -- Thursday, January 21, 2021 --

www.eenews.net.pdf"

Ann, this is very exciting news...congratulations!

Eric

Begin forwarded message:

From: "Muller, Duane" < dmuller@conet.ucla.edu >

Subject: RE: UCLA's Ann Carlson tapped to be General Counsel at DoT's National Hwy Traffic Safety

Administration

Date: January 22, 2021 at 8:08:03 AM PST

To: "Poulakidas, Jennifer" <ipoulakidas@support.ucla.edu>, "Dominguez, Ashley"

<a href="mailto:adominguez@support.ucla.edu">, "Hoek, Eric" <e href="mailto:adous">e href="mailto:adous">adominguez@support.ucla.edu>, "Hoek, Eric" <e href="mailto:adous">e href="mailto:adous">

<crauser@conet.ucla.edu>

More from E&E news...

From: Muller, Duane

Sent: Friday, January 22, 2021 8:02 AM

To: Poulakidas, Jennifer <ipoulakidas@support.ucla.edu>; Dominguez, Ashley <adominguez@support.ucla.edu>; Hoek,

Eric <emvhoek@ucla.edu>; Rauser, Casandra <crauser@conet.ucla.edu>

Subject: UCLA's Ann Carlson tapped to be General Counsel at DoT's National Hwy Traffic Safety Administration

DOT GOES GREEN: The Biden administration has named several prominent climate experts to senior positions at the Transportation Department, in the latest sign he intends to follow through with his campaign promise to tackle climate change across his administration, Pro's Sam Mintz, Zack Colman and Stephanie Beasley report.

Thursday's elevation of three climate hawks comes as the administration confronts the vexing question of how to fundamentally transform transportation, the highest-emitting sector of the U.S. economy. The appointees include Steve Cliff, deputy executive director at the California Air Resources Board, who will serve as deputy administrator at NHTSA and Ann Carlson, a highly regarded climate expert and UCLA environmental law professor, to be NHTSA's general counsel. Annie Petsonk, a lawyer at the Environmental Defense Fund, has been tapped to be principal deputy assistant secretary for aviation and international affairs.

Source: https://www.politico.com/newsletters/morning-energy/2021/01/22/bidens-first-steps-on-drilling-792916

Duane Muller

Assistant Director, Government Liaison for Environment & Sustainability UCLA Sustainable LA Grand Challenge

Mobile: 202-494-1739

https://grandchallenges.ucla.edu/sustainable-la/

PEOPLE

Biden taps climate experts for DOT, eyes clean car rules

Maxine Joselow, E&E News reporter Published: Thursday, January 21, 2021

President Biden today named two California-based climate experts to top roles at the Department of Transportation.

The appointments signal Biden's commitment to look to the Golden State to establish aggressive nationwide clean car standards. The California Air Resources Board has set greenhouse gas standards for automobiles that are more stringent than federal rules.

Steve Cliff, the deputy executive officer at CARB, was <u>named</u> deputy administrator of the National Highway Traffic Safety Administration.

NHTSA (pronounced "NIT-suh") is the division of DOT tasked with setting fuel economy standards for passenger cars and light trucks.

Cliff came to CARB in 2008, leading the development of the state's cap-and-trade program for greenhouse gases.

He left the board from 2014 to 2016 for a stint as the first director of sustainability at the California Department of Transportation under then-Gov. Jerry Brown (D).

Cliff returned to CARB as senior adviser to then-Chair Mary Nichols and later as deputy executive officer, according to a bio on the board's website.

Asked for comment, CARB Executive Officer Richard Corey said in an email to E&E News: "Dr. Cliff has played an integral role in leading California's actions to clean the air and protect public health. He is uniquely suited to work with states, industry and communities to expedite the move to a safe, efficient, and pollution-free transportation system. We look forward to renewing our partnership with the federal government."

In addition to Cliff, Biden today selected UCLA School of Law professor Ann Carlson as NHTSA chief counsel.

At UCLA, Carlson served as faculty co-director of the Emmett Institute on Climate Change and the Environment, where she published numerous articles on climate and the law.

Former President Trump directed EPA and NHTSA to roll back the clean car standards established by former President Obama.

Biden has made reinstating strong clean car standards a top priority as part of his broader climate agenda.

Soon after being inaugurated yesterday, Biden signed an <u>executive order</u> on the environment that called for "establishing ambitious, job-creating fuel economy standards" in consultation with "labor unions, states and industry."

In an interview with E&E News last month, Carlson said the Biden administration could show international leadership on climate change by targeting 100% electric vehicle sales and phasing out sales of new gasoline-powered cars.



Steve Cliff. California Air Resources

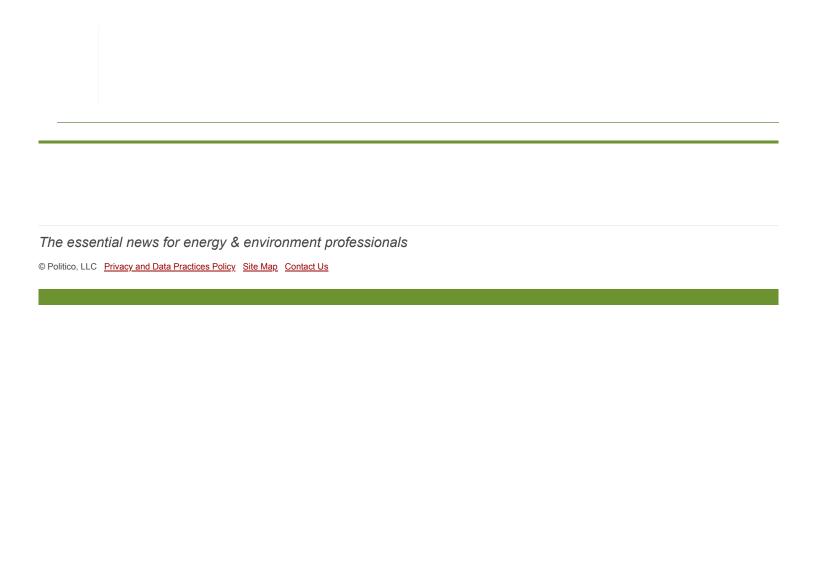


Ann Carlson. UCLA School of Law

"It would be symbolically really important on the climate front for the world's second-biggest emitter — and biggest emitter historically — to be phasing out the internal combustion engine," she said at the time (*Climatewire*, Dec. 7, 2020).

Carlson didn't respond to a request for comment in time for publication.

Twitter: @maxinejoselow | Email: mjoselow@eenews.net



From: Marks, Victoria <vmarks@arts.ucla.edu> Sent: Friday, January 29, 2021 8:19 PM PST To: Carlson, Ann <carlson@law.ucla.edu>

Subject: Fwd: Weekly Highlights from UCLA Newsroom

Oh, Ann, so thrilled and thankful that your voice will help lead the way forward. Enjoy and rest when you can!!

Love, vic

Associate Dean, Academic Affairs
UCLA's School of the Arts and Architecture
Professor, Department of World Arts and Cultures/Dance
Chair, Disability Studies minor
victoriamarksprojects.com

The Department of World Arts and Cultures/Dance at UCLA acknowledges our presence on the traditional, ancestral and unceded territory of the Gabrielino/Tongva peoples.

Begin forwarded message:

From: UCLA Newsroom <<u>media@stratcomm.ucla.edu</u>> Subject: Weekly Highlights from UCLA Newsroom

Date: January 29, 2021 at 3:35:32 PM PST

To: <<u>vmarks@arts.ucla.edu</u>>

UCLA Newsroom			

WEEKLY HIGHLIGHTS

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An aerial view of UCLA's Dickson Plaza, including Royce Hall, Powell Library, and surrounding buildings			

UCLA shatters applications record

The campus received the largest number of applications in its history for fall 2021 admission, with steep increases in applicants from underrepresented backgrounds.

UCLA leaders offer facts on COVID-19 vaccine safety and effectiveness at town hall

Scientists jump-start two people's brains after coma

UCLA to establish archive on policing and mass incarceration in L.A.

Nearly half of California adolescents report mental health difficulties

Six UCLA arts projects receive Getty Foundation grants

MORE ON UCLA NEWSROOM \rightarrow

FACULTY AND STAFF NEWS

UCLA School of Law

Professor Ann Carlson joins Biden administration

Carlson, an environmental law professor and co-director of the Emmett Institute on Climate Change and the Environment, will serve as chief counsel of the National Highway Traffic Safety Administration.

In memoriam: Reginald Brown, 68, writer and director who taught film production

COVID-19 information for the campus community

UCLA is closely monitoring the outbreak of COVID-19, and departments are working closely with local, state and national officials.

MORE FACULTY AND STAFF NEWS ightarrow

UCLA IN THE NEWS

UCLA wins \$3.65 million grant for archive on mass incarceration | Los Angeles Times

Objections to Poland's planned Museum of the Warsaw Ghetto | Forward

Botched rollout, baseless fears on California's vaccine effort | Sacramento Bee

If you squeeze the coronavirus, does it shatter? | New York Times

Trump agreements sought to tie Biden's hands on immigration | Associated Press

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From: Dan McGraw <dan@carbon-pulse.com> Sent: Tuesday, September 22, 2020 10:03 AM PDT

To: Carlson, Ann <carlson@law.ucla.edu> **Subject:** Ginsburg/SCOTUS question

Hey Ann.

I sent a similar email to Danny Cullenward, but I figured your UCLA position and work with IEMAC might give you a different view on these questions.

In the wake of last week's depressing news (Ginsburg's death), I figure I should ask about any potential ramifications from a new Supreme Court justice. I realize that there is quite a bit of speculation involved in this, mainly the Senate confirms a new justice this year and Trump wins re-election in November. However, these seemed like the three biggest California/RGGI-related issues.

- Mass v. EPA Could a Trump administration and conservative majority SCOTUS relitigate this case? If this happens, what are the potential long-term impacts?
 - I am guessing the biggest concern is a future court saying the Clean Air Act does not give the EPA the authority to regulate GHG emissions, potentially limiting a future Democrat president from utilizing the CCA to impose federal climate regulations. Obviously, a Democrat trifecta would allow for a legislative option.
- Fuel economy waiver -- Does a conservative majority increase the chances that a court could side with the Trump administration?
 - In the long term, I realize that a second term for Trump would likely doom the chances of an extension, but I imagine there is more uncertainty about the current waiver.
- ETS linkage lawsuit Because of the novel arguments here, does a conservative majority in the Supreme Court raise any further concern about the linkage viewed as a violation under the treaty/compact clauses or Foreign Affairs Doctrine?

It probably goes without saying that a Biden administration wouldn't advance the latter two.

Any other issues that you foresee?

Dan McGraw Head of Americas Carbon Pulse 817-253-1689 From: Horowitz, Cara < HOROWITZ@law.ucla.edu> Sent: Tuesday, January 19, 2021 9:17 AM PST

To: McCalley, James D [E CPE] <jdm@iastate.edu>; Ben Hobbs <bhobbs@jhu.edu>; brendan@consultkirby.com

<bre><bre>dan@consultkirby.com>; Kenneth Lutz <lutzk@udel.edu>

CC: Corbett, Charles <corbett@law.ucla.edu>; Boyd, William <BOYD@law.ucla.edu>; Carlson, Ann

<carlson@law.ucla.edu>

Subject: Good news in ACE/CPP litigation

Attachment(s): "american-lung-assn-v.-epa-dc-cir.-no.-19-1140-per-curiam-decision.pdf"

Dear grid expert crew: Good morning! As you may have heard, the DC Circuit issued its decision in the ACE/CPP case this morning, and it's good news. The court strikes down the ACE Rule and, importantly, holds that the EPA's highly constrained interpretation of Section 111(d) is incorrect—and that nothing in the statute prevents the agency from considering generation shifting when assessing the best system of emission reduction for these sources.

There is no doubt that our brief made a difference both in shaping the court's understanding of how the grid works and in informing its legal analysis. We're cited throughout the brief, for example on pages 21, 30, 41, and 89, including to support the court's view of the importance of generation shifting. The decision is attached.

I'm thrilled that all of your work through many years has helped the court reach the right decision here. The timing is terrific, vacating this rule just as the Biden Administration enters the scene and giving the new President an easier path to strengthening regulation of these sources.

I'm still absorbing the full decision and may have more to say once I do, but for now, congratulations to you all, and many thanks for enlightening the court. I hope you and your loved ones are all doing well.

All my best, Cara

Cara Horowitz
Andrew Sabin Family Foundation Co-Executive Director
Emmett Institute on Climate Change and the Environment
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United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

Argued October 8, 2020

Decided January 19, 2021

No. 19-1140

AMERICAN LUNG ASSOCIATION AND AMERICAN PUBLIC HEALTH ASSOCIATION, **PETITIONERS**

V.

ENVIRONMENTAL PROTECTION AGENCY AND ANDREW WHEELER, ADMINISTRATOR, RESPONDENTS

> AEP GENERATING COMPANY, ET AL., **INTERVENORS**

Consolidated with 19-1165, 19-1166, 19-1173, 19-1175, 19-1176, 19-1177, 19-1179, 19-1185, 19-1186, 19-1187, 19-1188

> On Petitions for Review of a Final Action of the Environmental Protection Agency

Steven C. Wu, Deputy Solicitor General, Office of the Attorney General for the State of New York, argued the cause for the State and Municipal petitioners and intervenor Nevada. 2

Document #1880546

With him on the briefs were *Letitia James*, Attorney General, Barbara D. Underwood, Solicitor General, Matthew W. Grieco, Assistant Solicitor General, Michael J. Myers, Senior Counsel, Andrew G. Frank, Assistant Attorney General of Counsel, Xavier Becerra, Attorney General, Office of the Attorney General for the State of California, Robert W. Byrne, Senior Assistant Attorney General, David A. Zonana, Supervising Deputy Attorney General, Jonathan A. Wiener, M. Elaine Meckenstock, Timothy E. Sullivan, Elizabeth B. Rumsey, and Theodore A.B. McCombs, Deputy Attorneys General, William Tong, Attorney General, Office of the Attorney General for the State of Connecticut, Matthew I. Levine and Scott N. Koschwitz, Assistant Attorneys General, Kathleen Jennings, Attorney General, Office of the Attorney General for the State of Delaware, Valerie S. Edge, Deputy Attorney General, Philip J. Weiser, Attorney General, Office of the Attorney General for the State of Colorado, Eric R. Olson, Solicitor General, Robyn L. Wille, Senior Assistant Attorney General, Clare E. Connors, Attorney General, Office of the Attorney General for the State of Hawaii, William F. Cooper, Deputy Attorney General, Aaron M. Frey, Attorney General, Office of the Attorney General for the State of Maine, Laura E. Jensen, Assistant Attorney General, Brian E. Frosh, Attorney General, Office of the Attorney General for the State of Maryland, John B. Howard, Jr., Joshua M. Segal, and Steven J. Goldstein, Special Assistant Attorneys General, Maura Healey, Attorney General, Office of the Attorney General for the Commonwealth of Massachusetts, Melissa A. Hoffer and Christophe Courchesne, Assistant Attorneys General, Megan M. Herzog and David S. Frankel, Special Assistant Attorneys General, Dana Nessel, Attorney General, Office of the Attorney General for the State of Michigan, Gillian E. Wener, Assistant Attorney General, Keith Ellison, Attorney General, Office of the Attorney General for the State of Minnesota, Peter N. Surdo, Special Assistant Attorney

Page 3 of 185

3

Document #1880546

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4

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Filed: 01/19/2021

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Steph Tai was on the brief for amici curiae Climate Scientists in support of petitioners.

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- Keri R. Steffes was on the brief for amici curiae Faith Organizations in support of petitioners.
- Shaun A. Goho was on the brief for amici curiae Maximilian Auffhammer, et al. in support of petitioners.
- Ethan G. Shenkman and Stephen K. Wirth were on the brief for amici curiae Patagonia Works and Columbia Sportswear Company in support of petitioners.

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Filed: 01/19/2021

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Page 8 of 185

8

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14

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Wayne Stenehjem, Attorney General, Office of the Attorney General for the State of North Dakota, and Paul M. Seby, Special Assistant Attorney General, were on the brief for intervenor State of North Dakota in support of the respondents. Jerry Stouck entered an appearance.

Thomas J. Ward, Megan H. Berge, and Jared R. Wigginton were on the brief for amicus curiae National Association of Builders in support of respondents.

Before: MILLETT, PILLARD, and WALKER, Circuit Judges.

Opinion for the Court filed PER CURIAM.

Opinion concurring in part, concurring in the judgment in part, and dissenting in part filed by *Circuit Judge* WALKER.

15

TABLE OF CONTENTS

I. Background	17
A. The Clean Air Act	17
B. Electricity and Climate Change	21
1. Electricity	
2. Climate Change and the Federal Government	24
C. The Clean Power Plan	29
D. The ACE Rule	32
1. Repeal of the Clean Power Plan	32
2. Best System of Emission Reduction	
3. Degree of Emission Limitation Achievable	
4. Implementing Regulations	38
E. Petitions for Review	38
F. Jurisdiction and Standard of Review	39
II. Section 7411	40
A. Statutory Context	40
1. Text	46
2. Statutory History, Structure, and Purpose	59
3. Compliance Measures	71
B. The Major Questions Doctrine	74
1. The EPA's Regulatory Mandate	75
2. Best System of Emission Reduction	80
C. Federalism	92
III. The EPA's Authority to Regulate Carbon Dioxide	
Emissions Under Section 7411	
A. The Coal Petitioners' Challenges	98
1. Endangerment Finding	99
2. Section 7411 and Section 7412's	
Parallel Operation	
B. The Robinson Petitioners' Challenges	
IV. Amendments to the Implementing Regulations	
V. Vacatur and Remand	146
VI. Conclusion	147

As the Supreme Court recognized nearly fourteen years ago, climate change has been called "the most pressing environmental challenge of our time." Massachusetts v. EPA, 549 U.S. 497, 505 (2007) (formatting modified). thereafter, the United States government determined that greenhouse gas emissions are polluting our atmosphere and causing significant and harmful effects on the human environment. Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act (2009 Endangerment Finding), 74 Fed. Reg. 66,496, 66,497-66,499 (Dec. 15, 2009). And both Republican and Democratic administrations have agreed: Power plants burning fossil fuels like coal "are far and away" the largest stationary source of greenhouse gases and, indeed, their role in greenhouse gas emissions "dwarf[s] other categories[.]" EPA Br. 169; see also Standards of Performance for Greenhouse Gas Emissions from New, Modified, and Reconstructed Stationary Sources: Electric Utility Generating Units (New Source Rule), 80 Fed. Reg. 64,510, 64,522 (Oct. 23, 2015) (fossil-fuel-fired power plants are "by far the largest emitters" of greenhouse gases).

The question in this case is whether the Environmental Protection Agency (EPA) acted lawfully in adopting the 2019 Affordable Clean Energy Rule (ACE Rule), 84 Fed. Reg. 32,520 (July 8, 2019), as a means of regulating power plants' emissions of greenhouse gases. It did not. Although the EPA has the legal authority to adopt rules regulating those emissions, the central operative terms of the ACE Rule and the repeal of its predecessor rule, the Clean Power Plan, 80 Fed. Reg. 64,662 (Oct. 23, 2015), hinged on a fundamental misconstruction of Section 7411(d) of the Clean Air Act. In addition, the ACE Rule's amendment of the regulatory framework to slow the process for reduction of emissions is arbitrary and capricious. For those reasons, the ACE Rule is

vacated, and the record is remanded to the EPA for further proceedings consistent with this opinion.

I. BACKGROUND

A. THE CLEAN AIR ACT

In 1963, Congress passed the Clean Air Act, 42 U.S.C. § 7401 *et seq.*, "to protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare and the productive capacity of its population[,]" *id.* § 7401(b)(1). Animating the Act was Congress' finding that "growth in the amount and complexity of air pollution brought about by urbanization, industrial development, and the increasing use of motor vehicles[] has resulted in mounting dangers to the public health and welfare[.]" *Id.* § 7401(a)(2).

Section 111 of the Clean Air Act, which was added in 1970 and codified at 42 U.S.C. § 7411, directs the EPA to regulate any new and existing stationary sources of air pollutants that "cause[], or contribute[] significantly to, air pollution" and that "may reasonably be anticipated to endanger public health or welfare." 42 U.S.C. § 7411(b)(1)(A); see id. § 7411(d), (f) (providing that the EPA Administrator "shall" regulate existing and new sources of air pollution). A "stationary source" is a source of air pollution that cannot move, such as a power plant. See id. § 7411(a)(3) (defining "stationary source" as "any building, structure, facility, or installation which emits or may emit any air pollutant[]"). An example of a common non-stationary source of air pollution is a gas-powered motor vehicle. See Utility Air Regulatory Group v. EPA (UARG), 573 U.S. 302, 308 (2014).

Within 90 days of the enactment of Section 7411, the EPA Administrator was to promulgate a list of stationary source categories that "cause[], or contribute[] significantly to, air

pollution[.]" 42 U.S.C. § 7411(b)(1)(A). In 1971, the Administrator included fossil-fuel-fired steam-generating power plants on that list. Air Pollution Prevention and Control: List of Categories of Stationary Sources, 36 Fed. Reg. 5,931 (March 31, 1971); *see also* New Source Rule, 80 Fed. Reg. at 64,527–64,528. Today's power plants fall in that same category. ACE Rule, 84 Fed. Reg. at 32,557 n.250.

Once a stationary source category is listed, the Administrator must promulgate federal "standards of performance" for all newly constructed sources in the category. 42 U.S.C. § 7411(b)(1)(B). The Act 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 nonair quality health and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated.

Id. § 7411(a)(1).

Once such a new source regulation is promulgated, the Administrator also must issue emission guidelines for already-existing stationary sources within that same source category. 42 U.S.C. § 7411(d)(1)(A)(ii); see also American Elec. Power Co., Inc. v. Connecticut (AEP), 564 U.S. 410, 424 (2011).

While the new source standards are promulgated and enforced entirely by the EPA, the Clean Air Act prescribes a process of cooperative federalism for the regulation of existing sources. Under that structure, the statute delineates three distinct regulatory steps involving three sets of actors—the

EPA, the States, and regulated industry—each of which has a flexible role in choosing how to comply. See 42 U.S.C. § 7411(a)(1), (d). This allows each State to work with the stationary sources within its jurisdiction to devise a plan for meeting the federally promulgated quantitative guideline for emissions. See id. § 7411(d).

The process starts with the EPA first applying its expertise to determine "the degree of emission limitation achievable through the application of the best system of emission reduction" that "has been adequately demonstrated." 42 U.S.C. § 7411(a)(1); see 40 C.F.R. § 60.22a. That system must "tak[e] into account the cost of achieving such reduction and any nonair quality health and environmental impact and energy requirements[.]" 42 U.S.C. § 7411(a)(1). Once the Administrator identifies the best system of emission reduction, she then determines the amount of emission reduction that existing sources should be able to achieve based on the application of that system and adopts corresponding emission guidelines. Id.; see also, e.g., ACE Rule, 84 Fed. Reg. at 32,523; Clean Power Plan, 80 Fed. Reg. at 64,719.

Each State then submits to the EPA a plan that (i) establishes standards of performance for that State's existing stationary sources' air pollutants (excepting pollutants already subject to separate federal emissions standards), and (ii) "provides for the implementation and enforcement of such standards of performance[]" by the State. 42 U.S.C. § 7411(d)(1); see 40 C.F.R. § 60.23a. The standards of performance must "reflect[]" the emission targets that the EPA has determined are achievable. 42 U.S.C. § 7411(a)(1). In this context, a state standard need not adopt the best system identified by the EPA to "reflect[]" it. *Id.*; see 40 C.F.R. § 60.24a(c). Instead, the Clean Air Act affords States significant flexibility in designing and enforcing standards that

employ other approaches so long as they meet the emission guidelines prescribed by the Agency.

If a State fails to submit a satisfactory plan, the EPA may prescribe a plan for that State. 42 U.S.C. § 7411(d)(2)(A); see 40 C.F.R. § 60.27a(c)-(e). Similarly, if the State submits a plan but fails to enforce it, the EPA itself may enforce the plan's terms. *Id.* § 7411(d)(2)(B).

The third and final set of relevant actors are the regulated entities themselves, to which, under the Act, the States may afford leeway in crafting compliance measures. *See* Clean Power Plan, 80 Fed. Reg. at 64,666; ACE Rule, 84 Fed. Reg. at 32,555.

The EPA has exercised its authority under Section 7411 over the years to set emission limitations for different types of air pollution from various categories of existing sources. *See* 42 Fed. Reg. 12,022 (March 1, 1977) (fluorides from phosphate fertilizer plants); 42 Fed. Reg. 55,796 (Oct. 18, 1977) (acid mist from sulfuric acid plants); 44 Fed. Reg. 29,828 (May 22, 1979) (total reduced sulfur from kraft pulp plants); 45 Fed. Reg. 26,294 (April 17, 1980) (fluorides from primary aluminum plants); 60 Fed. Reg. 65,387 (Dec. 19, 1995) (various pollutants from municipal waste combustors); 61 Fed. Reg. 9905 (March 12, 1996) (landfill gases from municipal solid waste landfills); 70 Fed. Reg. 28,606 (May 18, 2005) (mercury from coal-fired power plants).

The Clean Air Act is a comprehensive statute that includes a variety of regulatory programs for tackling air pollution in addition to Section 7411. Regulated parties may be subject to one or more programs. As relevant here, the National Ambient Air Quality Standards (NAAQS) provisions, 42 U.S.C. §§ 7408–7410, govern the levels of specified air pollutants that may be present in the atmosphere to protect air quality and the

public health and welfare. The Hazardous Air Pollutants program, *id.* § 7412, directs the EPA to establish strict emission limitations for the most dangerous air pollutants emitted from major sources. Section 7411's cooperative federalism program for existing sources operates as a gap-filler, requiring the EPA to regulate harmful emissions not controlled under those other two programs. *Id.* § 7411(d)(1)(i).

B. ELECTRICITY AND CLIMATE CHANGE

1. Electricity

Electricity powers the world. Chances are that you are reading this opinion on a device that consumes electricity. Yet two distinct characteristics of electricity make its production and delivery in the massive quantities demanded by consumers an exceptionally complex process. First, unlike most products, electricity is a perfectly fungible commodity. Grid Experts Amicus Br. 6. A watt of electricity is a watt of electricity, no matter who makes it, how they make it, or where it is purchased. Second, at least as of now, this highly demanded product cannot be effectively stored at scale after it is created. Paul L. Joskow, *Creating a Smarter U.S. Electricity Grid*, 26 J. ECON. PERSP. 29, 31–33 (2012). Instead, electricity must

¹ Change in storage capacity is picking up speed. See generally Richard L. Revesz & Burcin Unel, Managing the Future of the Electricity Grid: Energy Storage and Greenhouse Gas Emissions, 42 HARV. ENV'T L. REV. 139, 140–141 (2018) (describing ongoing declines in cost of storage); LAZARD, LAZARD'S LEVELIZED COST OF STORAGE ANALYSIS—VERSION 6.0 (2020) (noting "storage costs have declined across most use cases and technologies, particularly for shorter-duration applications, in part driven by evolving preferences in the industry"). Nevertheless, the grid's production capacity still far exceeds its present storage capacity. Univ. of Mich.

constantly be produced, and is almost instantaneously consumed. *See* Clean Power Plan, 80 Fed. Reg. at 64,677, 64,692; Grid Experts Amicus Br. 8.

Those unique attributes led to the creation of the American electrical grid.² The grid has been called the "supreme engineering achievement of the 20th century," MASS. INST. OF TECH., THE FUTURE OF THE ELECTRIC GRID 1 (2011) (formatting modified), and it is an exceptionally complex, interconnected system. "[A]ny electricity that enters the grid immediately becomes a part of a vast pool of energy that is constantly moving[.]" New York v. FERC, 535 U.S. 1, 7 (2002). That means that units of electricity as delivered to the user are identical, no matter their source. On the grid, there is coal-generated electricity or renewable-generated electricity; there is just electricity. See Clean Power Plan, 80 Fed. Reg. at 64,692; Grid Experts Amicus Br. 7–8. Also, because storing electricity for any length of time remains technically challenging and often costly, the components of the grid must operate as a perfectly calibrated machine to deliver the amount of electricity that all consumers across the United States need at the moment they need it. Grid Experts Amicus

Ctr. for Sustainable Sys., U.S. GRID ENERGY STORAGE (Sept. 2020), http://css.umich.edu/sites/default/files/US%20Grid%20Energy%20 Storage_CSS15-17_e2020.pdf (last visited Jan. 11, 2021) (United States has 1,100 gigawatts of installed generation capacity and just 23 gigawatts of storage capacity).

² Technically, "grids." There are three regional grids in the contiguous United States: Eastern, Western, and Texas. Grid Experts Amicus Br. 9; *see also* United States Dep't of Energy, *North American Electric Reliability Corporation Interconnections*, https://www.energy.gov/oe/downloads/north-american-electric-reliability-corporation-interconnections (last visited Jan. 11, 2021).

Br. 8, 10–11; see also 80 Fed. Reg. at 64,677. "If [someone] in Atlanta on the Georgia [leg of the] system turns on a light, every generator on Florida's system almost instantly is caused to produce some quantity of additional electric energy which serves to maintain the balance in the interconnected system[.]" Federal Power Comm'n v. Florida Power & Light Co., 404 U.S. 453, 460 (1972) (citation omitted). "Like orchestra conductors signaling entrances and cut-offs, grid operators use automated systems to signal particular generators to dispatch more or less power to the grid as needed over the course of the day, thus ensuring that power pooled on the grid rises and falls to meet changing demand." Grid Experts Amicus Br. 11.

Most generators of electricity on the American grid create power by burning fossil fuels like coal, oil, and natural gas. See United States Energy Information Administration (EIA), Frequently Asked Questions: What Is U.S. Electricity Energy Generation bvSource? (Nov. 2, 2020), https://www.eia.gov/tools/faqs/faq.php?id=427&t=3 (last visited Jan. 11, 2021) (fossil fuels represented 62.6 percent of electricity generation in 2019). Some of those power plants take a fossil fuel (usually coal) and burn it in a water boiler to make steam. Other power plants take a different fossil fuel (usually natural gas), mix it with highly compressed air, and ignite it to release a combination of super-hot gases. Either way, that steam or superheated mixture is piped into giant turbines that catch the gases and rotate at extreme speeds. Those turbines turn generators, which spin magnets within wire coils to produce electricity. EIA, Electricity Explained (Nov. 2020), https://www.eia.gov/energyexplained/ electricity/how-electricity-is-generated.php (last visited Jan 11, 2021).

2. Climate Change and the Federal Government

Electrical power has become virtually as indispensable to modern life as air itself. But electricity generation has come into conflict with air quality in ways that threaten human health and well-being when power generated by burning fossil fuels emits carbon dioxide and other polluting greenhouse gases into the air.

Since the late 1970s, the federal government has focused "serious attention" on the effects of carbon dioxide pollution on the climate. Massachusetts v. EPA, 549 U.S. at 507. In 1978, Congress adopted the National Climate Program Act, Pub. L. No. 95-367, 92 Stat. 601, which directed the President to study and devise an appropriate response to "man-induced climate processes and their implications[,]" id. § 3; see Massachusetts v. EPA, 549 U.S. at 507-508. In response, the National Academy of Sciences' National Research Council reported "no reason to doubt that climate changes will result" if "carbon dioxide continues to increase," and "[a] wait-andsee policy may mean waiting until it is too late." Massachusetts v. EPA, 549 U.S. at 508 (quoting CLIMATE RESEARCH BOARD, CARBON DIOXIDE & CLIMATE: A SCIENTIFIC ASSESSMENT, at viii (1979)).

In 1987, Congress passed the Global Climate Protection Act, which found that "manmade pollution[,]" including "the release of carbon dioxide, * * * may be producing a long-term and substantial increase in the average temperature on Earth[.]" Pub. L. No. 100-204, Title XI, §1102(1), 101 Stat. 1407, 1408 (codified at 15 U.S.C. § 2901 note). The Climate Protection Act directed the EPA to formulate a "coordinated national policy on global climate change." *Id.* § 1103(b), 101 Stat. at 1408; *see Massachusetts v. EPA*, 549 U.S. at 508.

It was not until the Supreme Court's 2007 decision in Massachusetts v. EPA, however, that the Court confirmed that carbon dioxide and other greenhouse gas emissions constituted "air pollutant[s]" covered by the Clean Air Act. See 549 U.S. at 528. The Supreme Court explained that the Clean Air Act's "sweeping definition of 'air pollutant' includes 'any air pollution agent or combination of such agents, including any physical, chemical ... substance or matter which is emitted into or otherwise enters the ambient air[.]" Id. at 528-529 (quoting 42 U.S.C. § 7602(g)). The Act, the Supreme Court held, "is unambiguous" in that regard. Id. at 529. "On its face, the definition embraces all airborne compounds of whatever stripe, and underscores that intent through the repeated use of the word 'any." Id. And "[c]arbon dioxide" and other common greenhouse gases are "without a doubt" chemical substances that are "emitted into ... the ambient air." Id. (quoting 42 U.S.C. § 7602(g)).

Given that statutory command, the Supreme Court ruled that the EPA "can avoid taking further action" to regulate such pollution "only if it determines that greenhouse gases do not contribute to climate change" or offers some reasonable explanation for not resolving that question. *Massachusetts v. EPA*, 549 U.S. at 533.

Taking up the mantle, the EPA in 2009 found "compelling[]" evidence that emissions of greenhouse gases are polluting the atmosphere and are endangering human health and welfare by causing significant damage to the environment. 2009 Endangerment Finding, 74 Fed. Reg. at 66,497; see id. ("[T]he Administrator finds that greenhouse gases in the atmosphere may reasonably be anticipated both to endanger public health and to endanger public welfare. * * * The Administrator has determined that the body of scientific evidence compellingly supports this finding."); id. at 66,497—

66,499. The EPA concluded that "compelling' evidence supported the 'attribution of observed climate change to anthropogenic' [that is, human-influenced] emissions of greenhouse gases[.]" *AEP*, 564 U.S. at 417 (quoting 74 Fed. Reg. at 66,518). The "[c]onsequent dangers of greenhouse gas emissions," the EPA determined, include

increases in heat-related deaths; coastal inundation and erosion caused by melting icecaps and rising sea levels; more frequent and intense hurricanes, floods, and other "extreme weather events" that cause death and destroy infrastructure; drought due to reductions in mountain snowpack and shifting precipitation patterns; destruction of ecosystems supporting animals and plants; and potentially "significant disruptions" of food production.

Id. (quoting 74 Fed. Reg. at 66,524–66,535).

Not long thereafter, the Supreme Court ruled that the significant greenhouse gas pollution caused by fossil-fuel-fired power plants is subject to regulation under Section 7411 of the Clean Air Act. *AEP*, 564 U.S. at 424 (holding that Section 7411 "speaks directly to emissions of carbon dioxide from [fossil-fuel-fired] plants[]") (internal quotation marks omitted). The Court concluded that the EPA's expertise made it "best suited to serve as primary regulator of greenhouse gas emissions." *Id.* at 428.

In 2015, with the 2009 carbon dioxide endangerment finding continuing in effect, the EPA reaffirmed that greenhouse gases "endanger public health, now and in the future." New Source Rule, 80 Fed. Reg. at 64,518. The EPA explained that, "[b]y raising average temperatures, climate change increases the likelihood of heat waves, which are associated with increased deaths and illnesses[,]" particularly

among "[c]hildren, the elderly, and the poor[.]" *Id.* at 64,517. In addition, the EPA found that "[c]limate change impacts touch nearly every aspect of public welfare." Id. Among the "multiple threats caused by human emissions of [greenhouse gases]," the EPA pointed to climate changes that "are expected to place large areas of the country at serious risk of reduced water supplies, increased water pollution, and increased occurrence of extreme events such as floods and droughts." Id. The EPA "emphasize[d] the urgency of reducing [greenhouse gas] emissions due to * * * projections that show [greenhouse gas] concentrations climbing to ever-increasing levels in the absence of mitigation[,]" citing independent assessments finding that, "without a reduction in emissions, CO2 concentrations by the end of the century would increase to levels that the Earth has not experienced for more than 30 million years." Id. at 64,518.

The federal government's consistent recognition of the danger to public health and welfare caused by climate change, and the signal contribution of greenhouse gas emissions from power plants to global warming, continues to the present. In 2018, President Trump's administration concluded that "Earth's climate is now changing faster than at any point in the history of modern civilization, primarily as a result of human activities." U.S. GLOBAL CHANGE RESEARCH PROGRAM, FOURTH NATIONAL CLIMATE ASSESSMENT, VOLUME II: IMPACTS, RISKS, AND ADAPTATION IN THE UNITED STATES (REPORT-IN-BRIEF) 24 (2018). The administration added that "the evidence of human-caused climate change overwhelming and continues to strengthen," and "the impacts of climate change are intensifying across the country[.]" Id. at 26 (emphasis omitted). "Climate-related changes in weather patterns and associated changes in air, water, food, and the environment are affecting the health and well-being of the American people, causing injuries, illnesses, and death." *Id.* at

102. The administration's report concluded that urgent action is needed to mitigate these dangers because "[f]uture risks from climate change depend primarily on decisions made today." *Id.* at 13.

In preparing the ACE Rule, the EPA expressly acknowledged its continued adherence to the 2015 endangerment finding. 84 Fed. Reg. at 32,533 (The 2015 New Source Rule "continues to provide the requisite predicate for applicability of [Clean Air Act] section 111(d)."); *id.* at 32,557 n.250; *see also* Emission Guidelines for Greenhouse Gas Emissions from Existing Electric Utility Generating Units; Revisions to Emission Guideline Implementing Regulations; Revisions to New Source Review Program: Proposed Rule, 83 Fed. Reg. 44,746, 44,751 (Aug. 31, 2018) (confirming that the 2015 New Source Rule "remains on the books[]"); EPA Br. 217.

That endangerment finding provided the essential factual foundation—and triggered a statutory mandate—for the EPA to regulate greenhouse gas emissions from both new and existing power plants. See New Source Rule, 80 Fed. Reg. at 64,527, 64,529-64,532; Clean Power Plan, 80 Fed. Reg. at 64,683–64,690; see also 42 U.S.C. §§ 7411(b)(1)(A)–(B) (duty to regulate new stationary sources that contribute significantly to dangerous pollution identified in endangerment finding), 7411(d)(1)(A)(ii) (duty to regulate existing stationary sources that would be regulated under § 7411(b) if they were new stationary sources). Recall, Section 7411(b)(1)(A) provides that the EPA Administrator "shall" regulate any category of sources that, "in his judgment * * * causes, or contributes significantly to, air pollution which may reasonably be anticipated to endanger public health or welfare." The EPA endangerment findings reflect such well-established risks.

C. THE CLEAN POWER PLAN

In the last decade, the EPA has heavily focused its regulation of greenhouse gases on the power sector because "power plants are far and away the largest stationary-category source of greenhouse gases[,]" and "power plants' contributions to CO₂ pollution *** dwarf[] other categories[.]" EPA Br. 169.

In October 2015, the EPA issued greenhouse gas emission standards for new and modified power plants. *See* New Source Rule, 80 Fed. Reg. at 64,510. In so doing, the EPA found that, "[a]ll told, these fossil fuel-fired [power plants] emit almost one-third of all U.S. [greenhouse gas] emissions, and are responsible for almost three times as much as the emissions from the next ten stationary source categories combined." *Id.* at 64,531. That rule and finding remain in effect and are not challenged in this litigation.

The EPA then turned to the regulation of existing power plants. The EPA began, as the Clean Air Act requires, by determining the best system of emission reduction that has been adequately demonstrated for existing fossil-fuel-fired power plants. See 42 U.S.C. § 7411(a)(1); Clean Power Plan, 80 Fed. Reg. at 64,718. In identifying that system, the EPA chose to build on the established grid system and methods of operation already adopted by and familiar to the power sector. See 80 Fed. Reg. at 64,725, 64,727–64,728. The regulations and standards that the EPA formulated came to be known as the Clean Power Plan. Id. at 64,663.

In the Clean Power Plan, the EPA determined that a combination of three existing methods of emission reduction—which the Plan referred to as building blocks, 80 Fed. Reg. at 64,667—formed the "best system of emission reduction," 42 U.S.C. § 7411(a)(1).

First, the system incorporated heat-rate improvements—that is, technological measures that improve efficiency at coal-fired steam power plants and, in that way, reduce the amount of coal that must be burned to produce each watt of electricity to the grid. 80 Fed. Reg. at 64,667.

Second, the system added the "substitut[ion of] increased generation from lower-emitting existing natural gas combined cycle units for generation from higher-emitting affected steam generating" power plants, which are mostly coal-fired. 80 Fed. Reg. at 64,667.

Third, the system prioritized the use of electricity generated from zero-emitting renewable-energy sources over electricity from the heavily greenhouse-gas-polluting fossil-fuel-fired power plants. 80 Fed. Reg. at 64,667.

Those second and third methods of emission control are often referred to as "generation shifting" because the reductions occur when the source of power generation shifts from higher-emission power plants to less-polluting sources of energy. See Clean Power Plan, 80 Fed. Reg. at 64,728–64,729. As the EPA observed, such shifts in generation already occur all the time as a matter of grid mechanics. That is, within the grid's "Constrained Least-Cost Dispatch" system, production from "generators with the lowest variable costs" will be dispatched "first, as system operational limits allow, until all Grid Experts Amicus Br. 12. demand is satisfied." "[R]enewable energy generators typically receive dispatch priority because they have lower variable costs than fossil-fuelfired generators, which must purchase fuel." Id. at 13 (citing 80 Fed. Reg. at 64,693). The EPA found that most electricity is generated by diversified utilities that could achieve most or all of the shift to lower- or no-emission generation by

reassessing the dispatch priority of their own assets. *See* 80 Fed. Reg. at 64,796, 64,804.

As required by Section 7411(a)(1), the EPA then quantified the degree of emission reduction achievable under that three-tier best system for the relevant fossil-fuel-fired power plants and translated it into state-specific emissions goals for 2030. Clean Power Plan, 80 Fed. Reg. at 64,824–64,825. To permit additional flexibility, the Plan actually provided two alternative types of targets: rate-based goals, reflecting the rate of emission per certain amount of generation, and mass-based goals, reflecting the total emission from a State's sources. *Id.* at 64,820, 64,824–64,825 Tables 12, 13. The alternative metrics were an added source of flexibility for States in choosing how they would meet the federal limits.

Under the Clean Air Act, States could then propose plans that set standards of performance for their existing power plants that would meet those emission goals. Clean Power Plan, 80 Fed. Reg. at 64,664. In doing so, the States and their power plants were under no obligation to use the three specific methods that the EPA had identified in determining the best system of emission reduction. Rather, consistent with Section 7411(d)'s cooperative federalism approach, States were free to choose any measures, approaches, or technologies that they deemed appropriate to meet the federal guidelines. example, they could adopt technological controls already in use by some power plants like carbon capture and sequestration (by which carbon dioxide is captured from the plant's flue gas before it is emitted and then securely stored so it cannot reach the atmosphere) or co-firing (where fuels that release less carbon dioxide are burned alongside fuels that release more to reduce the amount of the latter used). See id. at 64,883. The EPA also suggested that States might rely on emissions-trading

programs (often referred to as cap-and-trade) and other potential compliance strategies. *Id.* at 64,887.

32

The EPA found that its proposed approach was "consistent with, and in some ways mirrors, the interconnected, interdependent and highly regulated nature of the utility power sector[]" and its grid, as well as "the daily operation of affected [power plants] within this framework, and the critical role of utilities in providing reliable, affordable electricity at all times and in all places within this complex, regulated system." Clean Power Plan, 80 Fed. Reg. at 64,678.

The Clean Power Plan was challenged in this court. *West Virginia* v. *EPA*, No. 15-1363 (and consolidated cases) (D.C. Cir. Oct. 23, 2015). After we heard argument *en banc*, but before we issued a decision, that litigation was held in abeyance and ultimately dismissed as the EPA reassessed its position. No. 15-1363, Docs. 1673071, 1806952.

D. THE ACE RULE

In 2019, the EPA issued a new rule that repealed and replaced the Clean Power Plan: The Affordable Clean Energy (ACE) Rule. *See* Repeal of the Clean Power Plan; Emission Guidelines for Greenhouse Gas Emissions from Existing Electric Utility Generating Units; Revisions to Emission Guidelines Implementing Regulations, 84 Fed. Reg. 32,520 (July 8, 2019). That Rule is the subject of this litigation.

1. Repeal of the Clean Power Plan

At the outset, the ACE Rule repealed the Clean Power Plan. The EPA explained that it felt itself statutorily compelled to do so because, in its view, "the plain meaning" of Section 7411(d) "unambiguously" limits the best system of emission reduction to only those measures "that can be put into operation

at a building, structure, facility, or installation." ACE Rule, 84 Fed. Reg. at 32,523–32,524. Because the Clean Power Plan's best system was determined by using some emission control measures that the EPA characterized as physically operating off the site of coal-fired power plants—such as some forms of generation shifting and emissions trading—the EPA concluded that it had no choice but to repeal the Plan. *Id.* The EPA emphasized "that [its] action is based on the only permissible reading of the statute and [it] would reach that conclusion even without consideration of the major question doctrine," while adding that application of that latter doctrine "confirms the unambiguously expressed intent" of Section 7411. *Id.* at 32,529.

2. Best System of Emission Reduction

Considering its authority under Section 7411 to be confined to physical changes to the power plants themselves, the EPA's ACE Rule determined a new best system of emission reduction for coal-fired power plants only. The EPA left unaddressed in this rulemaking (or elsewhere) greenhouse gas emissions from other types of fossil-fuel-fired power plants, such as those fired by natural gas or oil. ACE Rule, 84 Fed. Reg. at 32,533.

The EPA's proposed system relied solely on heat-rate improvement technologies and practices that could be applied at and to existing coal-fired power plants. ACE Rule, 84 Fed. Reg. at 32,525, 32,537. The EPA selected only seven heat-rate improvement techniques as components of its best system. *Id.* at 32,537. Six of those measures were new-to-the-plant technologies or "equipment upgrades." *Id.* at 32,536–32,537 (naming as part of the best system (1) adding or upgrading neural networks and intelligent sootblowers; (2) upgrading boiler feed pumps; (3) replacing or upgrading air heater and

duct leakage control devices; (4) adding variable frequency drives in feed pumps and induced-draft fans; (5) blade path upgrades; and (6) redesigning or replacing economizers). The seventh measure was the use of "best operating and maintenance practices" implementing heat-rate improvement techniques. Id. at 32,537, 32,540. The EPA limited itself to techniques that could be "applied broadly" to the Nation's coalfired plants, which primarily amounted to upgrades to existing equipment. Id. at 32,536.

The EPA explained that only five of the seven listed techniques directly reduce the heat rate of power plants. See ACE Rule, 84 Fed. Reg. at 32,538-32,540. The other two techniques—replacing or upgrading the boiler feed pump and installing variable frequency drives—serve to reduce the amount of energy that a power plant must use to run its own general operations. *Id.* at 32,538–32,539.³ So those two techniques do not make a power plant more efficient in turning coal into power, but instead allow power plants to dispatch more of the power they produce to the grid rather than using it internally. Id.

³ The boiler feed pump is a device that is used to pump water into the boiler. 84 Fed. Reg. at 32,538. It consumes a "large fraction" of the power used to run the plant. *Id.* Because the boiler feed pump requires so much energy, the EPA suggested that "maintenance on these pumps should be rigorous to ensure both reliability and high-efficiency operation." Id. Variable frequency drives "enable[] very precise and accurate speed control" of both boiler feed pumps and "induced draft (ID) fans," which "maintain proper flue gas flow through downstream air pollutant control equipment[.]" Id. at 32,539. This precise control would reduce the excess use of fans and pumps, requiring less energy. See id.

The EPA identified two of its other chosen techniques—blade path and economizer upgrades—as the measures that, of all the considered technologies, were "expected to offer some of the largest [heat-rate] improvements." ACE Rule, 84 Fed. Reg. at 32,537 (showing table predicting highest heat-rate improvement range in economizer redesign or replacements and blade path upgrades).⁴

But the EPA then stated that it expected some power plants would not adopt those two technologies because their use could trigger additional regulation that the companies would find burdensome. 84 Fed. Reg. at 32,537 ("[B]ased on public comments * * *, [blade path upgrades and economizer redesign or replacement] are [heat-rate improvement] technologies that have the most potential to trigger [New Source Review] requirements."). In fact, the EPA did not model those two techniques in its regulatory impact analysis precisely because it was unlikely that they would be adopted. J.A. 1656–1657.

Finally, the EPA acknowledged that the proposed technologies could create a "rebound effect." ACE Rule, 84 Fed. Reg. at 32,542. A rebound effect means that net carbon dioxide emissions actually *increase* as a result of the efficiency improvements made by power plants. *Id.* This happens because, as the efficiency upgrades make coal-based energy cheaper to produce, coal-fired power plants will have an incentive to run more often, thereby increasing their overall emissions. *Id.* The EPA found that risk of increased emissions irrelevant because its best system of emission reduction "is aimed at improving a source's emissions *rate* performance at

⁴ "Blade path upgrades" consist of upgrades to the steam turbine. Economizers are heat-exchange devices that "capture waste heat from boiler flue gas" and use that captured heat to help heat the boiler feedwater. *Id.* at 32,540.

the unit-level," rather than reducing the overall volume of emissions by individual sources. *Id.* at 32,543.

In choosing its seven proposed power-plant-based heatrate improvement technologies, the EPA excluded from its best system several other suggested methods of reducing emissions, including (1) natural gas co-firing, repowering, and refueling; (2) biomass co-firing; and (3) carbon capture and storage technologies. ACE Rule, 84 Fed. Reg. at 32,543-32,547. The EPA rejected biomass co-firing primarily because "any potential net reductions in emissions from biomass use occur outside of the regulated source," and so do not fall within the EPA's reading of Section 7411(d) as confined to emission limits imposed at and to individual plants. *Id.* at 32,546. The EPA excluded natural gas co-firing and carbon capture and storage from its own best system, citing cost, geographical, and operational concerns. *Id.* at 32,544–32,545, 32,547–32,548. The EPA provided that sources could choose to use natural gas co-firing or carbon capture—but not biomass co-firing—to meet state-established standards of performance. Id. at 32,555.

3. Degree of Emission Limitation Achievable

Having determined its best system of emission reduction, the EPA then purported to prescribe the "degree of emission limitation achievable," which States could use to create their own standards of performance. 42 U.S.C. § 7411(a)(1). What the EPA produced as its emission guidelines was a chart that prescribed heat-rate improvement "ranges" for each of the EPA's chosen heat-rate improvement technologies, organized by power plants of differing sizes. ACE Rule, 84 Fed. Reg. at 32,537. The ranges show how much heat-rate improvement can be "expected" from use of each of the identified technologies. *Id*.

The EPA was explicit, though, that the "potential" range of heat-rate reduction was only illustrative and that the actual reduction for each of the EPA's chosen technologies would be "unit-specific" and would "depend upon a range of unitspecific factors." ACE Rule, 84 Fed. Reg. at 32,537–32,538. In that way, the ACE Rule made States responsible for evaluating "[heat-rate improvement] potential, technical feasibility, and applicability for each of the [best system of emission reduction] candidate technologies" on a power-plantby-power-plant basis. *Id.* at 32,538. The ACE Rule expressly left States free to establish their own standards of performance for their power plants that "reflect a value of [heat-rate improvement] that falls outside" the ranges provided in the EPA's chart. Id. (emphasis added). In other words, the minimums listed in the EPA's emission-reduction chart were only suggestions.

The EPA explained that its non-mandatory ranges of efficiency reduction were valid because the applicability of the heat-rate improvement techniques to different plants and the effectiveness of each power plant's existing technology may vary. *See* ACE Rule, 84 Fed. Reg. at 32,538 (stating that "not all" of the technologies would be "applicable or warranted at the level of a particular facility due to source-specific factors such as the site-specific operational and maintenance history, the design and configuration, [or] the expected operating plans").

The EPA predicted that its ACE Rule would reduce carbon dioxide emissions by less than 1% from baseline emission projections by 2035. J.A. 1651. That calculation did not reflect emission *increases* that could result from the rebound effect.

4. Implementing Regulations

The ACE Rule included some new regulations under Section 7411(d). ACE Rule, 84 Fed. Reg. at 32,575-32,584 (codified at 40 C.F.R. pt. 60, subpart Ba). As relevant here, the regulations significantly extend the States' deadlines for the development and submittal of their plans for emission reduction from nine months to three years. See 40 C.F.R. § 60.23a(a)(1). Similarly, the new regulations extend the EPA's deadline to act on those plans from four months to one year. 40 C.F.R. § 60.27a(b). The new regulations also extend the EPA's deadline to substitute its own plan for a noncompliant State's plan from six months after the submission deadline to two years after a finding that the plan was incomplete, disapproved, or unsubmitted. See 40 C.F.R. § 60.27a(c). Finally, the requirement that States demonstrate compliance progress is now triggered only where a State's compliance schedule stretches more than two years from when its plan was originally due, as opposed to the one-year period in the prior regulations. See 40 C.F.R. § 60.24a(d).

E. PETITIONS FOR REVIEW

Twelve petitions for review of the ACE Rule were timely filed in this court and consolidated in this case. Nos. 19-1140 (lead case), 19-1165, 19-1166, 19-1173, 19-1175, 19-1176, 19-1177, 19-1179, 19-1185, 19-1186, 19-1187, 19-1188. The petitioners fall into three groups.

The first grouping consists of petitioners who seek review of the ACE Rule's conclusion that Section 7411 only permits emission reduction measures that can be implemented at and applied to the source. Those petitioners include (i) a coalition of State and municipal governments; (ii) power utilities;

- (iii) trade associations from the renewable energy industry; and (iv) several public health and environmental advocacy groups.⁵
- The second grouping is petitioners who challenge the ACE Rule's imposition of any emission limits as unlawful because, in their view, (i) the EPA failed to make a specific endangerment finding for carbon dioxide emitted from existing power plants; (ii) the EPA's regulation of mercury emissions from coal-fired power plants under Section 7412 precludes the regulation of greenhouse gas emissions under Section 7411; and (iii) the EPA should have regulated carbon dioxide from stationary sources, including power plants, under the NAAQS program, 42 U.S.C. §§ 7408–7410.

The third petitioner group is the Biogenic CO₂ Coalition. They object only to the ACE Rule's determination that States may not count biomass co-firing as a method of complying with numerical emission limits.

F. JURISDICTION AND STANDARD OF REVIEW

This court has jurisdiction to review these petitions under the Clean Air Act. 42 U.S.C. § 7607(b)(1); see also Sierra Club v. EPA, 955 F.3d 56, 61 (D.C. Cir. 2020).

We may set aside the ACE Rule if it is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 42 U.S.C. § 7607(d)(1)(C), (d)(9)(A); see also Maryland v. EPA, 958 F.3d 1185, 1196 (D.C. Cir. 2020) ("[W]e apply the same standard of review under the Clean Air Act as we do under the Administrative

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⁵ The public health and environmental advocacy groups also challenge the third prong of the ACE Rule—the new implementing regulations—as arbitrary and capricious.

Procedure Act.") (quoting *Allied Local & Reg'l Mfrs. Caucus v. EPA*, 215 F.3d 61, 68 (D.C. Cir. 2000)).

II. SECTION 7411

A. STATUTORY CONTEXT

In enacting the Clean Air Act, "Congress delegated to EPA the decision whether and how to regulate carbon-dioxide emissions from powerplants." *American Elec. Power Co. v. Connecticut (AEP)*, 564 U.S. 410, 426 (2011). As the Supreme Court has observed, 42 U.S.C. § 7411 "speaks directly to" and outlines the framework for that regulation. *Id.* at 424 (internal quotation marks omitted). Specifically, Section 7411 marks out a pair of distinct regulatory tracks for stationary sources of air pollutants. *See* 42 U.S.C. § 7411(a)(2), (6). The first track applies to new sources, *id.* § 7411(b), and the second to existing sources, *id.* § 7411(d). The statute calls for federal-state cooperation in regulating existing sources, affording distinct roles to the federal and state agencies in arriving at what Section 7411 calls "standards of performance" for the emission of air pollutants. *Id.* § 7411(a)(1), (c), (d)(1).

The regulatory regimes for new and existing sources differ in the process by which such standards are established—and the roles played by the respective regulatory actors. The Act assigns the EPA the main regulatory role in specifying the newsource pollution controls: After the EPA determines that a particular "category of sources * * * causes, or contributes significantly to, air pollution which may reasonably be anticipated to endanger public health or welfare," it publishes regulations establishing standards of performance for new sources in that category. *Id.* § 7411(b)(1).

The process for regulating existing sources—which raise distinct concerns about sunk costs and the health and

environmental effects of older processes—involves more actors and steps. Regulation of a given category of existing sources is triggered by the same EPA air-pollution determination as for new sources. But for existing sources the Act adopts a cooperative-federalism approach that leaves the States discretion in determining how their State and industry can best meet quantitative emissions guidelines established by the EPA. See AEP, 564 U.S. at 424. Under Section 7411(d), the EPA and the States thus have distinct but complementary roles subject to different procedures and limitations. See 42 U.S.C. § 7411 (a)(1), (d)(1). This case concerns the mechanics of that cooperative framework for existing sources and, specifically, restrictions the Agency now claims the statute imposes on regulation of the air pollutants those sources emit.

Two provisions of Section 7411 shape the existing-source framework. Subsection (a)(1) defines a standard of performance, by reference to the "degree of emission limitation" that the EPA determines is "achievable," 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 nonair quality health and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated.

42 U.S.C. § 7411(a)(1).

Subsection (d)(1), in turn, requires the Secretary to set up a system by which willing States can submit to the EPA "a plan which [] establishes standards of performance for any existing source." *Id.* § 7411(d)(1). Only "where [a] State fails to submit a satisfactory plan" may the EPA step in and directly

promulgate standards of performance for existing sources. *Id.* § 7411(d)(2).

Putting these two provisions together results in what are best understood as three distinct steps involving three sets of actors, each exercising a degree of leeway in choice of control measures. *See* ACE Rule, 84 Fed. Reg. at 32,533, 32,549–32,550; Clean Power Plan, 80 Fed. Reg. at 64,665–64,666.

First, under subsection (a)(1), the EPA determines the "best system of emission reduction" that is "adequately demonstrated," taking into consideration certain enumerated statutory criteria: cost, any nonair quality health and environmental impacts, and energy requirements. 42 U.S.C. § 7411(a)(1). The Agency then issues emission guidelines that quantify the "degree of emission limitation achievable through the application of the best system" it has identified. *Id.*; 40 C.F.R. § 60.22a; *see AEP*, 564 U.S. at 424; EPA Br. 21–22; ACE Rule, 84 Fed. Reg. at 32,523, 32,551.

Second, under subsection (d)(1), States issue standards of performance for existing sources that comply with the EPA's emission guidelines and "reflect" the achievable degree of emission limitation set in those guidelines. *AEP*, 564 U.S. at 424; 42 U.S.C. § 7411(d)(1); 40 C.F.R. § 60.23a; *see also* Clean Power Plan, 80 Fed. Reg. at 64,666. That the standards must "reflect" the emission guidelines does not mean that they must embody the methods EPA contemplated in identifying the best system; rather, the States have flexibility in determining the specifics of the standards they issue so long as they accomplish the "degree of emission limitation" the EPA calculated based on its "best system."

Third, the operators of regulated stationary sources implement measures to ensure they will in practice comply with the standards of performance their state agency has

established for them. See ACE Rule, 84 Fed. Reg. at 32,555. States often grant regulated entities some discretion in how they meet those standards. See, e.g., N.Y. COMP. CODES R. & REGS. Tit. 6 § 201-6.4(f) (2013) (describing the "operational flexibility" afforded to Title V facility owners in New York State to "propose a range of operating conditions that will allow flexibility [for a facility] to operate under more than one operating scenario").

The issue before us arises at the first step—the EPA's determination of the best system of emission reduction. In the Clean Power Plan, the Agency determined that the best system was one that both improved the heat rate at power plants and prioritized generation from lower-emitting plants ahead of high-emitting plants. Clean Power Plan, 80 Fed. Reg. at 64,707. The EPA then calculated specific emission reductions achievable through application of that best system that it published as emission guidelines for States. Id. Had the Clean Power Plan gone into effect, States would then have submitted to the EPA plans based on the Agency's guidelines that established standards of performance for sources in their jurisdictions, as provided for in subsection (d)(1). The Clean Power Plan left States flexibility in the measures they included in their plans, so long as they achieved a reduction in emissions at least as great as that achieved by EPA-established quantitative guidelines. See, e.g., id. at 64,665, 64,756–64,757, 64,734–64,737, 64,832–64,837. And it further allowed States, at their option, to give leeway to sources to select alternate compliance measures to make the requisite reductions. See id. at 64,834–64,835.

Based on what it now perceives to be an express and unambiguous textual limitation in Section 7411 that it says the Clean Power Plan overlooked, the EPA repealed that Plan and replaced it with the ACE Rule. The EPA's new reading of the

statute requires the Agency, in modeling its "best system of emission reduction," to consider only emission-reduction measures that "can be applied at and to a stationary source." ACE Rule, 84 Fed. Reg. at 32,534; *see also id.* at 32,526–32,532.

We address below the EPA's arguments regarding how the text and structure of Section 7411 purportedly support this limitation. That discussion is necessarily somewhat abstract and technical. So, for starters, it is worth bringing the matter more concretely into view.

Consider the effect the EPA's new statutory interpretation had on its resulting Rule. First, because generation shifting is not, in the EPA's view, a measure that can be applied "at and to" any one individual source, the ACE Rule limits the best system of emission reduction to heat-rate improvements alone. 84 Fed. Reg. at 32,534–32,535. Then, instead of publishing emission guidelines quantifying emission reductions achievable through application of the best system, the ACE Rule identifies what the Agency has determined are the most effective heat-rate technologies available and a potential range of heat-rate improvements achievable through application of each of those technologies. *Id.* 32,535–32,537.

As under the Clean Power Plan, the ACE Rule grants States flexibility in establishing standards of performance for sources pursuant to the Agency's emission guidelines. Unlike the Clean Power Plan, however, the ACE Rule does not require that the States reach any specified minimum emission reduction. Instead, States must merely "evaluate the applicability of each of the candidate technologies" to sources within their jurisdiction and report their conclusions back to the Agency. ACE Rule, 84 Fed. Reg. at 32,550, 32,538–32,561.

The Rule recites that regulated entities have "broad

discretion" in meeting state-established standards, ACE Rule, 84 Fed. Reg. at 32,555, yet at the same time the Rule deems impermissible any compliance measure that cannot be applied at and to the source, *id.* The ACE Rule thereby disqualifies compliance by, for example, burning biofuel, *id.* at 32,557–32,558, which emits recently captured carbon dioxide, in contrast to fossil fuels' release of carbon dioxide stored away millions of years ago. *See generally Center for Biological Diversity v. EPA*, 722 F.3d 401, 405–406 (D.C. Cir. 2013).

The question here is a relatively discrete one. We are not called upon to decide whether the approach of the ACE Rule is a permissible reading of the statute as a matter of agency discretion. Instead, the sole ground on which the EPA defends its abandonment of the Clean Power Plan in favor of the ACE Rule is that the text of Section 7411 is clear and unambiguous in constraining the EPA to use only improvements at and to existing sources in its best system of emission reduction.

The EPA contends that its current interpretation is "the only permissible interpretation of the scope of the EPA's authority." ACE Rule, 84 Fed. Reg. at 32,535. Our task is to assess whether Section 7411 in fact compels the EPA's new And because "deference to an agency's interpretation. interpretation of a statute is not appropriate when the agency wrongly believes that interpretation is compelled by Congress," Peter Pan Bus Lines, Inc. v. Fed. Motor Carrier Safety Admin., 471 F.3d 1350, 1354 (D.C. Cir. 2006) (quoting PDK Labs., Inc. v. DEA, 362 F.3d 786, 798 (D.C. Cir. 2004) (internal quotation marks omitted)), we may not defer to the EPA's reading if it is but one of several permissible interpretations of the statutory language, see Negusie v. Holder, 555 U.S. 511, 521 (2009). That is, the "regulation must be declared invalid, even though the agency might be able to adopt the regulation in the exercise of its discretion, if it 'was not

based on the agency's own judgment but rather on the unjustified assumption that it was Congress' judgment that such a regulation is desirable" or required. *Prill v. NLRB*, 755 F.2d 941, 948 (D.C. Cir. 1985) (quoting *FCC v. RCA Comme'ns*, 346 U.S. 86, 96 (1953) (formatting modified)); accord Arizona v. Thompson, 281 F.3d 248, 259 (D.C. Cir. 2002) (quoting *Prill*, 755 F.2d at 948).

For the reasons explained below, Section 7411 does not, as the EPA claims, constrain the Agency to identifying a best system of emission reduction consisting only of controls "that can be applied at and to a stationary source." ACE Rule, 84 Fed. Reg. at 32,534. The EPA here "failed to rely on its own judgment and expertise, and instead based its decision on an erroneous view of the law." *Prill*, 755 F.2d at 956. We accordingly must vacate and remand to the Agency "to interpret the statutory language anew." *Peter Pan Bus Lines*, 471 F.3d at 1354.

1. Text

As just noted, Section 7411 contemplates distinct roles for the EPA and the States in regulating existing stationary sources. See 42 U.S.C. § 7411(a)(1) (granting authority to the EPA to designate the best system and determine achievable degree of emissions reduction); id. § 7411(d)(1) (outlining the States' role in setting standards of performance for their sources). Nevertheless, the EPA now contends that language in Section 7411(a)(1) and (d)(1) "unambiguously limits the [best system of emission reduction] to those systems that can be put into operation at a building, structure, facility, or installation." ACE Rule, 84 Fed. Reg. at 32,524 (emphasis in original); see id. at 32,528; EPA Br. 70.

In the Agency's current view, the only pollution-control methods the Administrator can consider in selecting the "best

system of emission reduction" within the meaning of Section 7411(a) are add-ons or retrofits confined to the level of the individual fossil-fuel-fired power plant. ACE Rule, 84 Fed. Reg. at 32,524. That is so even though the record before the EPA shows that generation shifting to prioritize use of the cleanest sources of power is one of the most cost-effective means of reducing emissions that plants have already adopted and that have been demonstrated to work, and that generation shifting is capable of achieving far more emission reduction than controls physically confined to the source. See, e.g., Clean Power Plan, 80 Fed. Reg. at 64,693, 64,728–64,729; 2 J.A. 598; Grid Experts Amicus Br. 13–16. In other words, the EPA reads the statute to require the Agency to turn its back on major elements of the systems that the power sector is actually and successfully using to efficiently and cost-effectively achieve the greatest emission reductions. See Grid Experts Amicus Br. 22 (observing that the ACE Rule "imposes greater abatement costs on industry than other approaches would to achieve the same effect").

The Clean Power Plan could not stand, the EPA now concludes, because its consideration of generation shifting exceeded the Agency's narrow authority under Section 7411's plain text. ACE Rule, 84 Fed. Reg. at 32,526–32,527. In promulgating the Clean Power Plan, the EPA read "system of emission reduction" to mean "a set of measures that work together to reduce emissions and that are implementable by the sources themselves." Clean Power Plan, 80 Fed. Reg. at 64,762. And it concluded that both heat-rate improvements and generation shifting "are components of a best system of emission reduction for the affected [electricity generating units] because they entail actions that the affected [units] may themselves undertake that have the effect of reducing their emissions." *Id.* at 64,709 (internal quotation marks omitted).

All of that is wrong, the EPA has since decided. "[T]he Agency now recognizes that Congress 'spoke to the precise question' of the scope of [42 U.S.C. § 7411](a)(1) and clearly precluded the unsupportable reading of that provision asserted in the [Clean Power Plan]." ACE Rule, 84 Fed. Reg. at 32,527. The EPA insists that its current reading is mandated by the statutory text.

It is the EPA's current position that is wrong. Nothing in Section 7411(a)(1) itself dictates the "at and to the source" constraint on permissible ingredients of a "best system" that the Agency now endorses. For the EPA to prevail, its reading must be required by the statutory text. *Peter Pan Bus Lines*, 471 F.3d at 1354. It fails for at least three reasons, any of which is alone fatal.

First, the plain language of Section 7411(a)(1), the root of the EPA's authority to determine the best system, announces its own limitations. Those limitations simply do not include the source-specific caveat that the EPA now interposes and casts as unambiguous.

Second, there is no basis—grammatical, contextual, or otherwise—for the EPA's assertion that the source-specific language of subsection (d)(1) must be read upstream into subsection (a)(1) to equate the EPA's "application of the best system" with the controls States eventually will apply "at and to" an individual source. As the EPA at times acknowledges, the two subsections address distinct steps in the regulatory process, one focused on the EPA's role and the other focused on the States'. Any question as to which limitations pertain to each regulatory actor cannot reasonably be said to have been resolved by Congress in favor of the unambiguous meaning the EPA now advocates.

Third, even if subsections (a)(1) and (d)(1) were read

together in the way the EPA proposes, they would not confine the EPA to designating a best system consisting of at-the-source controls. The EPA's entire theory hinges on the Agency's unexplained replacement of the preposition "for" in "standards of performance for any existing source" with the prepositions "at" and "to." Yet the statutory text calls for standards of performance "for" existing sources. Emission-reduction measures "for" sources may readily be understood to go beyond those that apply physically "at" and "to" the individual source. Emissions trading, for example, might be a way "for" a source to meet a standard of performance.

The shortcomings of its statutory interpretation are more than enough to doom the Agency's claim that Section 7411 announces an unambiguous limit on the best system of emission reduction. The issue is not whether the EPA's counterarguments to each of these points might show its interpretation to be permissible as an exercise of discretion. Again, the EPA has not claimed to be exercising any such discretion here. It insists instead that the unambiguous terms of the statute tie its hands.

After reviewing what Section 7411 clearly says about the nature and limits of the "best system of emission reduction" that Congress called on the EPA to determine, we take up each of the EPA's arguments to show why Section 7411 does not unambiguously support its at-the-source restriction.

a. Section 7411(a) Defines the Best System

The EPA acknowledges, as it must, that Section 7411(a) is the source of the EPA's authority and responsibility to determine the best system of emission reduction for existing sources and set corresponding emission guidelines. *See, e.g.*, ACE Rule, 84 Fed Reg. at 32,534. Indeed, that is the only subsection in which the term "best system of emission

reduction" appears. But the EPA offers no reading of subsection (a)(1) itself.

Section 7411(a)(1) expresses Congress' expectation that the EPA will study all "adequately demonstrated" means of emission reduction. And it directs the EPA to draw on "adequately demonstrated" methods to determine the "best" system to reduce emissions. Congress imposed no limits on the types of measures the EPA may consider beyond three additional criteria: cost, any nonair quality health and environmental impacts, and energy requirements. 42 U.S.C. § 7411(a)(1). Congress largely called on the expert judgment of the EPA to determine for a particular source category and pollutant which already-demonstrated methods compose the "best system."

Because it did not set out separate definitions for either "system" or "best," those words take their ordinary meanings. See Sandifer v. United States Steel Corp., 571 U.S. 220, 227 (2014). Webster's Dictionary offers a representative definition of "system" contemporaneous with the Act's adoption: "[A] complex unity formed of many often diverse parts subject to a common plan or serving a common purpose." System, Webster's Third New International Dictionary of the English Language Unabridged 2322 (2d ed. 1968). The superlative "best" as applied to a "system of emission reduction" plainly places a high priority on efficiently and effectively reducing emissions. See Best, Merriam-Webster, https://www.merriam-webster.com/dictionary/best (last visited Jan. 11, 2021) ("excelling all others," "offering or producing the greatest advantage, utility, or satisfaction").

The ordinary meanings of these terms "reflect[] an intentional effort to confer the flexibility necessary" for effective regulation appropriate to the context. *Massachusetts*

v. EPA, 549 U.S. 497, 532 (2007). As the Supreme Court has acknowledged, "the degree of agency discretion that is acceptable varies according to the scope of the power congressionally conferred." Whitman v. American Trucking Ass'n, 531 U.S. 457, 475 (2001); see Gaughf Props., L.P. v. Commissioner, 738 F.3d 415, 424–425 (D.C. Cir. 2013); Sabre, Inc. v. Department of Transp., 429 F.3d 1113, 1122, 1124–1125 (D.C. Cir. 2005). Congress in Section 7411 deliberately charged the EPA with identifying the best system of emission reduction to keep pace with escalating threats to air quality, and, within expressed limits, empowered it to make the judgments how best to do so.

The Agency simply ignores how the statutory text defines the "best system of emission reduction," asserting instead that definitional language does not confer regulatory authority. See, e.g., EPA Br. 58–59 ("[I]t is not Section 7411(a) ('Definitions') that grants the agency authority to act."). Section 7411(a)(1)'s designation as a definitional provision deprives it of standalone meaning, the EPA contends. The EPA instead reads it as "subsidiary" to Section 7411(d), regarding state standards of performance for existing sources. EPA Br. 58. But Congress does indeed use definitional provisions to confer regulatory authority. See, e.g., Weinberger v. Bentex Pharm, Inc., 412 U.S. 645, 652–653 (1973) (holding that the statutory definition of "new drug" confers authority upon the FDA). That is precisely what it did in Section 7411(a)(1). See Sierra Club v. Costle, 657 F.2d 298, 321 (D.C. Cir. 1981) (describing Section 7411(a)(1) as authorizing the EPA to determine the best system of emission reduction and regulate accordingly); 40 C.F.R. 60.22a.

The EPA offers no support—apart from its own new-found version of "statutory interpretation 101," EPA Br. 65—for ignoring how the Act itself defines and limits the "best

system" determination. Nor does it offer any sound justification for importing language from a different provision governing States' "standards of performance." The EPA's "at and to the source" limitation on "best system" finds no footing in the text of Section 7411(a)(1).

b. Section 7411(d)(1) Does Not Change the Definition

Even taking the EPA's argument on its own terms does not work because Section 7411(d)(1)'s text and statutory context get it no further. To support its narrow reading of the EPA's authority to determine the "best system," the Agency focuses on the phrase "through the application of" in Section That provision defines a "standard 7411(a)(1). performance" as an emission standard that "reflects the degree of emission limitation achievable through the application of the best system of emission reduction[.]" The EPA says the "application" phrase "requires both a direct object and an indirect object." ACE Rule, 84 Fed. Reg. at 32,524; accord EPA Br. 66-68. And, it continues, Congress cannot have meant to leave its indirect object undefined. The EPA says that, grammatically speaking, someone must apply something (the direct object) to something else (the indirect object). EPA Br. 115–116, 118–119. It then picks its preferred, narrow indirect object from a different statutory subsection and casts that object as the only statutorily permissible choice. See 84 Fed Reg. at 32,524.

The EPA locates an indirect object in Section 7411(d). Unlike subsection (a)(1), subsection (d)—entitled "Standards of performance for existing sources"—explicates an indirect object. 42 U.S.C. § 7411(d). Borrowing from subsection (d), then, the EPA imports into subsection (a)(1) a limitation of the "best system of emission reduction" to measures that can be applied "to and at *an individual existing source*—i.e., any

building or facility subject to regulation." EPA Br. 58 (emphasis added); *see also* ACE Rule, 84 Fed. Reg. at 32,534.

But the language to which the EPA points supplies the indirect object only of "standards of performance" adopted by States pursuant to Section 7411(d)(1), not of the EPA's "best system of emission reduction" determined pursuant to Section 7411(a)(1). The latter phrase does not even appear in Section 7411(d)(1). To reach its preferred result, the Agency invokes surmise rather than statutory text. It insists that the limitations on States' standards of performance in Section 7411(d)(1)—the second step in the regulatory process—must be read upstream to limit the EPA's "best system of emission reduction" in subsection (a)(1). Nothing in the statute so requires.

In the text, States' standards of performance need only "reflect" the emission guidelines (or "degree of emission limitation achievable") the EPA calculates based on the "best system of emission reduction" it determines. As laid out in the statute and explained above, those state-developed "standards of performance" follow on but are legally and functionally distinct from the "best system" that the EPA develops. The EPA is simply wrong that the statute clearly and unambiguously requires that the unstated indirect object of "application of the best system of emission reduction" under Section 7411(a)(1) must be the same as the indirect object of States' standards of performance as stated in Section 7411(d)(1).

Neither does the grammatical rule the EPA invokes to bridge the gap between these subsections hold up. The crux of the EPA's textual argument is that "the verb 'to apply,' requires both a direct object and an indirect object." ACE Rule, 84 Fed. Reg. at 32,524; EPA Br. 66–68. The first obvious problem is

that, in the relevant passage of Section 7411(a)(1), Congress did not use the verb "apply," but rather the noun "application." The EPA acknowledges this distinction in passing in the ACE Rule, but dismisses it without discussion, offering only that "application' is derived from the verb 'to apply[.]" 84 Fed. Reg. at 32,524. That is, of course, true, as far as it goes. The phrase "application of the best system of emission reduction" is what is called a nominalization, a "result of forming a noun or noun phrase from a clause or a verb." Nominalization, Merriam-Webster Dictionary https://www.merriamwebster.com/dictionary/nominalization (last visited Jan. 11, 2021). Grammar assigns direct or indirect objects only to verbs—not nouns. No objects are needed to grammatically complete the actual statutory phrase. So much for the grammatical imperative.

Even if we were to take the EPA's leap to the verb "apply" from the noun "application" that actually appears in the statute, the Agency comes up short. The EPA is incorrect to insist that the verb "apply" requires an indirect object. There is nothing ungrammatical about the sentence "In its effort to reduce emissions, the EPA applied the best system of emission reduction." The verb "apply," like its nominalization, may properly be used in a sentence with or without an explicit indirect object. *See Apply*, THOMAS HERBST ET AL., A VALENCY DICTIONARY OF ENGLISH 41–42 (Ian F. Roe et al. eds., 2004) (listing examples of grammatically correct uses with and without direct and indirect objects).6

⁶ Take, for instance, the following sentences: "It appears to violate GATT regulations, but the rules for applying the regulations are vague and the Netherlands has so far escaped censure"; "This information may not apply in Scotland, which has a different legal system." *Apply*, THOMAS HERBST ET AL., A VALENCY DICTIONARY

The EPA's shift from nominalization to verb does not, in any event, accomplish much. Either way, the lack of an explicit indirect object in Section 7411(a)(1) does not require that one be borrowed from Section 7411(d)(1). Equally logical indirect objects include, for example, the entire category of stationary sources, or the air pollutant to be limited. In any event, the best system cannot reasonably be said to be unambiguously applicable only to the indirect object the EPA suggests.

The EPA faults the Clean Power Plan for reading "application of" to be functionally equivalent to "implementation of," because "implement" "does not require an indirect object." EPA Br. 73. But neither does "application." So "application" textually supports adoption of the Clean Power Plan just as well as "implementation." Again, so much for grammar mandating the EPA's result.

The argument fails either way, but the fact is that Congress used the nominalization "application of" the best system of emission reduction. A nominalization enables the drafter to leave certain information unspecified—namely, who is acting and where their action is directed. See, e.g., George D. Gopen, Who Done It? Controlling Agency in Legal Writing, Part II, 39 LITIG. 12, 12–13 (Spring 2013) (describing how nominalizations create ambiguity). Legal writers, including Congress, employ nominalizations all the time. And they do so with the full awareness that their use preserves flexibility.

Congress reasonably built in leeway for the EPA to

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OF ENGLISH 41–42 (examples from sections D1 and D5). Additional examples abound. *See, e.g., Apply*, OXFORD ENGLISH DICTIONARY (3d ed. 2008) (def. I.9) ("Crest bought the firm[,] and, by applying its marketing and distribution muscle, has turned it into a \$200 million category killer.").

exercise technical expertise in applying Section 7411, given the variety of pollution problems that it covers and the importance of allowing States maneuvering room under the cooperative federalism scheme. Congress may avoid specifying subjects, objects, or other grammatical information because a degree of adaptability suits the statutory role and purpose. One way Congress can denote that it has delegated to an agency's judgment the task of filling in the on-the-ground details of a statutorily defined program is by declining to dictate grammatically optional information, see Lehrfeld Richardson, 132 F.3d 1463, 1465–1466 (D.C. Cir. 1998); Appalachian Power Co. v. EPA, 135 F.3d 791, 808–810 (D.C. Cir. 1998), including an indirect object that the rules of grammar do not require be explicitly stated, see, e.g., Peter Pan Bus Lines, 471 F.3d at 1353-1354.

Even if an implicit indirect object can be surmised, there is more than one plausible candidate here, and the statute does not unambiguously dictate the object. There certainly is no rule—grammatical or otherwise—that the specific indirect object must be the one to which the EPA now points. At the least, other contextually appropriate indirect objects of the "best system" include the source category or the emissions. The EPA has failed to establish that the sole and unambiguous indirect object must be the individual source. The EPA, of course, "may fill the gap[s] the Congress left," and any such "regulation is entitled to deference." *Gaughf Props.*, 738 F.3d at 424; *see also Appalachian Power*, 135 F.3d at 811–812. But in the ACE Rule and in its briefing here, the EPA has assiduously denied the existence of any gap at all. That was error.

c. EPA's Reading Itself Falls Short

The third and equally fatal flaw in the EPA's textual

analysis is its unexplained substitution of the prepositions "at" and "to" where the text it would have us borrow from subsection (d)(1) actually says "for" in referencing "standards of performance for any existing source." *See, e.g.*, ACE Rule, 84 Fed. Reg. at 32,534. As we do with any words enacted by Congress, we must give effect to the preposition it chose. *Cf. Telecommunications Res. & Action Ctr. v. FCC*, 801 F.2d 501, 517–518 (D.C. Cir. 1986) (finding decisive Congress' use of the preposition "under" instead of "by"). The word Congress actually used—"for" the source—lacks the site-specific connotation on which the EPA's case depends.

In its brief, the EPA presents the compound construction it says inexorably follows from reading text from subsection (a)(1) together with text from subsection (d)(1), and says it is restricted to determining a "best system of emission reduction for any building, structure, facility, or installation." EPA Br. 56 (formatting modified) (quoting 42 U.S.C. § 7411(a)(1), (a)(3), (a)(6), (d)(1)). The Agency then asserts that "the natural reading" of its proffered construction is that "the methods planned would be 'for' and act at the level of the singular, individual source." *Id.* at 62 (emphasis added).

In the preamble to the ACE Rule, the EPA went further, fully substituting the prepositions "at" and "to" in place of the preposition "for" that actually appears in the text the Agency says must be borrowed from subsection (d)(1). ACE Rule, 84 Fed. Reg. at 32,534. It relies on that further substitution to insist that the best system of emission reduction designated by the EPA must be limited to controls "that can be applied at and to," not "for," "a stationary source." *Id.*; *see also id.* at 32,524 ("at"); *id.* at 32,532, 32,534, 32,556 ("at and to"); *id.* at 32,555, 32,529 ("to and at"); *id.* at 32,543 ("at or to"); *id.* at 32,526 n.65 ("to or at"); EPA Br. 4, 58, 74. But nowhere in the ACE Rule does the EPA explain this swap of one preposition for two

meaningfully more restrictive ones. *See, e.g.*, 84 Fed. Reg. at 32,523–32,524, 32,534–32,535.

The EPA rewrites rather than reads the plain statutory text. Section 7411(a)(1), even if cross-referenced to subsection (d)(1) in the way the EPA says it must be, calls for the Agency to determine "the degree of emission limitation achievable through the application of the best system of emission reduction for any existing source"—not the application of the best system "at" and "to" such a source. And the word "for" lacks the physical on-site connotation that is so critical to the EPA's reading of the statutory text. Indeed, a standard of performance or system of emission reduction "for" a source just means that the system is "with regard or respect to" or "concerning" the source. See For, Oxford English DICTIONARY (2d ed. 1989) (def. 26). In contrast, "at" and "to" tend to connote direct physical proximity or contact. See At, OXFORD ENGLISH DICTIONARY (3d ed. 2008) (def. 1.a) ("usually determining a point or object with which a thing or attribute is practically in contact"); To, OXFORD ENGLISH DICTIONARY (3d. ed 2008) (def. 5.a) ("Into (or in) contact with; on, against"). A best system "for" a source thus might entail a broader array of controls that concern but are not immediately physically proximate to the source—such as, for instance, generation shifting.

* * *

In sum, the straitened vision of the EPA's best system that the Agency espies in Section 7411 is simply not supported by the text, let alone plainly and unambiguously required by it. The Act calls on the EPA to determine the degree of emission limitation achievable through "application of the best system of emission reduction" without specifying the system's indirect object, and uses the preposition "for" when it calls on the States

to develop "standards of performance for existing sources." 42 U.S.C. § 7411(a), (d). It simply does not unambiguously bar a system of emission reduction that includes generation shifting.

The EPA's position depends critically on words that are not there. It erroneously treats a nominalization of a verb as requiring an indirect object, collapses two separate functions and provisions of the Act in order to supply a borrowed indirect object, does so without any evidence that the borrowed indirect object was what Congress necessarily intended, and narrowly focuses the Agency's authority on that indirect object by using a different preposition from the one that actually appears in the borrowed text. Each of those interpretive moves was a misstep. Read faithfully, Section 7411(a)(1) lacks the straitjacket that the EPA imposes.

Policy priorities may change from one administration to the next, but statutory text changes only when it is amended. The EPA's tortured series of misreadings of Section 7411 cannot unambiguously foreclose the authority Congress conferred. The EPA has ample discretion in carrying out its mandate. But it may not shirk its responsibility by imagining new limitations that the plain language of the statute does not clearly require.

2. Statutory History, Structure, and Purpose

Even looking beyond the text does nothing to substantiate the EPA's proposed reading of Section 7411. *See Kiewit Power Constructors Co. v. Secretary of Labor*, 959 F.3d 381, 395 (D.C. Cir. 2020) (Henderson, J.) ("To discern the Congress's intent, we generally examine the statutory text, structure, purpose and its legislative history.") (quoting *Lindeen v. SEC*, 825 F.3d 646, 653 (D.C. Cir. 2016)). These other tools of statutory interpretation underscore the flexibility

of Section 7411(a)'s text, not the cabined reading the EPA proposes.

We begin by acknowledging Section 7411's role within the Clean Air Act. It is a catch-all, intended to ensure that the Act achieves comprehensive pollution control by guaranteeing that there are "no gaps in control activities pertaining to stationary source emissions that pose any significant danger to public health or welfare." S. REP. No. 91-1196, at 20 (1970). In other words, Section 7411 is intended to reach pollutants that do not fit squarely within the ambit of the Act's other regulatory provisions. It authorizes regulation of pollutants not controlled by the other programs under the Act. The EPA does not contest that greenhouse gases emitted by powerplants fit that description.

The Agency points to statutory structure and history for evidence that Congress restricted the "best system of emission reduction" under Section 7411(a) to physical controls that are applied "at and to" an existing source. But the history and structure only confirm what the text shows: Nothing the EPA has identified suggests that Congress in Section 7411 meant to so constrict what might be part of a "best system of emission reduction."

The Congress that enacted Section 7411 was well aware that what a "best system" might comprise is necessarily dynamic and evolving. Congress' main limitation was that the "best system" selected by the EPA must be "adequately demonstrated." 42 U.S.C. § 7411(a)(1). And it stated three other key criteria—cost, nonair quality health and environmental impact, and energy requirements—as factors the EPA must take into account. See id. With those parameters in place, Congress largely left the identification of the best

system of emission reduction to the Agency's expert scientific judgment.

Consider cues from the Clean Air Act as a whole. In contrast to other systemic benchmarks in the Act, Section 7411(a)(1)'s prescription of the "best system of emission reduction" is striking for its paucity of restrictive language. References to more specific categories of emissionreduction tools appear elsewhere in the Act. A provision governing the Nitrogen Oxides Emissions Reduction Program, for example, directs the Administrator to establish limits based on the "degree of reduction achievable through the retrofit application of the best system of continuous emission reduction, taking into account available technology[.]" 42 U.S.C. § 7651f(b)(2) (emphasis added). The Act's regional haze program is likewise specific in its call for use of the "best available retrofit technology." Id. § 7491(b)(2)(A), (g)(2). The specificity of those other provisions highlights the comparative generality of Section 7411(a)'s reference to the "best system of emission reduction."

The sole provision the EPA highlights to shore up its atthe-source theory only further undermines it. The EPA points to the Act's Prevention of Significant Deterioration (PSD) program, 42 U.S.C. § 7475, and its requirement of controls at least as stringent as limits set under Section 7411, *see id.* § 7479(3), to argue that that "the interrelationship between the two types of standards"—the best system of emission reduction and the best available control technology—"is only intelligible if the standards are *in pari materia*." EPA Br. 85. But the distinct roles of the two provisions make clear that the limits in Section 7475 have no place in Section 7411(a)(1).

To qualify for a permit under the PSD program before a source may be built or modified, an applicant must affirm that

it will apply to each source the "best available control technology," or BACT, to limit its emissions. 42 U.S.C. § 7475(a)(4). The statute defines BACT as the degree of control that the permitting agency "determines is achievable for such [major emitting] facility through application of production processes and available methods, systems, and techniques, including fuel cleaning, clean fuels, or treatment or innovative fuel combustion techniques[.]" *Id.* § 7479(3). The statute further provides that BACT cannot "result in emissions of any pollutants which will exceed the emissions allowed by any applicable standard established pursuant to [S]ection 7411 or 7412 of this title." *Id.* § 7479(3). The listed BACT options, EPA observes, are all physically applicable to the source unit. EPA Br. 85.

But the EPA ignores a critical detail: The BACT requirement applies only to newly constructed or modified sources. See Alaska Dep't of Env't Conservation v. EPA, 540 U.S. 461, 472 (2004) (describing 42 U.S.C. § 7475). Any standard established under Section 7411 and also "applicable," per the statutory cross-reference, to a facility regulated for prevention of significant deterioration under Section 7475 would be a standard for new or modified sources established pursuant to Section 7411(b). The BACT requirement does not apply to the existing sources covered by the provision at issue here, Section 7411(d). See New York v. EPA, 413 F.3d 3, 13 (D.C. Cir. 2005). Even if Section 7475 tracks Section 7411(b), there is simply no conflict between, on one hand, requiring new source construction to employ the newest and best at-thesource control technologies and, on the other, empowering the EPA to look to a wider range of ways to reduce emissions when it regulates older, existing sources.

The anomaly of looking to Section 7475(a)(4) to confine Section 7411 is highlighted by the fact that BACT permits are

required only in so-called "non-attainment" areas of the country. See 42 U.S.C. §§ 7407, 7472, 7474. We are unpersuaded that Congress buried a limit on the EPA's Section 7411 authority to address pollution from existing sources throughout the Nation by making reference to a floor for certain new facilities in certain parts of the country.

The statutory history of the BACT requirement further demonstrates that Congress did not intend that it weaken Section 7411(d). Sections 7475 and 7479 were enacted in the 1977 Clean Air Amendments, Pub. L. No. 95-95, §§ 165, 169, 91 Stat. 685, 735–742 (Aug. 7, 1977). In the very same legislation, Congress restricted the best system of emission reduction for *new* sources to technological methods while explicitly allowing the best system for *existing* sources to include non-technological methods. § 109(c)(1)(A), 91 Stat. at 700. If Congress wanted to confine Section 7411 to at-the-source technologies, it would have done so directly rather than hiding such a substantial limitation in an implicit inference from a more remote statutory provision.

The Clean Air Act's legislative history, including the history of the 1970 enactment of Section 7411 and the 1977 and 1990 amendments, further shows that Congress never imposed on the "best system of emissions reduction" the constraints the EPA now advocates. Before Congress settled on the best-system language it enacted in 1970, the Senate bill proposed to authorize the EPA to set standards for stationary sources "reflect[ing] the greatest degree of emission control" achievable through "the latest available control technology, processes, operating methods, or other alternatives." S. 4358, 91st Cong. § 6 (1970). The phrase "other alternatives" was understood to encompass "[t]he maximum use of available means of preventing and controlling air pollution"—without limitation to technological or at-the-source means. S. REP. No.

Page 64 of 185

Document #1880546

91-1196, at 16. The Senate believed that was "essential" to limit emissions from both new and existing sources. Id. The House, for its part, proposed an initial version of Section 7411 that would have "require[d] new sources to 'prevent and control [their] emissions to the fullest extent compatible with the available technology and economic feasibility," H.R. 17255, 91st Cong. § 5 (1970), but included no provision regarding the regulation of existing sources.

As enacted, Section 7411 simply requires that the EPA identify as its benchmark for existing sources the "best system of emission reduction." 42 U.S.C. § 7411(a)(1). Nothing that the EPA identifies or that we discern in the relevant history shows the enacting Congress myopically "focused on steps that can be taken at and by individual sources to reduce emissions." EPA Br. 69. And of course, even if Congress at that time was only thinking of at-the-source controls, the EPA was well aware that environmental problems and their solutions rapidly evolve. At the end of the day, it is the statutory text that governs. See Bostock v. Clayton County, 140 S. Ct. 1731, 1738 (2020).

Congress has consistently relied on the EPA's expert judgment in identifying the "best system" for existing sources. Its action in making, and then undoing, a limiting amendment to Section 7411's "best system of emission reduction" just for new and modified sources—not existing sources—underscores the point. First, Congress in 1977 amended the standard for new sources to require use of "the best technological system of continuous emission reduction," but did not make any parallel change to the standard for existing sources to add those "technological" and "continuous" limitations. Clean Air Amendments Act of 1977, Pub. L. No. 95-95, § 109(c)(1)(A), 91 Stat. 685; see also id. at 700 (adding Section 7411(a)(1)(C)). Then, in 1990, Congress again amended Section 7411, this time

to remove those additional limitations, reverting for new sources to the "best system of emission reduction" that had applied all along to existing sources. Clean Air Act Amendments of 1990, Pub. L. No. 101-549, § 403(a), 104 Stat. 2399, 2631 (1990).

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The amendment and re-amendment of the new-source "best system" language emphasizes that Congress consistently avoided imposing any such technological, at-the-source limitation on the measures that EPA might include in the "best system" for reducing emissions from existing-source categories. And it shows that Congress had always understood the existing-source "best system" language to go beyond the technological restrictions that it briefly imposed on the parallel new source provision.

The ACE Rule is the first EPA rule to read the statute as so strictly boxing in the Agency. Although agency practice cannot directly show whether Congress had a specific intent on the matter in question, it is notable that the regulators closest to the issue never before saw what the EPA now insists is obvious on the face of Section 7411

Over the last half century, no prior Administrator read the Act to foreclose from consideration in the "best system" all but at-the-source means of emission control. Rather, the EPA has exercised latitude to consider any adequately demonstrated approach to reducing harmful pollutants from existing source categories that it believed met the cost, grid-reliability and other statutory criteria. 42 U.S.C. § 7411(a)(1). Where the characteristics of the source category and the pollutant at issue point to emissions trading programs or production shifts from higher- to lower-emitting sources as components of the "best system," the EPA has in the past consistently concluded that it had the authority to consider them.

During the administration of President George W. Bush, for example, the EPA adopted the Clean Air Mercury Rule, 70 Fed. Reg. 28,606 (May 18, 2005), which included a mercury cap-and-trade program as a component of its best system of emissions reduction for existing coal-fired power plants, *see id.* at 28,619–28,620; *id.* at 28,617 ("EPA has determined that a cap-and-trade program based on control technology available in the relevant timeframe is the best system for reducing [mercury] emissions from existing coal-fired Utility Units.").⁷

The EPA's Clinton-era regulation of nitrogen oxide emissions from municipal solid waste combustors likewise relied on Section 7411(d), together with the EPA's waste-management authority under Section 7429, to authorize States to include emissions-trading programs in their State Plans. 40 C.F.R. § 60.33b(d)(2). Under state standards of performance designed to meet guidelines the EPA derived from its "best system," regulated entities were permitted to average the emission rates of multiple units within a single plant as well as trade emission credits with other plants. Municipal Waste Combustors Rule, 60 Fed. Reg. 65,387, 65,402 (Dec. 19, 1995).

The EPA's efforts to distinguish those other Section 7411(d)(1) programs do not work. The EPA claims that the Mercury Rule did not primarily rely on a cap-and-trade

⁷ We vacated the Mercury Rule for unlawfully delisting mercury-emitting electric utility steam generating units from the Section 7412 Hazardous Air Pollutants list. *See New Jersey v. EPA*, 517 F.3d 574, 582–584 (D.C. Cir. 2008). Because we held those mercury sources must be listed, and because Section 7411 cannot be used to regulate air pollutants listed under Section 7412, the existing-source rule the EPA had adopted under Section 7411(d) to control those same mercury emissions from power plants failed as well.

or dispatch shifting program, but rather that the best system rested on a "combination of a cap-and-trade mechanism and * * * the technology needed to achieve the chosen cap level." EPA Br. 72 n.20 (quoting ACE Rule, 84 Fed. Reg. at 32,526). To be clear, that sort of hybrid best system, involving both on-site and system-wide elements, is precisely what the EPA now insists is unprecedented and expressly barred by the statute's text.

Lest there be any doubt that the Mercury Rule's best system rested in significant part on the cap-and-trade mechanism, we note that the EPA in fact approved state implementation plans that adopted *none* of the on-site controls included in the best system and instead relied entirely on implementation of the best system's cap-and-trade program. See, e.g., Notice of Intent, 32 La. Reg. 869, 870 (May 20, 2006) (proposing an implementation plan solely reliant on cap-andtrade); Approval and Promulgation of State Plan for Designated Facilities and Pollutants: Louisiana, 72 Fed. Reg. 46,188, 46,188 (Aug. 17, 2007) (approving Louisiana's proposal on the basis that it "would meet [Clean Air Mercury Rule] requirements by participating in the EPA administered cap-and-trade program addressing [mercury] emissions"). Contrary to the EPA's assertions, e.g. EPA Br. 4, the Agency plainly has previously embraced beyond-the-source measures of emission reduction as authorized by the statutory text.

The EPA's invocation of its own past practice under Section 7411 falls wide of the mark. It errs in insisting that "the *more than seventy* Section 7411 rules" promulgated for "roughly forty-five years" somehow reflect a consistent adherence to the Agency's new view. EPA Br. 4, 88; *see id.* at 37–38, 88–89; ACE Rule, 84 Fed. Reg. at 32,526. Almost all of the rules to which it refers are irrelevant to the issue at hand. They were for new sources, subject to Section 7411(b), not

existing sources under Section 7411(d). *See* 84 Fed. Reg. at 32,526.

Older facilities that may be capable only of outdated, more polluting methods of generation present different regulatory challenges than new sources. As discussed above in connection with the EPA's reference to BACT requirements for new-source permitting under the PSD program, a requirement that owners and operators constructing new facilities apply state-of-the-art, lowest-emitting equipment and methods "at and to the source" might well be the best available means of reducing emissions for that source category. The same cannot be said for existing sources. A central error of the ACE Rule is that it fails to appreciate that difference. It identifies a handful of measures applicable to and at the source that the EPA suggests may achieve slight reductions. But industry practice demonstrates that better, lower-emitting, reliable, and cost-effective systems for reducing emissions from existing power plants typically also shift generation away higher-emitting, fossil-fuel-fired capacity renewable or lower- or zero-emitting generation is an available substitute.

Because the best, most efficient and effective systems for controlling emissions from existing sources ordinarily differ from the best systems for new sources, they are regulated via a distinct statutory track. Only the Section 7411(d) rules are relevant to the EPA's prior understanding of its authority to regulate existing sources. Those prior EPA rules contradict the EPA's position here. Before its about-face in the ACE Rule, all three of the Agency's most recent Section 7411(d) rules included emissions trading or generation shifting to lower-emitting sources. *See* Clean Power Plan, 80 Fed. Reg. at 64,755–64,756; Clean Air Mercury Rule, 70 Fed. Reg. at

28,606, 28,617, 28,619–28,620; Municipal Waste Combustors Rule, 60 Fed. Reg. 65,387, 65,402 (Dec. 19, 1995).

To put the EPA's mistaken reading of Section 7411 in perspective, consider how it effectively relegates federal regulators back to the sidelines where they stood before Congress overhauled the Clean Air Act in 1970. The federal government had until then done little more than provide information and guidance to cheer on States' air-quality regulators. *See Train v. NRDC*, 421 U.S. 60, 64 (1975) (noting that the States' response to earlier iterations of the Act focused on information and incentives had been "disappointing").

With the 1970 amendments, a virtually unanimous Congress dramatically strengthened the federal government's hand in combatting air pollution. See Train, 421 U.S. at 64 ("These Amendments sharply increased federal authority and responsibility. * * * The difference * * * was that the States were no longer given any choice as to whether they would meet th[eir statutory] responsibility."); cf. EPA v. EME Homer City Generation, LP, 572 U.S. 489, 497 (2014) (noting this progression toward "increasing[ly] rigor[ous]" federal regulation of interstate air pollution). Congress did so "to protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare and the productive capacity of its population[.]" 42 U.S.C. § 7401(b)(1). The EPA's newly enhanced authority was "designed to provide the basis" for "a massive attack on air pollution." S. REP. No. 91-1196, at 1. Section 7411(d) ensured that there would be "no gaps in control activities pertaining to stationary source emissions that pose any significant danger to public health or welfare." Id. at 20.

Describing the Act shortly before its passage, Republican Senator John Cooper explained that the "philosophy of the bill

abandons the old assumption of requiring the use of only whatever technology is already proven and at hand" and instead "set[s] out what is to be achieved." 116 CONG. REC. 32,919 (1970). To that end, the Act did not finely detail specific approaches to enumerated sources or types of air pollution. See 116 CONG. REC. 32,901–32,902 (1970) (statement of Sen. Muskie). Congress chose instead to entrust the EPA with flexible powers to craft effective solutions. Only by doing so could air quality regulation hope to reflect developing understandings of escalating problems and bring to bear as-yet-unseen solutions.

American air quality is the proof of that approach. The EPA has worked closely with industry, States, and the public to develop the world's most nimble, responsive, and effective regime of air pollution regulation. For example, in the half-century since the 1970 Act, "the combined emissions of * * * six key pollutants regulated under the National Ambient Air Quality Standards dropped by 73 percent" between 1970 and 2017. EPA Releases 2018 Power Plant Emissions Demonstrating Continued Progress, EPA (Feb. 20, 2019), https://www.epa.gov/newsreleases/epa-releases-2018-power-plant-emissions-demonstrating-continued-progress (last visited Jan. 11, 2021).

The EPA's new reading of Section 7411 would atrophy the muscle that Congress deliberately built up. The EPA asserts it lacks authority to curb a pollutant that the Agency itself has repeatedly deemed a grave danger to health and welfare but that eludes effective control under other provisions of the Act. We do not believe that Congress drafted such an enfeebled gap-filling authority in Section 7411.

* * *

In sum, traditional tools of statutory interpretation reveal nothing in the text, structure, history, or purpose of Section 7411 that compels the reading the EPA adopted in the ACE Rule.

3. Compliance Measures

In the ACE Rule, the EPA also limited the measures that sources may use to comply with the States' standards of performance set under Section 7411(d). Recognizing that sources generally have "broad discretion" in how they comply with state standards, 84 Fed. Reg. at 32,555, the EPA nonetheless categorically excluded two specific measures from the States' consideration: averaging and trading, and biomass co-firing. It did so on the ground that these measures do not meet two criteria it determined were required of compliance measures: that they be (1) "capable of being applied to and at the source" and (2) "measurable at the source using data, emissions monitoring equipment or other methods to demonstrate compliance[.]" *Id*. The EPA identified these criteria on account of "both legal and practical concerns[.]" *Id*.

The Agency's legal concern was that non-source-specific compliance measures "would be inconsistent with the EPA's interpretation of the" best system of emission reduction as itself plant-specific. ACE Rule, 84 Fed. Reg. at 32,555–32,556. In that way, the EPA extended to States' compliance measures the same incorrect textual interpretation of the Clean Air Act that underlay its determination of what best systems may include—namely, that the system must be one that can be applied to and at the individual source. The EPA reasoned that "implementation and enforcement of such standards should correspond with the approach used to set the standard in the first place." *Id.* at 32,556.

The Agency's practical concern was that compliance measures that are not source-specific could result in "asymmetrical regulation[,]" meaning the stringency of standards could vary across sources. ACE Rule, 84 Fed. Reg. at 32,556. It argues here that such regulation "could have significant localized adverse consequences" in the case of many pollutants regulated under Section 7411(d). EPA Br. 240.

Because we hold that the EPA erred in concluding Section 7411 unambiguously requires that the best system of emission reduction be source specific, we necessarily reject the ACE Rule's exclusion from Section 7411(d) of compliance measures it characterizes as non-source-specific. The Agency tied that exclusion to its flawed interpretation of the statute as unambiguously confined to measures taken "at" individual plants, so it falls with that decision. ACE Rule, 84 Fed. Reg. at 32,555–32,556.

The statute says nothing about the measures that sources may use to comply with the standards States establish under Section 7411(d), and the EPA cites no separate authority that would require compliance measures to be source-specific, or that Congress meant to so hogtie the States in devising standards of performance. Regardless of any policy-based reasons the EPA offers for limiting compliance measures, then, its decision to exclude averaging and trading and biomass co-firing is foreclosed by its legally erroneous starting point.

Neither can the EPA's policy-based reasons sustain its decision to exclude its disfavored non-source-specific compliance measures in the context of carbon dioxide emissions. Apart from its statutory interpretation, the EPA's only ground for excluding those compliance measures is the Agency's stated concern to avoid asymmetrical regulation.

ACE Rule, 84 Fed. Reg. at 32,556. It argues that asymmetrical regulation "could have significant localized adverse consequences for public health and the environment." EPA Br. 240. The Agency points to the case of fluoride—another pollutant regulated under Section 7411(d)—to note that allowing sources to meet state standards of performance by averaging emissions across units or between facilities "could cause serious environmental impacts on local communities where pollution was under-controlled, causing localized damage." *Id.* In light of such considerations, the EPA worried that a system of averaging and trading "would undermine the EPA's determination" of the best system of emission reduction, leading to the sort of localized consequences the system is designed to guard against. ACE Rule, 84 Fed. Reg. at 32,557.

But that point does not support the EPA's categorical rule, let alone prove that the statute unambiguously compels the Agency's reading. Unlike pollutants such as fluoride, carbon dioxide emissions do not pose localized concerns at the site of emission. Whereas the EPA might determine that the best system for reducing fluoride emissions is one that can be applied to and at the source, and it would be reasonable for the EPA in turn to limit compliance measures to correspond with such a "best system," the same cannot be said of carbon dioxide. Indeed, the EPA recognizes that "CO₂ is a global pollutant with global effects[,]" meaning "there may be few direct and area public health consequences from asymmetrical regulation of carbon dioxide within a State." EPA Br. 239.

The Agency defends its concern about asymmetrical regulation in the context of carbon dioxide emissions with the unsupported contention that an interpretation of Section 7411(d) that allowed non-source-specific compliance measures "would not be limited to carbon dioxide alone." EPA Br. 240. But there is no reason to conclude, and petitioners do not argue,

that the statute requires the EPA to permit non-source-specific compliance measures for every pollutant it regulates under Section 7411. The statute is not so rigid as EPA supposes. In fact, Section 7411 itself does not textually restrict the States' choice of compliance measures for their sources at all. *See also* Power Cos. Pet'rs Br. 25–26; Biogenic Pet'r Br. 16–17. Even if the EPA might reasonably limit compliance measures in specific situations based on its determination of the best system for reducing particular types of emissions with localized consequences, the statute imposes no requirement that such limitations be uniform across the regulation of different pollutants.

In sum, the EPA's conclusion on compliance by sources rises and falls with its legally flawed interpretation of the statute. The Agency's practical concern about asymmetrical regulation could not, in any event, support the exclusion of biomass co-firing or averaging and trading in the particular context of carbon dioxide emission regulation.

B. THE MAJOR QUESTIONS DOCTRINE

The EPA also references the so-called "major questions" doctrine in defense of its statutory interpretation and the ACE Rule. 84 Fed. Reg. at 32,529. But that doctrine does not confine the EPA to adopting solely emission standards that can be implemented physically to and at the individual plant.

The Supreme Court has said in a few cases that sometimes an agency's exercise of regulatory authority can be of such "extraordinary" significance that a court should hesitate before concluding that Congress intended to house such sweeping authority in an ambiguous statutory provision. See King v. Burwell, 576 U.S. 473, 485–486 (2015); Gonzales v. Oregon, 546 U.S. 243, 262, 266–267 (2006); FDA v. Brown & Williamson Tobacco Corp., 529 U.S. 120, 159 (2000); accord

Utility Air Regulatory Group v. EPA (UARG), 573 U.S. 302, 324 (2014); see also MCI Telecommc'ns v. AT&T, 512 U.S. 218, 231 (1994). Where there are special reasons for doubt, the doctrine asks whether it is implausible in light of the statute and subject matter in question that Congress authorized such unusual agency action. See, e.g., UARG, 573 U.S. at 324 (considering whether the challenged rule would "bring about an enormous and transformative expansion in EPA's authority congressional regulatory without clear authorization"); Brown & Williamson, 529 U.S. at 161 (holding that the FDA could not regulate tobacco because it was "plain that Congress ha[d] not given the FDA the authority that it s[ought] to exercise").

In the ACE Rule, the EPA stated that, while its interpretation of Section 7411 did not depend on the "major question[s] doctrine[,]" the Agency believed that "that doctrine should apply here[.]" 84 Fed. Reg. at 32,529. The Agency reasoned that the Clean Power Plan would have had "billions of dollars of impact on regulated parties and the economy," would have "affected every electricity customer[,]" was "subject to litigation involving almost every State," and would have upset the balance of regulatory authority between federal agencies and the States. *Id.* For those reasons, the Agency concluded that the "interpretive question raised"—whether the "best system of emission reduction" can include measures other than improvements to and at the physical source—"must be supported by a clear[]statement from Congress." *Id.* That was incorrect.

1. The EPA's Regulatory Mandate

Unlike cases that have triggered the major questions doctrine, each critical element of the Agency's regulatory

authority on this very subject has long been recognized by Congress and judicial precedent.

Most importantly, there is no question that the regulation of greenhouse gas emissions by power plants across the Nation falls squarely within the EPA's wheelhouse. The Supreme Court has ruled specifically that greenhouse gases are "air pollutants" covered by the Clean Air Act. *Massachusetts v. EPA*, 549 U.S. at 532. More to the point, the Court has told the EPA directly that it is the Agency's job to regulate power plants' emissions of greenhouse gases under Section 7411. "Congress delegated to EPA the decision whether and how to regulate carbon-dioxide emissions from powerplants" through a "§ 7411 rulemaking[.]" *AEP*, 564 U.S. at 426–427. The separate opinion agrees. *See* Separate Op. at 14 ("Does the Clean Air Act direct the EPA to make our air cleaner? Clearly yes. Does it require at least some carbon reduction? According to *Massachusetts v. EPA*, again yes.").

On top of that, the issuance of regulations addressing greenhouse gas pollution is mandatory under the statute because of longstanding endangerment findings. Massachusetts v. EPA, the Supreme Court directed the EPA either to make an endangerment finding under the statute for greenhouse gas pollution, or to explain why it would not do so. 549 U.S. at 532–535. The EPA complied. For now more than a decade—from 2009 to the present day in the ACE Rule itself—the EPA has consistently and repeatedly recognized the serious danger that greenhouse gas pollution poses to human health and welfare. See ACE Rule, 84 Fed. Reg. at 32,533; New Source Rule, 80 Fed. Reg. at 64,530-64,531; 2009 Endangerment Finding, 74 Fed. Reg. at 66,496–66,497. By statute, that finding triggers a mandatory duty on the EPA to regulate greenhouse gas pollution. 42 U.S.C. § 7521(a)(1) (motor vehicle emissions); 42 U.S.C. § 7411(b) (stationary

sources that contribute significantly to such dangerous pollution).8

So the EPA has not just the authority, but a statutory duty, to regulate greenhouse gas pollution, including specifically from power plants.

In that way, the pollution measures in the Clean Power Plan do not fit the major-question mold of prior cases. For example, in *Brown & Williamson*, the major question was whether the agency had authority to regulate tobacco at all. There, the Supreme Court ruled that there was "reason to hesitate" before concluding that the provisions of the Food, Drug, and Cosmetic Act covering restricted devices, *Brown & Williamson*, 529 U.S. at 134 (citing 21 U.S.C. § 360j(e)), gave the Food and Drug Administration the authority to regulate

⁸ As discussed below with respect to the challenge brought by the Coal Petitioners (infra at III.A.1), the legal basis for the EPA's regulation of greenhouse gas emissions from existing power plants in both the Clean Power Plan and the ACE Rule was the Agency's prior 2015 decision to issue standards of performance for carbon dioxide emitted from new power plants. That decision, in turn, was based on the Agency's recognition (since the 1970s) that fossil-fuelfired power plants contribute significantly to air pollution, which "may reasonably be anticipated to endanger the public health or welfare." 42 U.S.C. § 7411(b)(1)(A); see Air Pollution Prevention and Control: List of Categories of Stationary Sources, 36 Fed. Reg. 5931, 5931 (March 31, 1971); Air Pollution Prevention and Control: Addition to the List of Categories of Stationary Sources, 42 Fed. Reg. 53,657, 53,657 (Oct. 3, 1977). The EPA also determined in 2015 that power plants contribute significantly to greenhouse gas pollution in particular. See New Source Rule, 80 Fed. Reg. at 64,531. That determination, combined with the determination that greenhouse gases are dangerous to public health and welfare, triggers a mandatory duty to regulate under Section 7411(b)(1)(A).

tobacco given its "unique political history" and its role as a "significant portion of the American economy." *Id.* at 159. The Court reasoned based on the overall drug-regulatory scheme, as well as Congress having "created a distinct regulatory scheme for tobacco products," that Congress "could not have intended to delegate a decision of such economic and political significance to an agency in so cryptic a fashion." *Id.* at 159–160.

That question of agency authority to regulate the matter in question was absent for the Clean Power Plan. In fact, the Supreme Court in *Massachusetts v. EPA* rejected the analogy between regulation of greenhouse gases as a pollutant under the Clean Air Act and regulation of tobacco as a drug under the Food, Drug, and Cosmetic Act. 549 U.S. at 530–531. Treating tobacco as a drug would have been wholly novel, requiring the agency to ban virtually all tobacco products—a result the Court suspected Congress did not intend. *Id.* at 531; *Brown & Williamson*, 529 U.S. at 143. By contrast, the Supreme Court explained, greenhouse gases are air pollutants that fall squarely within the Clean Air Act's coverage, and the Act would subject such pollutants, if the agency makes the necessary findings, only to regulation, not prohibition. *Massachusetts v. EPA*, 549 U.S. at 531.

The Clean Air Act also contains its own limits on regulation, like mandating that the EPA take into account such factors as available technology and the cost of compliance. *Id.* (citing 42 U.S.C. § 7521(a)(2)); *see also* 42 U.S.C. § 7411(a)(1) (requiring consideration of health and environmental impacts, energy requirements, and cost). In that way, Congress designed the Clean Air Act's processes for regulating air pollution to adapt to "changing circumstances and scientific developments" without imposing unreasonable technological or financial burdens on industry. *Massachusetts*

v. EPA, 549 U.S. at 532. So, unlike the major question of tobacco regulation in *Brown & Williamson*, there is "nothing counterintuitive" about the EPA's reasonable regulation of dangerous airborne substances like greenhouse gases. *Id.* at 531–532.

Similarly, the major question in *UARG* was whom the EPA was attempting to regulate. In that case, the Supreme Court held that the EPA's statutory permitting authority for the construction and modification of stationary sources was "designed to apply to, and cannot rationally be extended beyond, a relative handful of large sources capable of shouldering heavy substantive and procedural burdens"—sources like power plants. 573 U.S. at 322. The Court held that, without clear statutory grounding, the EPA's effort to extend permitting requirements to literally millions of small sources of greenhouse gas pollution but of no other regulated pollutants—sources like schools, hospitals, churches, and shopping malls—overshot its statutory authority. *Id.* at 324, 328.

The Clean Power Plan, by contrast, regulated the very entities the EPA was told by the Supreme Court in *AEP* and *UARG* to regulate—fossil-fuel-fired power plants. And it employed statutory tools that were "suitable" for application to the long-regulated power industry. *See UARG*, 573 U.S. at 323, 324 n.7. *American Electric Power* pointed the Agency to regulation under Section 7411 specifically, explaining that "Congress delegated to EPA the decision whether and how to regulate carbon-dioxide emissions from [new, modified, and existing] powerplants" using the regulatory tools laid out in Section 7411. 564 U.S. at 424–426.

That is no doubt a significant task for the EPA. But that is not because of any agency overreach. It is the product of 80

Congress' charge that the EPA regulate air pollution nationwide. And with respect to regulating greenhouse gas pollution in particular, it reflects the fact that fossil-fuel-fired power plants predominate the power industry and are spread across the Nation. See United States Energy Information Administration (EIA), Frequently Asked Questions: What is U.S. Electricity Generation by Source? (Nov. 2, 2020), https://www.eia.gov/tools/faqs/faq.php?id=427&t=2 (last visited Jan. 11, 2021); EIA, U.S. Energy Mapping System, https://www.eia.gov/state/maps.php (last visited Jan. 11, 2021). So much so that they "are by far" the greatest stationary contributor to greenhouse gas pollution and the significant dangers it causes for the public health and welfare. New Source Rule, 80 Fed. Reg. at 64,522.

2. Best System of Emission Reduction

So *what* the EPA may regulate (greenhouse gas pollution), and *whom* it may target (power plants), and *how* (under Section 7411) have all been resolved and so do not trigger the major questions doctrine.

That leaves the EPA no place to house its major-question objection other than in the interpretation of the statutory term "best system of emission reduction," 42 U.S.C. § 7411(a)(1). More specifically, the EPA says the use of any emission-control measures that do not operate at the individual physical plant level requires an express statement from Congress, and that federal standards that might encourage generation-shifting are therefore categorically forbidden under Section 7411.

But the major questions doctrine does not apply there either for a number of reasons.

a. Statutory Design

For starters, the "best system of emission reduction" plays a cabined role in the statutory scheme. The determination of the best system of emission reduction is entirely internal to the EPA. The EPA itself evaluates relevant scientific, technological, and economic evidence to identify, in its judgment, the "best system of emission reduction" available, and the "degree of emission limitation achievable" through it. 42 U.S.C. § 7411(a)(1).

In making that determination, the statute significantly reins in the EPA's judgment by requiring the Agency to (1) "tak[e] into account the cost of achieving such reduction," (2) factor in "any nonair quality health and environmental impact," (3) balance the effect on "energy requirements," and (4) ensure that the system has been demonstrated[.]" 42 U.S.C. § 7411(a)(1). To be "adequately demonstrated[,]" we have explained, the system must be shown to be reasonably "reliable," "efficient," and "expected to serve the interests of pollution control without becoming exorbitantly costly[.]" Essex Chem. Corp. v. Ruckelshaus, 486 F.2d 427, 433 (D.C. Cir. 1973), cert. denied, 416 U.S. 969 (1974); see also Portland Cement Ass'n v. Ruckelshaus, 486 F.2d 375, 391 (D.C. Cir. 1973) (whether a system is adequately demonstrated "cannot be based on 'crystal ball' inquiry").9

⁹ In addition to these statutory constraints, the EPA has tied its own hands by requiring that the best system include only actions touching three bases: (i) they reduce emissions (rather than, for example, capturing emissions after they are released into the air by planting trees), (ii) sources themselves can implement them, and (iii) they target supply-side activities. *See* Clean Power Plan, 80 Fed. Reg. at 64,776, 64,778–64,779.

Once the EPA identifies a best system that meets those requirements and calculates the degree of emission limitation it allows, the Clean Air Act leaves it to the States to set their own standards of performance for their existing pollution sources. 42 U.S.C. § 7411(d). The cooperative-federalism design of Section 7411(d) gives the States broad discretion in achieving those emission limitations. *See AEP*, 564 U.S. at 428 ("The Act envisions extensive cooperation between federal and state authorities, generally permitting each State to take the first cut at determining how best to achieve EPA emissions standards within its domain[.]") (internal citations omitted). In addition, Section 7411(d) expressly allows States, in setting their emission standards, to "take into consideration, among other factors, the remaining useful life" of its existing sources. 42 U.S.C. § 7411(d).

So the EPA's scientific and technological identification of the best system of emission reduction cannot bear the major-question label. Determining the system is a task expressly and indisputably assigned by Congress to the EPA and requiring specialized agency expertise. That system serves only as the basis for the EPA to set the emission-reduction targets in its quantitative guidelines. The States retain the choice of how to meet those guidelines through standards of performance tailored to their various sources. Neither exercise entails resolution of a major question.

The EPA argues that its own best-system process raised a major question by "impos[ing] 'generation shifting[.]" EPA Br. 99. But under Section 7411(d), the EPA does not impose the "best system of emission reduction" on anyone. Instead, each State decides for itself what measures to employ to meet the emission limits, and in so doing may elect to consider the "remaining useful life" of its plants and "other factors." 42 U.S.C. § 7411(d). See Clean Power Plan, 80 Fed. Reg. at

64,709–64,710, 64,783. The Clean Power Plan, in fact, afforded States considerable flexibility in choosing how to calculate and meet their emissions targets. *See, e.g., id.* at 64,665, 64,756–64,757, 64,834–64,837.¹⁰

Congress already focused on the issue and made the decision to rope the EPA's selection of a best system of emission reduction about with all of those substantive and structural limitations. So the major questions doctrine does not provide any basis for concluding that the Clean Air Act categorically forecloses the EPA's consideration of even those generation-shifting measures that are already widely in use by States and power plants and have been demonstrated to be reasonable, reliable, effective, and not unduly disruptive to the regulated industry. See Clean Power Plan, 80 Fed. Reg. at 64,735, 64,769.

sources might choose to meet their emissions targets by using measures other than the specific heat-rate improvements and generation shifting that the EPA had identified in its best system. See 80 Fed. Reg. at 64,755–64,758. The EPA offered a list of alternative available technologies that reduced power plants' carbon dioxide emissions per megawatt, including carbon capture and storage, heat-rate improvements at non-coal plants, fuel switching to gas, fuel switching to biomass, and waste heat-to-energy conversion. Id. at 64,756. In certain situations, for example, modifying coal-fired plants to burn natural gas could "help achieve emission limits consistent with the [best system]." Id. The Agency also identified a list of alternative measures that States could implement to lower overall emissions from fossil-fuel-fired plants. Those measures included, for example, demand-side energy efficiency—a policy tool

that the EPA expected some States to use because "the potential emission reductions from demand-side [energy efficiency] rival

those from [generation shifting] in magnitude[.]" *Id.*

¹⁰ The Clean Power Plan expressly contemplated that States and

84

In that respect, the EPA's argument sounds much like a second argument rejected by the Supreme Court in UARG. In addition to the scope question discussed above, the Court addressed whether the EPA could require facilities that emit conventional pollutants also to implement the "best available control technology" for greenhouse gases. UARG, 573 U.S. at 329-333 (citing 42 U.S.C. § 7475(a)(4)). Like the EPA here, the industry petitioners argued that the "best available control technology" standard was "fundamentally unsuited" to greenhouse gas emissions because it had "traditionally" focused on "end-of-stack controls." *Id.* at 329–330. "[A]pplying it to greenhouse gases," the industry petitioners insisted, would make the "best available control technology" standard "more about regulating energy use, which will enable regulators to control every aspect of a facility's operation and design[.]" *Id.* at 330 (internal quotation marks omitted).

The Supreme Court rejected that challenge. The Court explained that the EPA's guidance contemplated both "end-ofstack"-type controls and energy efficiency measures. UARG, 573 U.S. at 330. And, critically, the Court emphasized that the statute and regulations already imposed "important limitations on [best available control technology] that may work to mitigate petitioners' concerns about 'unbounded' regulatory authority." Id. at 331. Among those limitations was the EPA's longstanding statutory interpretation that the best available control technology was required "only for pollutants that the source itself emits," and the EPA's existing guidance that permitting authorities should "consider whether a proposed regulatory burden outweighs any reduction in emissions to be achieved." Id. The statute also required the EPA to determine the best available control technology with reference to "energy, environmental, and economic impacts and other costs." 42 U.S.C. § 7479(3); see also UARG, 573 U.S. at 333 n.9.

85

The numerous substantial and explicit So too here: constraints on the EPA's selection of a best system of emission reduction foreclose using the major questions doctrine to write additional, extratextual, and inflexibly categorical limitations into a statute whose "broad language *** reflects an intentional effort to confer the flexibility necessary to forestall * * * obsolescence." Massachusetts v. EPA, 549 U.S. at 532; see also Transmission Access Policy Study Group v. FERC, 225 F.3d 667, 711 (D.C. Cir. 2000) (where Congress has spoken, court upholds as within agency authority an order that "fundamentally change[d] the regulatory environment in which utilities operate" and "introduc[ed] meaningful competition into an industry that since its inception has been highly regulated and affecting all utilities in a similar way"), aff'd sub nom. New York v. FERC, 535 U.S. 1 (2002).

The EPA points to the Supreme Court's statement in *UARG* that "[w]hen an agency claims to discover in a long-extant statute an unheralded power to regulate 'a significant portion of the American economy,' we typically greet its announcement with a measure of skepticism." 573 U.S. at 324 (quoting *Brown & Williamson*, 529 U.S. at 159).

True. But, as already explained, the EPA made no new discovery of regulatory power with the Clean Power Plan. While power plants are significant players in the American economy, they have been subject to regulation under Section 7411 for nearly half a century. See, e.g., Costle, 657 F.2d at 318; Oljato Chapter of Navajo Tribe v. Train, 515 F.2d 654, 656–57 (D.C. Cir. 1975). Their emission of massive amounts of carbon dioxide has long been known. And the source of the EPA's duty to regulate that greenhouse gas pollution from power plants was the plain statutory text and Supreme Court precedent, not something the EPA pulled out of a hat. See AEP, 564 U.S. at 425; Massachusetts v. EPA, 549 U.S. at 532.

In sum, the Clean Air Act expressly confers regulatory authority on the EPA to set standards for reducing greenhouse gas emissions from fossil-fuel-fired power plants nationwide. Congress knew both the scope and importance of what it was doing. And it cabined the EPA's authority with concrete and judicially enforceable statutory limitations. The major questions doctrine is meant to discern, not override, such statutory judgments. Doubly so when the regulatory authority and its reach have been affirmed and enforced by the Supreme Court.

b. Regulatory Consequences

The problems with the EPA's approach to the major-question analysis do not stop there. The Agency also conflates the significance of greenhouse gas regulation of power plants generally with any significance attributable solely to the EPA's choice of a "best system of emission reduction"—the statutory provision where the EPA tried to anchor its major-question objection. Remember, the EPA concluded that the major questions doctrine was triggered centrally by (i) the Clean Power Plan's "billions of dollars of impact" on the economy; (ii) its effect on "every electricity customer"; (iii) the number of litigation challenges it spawned, "involving almost every State"; and (iv) its perceived shifting of regulatory authority between federal agencies and the States. ACE Rule, 84 Fed. Reg. at 32,529.

Taking the characterizations as true, those consequences are a product of the greenhouse gas *problem*, not of the best-system's role in the solution. Given the number and dispersion of fossil-fuel-fired power plants, any nationwide regulation of their greenhouse gas pollution that meaningfully addresses emissions will necessarily affect a broad swath of the Nation's electricity customers. Under the EPA's grave endangerment

finding, so too would a *failure* to regulate those greenhouse gas emissions. *See* 2009 Endangerment Finding, 74 Fed. Reg. at 66,496.

As for the "billions of dollars of impact[,]" the EPA has offered no evidence tying that cost to generation shifting rather than physical plant adjustments or a variety of other means States might choose for complying with emission limits. As the EPA itself previously acknowledged, generation shifting can be cheaper than other demonstrated methods of reducing greenhouse gas emissions, like carbon capture and storage, that take place "at" the source (and thus fall within the EPA's current statutory vision). *See* Clean Power Plan, 80 Fed. Reg. at 64,727. Moreover, the Clean Power Plan's significant projected economic impact was not atypical for Clean Air Act rulemakings by the EPA. *See, e.g., Costle,* 657 F.2d at 314 (upholding 1979 new source performance standards governing emission control by coal-burning power plants that imposed "tens of billions of dollars" of costs on the power sector).

Even assuming that the EPA's federalism concerns could trigger the major questions doctrine (rather than the federalism clear-statement canon), they carry no material weight here. That is because the statutory role of the best system of emission reduction under Section 7411(d) textually preserves and enforces the States' independent role in choosing from among the broadest range of options to set standards of performance appropriate to sources within their jurisdiction. In fact, it is the

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¹¹ The EPA now takes the position that natural gas co-firing is not adequately demonstrated and that neither co-firing nor carbon capture and storage is part of the best system of emission reduction. *See* ACE Rule, 84 Fed. Reg. at 32,544–32,545, 32,549. But those methods are amenable to implementation "to" and "at" the source, in keeping with the EPA's statutory view.

ACE Rule's unreasoned barriers to certain compliance measures, like generation shifting and biomass co-firing, that hamstring the States. *See supra* Part II.A.3 (analyzing ACE Rule, 84 Fed. Reg. at 32,555–32,556).

Finally, it seems doubtful that the volume of litigation aimed at a regulation can reasonably bear on its major-question status. The Supreme Court has certainly never embraced that idea. For good reason. A doctrine at the mercy of litigation stratagems, or the mere existence of disagreements over which parties find advantage in filing suit, cannot be an elucidating or even logically relevant tool of statutory interpretation.

In any event, the EPA offers no basis for concluding that the best-system determination is what lit the litigation fire. After all, the ACE Rule too has been "subject to litigation" involving 43 States and all manner of other interested parties, despite the Rule's jettisoning of generation shifting as part of the best system of emission reduction. *See* Opinion Caption, *supra*.

c. Regulating in the Electricity Sector

The ACE Rule's last attempt to wrap the best-system determination in the major-question mantle asserts that including generation shifting as part of the best system of emission reduction lacks a "valid limiting principle," and that, by "shifting focus to the entire grid[,]" it would "empower" the Agency "to order the wholesale restructuring of any industrial sector[.]" ACE Rule, 84 Fed. Reg. at 32,529. But that is entirely wrong. The Clean Power Plan was aimed not at regulating the grid, but squarely and solely at controlling air pollution—a task at the heart of the EPA's mandate. Indeed, the EPA's reasoning in the ACE Rule defeats its own argument.

The EPA suggests that counting generation shifting among the tools for emission reduction risks expanding the Agency's regulatory sights too far, because "any action affecting a generator's operating costs could impact its order of dispatch and lead to generation shifting." ACE Rule, 84 Fed. Reg. at 32,529 (emphasis added). That is exactly right: Any regulation of power plants—even the most conventional, at-the-source controls—may cause a relative increase in the cost of doing business for particular plants but not others, with some generation-shifting effect. That is how pollution regulation in the electricity sector has always worked. Regulators including, for example, Congress in the Clean Air Act's acid rain cap-and-trade program, 42 U.S.C. §§ 7651-76510—have long facilitated those generation-shifting effects to serve the goal of pollution reduction. See Grid Experts Amicus Br. 13-15.

So the EPA's contention that it cannot consider measures resulting in generation shifting as part of its best system proves far too much: If that were so, the EPA would be limited to considering only measures that power plants could adopt at zero cost, so as to maintain their relative-dispatch position. That is, of course, incompatible with Congress' instruction that the best system take cost into account as only one factor among several, *see* 42 U.S.C. § 7411(a)(1), and contrary to the very nature of environmental law, which requires the regulation of polluters and material changes in their pollution emissions.

The EPA's argument also ignores, again, the critical statutory limitations that the Clean Air Act imposes on the selection of a best system of emission reduction and its function in state plans. Under Section 7411(d), the EPA lacks the authority to "order the wholesale restructuring" of anything. All it can do is identify the best system of emission reduction that has been adequately demonstrated within the cost, energy-

requirement, and other substantive constraints set by Congress, and then calculate achievable emission goals by reference to that system. 42 U.S.C. § 7411(a)(1). States, in turn, set standards of performance only "for" any "existing source[,]" and need not implement any aspect of the EPA's "best system[.]" Id. § 7411(d)(1) (emphasis added). And the EPA's determination about how best to combat air pollution is, of course, subject to judicial review, including on questions like whether a system has been adequately demonstrated and whether the Agency adequately considered costs. 42 U.S.C. § 7607(b); cf. AEP, 564 U.S. at 427; UARG, 573 U.S. at 333 Congress' carefully calibrated system—involving n.9. scientific and technological evidence-gathering, close study of existing industry practice, constrained discretion, divided regulatory authority, collaboration with States, and judicial review—leaves no room for the unauthorized agency overreach that the EPA fears.

A group of States and industry groups intervened with other major-question challenges, but their salvos all fall short. They argue that the major questions doctrine is implicated because the EPA has "'no expertise' in electricity generation, transmission, and reliability." State & Industry Intervenors Repeal Br. 30 (quoting King, 576 U.S. at 474); see also Gonzales, 546 U.S. at 267 (rejecting interpretive rule of the Attorney General that was "both beyond his expertise and incongruous with the statutory purposes and design"). But Section 7411 not only foresees, but demands that the EPA consider "energy requirements" when assessing the best system of emission reduction. 42 U.S.C. § 7411(a)(1). The Supreme Court in AEP recognized the EPA's signal role in regulating greenhouse gases under Section notwithstanding that the EPA must consider energy requirements and ensure a reliable energy supply when it does so. 564 U.S. at 427. The Court explained that, when the EPA

is formulating greenhouse gas regulations, it must consider not only "the environmental benefit potentially achievable," but also "our Nation's energy needs and the possibility of economic disruption[.]" *Id.* The Clean Air Act "entrusts such complex balancing to EPA in the first instance, in combination with state regulators." *Id.*; see 42 U.S.C. § 7411(a)(1). That definitive reading of the statute by the Supreme Court cannot suddenly become a forbidden major question when the EPA regulates as it was told to do.

The statutory scheme simply gives no quarter to the proposition that, in following Congress' directive to regulate electricity-producing power plants, the EPA is categorically forbidden to consider emission-reduction measures that take into account the nature of the electricity grid in which those power plants operate day in and day out. Nor is it sensible to categorically put off-limits the generation-shifting measures that power plants are already actually using to meet emission requirements. *See* Clean Power Plan, 80 Fed. Reg. at 64,784–64,785.

The State and Industry Intervenors also overlook that the EPA developed the Clean Power Plan with input from other agencies with relevant expertise. See Clean Power Plan, 80 Fed. Reg. at 64,672–64,673 (explaining that "[i]nput and assistance from FERC [the Federal Energy Regulatory Commission] and DOE [the Department of Energy] have been particularly important in shaping" aspects of the Clean Power Plan); id. at 64,671 (noting "extensive consultation with key agencies responsible for [electric system] reliability[,]" as well as reliance on the "EPA's longstanding principles in setting emission standards for the utility power sector"). Contrast Delaware Dep't of Nat. Res. & Env't Control v. EPA, 785 F.3d 1, 14, 18 (D.C. Cir. 2015) (invalidating rule in part because the EPA had failed to consult with other expert agencies on grid

reliability issues). EPA could hardly do its job without substantively engaging with the on-the-ground facts about the electricity system that power plants support. Quite the opposite: An agency's wooden refusal to factor in reality and such on-point considerations would ordinarily render its decisionmaking arbitrary and capricious. See Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto Ins. Co., 463 U.S. 29, 43 (1983).

All told, the EPA's consideration of already-in-use generation shifting as part of the "best system of emission reduction" does nothing to enlarge the Agency's regulatory domain. "We are not talking about extending EPA jurisdiction over millions of previously unregulated entities," but about a familiar process of cooperative federalism applied to "entities already subject to *** regulation" to address a recognized form of air pollution that repeatedly has been found to endanger public health and welfare. See UARG, 573 U.S. at 332. The major questions doctrine cannot rescue the ACE Rule's mistaken interpretation of Section 7411(d) as categorically confining the best system of emission reduction to physical adjustments made only "at" and "to" the power plant.

C. FEDERALISM

The federalism canon lends no support to the ACE Rule's decision to confine the best system of emission reduction to measures that apply exclusively at and to the source. That canon recognizes that "the States retain substantial sovereign powers under our constitutional scheme, powers with which Congress does not readily interfere." *Gregory v. Ashcroft*, 501 U.S. 452, 460–461 (1991). So as a matter of constitutional avoidance, courts require Congress to "enact exceedingly clear language if it wishes to significantly alter the balance between federal and state power." *United States Forest Serv. v.*

Cowpasture River Pres. Ass'n, 140 S. Ct. 1837, 1849–1850 (2020).

The federalism clear-statement rule prevents direct federal intrusion into areas of traditional state responsibility unless Congress has made its intent to cross that line explicit. For example, courts will not assume that Congress meant to preempt a State's mandatory retirement age for state judges through the passage of a generic age discrimination law, unless it has clearly expressed its intent to police the qualifications of such high-level state officials. See Gregory, 501 U.S. at 463-464. Nor will courts lightly assume that Congress intended to claim state-owned land as part of the National Park System, see Cowpasture River, 140 S. Ct. at 1849-1850, to transform simple state-law assaults into breaches of international chemical weapons compacts, see Bond v. United States, 572 U.S. 844, 862–863 (2014), or to displace the States' traditional authority to regulate the practice of law, see American Bar Ass'n v. FTC, 430 F.3d 457, 466, 471–472 (D.C. Cir. 2005). Only when such conflicts between federal and state regulatory domains are plainly joined by Congress itself will the court confront the sensitive constitutional implications of such measures

That doctrine does not support the EPA's cramped reading of Section 7411. Interstate air pollution is not an area of traditional state regulation. And federalism concerns do not bar the United States government from addressing areas of *federal* concern just because its actions have incidental effects on areas of state power. *Cf. FERC v. Electric Power Supply Ass'n*, 136 S. Ct. 760, 775–778 (2016) (federal regulation of wholesale electricity market did not intrude on traditional state authority over the retail electricity market, even though wholesale market regulation created an incentive for retail consumers to change their behavior in state-regulated markets).

Page 94 of 185

Document #1880546

What is more, the Supreme Court has suggested that the federalism clear-statement rule is of limited applicability when a federal regulatory regime is enforced through a statutory cooperative-federalism framework, as Section 7411(d) is. See AT&T Corp. v. Iowa Util. Board, 525 U.S. 366, 378 n.6 (1999) (noting appeals to States' rights as "most peculiar" in the context of "a federal program administered by 50 independent state agencies"); see also Alaska Dep't of Env't Conservation v. EPA, 540 U.S. 461 (2004) (declining to adopt dissent's proposed clear-statement rule for federal constraints on state implementation decisions in cooperative-federalism program). See generally Abbe Gluck, Intrastatutory Federalism and Statutory Interpretation: State Implementation of Federal Law in Health Reform and Beyond, 121 YALE L.J. 534, 555-556 (2011).

In any case, the Clean Power Plan's incorporation of generation shifting into its best system of emission reduction fell squarely within an area of the federal government's constitutional competence. The EPA does not dispute the government's authority or its statutory mandate to reduce the emission of pollutants that endanger public health and welfare. 42 U.S.C. § 7411(b)(1)(A), (d)(1). The EPA also agrees that greenhouse gases are among the pollutants properly regulated by the federal government. See AEP, 564 U.S. at 416–417, 424; see also supra Part I.B.2.

The Clean Power Plan directly regulated only the amount of greenhouse gas pollutants that may be emitted into the atmosphere. 80 Fed. Reg. at 64,663-64,664. That is an area of unique federal concern. After all, "[a]ir pollution is transient, heedless of state boundaries," EME Homer City Generation, 572 U.S. at 496, particularly where the pollutants are greenhouse gases, which have little if any localized effect but great cumulative impact. The inability of individual States to redress the problem of interstate air pollution, in fact, was among the very reasons for the enactment of the Clean Air Act. See 42 U.S.C. § 7401(a)(1), (4); S. REP. No. 88-638, at 3 (1963) ("Polluted air is not contained in a specific area but is carried from one political jurisdiction to another. It does not know State lines or city limits. Providing air of good quality * * * is a challenge and an obligation for Government operations on all levels."); id. at 5 ("The nationwide character of the air pollution problem requires an adequate Federal program to lend assistance, support, and stimulus to State and community programs.").

To be sure, the federal government's regulation of such an interstate problem can have indirect effects on State energy production and utility regulation decisions. But even when those effects are the fully anticipated "natural consequences" of an agency's policy choice, *Electric Power Supply Ass'n*, 136 S. Ct. at 776, that does not transform a fundamentally federal action in a core federal area of concern into a restriction on state action that triggers the federalism canon.¹²

The EPA protests that the Clean Power Plan breached that divide because it expressly considered generation shifting to

¹² In the ACE Rule, the EPA suggested that the Clean Power Plan's best system of emission reduction was also impermissible as an encroachment on "measures and subjects exclusively left to FERC[.]" 84 Fed. Reg at 32,530. The EPA has not pressed that argument here. For good reason. The effects of environmental regulations on the power grid do not amount to power regulation statutorily reserved to FERC. And, in any event, the constitutional concerns that require us to patrol the boundaries between federal and state authority with vigilance do not support any similar clear-statement requirement regarding turf battles between federal agencies.

determine the best system of emission reduction and, in so doing, stepped on the States' power to regulate electrical utilities' mix of electricity generation. Reg.

But that argument has nothing to do with the narrow construction of Section 7411 that the EPA adopted. After all, the EPA could have set the same emission guidelines predicated on a best system of emission reduction that exclusively employed technological controls applicable at and to the source, like carbon capture and sequestration. And the EPA must agree that the federalism canon would play no role in determining the appropriateness of that system, since on the Agency's own reading, measures applicable at and to the source are precisely what Section 7411 allows.¹³

Nowhere does the EPA explain why reference to a different mechanism—generation shifting—in its calculation of the best system would raise materially different federalism

¹³ While the EPA did not select carbon capture and sequestration as the best system of emission reduction in the ACE Rule, it excluded that process because of cost and feasibility concerns, not federalism interests. See 84 Fed. Reg. at 32,547–32,549. That exclusion was a change of position from the Clean Power Plan, where the EPA found that the process was "technically feasible and within price ranges that the EPA has found to be cost effective[.]" 80 Fed. Reg. at 64,727. Carbon capture and sequestration ultimately was not selected as the best system of emission reduction in the Clean Power Plan solely because generation shifting was even more cost-effective. Id. at 64,727-64,728. What matters here is that the EPA did not express any concern in either the ACE Rule or the Clean Power Plan that such a system would intrude upon traditional areas of State authority. In the ACE Rule, the EPA permits the use of such technological controls to meet its emission standards, 84 Fed. Reg. at 32,549, 32,555, as it did in the Clean Power Plan, 80 Fed. Reg. at 64,883-64,884.

concerns. Under either system, the only direct obligation imposed on States is the same: a federally set emissions guideline. In both scenarios, the States remain equally free to choose the compliance measures that best fit the needs of their State and industry. And as a practical matter, many if not most States would likely opt for generation shifting over carbon capture and sequestration under *either* rule because the former is cheaper for existing plants. *See* Clean Power Plan, 80 Fed. Reg. at 64,727–64,728; ACE Rule, 84 Fed. Reg. at 32,532 ("Market-based forces have already led to significant generation shifting in the power sector.").

The EPA also suggests that the clear-statement rule operates with particular force here because the Plan imposed uneven regulatory burdens weighted toward States with more high-emitting power plants. But that argument tries to twist principles of federalism into a command of regulatory homogenization that defies on-the-ground reality. Regulations under the Clean Air Act or any environmental law will commonly affect States differently depending on the States' The regulation of pollutants associated with activities. automotive manufacturing affects States with production facilities more than those without. See, e.g., General Motors Corp. v. United States, 496 U.S. 530, 534-535 (1990). The regulation of mining-related pollutants imposes greater costs on States with more plentiful mineral resources. See, e.g., Alaska Dep't of Env't Conservation, 540 U.S. at 469–470, 474; Hodel v. Virginia Surface Mining & Reclamation Ass'n, 452 U.S. 264, 289–290 (1981). The same point applies to industries like petroleum refining, which are concentrated near navigable waters. See generally EIA, U.S. Energy Mapping System https://www.eia.gov/state/maps.php (last visited Jan. 11, 2021). Indeed, some regulations impose additional regulatory burdens based literally on the direction the wind blows. See EME Homer City Generation, 572 U.S. at 520. Likewise,

States with more navigable water necessarily carry more burdens under the Clean Water Act than those with less.

Affected States, of course, could raise statutory challenges to enforce the Clean Air Act's express constraints, such as required consideration of cost, non-air quality health and environmental impact, or energy requirements under Section 7411(a). And they could always challenge any unreasoned or unwarranted distinctions in regulatory coverage as arbitrary or capricious. But in the absence of such an objection, it does not offend—or even implicate—principles of federalism to observe that States whose industries pollute the Nation's air and so harm the public's health more will, in turn, be affected more by emission controls.

For all of those reasons, nothing in the federalism canon supports the EPA's effort to categorically constrict the best system of emission reduction to measures physically applied at and to the individual plant.

III. THE EPA'S AUTHORITY TO REGULATE CARBON DIOXIDE EMISSIONS UNDER SECTION 7411

A. THE COAL PETITIONERS' CHALLENGES

The North American Coal Corporation and Westmoreland Mining Holdings LLC, both coal mine operators (the Coal Petitioners), bring two challenges to the ACE Rule. Both question the EPA's legal authority to enact the rule. First, the Coal Petitioners argue that the EPA failed to make the required endangerment finding—that carbon dioxide emissions from power plants cause or contribute significantly to air pollution that may reasonably be anticipated to endanger public health or welfare—before regulating those emissions. *See* 42 U.S.C. § 7411(b)(1)(A). Second, they claim that the EPA's previous regulation of a different air pollutant (mercury) from power

plants under the Hazardous Air Pollutants provision, 42 U.S.C. § 7412, precludes the EPA from now regulating power plants' emission of greenhouse gases under Section 7411(d).

Both arguments fail. The EPA made the requisite endangerment finding in 2015, and the ACE Rule expressly retained that finding. As for the Section 7412 challenge, the EPA has correctly and consistently read the statute to allow the regulation both of a source's emission of hazardous substances under Section 7412 and of other pollutants emitted by the same source under Section 7411(d). The Coal Petitioners' argument rests not on the enacted statutory language, but instead on their own favored reading of one statutory amendment inserted by codifiers. Reading the statutory text as a whole—that is, all of the relevant language enacted by Congress, including two duly enacted amendments—the Clean Air Act authorizes the EPA to regulate both power plants' emissions of greenhouse gases under Section 7411(d) and hazardous air pollutants under Section 7412. That reading is reinforced by the statutory structure, purpose, and history.

1. Endangerment Finding

a. The Record of Endangerment

The Coal Petitioners argue that the ACE Rule was unlawful right out of the box because the EPA failed to make a statutorily required finding that greenhouse gas emissions from power plants cause air pollution that endangers the public health and welfare. That is wrong.

As a reminder, before the EPA can regulate a category of stationary sources like electricity-generating power plants under Section 7411, the EPA Administrator must first find that the source category "in his judgment *** causes, or contributes, significantly to, air pollution which may

reasonably be anticipated to endanger the public health or welfare." 42 U.S.C. § 7411(b)(1)(A). pronouncement meeting those criteria is known as an "endangerment finding." New Source Rule, 80 Fed. Reg. at 64,529. And once it is made, the EPA is not just empowered, but obligated, to regulate. See 42 U.S.C. § 7411(b)(1)(A); see also supra note 8.

After the Administrator makes an endangerment finding, the source category is added to the EPA's Section 7411 list, 42 U.S.C. § 7411(b)(1)(A), and the Administrator must promulgate emissions standards (called "standards performance") for *new* sources in the category, § 7411(b)(1)(B). As relevant here, unless those dangerous emissions are regulated under another relevant provision of the Clean Air Act, the Administrator must also set an achievable emission guideline based on the "best system of emission reduction" and provide a process for States to submit a plan setting out standards of performance for existing stationary sources in that same category. *Id.* § 7411(d)(1)(A)(ii).

The EPA has for decades been regulating emissions other than carbon dioxide from electricity-generating power plants. In 1971, the EPA listed fossil-fuel-fired electricity-generating units with steam-generating boilers as a new source category under Section 7411(b) and promptly established standards of performance for them. See Air Pollution Prevention and Control: List of Categories of Stationary Sources, 36 Fed. Reg. 5931 (March 31, 1971); Standards of Performance for New Stationary Sources, 36 Fed. Reg. 24,876, 24,878–24,880 (Dec. 23, 1971). Then, in 1977, the EPA listed fossil-fuel-fired combustion turbines as a new source category under Section 7411 and set performance standards for them. See Air Pollution Prevention and Control: Addition to the List of Categories of Stationary Sources, 42 Fed. Reg. 53,657 (Oct. 3,

1977); New Stationary Sources Performance Standards; Electric Utility Steam Generating Units, 44 Fed. Reg. 33,580 (June 11, 1979). These categories cover the power plants at issue today. See New Source Rule, 80 Fed. Reg. at 64,531.

Through the 2015 New Source Rule, the EPA began regulating carbon dioxide emissions from electricitygenerating power plants. See New Source Rule, 80 Fed. Reg. 64,510. Because power plants had already been listed as a regulated source category, the New Source Rule did not need to take any action to add those plants to the Section 7411 list of regulated sources. It just issued, for the first time, standards of performance for carbon dioxide emitted from new power plants. In so doing, the New Source Rule provided the statutory predicate and corresponding duty for the EPA to establish carbon dioxide emission standards for existing power plants as well. Clean Power Plan, 80 Fed. Reg. at 64,715; see 42 U.S.C. § 7411(d)(1). The New Source Rule now serves that same function for the ACE Rule, 84 Fed. Reg. at 32,533.

Because the New Source Rule did not add a new category of pollution sources to the Section 7411 list, the EPA concluded that no new endangerment finding was needed. New Source Rule, 80 Fed. Reg. at 64,529-64,530. The EPA nevertheless went on to explain that it chose to regulate carbon electricity-generating emissions from dioxide specifically because greenhouse gas pollution endangers public health and welfare and contributes significantly to air pollution. See id. at 64,530-64,531. The EPA found in particular that increased atmospheric levels of greenhouse gases, including carbon dioxide, could lead to, among other things, more frequent extreme weather events and wildfires; threats to mental and physical health, especially for children and the elderly; reduced access to food and safe water; and mass 102

migrations and displacements as a result of rising sea levels. *Id.* at 64,517–64,520.

b. Timeliness

At the outset, the EPA argues that we must disregard the Coal Petitioners' challenge concerning the endangerment finding because it was not timely filed. This is a close question, but we ultimately conclude that the petition is timely.

The Clean Air Act requires that petitions for review challenging an EPA regulation—including any Section 7411 standard of performance—generally must be filed within 60 days of the regulation's publication in the Federal Register. 42 U.S.C. § 7607(b)(1). The Clean Air Act's timeliness bar is "jurisdictional in nature[.]" *Motor & Equip. Mfrs. Ass'n v. Nichols*, 142 F.3d 449, 460 (D.C. Cir. 1998) (quoting *Edison Elec. Inst. v. EPA*, 996 F.2d 326, 331 (D.C. Cir. 1993)).

Importantly, Congress carved out an exception to that 60day time limit if the petition "is based solely on grounds arising after [the] sixtieth day[.]" 42 U.S.C. § 7607(b)(1). In that situation, the clock resets, and the petitioner must file within 60 days of the occurrence of the new event that "ripens [the] claim" and thereby triggers the basis for a challenge. Coalition for Responsible Regulation, Inc. v. EPA, 684 F.3d 102, 129 (D.C. Cir. 2012), rev'd in part on other grounds sub nom. Utility Air Regulatory Group v. EPA (UARG), 573 U.S. 302 (2014); see also Alon Refining Krotz Springs, Inc. v. EPA, 936 F.3d 628, 646 (D.C. Cir. 2019); Honeywell Int'l, Inc. v. EPA, 705 F.3d 470, 472–473 (D.C. Cir. 2013); Sierra Club de Puerto Rico v. EPA, 815 F.3d 22, 26 (D.C. Cir. 2016). A claim "ripens" for purposes of the Clean Air Act when "subsequent factual or legal development creat[es] new legal consequences" for the party seeking review. Sierra Club de Puerto Rico, 815

F.3d at 28. This type of delayed challenge is commonly referred to as an "after arising" claim.

We agree with the Coal Petitioners that the ACE Rule is an after-arising event that ripened their challenge to the New Source Rule's endangerment finding.

When the EPA promulgated the New Source Rule in 2015, the Coal Petitioners did not challenge that rule's endangerment finding. ¹⁴ That is because they did not plan "to build any new facilities affected by the New Source Rule," and so were not directly affected by it. Coal Pet'rs Reply Br. 3. But when the ACE Rule used the New Source Rule as the predicate for regulating existing coal-fired power plants, ACE Rule, 84 Fed. Reg. at 32,533, the Coal Petitioners became concretely aggrieved by the finding.

Under those circumstances, the Coal Petitioners' challenge to the New Source Rule as an insufficient predicate for the ACE Rule is timely. If the Coal Petitioners had filed suit when the New Source Rule was first promulgated in 2015, their standing would have been in doubt because they did not have any, or intend to build any, new power plants. An asserted injury arising from how the New Source Rule might come to

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¹⁴ The Coal Petitioners claim that there is no timeliness problem because two trade associations with which the Coal Petitioners are affiliated—the National Mining Association and the United States Chamber of Commerce—challenged the New Source Rule. Coal Pet'rs Reply Br. 3 & n.2. There is no evidence or declaration regarding that relationship in the record, aside from counsel's representation at oral argument. Oral Argument Tr. 131:13–17. Because we hold that the after-arising exception makes the Coal Petitioners' own challenge timely, we do not address the relevance, if any, of a prior trade association challenge.

affect the regulation of their existing plants in the future might well have been too speculative to support judicial review. See Coalition for Responsible Regulation, 684 F.3d at 115-116, 129–131 (challenge to preexisting regulations was timely, where regulations first affected petitioners due to the recent promulgation of rule targeting motor vehicle emissions); see also Sierra Club de Puerto Rico, 815 F.3d at 27; Honeywell, Int'l, 705 F.3d at 473. That is why "this court has assured petitioners with unripe claims that 'they will not be foreclosed from judicial review when the appropriate time comes,' * * * and that they 'need not fear preclusion by reason of the 60-day stipulation barring judicial review," as long as they file a petition within 60 days of the injury that ripened their claim. Coalition for Responsible Regulation, 684 F.3d at 131 (formatting modified).

The EPA urges that the Coal Petitioners could have pressed a challenge to the New Source Rule in 2015 at the latest, as other coal-related entities did, once the EPA promulgated the Clean Power Plan in reliance on the New Source Rule's endangerment finding. See North Dakota v. EPA, No. 15-1381 (and consolidated cases).

Perhaps. See North American Coal Corp. v. EPA, No. 15-1451 (D.C. Cir.) (consolidated with West Virginia v. EPA, No. 15-1363 (D.C. Cir.)). But that would argue over spilled milk. The Clean Power Plan litigation came to a halt when the EPA reconsidered that rule, and the case was ultimately dismissed as moot after the ACE Rule withdrew the Clean Power Plan. Per Curiam Order, West Virginia v. EPA, No. 15-1363 (D.C. Cir. Sept. 17, 2019), ECF No. 1806952. The Coal Petitioners have raised their claim in the ACE Rule litigation, and it would

seem perverse to say they instead should have litigated the matter in a case that will never be decided.¹⁵

c. Adequacy of the Endangerment Finding

On the merits, the Coal Petitioners press a two-fold challenge to the EPA's compliance with the endangermentfinding requirement. First, they argue that Section 7411(b) requires the EPA to make a pollutant-specific endangerment finding for each stationary source category newly regulated under that provision. In their view, even though the EPA had already found that carbon dioxide emissions significantly cause or contribute to greenhouse gas air pollution that endanger the public health or welfare, the EPA also separately had to find that carbon dioxide specifically from coal-fired power plants is a significant source of that danger. 2009 Endangerment Finding, 74 Fed. Reg. at 66,499, 66,542 (for motor vehicles). Second, the Coal Petitioners claim that the EPA did not make such a finding, leaving it without authority to enact the ACE Rule.

We need not address the Coal Petitioners' first argument. Even assuming that Section 7411(b) requires a source-specific

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¹⁵ There is a second exception to the timeliness bar known as the "reopening rule." See, e.g., Environmental Def. v. EPA, 467 F.3d 1329, 1333 (D.C. Cir. 2006). The gist of that rule is that the 60-day jurisdictional review window restarts when an agency, either explicitly or implicitly, reconsiders its former action. See National Ass'n of Reversionary Prop. Owners v. Surface Transp. Bd., 158 F.3d 135, 141 (D.C. Cir. 1998); National Mining Ass'n v. United States Dep't of Interior, 70 F.3d 1345, 1351 (D.C. Cir. 1995). Because the after-arising ripeness exception preserves the Coal Petitioners' claim, we need not address the reopening doctrine.

endangerment finding for each pollutant, the EPA made a sufficient finding in the New Source Rule.

i. The New Source Rule

Before making the New Source Rule's endangerment finding keyed to carbon dioxide from new fossil-fuel-fired power plants, the EPA explained its "rational basis" for regulating those sources' emissions of that pollutant under Section 7411. New Source Rule, 80 Fed. Reg. at 64,530. The EPA first outlined why greenhouse gas emissions pose a danger to the public health and welfare, and then explained why it should regulate those emissions from power plants specifically.

For evidence of the harms posed by greenhouse gas air pollution, the EPA first pointed to its 2009 Endangerment Finding, made in connection with the motor vehicle emissions regulation at issue in Coalition for Responsible Regulation. New Source Rule, 80 Fed. Reg. at 64,530. There, this court upheld as reasonable the EPA's finding that greenhouse gas emissions threaten public health and welfare. Id.; see also Coalition for Responsible Regulation, 684 F.3d at 119–126.

In the 2015 New Source Rule, the Agency reviewed substantial scientific evidence, including contemporary studies from the National Research Council, the Intergovernmental Panel on Climate Change, and others that post-dated the record from the 2009 motor vehicle emissions regulation. 80 Fed. Reg. at 64,530–64,531; see also id. at 64,517–64,520 (detailing updated developments in scientific evidence). The EPA found that the new studies "len[t] further credence to the validity of the [2009] Endangerment Finding." Id. at 64,530. The EPA added that "[n]o information that commentators have presented or that the EPA has reviewed provides a basis for reaching a different conclusion," and that the science at the time had

reaffirmed its understanding of the effects of greenhouse gases on the public health and welfare. Id. "The facts," the EPA concluded, "unfortunately, have only grown stronger and the potential adverse consequences to public health and the environment more dire in the interim." Id. at 64,531.

The EPA next explained its reasons for regulating greenhouse gases from fossil-fuel-fired power plants specifically, pointing to the exceptionally high levels of emissions from those power plants. See New Source Rule, 80 Fed. Reg. at 64,522-64,523, 64,530. To that end, the EPA found that fossil-fuel-fired power plants are the largest stationary sources of greenhouse gas emissions in the United States, accounting for nearly one-third of the United States' greenhouse gas emissions and as much as three times the emissions from the next ten categories of stationary sources combined. *Id.* at 64,530. Coal-fired power plants in particular, the EPA added, are the largest of those large emitters, with just one coal-fired power plant emitting potentially millions of tons of carbon dioxide annually. Id. at 64,531. In that way, power plant emissions "far exceed[ed] in magnitude the emissions from motor vehicles," which had been the subject of the endangerment finding upheld in Coalition for Responsible Regulation. Id.

ii. All Required Findings Were Made

The Coal Petitioners acknowledge the EPA's findings, but argue that Section 7411 requires a two-part endangerment finding—that carbon dioxide from fossil-fuel-fired power plants (1) endangers the public health and welfare, and (2) causes or contributes significantly to greenhouse gas air pollution. See 42 U.S.C. § 7411(b)(1)(A) (findings must be for the "category of sources"). The Coal Petitioners do not contest that carbon dioxide endangers the public health and welfare. See Oral Argument Tr. 129:21–22.

Instead, they train their arguments on the second prong, arguing that the New Source Rule did not properly make a finding that fossil-fuel-fired power plants "contribute[] significantly" to greenhouse gas pollution. First, they fault the EPA for relying on the New Source Rule, which provided a rational basis for regulation to support a significantcontribution finding.¹⁶ Second, they argue that the EPA arbitrarily and capriciously failed to define the threshold measure of a "significant" contribution.

To survive those challenges, the EPA needed only to "articulate a satisfactory explanation" for the New Source Rule's endangerment finding, making a "rational connection between the facts found and the choice made." Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co. (State Farm), 463 U.S. 29, 43 (1983) (quoting Burlington Truck Lines v. United States, 371 U.S. 156, 168 (1962)). For an endangerment

¹⁶ The Coal Petitioners also argue that the EPA was wrong to rely on the 2009 Endangerment Finding because it used the lower "more than a de minimis or trivial" contribution standard. Coal Pet'rs Br. (quoting 2009 Endangerment Finding, 74 Fed. Reg. But the New Source Rule relies on the 2009 Endangerment Finding only for part one of the endangerment finding test—that greenhouse gas pollution may reasonably be anticipated to endanger the public health and welfare—which the Coal Petitioners do not contest. See New Source Rule, 80 Fed. Reg. at 64,530-64,531. The EPA separately considered the volume of greenhouse gas emissions that motor vehicles contribute to the problem and found it significant. See 2009 Endangerment Finding, 74 Fed. Reg. at 66,499, 66,543; Coalition for Responsible Regulation, 684 F.3d at 128.

109

finding, that choice need not include a "precise numerical value" that defines the threshold at which air pollution endangers the public health and welfare. Coalition for Responsible Regulation, 684 F.3d at 326. Instead, a "'more qualitative' approach," employing reasoned predictions based on "empirical data and scientific evidence," may suffice. Id. at 327 (quoting Ethyl Corp. v. EPA, 541 F.2d 1, 56 (D.C. Cir. 1976)). Such an approach "is a function of the precautionary thrust of the [Clean Air Act] and the multivariate and sometimes uncertain nature of climate science, not a sign of arbitrary or capricious decision-making." Id. By that measure, both of the Coal Petitioners' objections fail.

For starters, it is perfectly permissible, and commendably efficient, for an agency to re-confirm and build consistently upon such formally made factual determinations. It makes eminent sense, for example, for the EPA to take what it learned in regulating automobiles' greenhouse gas emissions and apply that in evaluating the need for regulation of another source of the same pollutant—fossil-fuel-fired power plants. matters here is that the EPA did not simply conclude that power plants' greenhouse gas emissions significantly contribute to air pollution and stop there. Instead, the EPA went on to explain why that significant-contribution finding was warranted. See New Source Rule, 80 Fed. Reg. at 64,530-64,531 (explaining that power plants are the largest stationary sources of domestic greenhouse gas emissions and that each coal-fired plant may emit millions of tons of carbon dioxide per year).

The Coal Petitioners' argument that the EPA failed to articulate a specific threshold measurement for significance fares no better. While the failure to identify the trigger point for significance might prove problematic in cases at the margins, the EPA sensibly found that this one is not even close. Because of their substantial contribution of greenhouse gases,

"under any reasonable threshold or definition," carbon dioxide from fossil-fuel-fired power plants represents "a significant contribution" to air pollution. New Source Rule, 80 Fed. Reg. at 64,531; *cf. Massachusetts v. EPA*, 549 U.S. at 525 (While domestic automobile emissions accounted for less than one-third of the United States' domestic emissions, "[j]udged by any standard, U.S. motor-vehicle emissions make a meaningful contribution to greenhouse gas concentrations and *** to global warming.").

In that regard, we have already held that nothing in the Clean Air Act "require[s] that [the] EPA set a precise numerical value as part of" a contribution endangerment finding. *Coalition for Responsible Regulation*, 684 F.3d at 122 (applying Section 7521(a)(1) of the Clean Air Act). So the "EPA need not establish a minimum threshold of risk or harm before determining whether an air pollutant endangers." *Id.* at 123.

Nevertheless, the Coal Petitioners insist that, before finding significance, the EPA had to decide whether its inquiry would (1) address domestic or global emissions, (2) be measured by a "simple percentage criterion" or another metric, (3) factor in historical trends and/or future projections, and (4) involve a different process for greenhouse gases than other pollutants. See Coal Pet'rs Br. 17. Whether the EPA could reasonably decide to factor in such considerations is not before us. What matters here is that nothing in the Clean Air Act or precedent mandates determinations on each of those factors at least not in a case in which there is no showing that any of them would have made any difference. Given that the United States, at the time of the endangerment finding, was the secondlargest emitter of greenhouse gases in the world, see 2009 Endangerment Finding, 74 Fed. Reg. at 66,538, it was not arbitrary or capricious for the EPA to conclude that the source

of close to one-third of those emissions is a significant contributor to air pollution by any measure. The global nature of the air pollution problem means that "[a] country or a source may be a large contributor, in comparison to other countries or sources, even though its percentage contribution may appear relatively small" in the context of total emissions worldwide. *Id.* Looking just at the Coal Petitioners' calculations, power plants contributed a hefty 4.5 percent to global greenhouse gas emissions in 2013. *See* Coal Pet'rs Br. 18. More to the point, a holding that greenhouse gas emissions by fossil-fuel-fired power plants are not significant would make it nigh impossible for any source of greenhouse gas pollution to cross that statutory threshold.¹⁷

For those reasons, we hold that the New Source Rule's endangerment finding provided a sufficient basis for the EPA's promulgation of the ACE Rule.

2. Section 7411 and Section 7412's Parallel Operation

a. Background on the 1990 Amendments

The Coal Petitioners next argue that the Clean Air Act expressly and unambiguously prohibits the EPA from

¹⁷ The EPA recently solicited public comment through a proposed rule on the appropriateness of considering such factors when making a significant-contribution finding. *See* Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources Review, 84 Fed. Reg. 50,244, 50,269 (Sept. 24, 2019). But the EPA explained that the comments on the proposed rule are meant only "to inform the EPA's actions in future rules," *id.* at 50,267, and explicitly declined to consider the merits of the comments or adopt any of the factors in that final rule, *see* Oil and Natural Gas Sector: Emission Standards for New, Reconstructed,

regulating coal-fired power plants' carbon dioxide emissions under Section 7411(d) because those same power plants' mercury emissions are regulated under Section 7412's Hazardous Air Pollutants provision. The relevant statutory text says otherwise.

To set the stage, as relevant here, the Clean Air Act regulates pollutants emitted by stationary sources like power plants under three distinct programs: (1) the National Ambient Air Quality Standards (NAAQS) program that applies to emissions of six common air pollutants, 42 U.S.C. §§ 7408–7410; (2) the regulation of certain specified pollutants under the Hazardous Air Pollutants program, 42 U.S.C. § 7412; and (3) the regulation of all other dangerous pollutants from new and existing sources under Section 7411.

Congress designed the existing source provision in Section 7411(d) to ensure that there were "no gaps in control activities pertaining to stationary source emissions that pose any significant danger to public health or welfare." S. REP. No. 91-1196, at 20 (1970). So Section 7411(d), in its gap-filling capacity, covers all dangerous pollutants except those already regulated by NAAQS or the Hazardous Air Pollutants provision. *See* Clean Air Act Amendments of 1990 ("1990 Amendments"), Pub. L. No. 101-549, § 108(g), § 302(a), 104 Stat. 2399, 2467, 2574.

From the passage of the Clean Air Act until its amendment in 1990, Congress had left substantially to the EPA the task of building a program to effectively identify and regulate hazardous air pollutants under Section 7412. Specifically, Section 7412(b)(1)(A)—Section 112(b)(1)(A) of the 1970

and Modified Sources Review, 84 Fed. Reg. 57,018, 57,058 (Sept. 14, 2020).

Public Law—had instructed the EPA to publish a list of hazardous air pollutants that it would then regulate under Section 7412's terms. See Clean Air Act Amendments of 1970 ("1970 Amendments"), Pub. L. No. 91-604, sec. 4(a), § 112(b)(1)(A), 84 Stat. 1676, 1685. Section 7411(d), for its part, covered "any air pollutant * * * for which air quality criteria have not been issued or which is not included on a list published under section * * * 112(b)(1)(A)" by the EPA. *Id.*, sec. 4(a), § 111(d)(1)(A), 84 Stat. at 1684.

After two decades, Congress found that Section 7412 had "worked poorly" in that the EPA had regulated only eight hazardous pollutants under Section 7412. S. REP. No. 102-228, at 128 (1989); see id. at 131. Through the 1990 Amendments to Section 7412, Congress forced the EPA's hand by statutorily designating 191 hazardous pollutants that Congress required the EPA to regulate. See 1990 Amendments, sec. 301, § 112(b)(1), 104 Stat. at 2532–2535 (codified at 42 U.S.C. § 7412(b)(1)); see also S. REP. No. 102-228, at 133. Congress also called on the EPA to add to the list. 1990 Amendments, sec. 301, § 112(b)(2)–(3), 104 Stat. at 2535–2537 (codified at 42 U.S.C. § 7412(b)(2)–(3)). Neither greenhouse gases in general nor carbon dioxide in particular were on Congress' statutory list. Nor have they ever been added by the EPA.

Section 7412(b) That change to necessitated corresponding technical change to Section 7411(d)'s carve-out of pollutants already regulated under the Hazardous Air Pollutants program, since the cross-referenced "list published under section * * * 112(b)(1)(A)" no longer existed. Congress' update of the statutory cross-reference is the root of the present dispute. That is because each chamber of Congress articulated

the technical correction differently, and yet both were enacted into law.

Senate—in a section entitled "Conforming The Amendments"—passed a straightforward amendment that struck "112(b)(1)(A)" from the Section 7411(d) exclusion, and replaced it with "112(b)"—which is the provision containing the new statutory list of hazardous pollutants to which the EPA could later add. 1990 Amendments, § 302(a), 104 Stat. at 2574. Just as before the 1990 Amendments, under the Senate Amendment, only hazardous pollutants on the Section 7412 list were excluded from Section 7411(d)'s regulation of existing sources' emissions, while dangerous pollutants not addressed by the Hazardous Air Pollutants or NAAQS programs remained in Section 7411(d)'s domain.

The House, for its part, called its technical amendment of the cross-reference "Miscellaneous Guidance," and it similarly deleted "112(a)(1)(B)[,]" and then excluded any air pollutant that is "emitted from a source category which is regulated under section 112." 1990 Amendments, § 108, 108(g), 104 Stat. at 2465, 2467.

Both of those amendments made it into the Conference Report, H.R. REP. No. 101-952, at 73, 183 (1990) (Conf. Rep.), and, after being passed by both chambers of Congress and signed by the President, they both became part of the Public Law.

Congress' Office of the Legal Revision Counsel is tasked with compiling and codifying the public law and publishing it in the United States Code. The Counsel, of course, has no authority to alter the substance of the Statutes at Large. See Ganem v. Heckler, 746 F.2d 844, 851 (D.C. Cir. 1984) ("[T]he changes made by the codifiers, whose 'choice, made * * * without approval of Congress * * * should be given no weight,'

are of no substantive moment.") (internal quotation marks omitted) (quoting North Dakota v. United States, 460 U.S. 300, 310 n.13 (1983)); see also Positive Law Codification, Office OF THE LAW REVISION COUNSEL, https://uscode.house.gov/ codification/legislation.shtml (last visited Jan. 11, 2021) (For non-positive law titles, such as Title 42, "there are certain technical, although non-substantive, changes made to the text for purposes of inclusion in the Code.").

When faced with the Senate and House Amendments' differing articulations of the cross-reference update, the Counsel chose to publish only the House Amendment in the United States Code

b. Interpreting the House and Senate Amendments

The Coal Petitioners argue that the House Amendment's technical update of the cross-reference actually worked a major substantive change in the law by categorically and unambiguously excluding from Section 7411 not the hazardous pollutants already regulated under Section 7412, but any stationary sources of hazardous pollutants regulated under Section 7412. In their view, once a source is subject to regulation under Section 7412 for any single listed hazardous pollutant, all of its other pollution emissions are off limits for regulation under Section 7411(d). More specifically, the Coal Petitioners' position is that, because the EPA regulates one hazardous air pollutant-mercury-emitted from coal-fired power plants, the EPA is powerless to regulate under Section 7411(d) every other non-"hazardous," but still

116

significantly dangerous, pollutant those same power plants emit, including greenhouse gases.¹⁸

On the other hand, for thirty years—from the enactment of the 1990 Amendments to the present day—the EPA has read the House's "Miscellaneous Guidance" as just that—a miscellaneous technical amendment that, like the Senate Amendment, simply updated the Section 7411(d) cross-reference to exclude the regulation of a stationary source's emission of pollutants that are already regulated under Section 7412.

For the Coal Petitioners' challenge to succeed, we would have to agree with their ambitious reading of the House Amendment as *precluding* regulation under Section 7411 of even those pollutants that are not covered by Section 7412. We also would have to ignore the duly enacted Senate Amendment entirely. And we would have to reject out of hand the EPA's three-decade-old harmonizing reading of the statutory amendments, the text of Section 7411(d), and the statutory structure. We decline the invitation because that is not how statutory interpretation works.

At the outset, the EPA seeks deference under *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984). If this were an ordinary EPA interpretation of a Clean Air Act provision, we would apply exactly that framework. *See UARG*, 573 U.S. at 315 ("We review EPA's

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¹⁸ See National Emission Standards for Hazardous Air Pollutants from Coal- and Oil-Fired Electric Utility Steam Generating Units, 77 Fed. Reg. 9304 (Feb. 16, 2012) (regulating mercury).

interpretations of the Clean Air Act using the standard set forth in *Chevron*[.]").

But this is no ordinary case. Here, the way in which the codifiers assembled the U.S. Code version of Section 7411(d) by omitting the Senate Amendment conflicts with the Statutes at Large, which is the definitive legal evidence of what the law is. 1 U.S.C. § 112; see id. § 204(a) (United States Code provides only prima facie evidence of the federal law). So any ambiguity arises from our duty to textually harmonize two duly enacted but differently articulated statutory provisions. undertaking that task, we need not decide whether Chevron supplies the appropriate framework for reconciling conflicting statutory provisions. Compare Scialabba v. Cuellar de Osorio, 573 U.S. 41, 64 (2014) (Kagan, J.) (plurality opinion), with id. at 76 (Roberts, C.J.) (concurring in the judgment). Instead, we independently reach the same conclusion as the EPA, harmonizing the House and Senate Amendments by giving "full effect" to both. Id. at 64.

i. The Consistent Meaning of Both Amendments

In reconciling the Senate and House Amendments, we start with what the mission of the amendments was. The plain purpose of each amendment was to update Section 7411(d)'s outdated cross-reference to a list created by the EPA under Section 7412(b)(1)(A), in light of Congress' publication of its new statutory list under Section 7412(b). That is why the Senate labeled its provision a "[c]onforming [a]mendment," and the House called its version "[m]iscellaneous [g]uidance." See 1990 Amendments, § 302(a), 104 Stat. at 2574 (Senate Amendment); id. § 108(g), 104 Stat. at 2465, 2467 (House Amendment). Neither amendment was meant to work a major substantive change in the law.

The Senate took the most direct textual path to updating Section 7411(d)'s cross-reference. Using the Public Law section number for Section 7412 (that is, Section 112), the Senate Amendment simply substituted "section 112(b)" for the outdated reference to "section 112(b)(1)(A)." Amendments, § 302(a), 104 Stat. at 2574. That way, the Senate Amendment maintains the parallelism of the two exclusions in Section 7411(d) for already-regulated pollutants that are either "included on a list published under section 108(a) [NAAQS] or 112(b) [the Hazardous Air Pollutants provision.]" *Id.* § 302(a), 104 Stat. at 2574 (incorporating Senate Amendment into the preexisting 1970 text, see 1970 Amendments, sec. 4(a), § 111(d)(1)(A), 84 Stat. at 1684). Both exclusionary clauses continue, as they had before the 1990 Amendments, to refer directly to specific air pollutants listed for regulation under other statutory provisions, and so to prevent duplicate regulation of the same harmful emissions.

The House Amendment was less efficient, but ended up in the same place. It substituted for "section 112(b)(1)(A)" the phrase an air pollutant that is "emitted from a source category which is regulated under section 112[.]" 1990 Amendments, § 108(g), 104 Stat. at 2467 (codified at 42 U.S.C. § 7411(d)(1)(A)(i)). So, with the House Amendment's phrasing, Section 7411(d)'s exclusion reads, as relevant here, that each State shall

establish[] standards of performance for any existing source for any air pollutant (i) for which air quality criteria have not been issued or which is not included on a list published under section 7408(a) of this title [the NAAQS program] or emitted from a source category which is regulated under section 7412 of this title [the Hazardous Air Pollutant program] but (ii) to which a standard of performance under this section

would apply if such existing source were a new source[.]

42 U.S.C. § 7411(d)(1)(A).

Reading the House Amendment within Section 7411(d)(1) "in [its] context and with a view to [its] place in the overall statutory scheme" shows that the House Amendment, like the Senate Amendment, just updated the cross-reference to exclude pollutant emissions already regulated for stationary sources under the Hazardous Air Pollutant program. *King v. Burwell*, 576 U.S. 473, 486 (2015) (quoting *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 132, 133 (2000)).

First, the entire point of the text that follows (i)—that is, romanette one—is to modify the phrase "air pollutant." "Air pollutant" is, in fact, the last antecedent to which all of the language in romanette one speaks. And grammatically, the last-antecedent rule means that a limiting phrase is generally read to "modify[] only the noun or phrase that it immediately follows." *Lockhart v. United States*, 136 S. Ct. 958, 962 (2016) (quoting *Barnhart v. Thomas*, 540 U.S. 20, 26 (2003)). In other words, the whole point of romanette one, including the House Amendment language, is to define which "air pollutant[s]" cannot be regulated under Section 7411(d) because those same pollutants are already regulated under the NAAQS or Hazardous Air Pollutants programs.

Second, reading the entirety of romanette one to modify "air pollutant" gives the updated cross-reference to Section 7412 full meaning. 19 See UARG, 573 U.S. at 317 (The

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¹⁹ Contrary to the separate opinion's view, *see* Separate Op. 34, use of the term "source category" (rather than "list") leaves open whether the EPA might regulate, in its Section 7411(d) gap-filling

phrase "any air pollutant" in Section 7411 must be given "a reasonable, context-appropriate meaning[.]"). The EPA has regulated over 140 source categories under Section 7412. EPA Br. 180. But it regulates only their emission of hazardous pollutants. In other words, Section 7412's regulatory scheme operates not broadly on the source category, but only on its emissions of the specified air pollutants. So Section 7412 does not and cannot police a source category's every emission, only its emission of "hazardous" air pollutants. That is why it is called the Hazardous Air Pollutants program, not the Hazardous Sources program. Reading Section 7411(d) as excluding only those air pollutants already governed by Section 7412's emissions regulations maps exactly onto romanette one's parallel exclusion of pollutants (not sources) already regulated under NAAQS. See 42 U.S.C. § 7411(d)(1)(A)(i). And it fits with Section 7411's gap-filling purpose, which is to capture those dangerous air pollutants not covered by NAAQS or the Hazardous Air Pollutants program. See S. REP. No. 91-1196, at 20.

Third, at the same time that Congress amended Section 7411(d), it also added a savings clause,

capacity, the emission even of hazardous air pollutants listed under Section 7412 when emitted by sources that Section 7412 does not reach, but to which Section 7411 does apply, see 42 U.S.C. § 7412(c)(1), (3)–(6); see also Clean Power Plan, 80 Fed. Reg. at 64,714–64,715 (stating that "both the House and Senate amendments should be read individually as having the same meaning in the context presented in this rule," but that "it is reasonable to interpret the House amendment of the Section [7412] Exclusion as only excluding the regulation of [hazardous air pollutant] emissions under [Clean Air Act] section [7411(d)] and only when that source category is regulated under [Clean Air Act] section [7412.]") (emphasis added).

Page 121 of 185

Document #1880546

Section 7412(d)(7), to the Hazardous Air Pollutants provision. That provision says that "[n]o emission standard or other requirement promulgated under this section shall be interpreted, construed, or applied to diminish or replace * * * applicable requirements established pursuant to section [7411], part C or D[.]" 1990 Amendments, sec. 301, § 112(d)(7), 104 Stat. at 2540-2541 (codified at 42 U.S.C. § 7412(d)(7)). That language requires reading Section 7411(d)'s simultaneously enacted cross-reference to regulation under Section 7412 consistently Section 7411(d)'s narrowly and with complementary role in the statutory scheme. It certainly does not allow courts to read the cross-reference as the major amputation of authority to regulate that the Coal Petitioners propose.

ii. The House Amendment Is Not a Trojan Horse

The Coal Petitioners and the separate opinion eschew reading the House and Senate updates of the cross-reference harmoniously. They prefer to pit the House Amendment against the Senate Amendment and espy in the former a major change in the law that—without a word of warning or explanation—would have significantly curtailed the regulation of air pollutants and broadly insulated stationary sources from regulatory oversight for their non-hazardous but stilldangerously polluting emissions.

There is a litany of problems with that approach.

For starters, recall that the House and Senate Amendments were meant to address an outdated statutory cross-reference. It is not the function of a single chamber's miscellaneous guidance or conforming amendment of a cross-reference to materially overhaul or truncate a statutory provision's operative reach. Instead, reading both amendments together as serving the same purpose of cross-referencing a new statutory

list of air pollutants fits with their legislative purpose and text. To be sure, the Clean Air Act "is far from a chef d'oeuvre of legislative draftsmanship," but "we, and EPA, must do our best, bearing in mind the 'fundamental canon of statutory construction that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme." UARG, 573 U.S. at 320 (quoting Brown & Williamson, 529 U.S. at 133).

More to the point, neither the House nor Senate Amendment said anything about changing the EPA's affirmative regulatory obligation under Section 7411(d) to promulgate emissions guidelines for all air pollutants, except those already regulated under the NAAQS or Section 7412. Yet reading the House Amendment as abruptly withdrawing from Section 7411(d)'s reach entire source categories and all of the otherwise-unregulated emissions they spew would put the House Amendment in direct conflict with not only the unambiguous language of the Senate Amendment, but also with the Clean Air Act's gap-filling structure and purpose, as well as with EPA's overarching regulatory obligation. And it would supposedly do all of that contrary to the statutory history, in defiance of the technical and updating nature of the two Amendments, and without a whisper of warning by a single House or Senate member that the miscellaneous guidance would cripple Section 7411's correlative function in the statutory scheme.

At best, the Coal Petitioners' and separate opinion's vision of the House Amendment would have the EPA's regulatory authority under Section 7411(d) turn on a fluke of timing. The Section 7412(d)(7) savings clause mentioned above, by its terms, protects the operation of Section 7411 regulations already in effect. So, too, does the House Amendment, which only excises what already "is regulated" under Section 7412.

Under the Coal Petitioners' approach, then, the Clean Air Act would allow the EPA to regulate sources under both Section 7411(d) and Section 7412 if, and only if, the EPA adopted its Section 7411(d) regulation before the Section 7412 regulation. No rational explanation is offered as to why Congress would want the mere sequencing of regulations to render them either lawful or invalid.

More to the point, the Coal Petitioners and the separate opinion point to nothing in the legislative record even hinting at a rationale for removing Section 7412 sources entirely from Section 7411's reach. Nothing suggests that Congress intended to veer off in that substantive legislative direction. The Senate certainly had no such intention.

The Coal Petitioners suggest that the EPA could instead regulate carbon dioxide under Section 7412. But they do not really mean it, as they say in the same breath that carbon dioxide would be a "poor fit" for Section 7412. Coal Pet'rs Br. 33 n.8. That is because Section 7412 strictly regulates all sources that emit ten tons per year or more of hazardous pollutants. 42 U.S.C. § 7412(a)(1). Adding carbon dioxide to that list would lead to a massive regulatory expansion of EPA authority to include everything from schools to hospitals and apartment buildings. Cf. UARG, 573 U.S. at 328. It would make no sense to conclude that Congress intended an unheralded string of words in a "Miscellaneous Guidance" amendment to hobble the gap-filling function Section 7411(d) and to disable the EPA from addressing the source of one-third of this country's greenhouse gas emissions.

Nor can the Coal Petitioners hang their hats on the inclusion of the House Amendment in the codified version of Section 7411(d). Putting aside that the two amendments readily can, and so must, be read harmoniously as just updating

the exclusion of already-regulated air pollutants, it is settled that "the Code cannot prevail over the Statutes at Large when the two are inconsistent." *Stephan v. United States*, 319 U.S. 423, 426 (1943); *see also Five Flags Pipe Line Co. v. Department of Transp.*, 854 F.2d 1438, 1440 (D.C. Cir. 1988) ("[W]here the language of the Statutes at Large conflicts with the language in the United States Code that has not been enacted into positive law, the language of the Statutes at Large controls.").

The Coal Petitioners' and the separate opinion's other efforts to cast aside the Senate Amendment all fail.

First, the Coal Petitioners and the separate opinion point to the Chafee-Baucus Statement of Senate Managers, in which Senators Chafee and Baucus addressed the negotiations surrounding the "Miscellaneous Guidance" in the 1990 Amendments. Using this statement, the Coal Petitioners and the separate opinion try to brush off the duly enacted Senate Amendment as a scrivener's or drafter's error. To that end, they stress the Managers' statement that, in the "Conference agreement," the "Senate recedes to the House except * * * with respect to the requirement regarding judicial review of reports * * * and with respect to transportation planning[.]" 136 CONG. REC. 36,007, 36,067 (Oct. 27, 1990).

That argument does not even get out of the starting gate. It should go without saying that two Managers' description of what a report said does not override the Conference Report itself. And it surely cannot erase the Senate Amendment text that was enacted by both the House and the Senate, and signed into law by the President.

In fact, the Managers were wrong about what the Conference Report said. What the Conference Report actually says is that "the Senate recede[s] from its disagreement to the

amendment of the House to the text of the bill and agree to the same with an amendment as follows." H.R. REP. No. 101-952, at 1 (Conf. Rep.) (emphasis added). The "amendment [that] follow[ed]" included the text of the Senate Amendment as well as the House Amendment. See id. at 73, 183. So the agreement retained the Senate Amendment language; the Senate plainly did not withdraw it. The accompanying joint explanatory statement of the Conference Committee confirms that the Senate receded to the House subject to this amendment, "which [was] a substitute for the Senate bill and the House amendment" and contained both the House and Senate Amendments at issue here. See id. at 335.

Beyond that, the Chafee-Baucus statement cannot bear the weight the Coal Petitioners and the separate opinion need it to carry. At most, as a "statement of managers," it purports to summarize the more than 800-page Conference Report. 136 CONG. REC. at 36,065. We generally do not view such statements as persuasive evidence of congressional intent, let alone an excuse for unceremoniously discarding unambiguous statutory text as a "drafter's error." See Separate Op. at 25 cf. Weyerhaeuser Co. v. Costle, 590 F.2d 1011, 1052 n.67 (D.C. Cir. 1978). Not to mention that we have specifically ruled that this very same floor statement carries little weight. Environmental Def. Fund, Inc. v. EPA, 82 F.3d 451, 460 n.11 (D.C. Cir. 1996). Simply put, the statement's purpose was to explain the report, not to change the content of the law, to resolve substantive conflicts, or to effect sweeping change in See Glossary Term: the statute's reach. Statement of Managers, U.S. SENATE, https://www.senate.gov/reference/ glossary term/statement of managers.htm (last visited Jan. 11, 2021).

Second, the Coal Petitioners argue that we should disregard the Senate Amendment because it is a "[c]onforming

Page 126 of 185

Document #1880546

See 1990 Amendments, § 302, 104 Stat. [a]mendment." at 2574. A conforming amendment can serve to harmonize statutory provisions, which is exactly what the Senate Amendment did by updating the cross-reference. See Burgess v. United States, 553 U.S. 124, 135 (2008).

That does not mean that the statutory provision can be See Burgess, 553 U.S. at 135. Amendment's careful maintenance of the status quo through a cross-reference update evidences a deliberate preservation of the prior regulatory scope of Section 7411.

By the way, if labels were what matters, the House's "Miscellaneous Guidance" provides no platform for the major legislative surgery on Section 7411 that the Coal Petitioners and the separate opinion envision.

Third, the Coal Petitioners ask us to defer to the Office of the Law Revision Counsel's decision to codify the House Amendment rather than the Senate Amendment. The separate opinion reasons as well that the Office of Law Revision Counsel is "the leading candidate" for deference. Separate Op. 23.

No such deference is due. While the Office of the Law Revision Counsel has expertise in the technical aspects of the codification process, it has no license, without Congress' approval, to change the substantive meaning of enacted law or to throw away an entire statutory provision. See Ganem, 746 F.2d at 851. That is why the Public Law prevails over the United States Code in case of conflict. See 1 U.S.C. § 112; Stephan, 319 U.S. at 426; United States v. Welden, 377 U.S. 95, 98 n.4 (1964).

Fourth, the Coal Petitioners point to Congress' drafting manuals, which suggest that a first-in-time amendment, such as

the House Amendment, supersedes a later-in-the-legislative-process amendment like the Senate Amendment. See U.S. SENATE, OFFICE OF LEGISLATIVE COUNSEL, LEGISLATIVE DRAFTING MANUAL ("SENATE MANUAL") § 126(d) (1997) ("If, after a first amendment to a provision is made * * * , the provision is again amended, the assumption is that the earlier (preceding) amendments have been executed."); U.S. HOUSE OF REPRESENTATIVES, OFFICE OF LEGISLATIVE COUNSEL, HOUSE LEGISLATIVE COUNSEL'S MANUAL ON DRAFTING STYLE ("HOUSE MANUAL") § 332(d) (1995) ("The assumption is that the earlier (preceding) amendments have been executed.").

One problem is that the Coal Petitioners provide no evidence that those manuals or their provisions were in place at the time of the 1990 Amendments.

A bigger problem is that it is doubtful that the cited manual provisions even apply in this scenario. These provisions are located in sections for "Cumulative Amendments," in which an amended provision is added onto by later provisions. See SENATE MANUAL § 126(d); HOUSE MANUAL § 332(d). Both manuals suggest that language should be added to such a provision to "alert the reader" to the later amendments. SENATE MANUAL § 126(d); see also, e.g., House Manual § 332(d)(1) (suggesting the following language for a cumulative amendment: "Title XX is amended by adding after section 123 (as added by section 802 of this Act) the following new section:"). That alert did not happen here. The House Amendment in Section 108 includes no reference to the Senate Amendment in Section 302, and there is no evidence that Congress believed it was adopting contradictory amendments in the final law.

The biggest problem of all is that nothing in the manuals says that a later but duly enacted amendment that has been signed into law can be cast aside as meaningless. Nor would it make any sense to do so here, when Congress placed the Senate Amendment in the logical statutory position to update a crossreference to Section 7412. That amendment is located in the Public Law title addressing Hazardous Air Pollutants and is the very first provision (in Section 302 of the Public Law) that follows the many changes to Section 7412's Hazardous Air Pollutants program (in Section 301 of the Public Law). See 1990 Amendments, title III, sec. 301, § 112, 104 Stat. at 2531; id. sec. § 302(s), 104 Stat. at 2574. The House Amendment, on the other hand, appears as "[m]iscellaneous [g]uidance" in the title of the Public Law pertaining to the NAAQS program, not the Hazardous Air Pollutants program. See 1990 Amendments, title I, § 108(g), 104 Stat. at 2467.

Finally, the Coal Petitioners and the separate opinion insist that, by subsuming the Senate Amendment's targeted focus within their much broader reading of the House Amendment, they are somehow giving effect to both. See Coal Pet'rs Br. 29–30; Separate Op. 28–30. The separate opinion sees it as no different than if a father did not want to name a child after a president from Virginia, and a mother did not want to name the child after any president. There is no conflict there, as the separate opinion sees it, because the mother's sweeping prohibition includes "every name excluded by the father (and then some)." Separate Op. 29–30.

But, of course, it is the "and then some" that is the By vastly overshooting the technical task of correcting a cross-reference, the separate opinion's and Coal Petitioners' proposed reading of the House Amendment is not "supplement[ing]" the Senate Amendment's exclusion of duplicate regulation. Separate Op. 30. It is supplanting it by

destroying the Senate Amendment's express preservation of Section 7411(d)'s pre-existing regulatory directive. To borrow the analogy, the separate opinion's vision of parental harmony is likely to be entirely lost on the father whose heart was set on naming his child Abraham, Theodore, or Harry.

The Coal Petitioners' and separate opinion's fundamental mistake in claiming to give effect to both Amendments is that the statute cannot mean both what the Senate Amendment says and what they think the House Amendment says: Section 7411(d) as amended in the 1990 Act cannot have simultaneously preserved and eliminated Section 7411(d)'s preexisting reach. As this case shows, the difference is quite material: It determines whether Section 7411(d) allows any regulation of power plants' greenhouse gas emissions or not. Given that, it blinks reality to claim that absorbing the Senate Amendment into the House Amendment in the manner the Coal Petitioners and the separate opinion propose somehow retains the Senate Amendment's independent effect. A mouse swallowed by a snake, while still present in some metaphysical way, hardly feels equally preserved.

At bottom, when confronted with two competing and duly enacted statutory provisions, a court's job is not to pick a winner and a loser. The judicial duty is to read statutory text as a harmonized whole, not to foment irreconcilability. See Bell Atl. Tel. Cos. v. FCC, 131 F.3d 1044, 1047 (D.C. Cir. 1997) ("Where, as here, we are charged with understanding the relationship between two different provisions within the same statute, we must analyze the language of each to make sense of Reading both amendments consistently "pursue[s] a middle course" that "vitiates neither provision but implements to the fullest extent possible the directives of each[.]" Citizens to Save Spencer Cnty. v. EPA, 600 F.2d 844, 871 (D.C. Cir. 1979). Said another way, the better and quite

natural reading of all of the relevant enacted statutory text, structure, context, purpose, and history is one that harmonizes the House and Senate Amendments, avoids determining that one chamber of Congress smuggled dramatic and unlikely changes to the Agency's regulatory authority into the Act through miscellaneous "guidance," and instead faithfully accomplishes the legislative adjustment needed to respond to the changes to Section 7412.

iii. The Harmonized Reading Stands the Test of Time

Reading the two provisions consistently as successfully performing their "conforming" and "miscellaneous" task of updating Section 7411(d)'s cross-reference to continue to exclude air pollutants already regulated under Section 7412 also maps onto the EPA's consistent interpretation of the statute. And that reading has stood the test of time, without congressional correction. The EPA first announced its interpretation of Section 7411(d) as excluding Section 7412's hazardous pollutants, rather than source categories, in the immediate wake of the 1990 Amendments. See Standards of Performance for New Stationary Sources and Guidelines for Control of Existing Sources: Municipal Solid Waste Landfills, 56 Fed. Reg. 24,468, 24,469 (May 30, 1991) (explaining that Section 7411(d) requires States to submit plans for standards of performance for pollutants that endanger the public health or welfare but are "not 'hazardous' within the meaning of section 112 of the CAA and [are] not controlled under sections 108 through 110 of the CAA"). The EPA has not deviated from that interpretation in the ensuing decades. Oral Argument Tr. 174:19-22. The EPA's view also gives effect to Section 7411(d)'s gap-filling purpose, see S. REP. No. 91-1196, at 20, by allowing it to continue to regulate dangerous pollutants that are not policed by Section 7412 or NAAQS.

Page 131 of 185

Document #1880546

The EPA's interpretation also dovetails with the development of judicial precedent. The Supreme Court has specifically addressed Section 7411(d)'s regulation of carbon dioxide emissions from fossil-fuel-fired power plants. American Electric Power Co. v. Connecticut (AEP), the Supreme Court held that the Clean Air Act foreclosed any federal common law right to challenge the regulation (or lack thereof) of carbon dioxide emissions from power plants. 564 U.S. 410, 424–425 (2011). In so ruling, the Supreme Court relied on the displacing force of Section 7411, and specifically Section 7411(d). Id. In ruling that "the Clean Air Act and the EPA actions it authorizes displace any federal common-law right to seek abatement of carbon-dioxide emissions from fossil-fuel fired powerplants," the Supreme Court pointed directly to the Section 7411 regulatory scheme, including, "most relevant here, § 7411(d)." Id. at 424. The Supreme Court even noted that the "EPA is currently engaged in a § 7411 rulemaking to set standards for greenhouse gas emissions from fossil-fuel fired powerplants." Id. at 425. As the Supreme Court explained, Section 7411 "speaks directly' to emissions of carbon dioxide from * * * [power] plants." *Id.* at 424.

The Coal Petitioners and the separate opinion put all their eggs in a footnote in AEP that notes Section 7411(d)'s exclusions. The footnote states that the "EPA may not employ § 7411(d) if existing sources of the pollutant in question are regulated under the national ambient air quality standard program, §§ 7408–7410, or the 'hazardous air pollutants' program, § 7412." AEP, 564 U.S. at 424 n.7. That footnote comports with the EPA's harmonized reading of the House and Senate Amendments because it says that Section 7411(d) does not apply when "the pollutant in question" is already regulated under one of the other two programs. See EPA Br. 189 (pointing out that the footnote's "use of the phrase of the

pollutant in question' suggests that [the Court] understood the regulatory bar to be pollutant-specific, consistent with EPA's interpretation").

The footnote could not mean otherwise. At the time of AEP, electricity-generating power plants as sources of different pollutants were already regulated under the NAAQS provisions. See, e.g., American Trucking Ass'ns, Inc. v. EPA, 283 F.3d 355, 359 (D.C. Cir. 2002) (considering NAAQS for particulate matter and ozone). So if the footnote did anything more than generally flag a statutory exclusion for alreadyregulated emissions-if it instead embraced the Coal Petitioners' and separate opinion's claim that Section 7411(d) excludes sources, rather than already-regulated emissions then the Court could not have ruled as it did. Specifically, it could not have relied on Section 7411(d) to hold that the Clean Air Act displaced the common law by "speak[ing] directly" to the EPA's authority to regulate power plants' emission of greenhouse gases. See AEP, 564 U.S. at 424. The footnote certainly did not purport to unravel the central rationale for AEP's holding.

* * *

For all of those reasons, we hold that Section 7411(d) allows the EPA to regulate carbon dioxide emissions from power plants, even though mercury emitted from those same power plants is regulated as a hazardous air pollutant under Section 7412.

B. THE ROBINSON PETITIONERS' CHALLENGES

Another group of petitioners—including the Texas Public Policy Foundation, the Competitive Enterprise Institute, and various businesses that petitioned jointly with a forest-services firm named Robinson Enterprises, Inc. (together, the Robinson

Petitioners)—challenge the ACE Rule as overstepping the EPA's authority. The Robinson Petitioners are the only parties that claim that the ACE Rule impermissibly regulates carbon dioxide emissions using Section 7411 of the Clean Air Act rather than Sections 7408 through 7410, under which the EPA sets NAAQS. Our ability to consider that claim fails due to the Robinson Petitioners' lack of standing.

The Robinson Petitioners assert the organizational standing of the Texas Public Policy Foundation and the Competitive Enterprise Institute, both nonprofit, nonpartisan organizations. Because the Foundation and the Institute seek the same relief on the same claim, only one needs to demonstrate standing. See American Anti-Vivisection Soc'y v. United States Dep't of Agric., 946 F.3d 615, 619-620 (D.C. Cir. 2020). The two organizations argue standing based on harm to their own activities; neither appears to be a membership organization, and they claim no associational, or representational, standing based on harm to members.

To establish standing, an organization, like an individual, must show an actual or imminent injury in fact that is fairly traceable to the challenged action and likely to be redressed by a favorable decision. See Havens Realty Corp. v. Coleman, 455 U.S. 363, 378–379 (1982); see also American Anti-Vivisection Soc'y, 946 F.3d at 618. Because neither organization is directly subject to the challenged rule, their "standing is 'substantially more difficult to establish[.]" Public Citizen, Inc. v. National Highway Traffic Safety Admin., 489 F.3d 1279, 1289 (D.C. Cir. 2007) (Kavanaugh, J.) (quoting Lujan v. Defenders of Wildlife, 504 U.S. 555, 562 (1992)).

Each organization proffers a distinct ground and theory of standing, so we analyze them in turn. The standing of both the Texas Public Policy Foundation and the Competitive

Filed: 01/19/2021

Enterprise Institute falters on the first factor, injury in fact, so we need not consider the remaining two factors.

The Texas Public Policy Foundation states that its mission is to provide legal counseling and services on a broad swath of matters, including promoting "a balanced approach to environmental regulation" by providing "legal counseling, referral, and advocacy services to individuals and businesses injured by federal, state, or local government overreach[.]" Decl. of Greg Sindelar ¶¶ 5, 7 ("[Its] mission is to promote, defend, and ensure liberty, personal responsibility, property criminal justice reform, greater educational rights, opportunities for all, a balanced approach to environmental regulation, free speech, state's rights under the 10th Amendment, energy sufficiency, and free enterprise[.]"). The Foundation's attorneys litigate cases on a wide range of issues on behalf of clients and refer clients to private counsel when necessary. Id. ¶ 8. The Foundation claims that the challenged rule has "caused a drain on [its] resources because [it] has had to divert significant time, effort, and resources from [its] activities in the area of property rights and wetlands regulation, for example," in order to represent clients "who are forced to deal with" the federal regulation of greenhouse gases. *Id.* \P 9.

It is well established that injury to an organization's advocacy activities does not establish standing. See, e.g., Center for Law & Educ. v. Department of Educ., 396 F.3d 1152, 1162 n.4 (D.C. Cir. 2005) (citing Sierra Club v. Morton, 405 U.S. 727, 739–740 (1972)). That is because "the expenditure of resources on advocacy is not a cognizable Article III injury." Turlock Irrigation Dist. v. FERC, 786 F.3d 18, 24 (D.C. Cir. 2015). To hold otherwise "would eviscerate standing doctrine's actual injury requirement" by permitting an interest group to generate its own standing merely by putting an issue in its lawyers' crosshairs. Id. (quoting Center for Law

& Educ., 396 F.3d at 1162 n.4); see also National Taxpayers Union, Inc. v. United States, 68 F.3d 1428, 1434 (D.C. Cir. 1995). The Texas Public Policy Foundation declares only that, since the EPA issued the ACE Rule, it has increased its legal counseling, referral, and advocacy on behalf of clients affected by the regulation of greenhouse gases rather than other clients. That is precisely the kind of injury to advocacy—and expenditure of resources on such efforts—that we have held does not amount to injury in fact.

The Foundation does not show the kind of perceptible impairment to its mission that sufficed for standing in a case like American Anti-Vivisection Society. There, we found injury because the agency's inaction—specifically, its failure to promulgate standards regarding the humane treatment of birds—deprived the organization of key information on which its public educational activities depended. See 946 F.3d at 619. That inaction compelled the organization to develop guidance for the public that otherwise would have been provided by the agency's standards. Id. By contrast, the Foundation fails to allege impairment of any similarly "discrete programmatic concerns" aside from its non-cognizable advocacy activities. National Taxpayers Union, 68 F.3d at 1433 (quoting American Legal Found. v. FCC, 808 F.2d 84, 92 (D.C. Cir. 1987)).

The Foundation points to Abigail Alliance for Better Access to Developmental Drugs v. Eschenbach, 469 F.3d 129 (D.C. Cir. 2006), in arguing that the cost associated with more legal counseling, referral, and advocacy services is a source of But the "counseling, referral, advocacy, and injury. educational services" at issue in Abigail Alliance were medical services, not legal services, and they directly furthered the plaintiff's mission of providing access to potentially life-saving medical drugs and treatments. See id. at 132-133. The Foundation's transplantation of Abigail Alliance's words into

the context of legal representation and counseling cannot change the outcome: the costs of litigation are not a cognizable Article III organizational injury. See Turlock, 786 F.3d at 24.

The Competitive Enterprise Institute claims a different injury, which also falls short: the risk that it will face higher electricity bills. The Institute works to counter "economic overregulation in areas ranging from technology and finance to energy and the environment," Decl. of Kent Lassman ¶ 3, and avers that it relies on electricity to power its headquarters in Washington, D.C., id. ¶¶ 2, 4. It says that the Regulatory Impact Analysis for the ACE Rule shows that the Rule could increase its electricity costs. That analysis estimated a 0.0% to 0.1% increase in average retail electricity prices nationwide attributable to the Rule between 2025 and 2035. See S.A. 220 (projecting baseline prices, in cents per kilowatt-hour, of 10.49 and 10.71 in 2025 and 2030, respectively, as compared to 10.50 and 10.72 under the ACE Rule, and estimating no increase attributable to the ACE Rule by 2035).

The Regulatory Impact Analysis that the Institute cites modeled one "illustrative policy scenario on retail electricity prices[,]" S.A. 220, and included the caveat that the estimates were based on "inadequate and incomplete information[,]" meaning that "costs could be lower[,]" S.A. 222. The analysis acknowledged that "the EPA has not analyzed or modeled a specific standard of performance," and recognized that costs could vary depending on "how states might apply the [best system of emission reduction] taking account of sourcespecific factors in setting standards of performance, and how sources might comply with those standards." S.A. 221–222. It also identified "several key areas of uncertainty related to the electric power sector[,]" including electricity demand, natural gas supply and demand, and longer-term planning by utilities. S.A. 222.

Even a small injury may suffice to support standing, see, e.g., Competitive Enter. Inst. v. FCC (CEI), 970 F.3d 372, 384 (D.C. Cir. 2020), but it must be "concrete and particularized and actual or imminent, not conjectural or hypothetical," id. at 381 (quoting Spokeo, Inc. v. Robins, 136 S. Ct. 1540, 1548 (2016)). "Were all purely speculative increased risks deemed injurious, the entire requirement of actual or imminent injury would be rendered moot, because all hypothesized, nonimminent injuries could be dressed up as increased risk of future injury." Public Citizen, 489 F.3d at 1294 (quoting Natural Res. Def. Council v. EPA, 464 F.3d 1, 6 (D.C. Cir. 2006)).

In recognition that standing must rest on a concrete injury that is at least imminent, "we have repeatedly held that litigants cannot establish an Article III injury based on the independent actions of some third party not before this court." Turlock, 786 F.3d at 25 (formatting modified) (quoting Florida Audubon Soc'y v. Bentsen, 94 F.3d 658, 670 (D.C. Cir. 1996) (en banc)). "This is because 'predictions of future events (especially future actions taken by third parties)' are too speculative to support a claim of standing." Id. (quoting United Transp. Union v. ICC, 891 F.2d 908, 912 (D.C. Cir. 1989)).

The remoteness and contingency of the prospect that the Competitive Enterprise Institute will in the future actually face even the tiny rate increase tentatively projected as possibly arising from the challenged ACE Rule renders its claimed injury speculative and thus defeats its standing. In particular, the effect the Institute anticipates on its future electricity rates depends on how third parties—such as electricity generators, electricity providers, public utility commissions, and state pollution control agencies—might react to the ACE Rule. See EPA Br. 192. It also turns on the nature of standards that States decide to set, and on the compliance choices of regulated sources. *Id.* It remains entirely unclear what standards States would develop in response to the "best system of emission reduction," how and whether those standards would have any effect on the costs of generation and transmission of energy, and whether rates will be affected by any offsetting savings through state or federal support for different generation mixes. A theory that "stacks speculation upon hypothetical upon speculation *** does not establish an 'actual or imminent' injury." *Turlock*, 786 F.3d at 24 (quoting *New York Reg'l Interconnect, Inc. v. FERC*, 634 F.3d 581, 587 (D.C. Cir. 2011)); *see Arpaio v. Obama*, 797 F.3d 11, 20–23 (D.C. Cir. 2015). In asking us to anticipate the future actions of various third parties that are not before us, the Institute does just that.

At oral argument, the Competitive Enterprise Institute identified as its strongest support our decision in *Competitive Enterprise Institute v. FCC*. But the concrete and actual injury claimed there was traceable through "a relatively simple causal chain[,]" 970 F.3d at 383, unlike the harm asserted here, which is based on "inadequate and incomplete information[,]" S.A. 222, and dependent on third parties' unpredictable responses to the ACE Rule. Critically, the plaintiffs there demonstrated that their internet prices in fact had increased since the agency took its challenged action. *CEI*, 970 F.3d at 382–383. This record lacks any such evidence.

Because neither the Texas Public Policy Foundation nor the Competitive Enterprise Institute shows injury in fact to support the Robinson Petitioners' standing, we cannot address the merits of their NAAQS-related challenge to the ACE Rule.

IV. AMENDMENTS TO THE IMPLEMENTING REGULATIONS

When the EPA repealed the Clean Power Plan and finalized the ACE Rule, it also changed the longstanding implementing regulations generally applicable to emission

guidelines promulgated under Section 7411(d) of the Clean Air Act. See ACE Rule, 84 Fed. Reg. at 32,564–32,571. The Public Health and Environmental Organization Petitioners (the Public Health Petitioners) challenge the implementing regulations insofar as they adopt new timing requirements that substantially extend the preexisting schedules for state and federal actions and sources' compliance under Section 7411(d). See 40 C.F.R. §§ 60.23a(a)(1), 60.27a(b), 60.27a(c), 60.24a(d); see also ACE Rule, 84 Fed. Reg. at 32,567. Because the challenged regulations lack reasoned support, they cannot stand.

The new implementing regulations extend the time allowed for States to submit their plans, for the EPA to review those plans, for the Agency to promulgate federal plans where state plans fall short, and for legally enforceable consequences to attach to sources that are slow to comply. Those extended timeframes apply unless the EPA otherwise specifies with respect to particular emission guidelines. *See* ACE Rule, 84 Fed. Reg. at 32,568. The Public Health Petitioners argue that the amendments are arbitrary and capricious because the Agency altogether failed to address the urgency of controlling harmful emissions—especially the greenhouse gas emissions accelerating climate change.

At the threshold, the EPA asserts that the Public Health Petitioners forfeited any challenge to the amended implementing regulations, but we conclude the claim was preserved. The EPA contends that Petitioners "barely mention" this claim in their opening brief, EPA Br. 268–269 (citing CTS Corp. v. EPA, 759 F.3d 52, 60 (D.C. Cir. 2014)), but it was adequately, if concisely, set forth, see Pub. Health & Env't Orgs. Br. 11–13. The issue is neither particularly complex nor as momentous as others in the case; Petitioners nonetheless clearly stated and supported the claim with

Page 140 of 185

Document #1880546

citations to the record and sources of legal authority. Id. That relatively abbreviated treatment suffices. See, e.g., Tribune Co. v. FCC, 133 F.3d 61, 69 n.8 (D.C. Cir. 1998) (noting one paragraph in a fifty-eight-page brief arguing that the agency's action was arbitrary and capricious sufficed to preserve the claim).

Petitioners' joint comment on this amendment as the EPA proposed it in the rulemaking process, which Petitioners cite in their brief, provides more detail. See Pub. Health & Env't Orgs. Br. 13 (citing Comments of Environmental and Public Health Organizations on Proposed Revisions to Emission Guideline Implementing Regulations 26–27, J.A. 973–974). The EPA well understands the nature of the claim, see EPA Br. 268-269, and there is no indication the brevity of the discussion in Petitioners' opening brief prejudiced the Agency at all. Cf. Avia Dynamics, Inc. v. Federal Aviation Admin., 641 F.3d 515, 521 (D.C. Cir. 2011) (forfeiture excused where federal agency was placed on notice of arguments by extensive substantive motion practice).

On the merits, the EPA failed to justify substantially extending established compliance timeframes, including deadlines that it has had in place since 1975. See State Plans for the Control of Certain Pollutants from Existing Facilities, 40 Fed. Reg. 53,340, 53,345, 53,346–53,348 (Nov. 17, 1975). Before we can sustain agency action as nonarbitrary under the APA, "the agency must * * * articulate a satisfactory explanation for its action including a 'rational connection between the facts found and the choice made." Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co., 463 U.S. 29, 43 (1983) (quoting Burlington Truck Lines v. United States, 371 U.S. 156, 168 (1962)). Petitioners' comments took issue with the tepid justifications the Agency offered, but the heart of their challenge is the EPA's complete failure to say

anything at all about the public health and welfare implications of the extended timeframes.

The Agency principally relied on reviving an argument it had considered and rejected when it first adopted the schedule it now displaces: that timeframes for the regulation of existing sources under Section 7411(d) should necessarily mimic or exceed timeframes for adoption of National Ambient Air Quality Standards (NAAQS) under Section 7410 of the Clean Air Act. Compare ACE Rule, 84 Fed. Reg. at 32,568, with State Plans for the Control of Certain Pollutants from Existing Facilities, 40 Fed. Reg. at 53,345. Section 7411(d) calls for regulations that "establish a procedure similar to that provided by [S]ection 7410[,]" which, like Section 7411, requires States to submit plans for the EPA's approval and, if those plans are either not submitted or fall short, requires the EPA to itself prescribe a plan. See 42 U.S.C. § 7410(a)(1), (c)(1); id. $\S 7411(d)(1)-(2)$. The two sets of rules accordingly reflect generally similar state-federal interactions.

But it is not evident that the statement that Section 7411(d) would use "a procedure similar" to that employed under Section 7410 even speaks to timing rules. As the Agency recognized when it promulgated the 1975 rule, faster compliance was appropriate under Section 7411(d) because plans under this provision are far simpler. They apply only to a single category of source, whereas state plans for NAAQS under Section 7410 cover multiple types of sources. See 40 Fed. Reg. at 53,345 (commenting that "Section [7411](d) plans will be much less complex than the [state implementation plans]" required under Section 7410). The Public Health Petitioners' comment on the 2018 proposed amendments to the implementing regulations explained that "a section [7410 state implementation plan] must ensure that ambient concentrations of a given pollutant in the state will stay below

Filed: 01/19/2021

the EPA-designated standard." J.A. 971. That goal is "far more complicated to both achieve and demonstrate" than limiting source emissions under Section 7411(d), because "meeting the ambient air quality standards involves air quality monitoring, complex modeling procedures, close attention to such factors as topography, wind patterns, cross-[border] transport of air pollution, and many other considerations." J.A. 971. By the same token, Petitioners commented that the EPA failed to justify giving itself as much time to review the simpler Section 7411(d) plans as it has to review state plans under Section 7410. J.A. 971-972. The EPA failed to engage meaningfully with the different scale of the two types of plans, dismissing Petitioners' comment with the conclusory assertion that Section 7411(d) plans "have their own complexities and realities that take time to address." ACE Rule, 84 Fed. Reg. at 32,568.

The EPA's proposed rule also relied on more general claims that the amended timelines are appropriate because of the amount of work involved in States' plan development and in the EPA's review of those plans. See Emission Guidelines for Greenhouse Gas Emissions from Existing Electric Utility Emission Guideline Generating Units: Revisions to Implementing Regulations; Revisions to New Source Review Program: Proposed Rule, 83 Fed. Reg. 44,746, 44,771 (Aug. 31, 2018). In response, Petitioners commented that the EPA did not document any problems during the decades that the existing timelines had been in place. J.A. 972 ("If the agency is truly concerned that the timing provision[s] in the framework regulations are unworkable, it must provide actual evidence of this—which it has not done thus far—and must propose amended provisions that correspond to the actual workload involved in section [7411(d)] rulemakings[.]"). The Final Rule failed to fill that gap. See, e.g., ACE Rule, 84 Fed. Reg. at 32,568. Indeed, the Agency at one point seemed to forget that

it even had a burden of justification under the APA, going so far as to suggest that the obligation was somehow on the commenters to show that the various actors do not need any additional time. Id.

It might be a close call whether, viewed in isolation, the analogy to Section 7410 and the general claim of need for more processing time could supply the "rational connection" the APA requires. State Farm, 463 U.S. at 43. But we do not view those reasons in isolation

The EPA's weak grounds for routinizing additional compliance delays in the amended implementing regulations are overwhelmed by its total disregard of the added environmental and public health damage likely to result from slowing down the entire Section 7411(d) regulatory process. "Normally, an agency rule would be arbitrary and capricious if the agency * * * entirely failed to consider an important aspect of the problem[.]" State Farm, 463 U.S. at 43. The extensions of implementation deadlines here give no consideration to the need for speed. Control of emissions from existing sources before they harm people and the environment is the central purpose of Section 7411(d) of the Clean Air Act. Yet when it deferred the compliance deadlines, the EPA did not even mention the need for prompt reduction of those emissions or the human and environmental costs of its substantial new delay.

In their comments, Petitioners emphasized the gravity and urgency of impending harms from unlawfully uncontrolled emissions as a reason the EPA must retain the tighter timeframes in the existing rule, not promulgate a new rule to build in additional years of delay. See Comments of Environmental and Public Health Organizations on Proposed Revisions to Emission Guideline Implementing Regulations 26-27, J.A. 973-974. They stressed in particular the broad and

longstanding scientific consensus on the role of carbon dioxide emissions in accelerating climate change, and insisted that "deep emission reductions are needed immediately" in order to avoid "the worst effects of climate change," making time "of the utmost essence." Id. They explained how the timing amendments stymie effective control of carbon dioxide emissions.

[T]he amendments in question would permit up to 60 months to elapse between the time an EPA emission guideline is finalized and the time that affected sources must, at a minimum, begin reducing their through enforceable increments emissions progress. Assuming EPA issues a final emission guideline for power plant [carbon dioxide] emissions in mid-2019, designated sources can be expected to start reducing emissions in mid-2024. * * * [T]he world has surpassed not only the 350 ppm threshold that atmospheric concentration of [carbon dioxide] that is considered the maximum safe level—but the 400 ppm threshold as well. If we are to avoid the worst effects of climate change, deep emission reductions are needed immediately: time is simply of the utmost essence. For EPA to inject even further delay into the process * * * flouts the agency's Clean Air Act obligation to require emission reductions to prevent this endangerment to public health and welfare.

Comments of Environmental and Public Health Organizations 27, J.A. 974.

Not all source categories or types of emissions subject to Section 7411(d) present problems of the magnitude and urgency of those posed by unregulated carbon dioxide

emissions from power plants. But the Public Health Petitioners' comments on the Agency's proposed amendments to the implementing regulations squarely called on the EPA to explain how slowing the regulatory timeframe with respect to any covered emissions or source category might be justified and consistent with the Act's objective. See Comments of Environmental and Public Health Organizations 23, J.A. 970.

In response to Petitioners' concrete objections, the final rule neither changed nor better justified the timing provisions. In fact, upon reading the rule's explanation of the deadline extensions, one would have no idea that the EPA actually recognized that greenhouse gas pollution was causing a global climate crisis requiring urgent remediation. In finalizing the proposed extensions to key deadlines, the EPA tersely reiterated its stated interest in giving itself, States, and regulated parties more time to comply—despite no showing of need—and, contrary to its explanation of the rule it displaced, stated that it was important after all to align the timing of the Section 7411(d) state-plan process with the compliance schedule under Section 7410. See ACE Rule, 84 Fed. Reg. at 32,564, 32,568.

The EPA did not even hint at how or whether it determined that prolonging public exposure to ongoing harms from pollutants emitted by existing source categories could be justified consistent with the core objectives of the Clean Air Act. That failure is irrational, especially in the face of the EPA's continued adherence to its 2015 finding of an urgent need to counteract the threats posed by unregulated carbon dioxide emissions from coal-fired power plants. The EPA made no mention whatsoever of the harms that Petitioners warned would result if the Agency slackened the pace of state and federal action to mitigate the harms Section 7411(d) In relation to the timing amendments, pollution

Filed: 01/19/2021

control—whether in the context of carbon dioxide and the ACE Rule or air pollution more generally—was simply not on the EPA's agenda. In short, Petitioners called the EPA's attention to an important aspect of the regulatory problem, and the EPA looked away.

The EPA offered what is at best a radically incomplete explanation for extending the compliance timeline. It offered undeveloped reasons of administrative convenience and regulatory symmetry, even as it ignored the environmental and public health effects of the Rule's compliance slowdown. The EPA thus "failed to consider an important aspect of the problem," *State Farm*, 463 U.S. at 43—indeed, arguably the most important aspect. We accordingly vacate the implementing regulations' extensions of the Section 7411(d) compliance periods.

V. VACATUR AND REMAND

The ACE Rule expressly rests on the incorrect conclusion that the plain statutory text clearly foreclosed the Clean Power Plan, so that complete repeal was "the only permissible interpretation of the scope of the EPA's authority under [Section 7411]." ACE Rule, 84 Fed. Reg. at 32,534; see also "[T]hat error prevented it from a full id. at 32,532. consideration of the statutory question here presented." Negusie v. Holder, 555 U.S. 511, 521 (2009). "Where a statute grants an agency discretion but the agency erroneously believes it is bound to a specific decision, we [cannot] uphold the result as an exercise of the discretion that the agency disavows," United States v. Ross, 848 F.3d 1129, 1134 (D.C. Cir. 2017), and the "regulation must be declared invalid, even though the agency might be able to adopt the regulation in the exercise of its discretion," Prill v. NLRB, 755 F.2d 941, 948 (D.C. Cir. 1985) (quoting Planned Parenthood Federation of America,

Inc. v. Heckler, 712 F.2d 650, 666 (D.C. Cir. 1983) (Bork, J., concurring in part and dissenting in part)); accord Arizona v. Thompson, 281 F.3d 248, 259 (D.C. Cir. 2002) (quoting Prill, 755 F.2d at 948).

Because the ACE Rule rests squarely on the erroneous legal premise that the statutory text expressly foreclosed consideration of measures other than those that apply at and to the individual source, we conclude that the EPA fundamentally "has misconceived the law," such that its conclusion "may not stand." SEC v. Chenery Corp., 318 U.S. 80, 94 (1943). Accordingly, we hold that the ACE Rule must be vacated and remanded to the EPA so that the Agency may "consider the question afresh in light of the ambiguity we see." Negusie, 555 U.S. at 523 (quoting Cajun Elec. Power Coop., Inc. v. FERC, 924 F.2d 1132, 1136 (D.C. Cir. 1991)); accord Peter Pan Bus Lines, Inc. v. Federal Motor Carrier Safety Admin., 471 F.3d 1350, 1354 (D.C. Cir. 2006); Prill, 755 F.2d at 948.

VI. CONCLUSION

Because promulgation of the ACE Rule and its embedded repeal of the Clean Power Plan rested critically on a mistaken reading of the Clean Air Act, we vacate the ACE Rule and remand to the Agency. We also vacate the amendments to the implementing regulations that extend the compliance timeline. Because the objections of the Coal Petitioners are without merit, we deny their petitions. And because the Robinson Petitioners lack standing, their petition is dismissed.

So Ordered.

WALKER, *Circuit Judge*, concurring in part, concurring in the judgment in part, and dissenting in part: This case concerns two rules related to climate change. The EPA promulgated both rules under § 111 of the Clean Air Act.¹

A major milestone in climate regulation, the first rule set caps for carbon emissions. Those caps would have likely forced shifts in power generation from higher-polluting energy sources (such as coal-fired power plants) to lower-emitting

¹ When this opinion refers to § 111, it is specifically referring to § 111(d). The codified version of § 111(d) is titled "Standards of performance for existing sources; remaining useful life of source." 42 U.S.C. § 7411(d). The first part reads:

(1) The Administrator shall prescribe regulations which shall establish a procedure similar to that provided by section 7410 of this title under which each State shall submit to the Administrator a plan which (A) establishes standards of performance for any existing source for any air pollutant (i) for which air quality criteria have not been issued or which is not included on a list published under section 7408(a) of this title or emitted from a source category which is regulated under section 7412 of this title but (ii) to which a standard of performance under this section would apply if such existing source were a new source, and (B) provides for the implementation and enforcement of such standards of performance. Regulations of the Administrator under this paragraph shall permit the State in applying a standard of performance to any particular source under a plan submitted under this paragraph to take into consideration, among other factors, the remaining useful life of the existing source to which such standard applies.

2

sources (such as natural gas or renewable energy sources).² That policy is called generation shifting.

Hardly any party in this case makes a serious and sustained argument that § 111 includes a clear statement unambiguously authorizing the EPA to consider off-site solutions like generation shifting. And because the rule implicates "decisions of vast economic and political significance," Congress's failure to clearly authorize the rule means the EPA lacked the authority to promulgate it.³

The second rule repealed the first and partially replaced it with different regulations of coal-fired power plants. Dozens of parties have challenged both the repeal and the provisions replacing it.

In my view, the EPA was required to repeal the first rule and wrong to replace it with provisions promulgated under § 111. That's because coal-fired power plants are already regulated under § 112, and § 111 excludes from its scope any power plants regulated under § 112. Thus, the EPA has no authority to regulate coal-fired power plants under § 111.

T.

When the Constitution's ratifiers empowered Congress to legislate on certain matters of national importance,⁴ they understood that federal regulation came with risks. For example, Congress might impose widely disbursed costs to

² For ease of reading, this opinion refers to the technical term "coal-fired electric utility generating units" by the slightly less precise but lay-friendlier term "coal-fired power plants."

³ Utility Air Regulatory Group v. EPA, 573 U.S. 302, 324 (2014) (quoting FDA v. Brown & Williamson Tobacco Corp., 529 U.S. 120, 160 (2000)).

⁴ U.S. CONST. art. I, § 8.

benefit insular groups in a nation of diverse economic and political interests. The framers called those groups factions.⁵

To guard against factions, legislation requires something approaching a national consensus. While a single state's simple majority can often subject that state to "novel social and economic experiments," federal legislation must survive bicameralism and presentment. Only through that process can ideologically aligned states use federal power to impose their will on the unwilling. So too for ideologically aligned environmentalists. Or polluters. Or big tech. Or big labor. Or free traders. Or fair traders. Or farmers. Or fishers. Or butchers. Or bakers.

In that process, each political institution probes legislative proposals from the perspective of different constituencies. The House speaks for the people. The Senate, among other roles, guards the interests of small states. The Electoral College, with representation just short of proportional, strikes a balance between the two. And by staggering elections over two-, four-, and six-year cycles, we further impede fleeting factions from ganging up on small states and unpopular political minorities. The point is: It's difficult to pass laws — on purpose.

⁵ See The FEDERALIST No. 10, at 56-65 (J. Madison) (J. Cooke ed., 1961).

⁶ New State Ice Co. v. Liebmann, 285 U.S. 262, 311 (1932) (Brandeis, J., dissenting).

⁷ U.S. CONST. art. I, §§ 1, 7; see *INS v. Chadha*, 462 U.S. 919, 951 (1983).

⁸ Of course, even then, a legislative coalition cannot regulate outside Congress's enumerated powers. *See* U.S. CONST. art. I, § 8.

⁹ See Department of Transportation v. Association of American Railroads, 575 U.S. 43, 61 (2015) (Alito, J., concurring) ("Our Constitution, by careful design, prescribes a process for making law, and within that process there are many accountability checkpoints.").

4

Document #1880546

This legislative gauntlet sometimes produces unfortunate, even tragic, consequences. Between the 1870s and 1960s, it foreclosed desperately needed civil rights laws. For budget hawks who predict a fiscal crisis, it has blocked entitlement And for those who fear a climate crisis, it has prevented clear congressional guidance on how to cool the planet and who will foot the bill.¹⁰

That, however, is the price we pay for bicameralism and presentment. Major regulations and reforms either reflect a broad political consensus, or they do not become law.

In its clearest provisions, the Clean Air Act evinces a political consensus. For example, according to Massachusetts v. EPA, carbon dioxide is clearly a pollutant, and the Act's § 202 unambiguously directs the EPA to curb pollution from new cars.11

But for every carbon question answered in that case, many more were not even presented. 12 For example, does the Clean Air Act force the electric-power industry to shift from fossil fuels to renewable resources? If so, by how much? And who will pay for it? Even if Congress could delegate those decisions, Massachusetts v. EPA does not say where in the Clean Air Act Congress clearly did so.

In 2009, Congress tried to supply that clarity through new legislation.

¹⁰ Cf. Bowsher v. Synar, 478 U.S. 714, 722 (1986) ("That this system of division and separation of powers produces conflicts, confusion, and discordance at times is inherent, but it was deliberately so structured to assure full, vigorous, and open debate on the great issues affecting the people and to provide avenues for the operation of checks on the exercise of governmental power.").

¹¹ 549 U.S. 497, 532-35 (2007).

¹² In this opinion, "carbon" is used as shorthand for carbon dioxide and other greenhouse gases.

5

The House succeeded. 13

The President supported it.¹⁴

But that effort stalled in the Senate. 15

Since climate change is real, man-made, and important, Congress's failure to act was, to many, a disappointment. But the *process* worked as it was designed. In general, Senators from small states blocked legislation they viewed as adverse to their voters. And because small states have outsized influence in the Senate, labeled to bill arrived on the President's

¹³ American Clean Energy and Security Act, H.R. 2454, 111th Cong. (2009).

¹⁴ See Interview with President Obama on Climate Bill, N.Y. TIMES (June 28, 2009), https://www.nytimes.com/2009/06/29/us/politics/29climate-text.html.

¹⁵ See Richard Cowan & Thomas Ferraro, Senator Graham Calls Cap-and-Trade Plan Dead, REUTERS (Mar. 2, 2010, 2:26 PM), https://www.reuters.com/article/us-climate-usa-congress/senator-graham-calls-cap-and-trade-plan-dead-idUKTRE62142T20100302.

¹⁶ Cf. Association of American Railroads, 575 U.S. at 61 (Alito, J., concurring) ("Bicameralism and presentment make lawmaking difficult by design[.]") (cleaned up).

¹⁷ Due to opposition to the 2009 climate bill, it never received a Senate vote. The closest analogue is the 2008 climate bill, which received a cloture vote. And of the states with no Senator voting for the 2008 bill, most of those states have populations smaller than 1/50 of the nation. *Roll Call Vote 110th Congress – 2nd Session*, U.S. SENATE.

https://www.senate.gov/legislative/LIS/roll_call_lists/roll_call_vote _cfm.cfm?congress=110&session=2&vote=00145#state (all internet materials last visited Jan. 10, 2021).

¹⁸ In 2008, *see supra*, for twenty-four state delegations, there was no Senate opposition to the climate bill. That's short of a majority of state delegations, and well short of the 3/5 necessary to break a

Filed: 01/19/2021

desk. Nor have dozens of other climate-related bills introduced since then. 19

So President Obama ordered the EPA to do what Congress wouldn't.²⁰ In 2015, after "years of unprecedented outreach

filibuster. But those twenty-four states equal 60% of the population. So the Senate's equal-state representation was critical. If representation were proportional to population, the climate bill would have been more likely to pass. *Roll Call Vote 110th Congress – 2nd Session*, U.S. SENATE, https://www.senate.gov/legislative/LIS/roll_call_lists/roll_call_vote cfm.cfm?congress=110&session=2&vote=00145#state.

¹⁹ See, e.g., American Clean Energy and Security Act, H.R. 2454, 111th Cong. (2009); Integrated Energy Systems Act, S. 2702, 116th Cong. (2019); Clean Industrial Technology Act, S. 2300, 116th Cong. (2019); Advancing Grid Storage Act, H.R. 7313, 115th Cong. (2018); Climate Risk Disclosure Act, S. 3481, 115th Cong. (2018); American Energy and Conservation Act, S. 3110, 114th Cong. (2016); Climate Solutions Commission Act, H.R. 6240, 114th Cong. (2016); Super Pollutants Act, S. 2911, 113th Cong. (2014); American Renewable Energy and Efficiency Act, H.R. 5301, 113th Cong. (2014); End Polluter Welfare Act, S. 3080, 112th Cong. (2012); Save Our Climate Act, H.R. 3242, 112th Cong. (2011); Carbon Dioxide Capture Technology Prize Act, S. 757, 112th Cong. (2011); Clean Energy Standard Act, S. 20, 111th Cong. (2010).

²⁰ Evan Lehmann & Nathanael Massey, *Obama Warns Congress to Act on Climate Change, or He Will*, SCIENTIFIC AMERICAN (Feb. 13, 2013), https://www.scientificamerican.com/article/obama-warns-congress-to-act-on-climate-change-or-he-will/ ("But if Congress won't act soon to protect future generations, I will,' Obama said. 'I will direct my Cabinet to come up with executive actions we can take, now and in the future, to reduce pollution, prepare our communities for the consequences of climate change, and speed the transition to more sustainable sources of energy."").

and public engagement"21 — including 4.3 million public comments²² (about 4.25 million more than in *Massachusetts v*. EPA)²³ — the EPA promulgated a rule aimed at "leading global" efforts to address climate change."24

Entitled the Clean Power Plan, the EPA's rule used the Clean Air Act's § 111 to set limits for carbon emissions that would likely be impossible to achieve at individual coal-fired power plants because of costs, unavailable technologies, or a need to severely reduce usage.²⁵ In that sense, the limits required generation shifting: shifting production from coalfired power plants to facilities that use natural gas or renewable resources.

To be clear, the 2015 Rule did not expressly say, "Power plants must adopt off-site solutions." But it did set strict emission limits in part by considering off-site solutions. And those emission limits would likely have been unachievable or too costly to meet if off-site solutions were off the table.

A political faction opposed generation shifting. challenged the 2015 Rule in this Court, arguing that § 111 does not allow the EPA to consider off-site solutions when determining the best system of emission reduction. The faction included about twenty-four states, represented by many

²¹ FACT SHEET: Overview of the Clean Power Plan, EPA, https://archive.epa.gov/epa/cleanpowerplan/fact-sheet-overviewclean-power-plan.html.

²² *Id*.

²³ 549 U.S. at 511.

²⁴ FACT SHEET: Overview of the Clean Power Plan, EPA, https://archive.epa.gov/epa/cleanpowerplan/fact-sheet-overviewclean-power-plan.html.

²⁵ Respondents' Br. at 32-37. For the codified text of § 111(d), see the first footnote of this opinion.

Filed: 01/19/2021

Senators who opposed the 2009 legislation.²⁶ Conversely, a political faction of about eighteen states defended the rule. Many of their Senators had supported the stymied legislation.²⁷

At that litigation's outset, our Court refused to stay the rule's implementation.²⁸ But in an unprecedented intervention, the Supreme Court did what this Court would not.²⁹ And through its stay, the Supreme Court implied that the challengers would likely succeed on the case's merits.³⁰

Taking the Supreme Court's not-so-subtle hint, in 2019 President Trump's EPA repealed the 2015 Rule and issued the Affordable Clean Energy Rule. Like the rule it replaced, the 2019 Rule relies on the Clean Air Act's § 111 to reduce carbon emissions. But unlike its predecessor, the 2019 Rule did not include generation shifting in its final determination of the best system of emission reduction.

A new faction then challenged the 2019 Rule. It looked a lot like the faction that had defended the 2015 Rule. Arrayed against that faction were many states and groups that had opposed the old rule. And so once again, politically diverse

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²⁶ See Legislative Hearing on S. 1733, Clean Energy Jobs and American Power Act Before the Committee on Environment and Public Works, 111th Cong. (2009) (For example, Senators from Oklahoma, Ohio, Wyoming, and Louisiana expressed opposition or concern about the legislation.).

²⁷ See id. (For example, Senators from California, Massachusetts, Minnesota, New Mexico, Oregon, Rhode Island, Vermont, and Maryland expressed support for the legislation.).

²⁸ West Virginia v. EPA, No. 15-1363 (D.C. Cir. Jan. 21, 2016) (per curiam) (order).

²⁹ West Virginia v. EPA, 136 S. Ct. 1000 (2016) (mem.).

³⁰ See Winter v. Natural Resources Defense Council, 555 U.S. 7, 20 (2008).

states and politically adverse special interest groups brought their political brawl into a judiciary designed to be apolitical.

In this latest round, the briefing's word count exceeded a quarter of a million words. The oral argument lasted roughly nine hours. The case's caption alone runs beyond a dozen pages. And yet, in all that analysis, hardly any of the dozens of petitioners or intervenors defending the 2015 Rule make a serious and sustained argument that § 111 includes a clear statement unambiguously authorizing the EPA to consider a system of emission reduction that includes off-site solutions or that § 111 otherwise satisfies the major-rules doctrine's clearstatement requirement. Neither does the EPA.

In light of that,³¹ I doubt § 111 authorizes the 2015 Rule — arguably one of the most consequential rules ever proposed by an administrative agency:

- It required a "more aggressive transformation in the domestic energy industry," marking for President Obama a "major milestone for his presidency."32
- It aspired to reduce that industry's carbon emissions by 32 percent — "equal to the annual emissions from more than 166 million cars."33

³¹ Cf. ARTHUR CONAN DOYLE, Silver Blaze, in THE COMPLETE SHERLOCK HOLMES 312, 325 (2009) ("Before deciding that question I had grasped the significance of the silence of the dog, for one true inference invariably suggests others.").

³² J.A. 2076 (White House Fact Sheet).

³³ FACT SHEET: Clean Power Plan By The Numbers, EPA, https://archive.epa.gov/epa/cleanpowerplan/fact-sheet-clean-powerplan-numbers.html; What Is the Clean Power Plan?, NATIONAL RESOURCES DEFENSE COUNCIL, INC. (Sept. 29, https://www.nrdc.org/stories/how-clean-power-plan-works-andwhy-it-

• Leaders of the environmental movement considered the rule "groundbreaking,"³⁴ called its announcement "historic,"³⁵ and labeled it a "critically important catalyst."³⁶

The potential costs and benefits of the 2015 Rule are almost unfathomable. Industry analysts expected wholesale electricity's cost to rise by \$214 billion.³⁷ The cost to replace shuttered capacity? Another \$64 billion.³⁸ ("A billion here, a billion there, and pretty soon you're talking real money."³⁹)

matters#:~:text=According%20to%20EPA%20projections%2C%20 by,nationally%2C%20relative%20to%202005%20levels.&text=Th e%20shift%20to%20energy%20efficiency,its%20electricity%20bill s%20in%202030 ("According to EPA projections, by 2030, the Clean Power Plan would cut the electric sector's carbon pollution by 32 percent nationally, relative to 2005 levels.").

³⁴ Save the Clean Power Plan, NATIONAL RESOURCES DEFENSE COUNCIL, INC., https://www.nrdc.org/save-clean-power-plan.

³⁵ *The Clean Power Plan*, ENVIRONMENTAL DEFENSE FUND, https://www.edf.org/clean-power-plan-resources.

³⁶ Press Release, Michael Brune, Sierra Club Executive Director, *Repealing the Clean Power Plan Will Threaten Thousands of Lives* (Oct. 9, 2017), https://www.sierraclub.org/press-releases/2017/10/repealing-clean-power-plan-will-threaten-thousands-lives.

³⁷ EPA's Clean Power Plan An Economic Impact Analysis, NMA, 2, http://nma.org/attachments/article/2368/11.13.15%20NMA_EPAs %20Clean%20Power%20Plan%20%20An%20Economic%20Impac t%20Analysis.pdf.

³⁸ *Id*.

³⁹ Senator Everett McKinley Dirksen Dies, U.S. SENATE (Sept. 7, 1969),

https://www.senate.gov/artandhistory/history/minute/Senator_Evere tt_Mckinley_Dirksen_Dies.htm; *cf. id.* ("Researchers have been unable to track down the quotation most commonly associated with

True, you can dismiss that research as industry-funded. But the EPA itself predicted its rule would cost billions of dollars and eliminate thousands of jobs. 40

On the benefits side of the ledger, the White House labeled the 2015 Rule a "Landmark," ⁴¹ and the President called it "the single most important step America has ever taken in the fight against global climate change."42 With that in mind, calculating the rule's benefits requires a sober appraisal of that fight's high stakes. According to the rule's advocates, victory over climate change will lower ocean levels; preserve glaciers; reduce asthma; make hearts healthier; slow tropical diseases; abate hurricanes; temper wildfires; reduce droughts; stop many floods; rescue whole ecosystems; and save from extinction up to "half the species on earth." 43

Dirksen. Perhaps he never said it, but the comment would have been entirely in character.").

⁴⁰ J.A. 336; see, e.g., Regulatory Impact Analysis for the Clean Power Plan Final Rule, EPA, 6-25 (Oct. 23, 2015), https://19january2017snapshot.epa.gov/sites/production/files/2015-08/documents/cpp-final-rule-ria.pdf.

⁴¹ Fact Sheet: President Obama to Announce Historic Carbon Pollution Standards for Power Plants, THE WHITE HOUSE (Aug. 3, https://obamawhitehouse.archives.gov/the-pressoffice/2015/08/03/fact-sheet-president-obama-announce-historiccarbon-pollution-standards.

⁴² Andrew Rafferty, Obama Unveils Ambitious Plan to Combat Climate Change, NBC NEWS (Aug. 3, 2015, 3:05 PM), https://www.nbcnews.com/politics/barack-obama/obama-unveilsambitious-plan-combat-climate-change-n403296.

⁴³ FACT SHEET: Overview of the Clean Power Plan, EPA, https://archive.epa.gov/epa/cleanpowerplan/fact-sheet-overviewclean-power-plan.html; Al Gore, Al Gore: The Climate Crisis Is the Battle of Our Time, and We Can Win, N.Y. TIMES (Sept. 20, 2019), https://www.nytimes.com/2019/09/20/opinion/al-gore-

These are, to put it mildly, serious issues. Lives are at stake. And even though it's hard to put a dollar figure on the net value on what many understandably consider invaluable, the EPA tried: \$36 billion, it said, give or take about a \$10-billion margin of error.⁴⁴

So say what you will about the cost-benefit analysis behind generation shifting, it's hardly a minor question. Minor questions do not forestall consequences comparable to "the extinction event that wiped out the dinosaurs 65 million years ago." Minor questions are not analogous to "Thermopylae, Agincourt, Trafalgar, Lexington and Concord, Dunkirk, Pearl Harbor, the Battle of the Bulge, Midway and Sept. 11." Minor rules do not inspire "years of unprecedented outreach and public engagement." Minor rules are not "the single most

climate-change.html; *Effects of Climate Change*, WORLD WILDLIFE FUND, https://www.worldwildlife.org/threats/effects-of-climate-change.

⁴⁴ FACT SHEET: Overview of the Clean Power Plan, EPA, https://archive.epa.gov/epa/cleanpowerplan/fact-sheet-overview-clean-power-plan.html.

⁴⁵ AN INCONVENIENT TRUTH (Lawrence Bender Productions, 2006) ("Global warming, along with the cutting and burning of forests and other critical habitats, is causing the loss of living species at a level comparable to the extinction event that wiped out the dinosaurs 65 million years ago. That event was believed to have been caused by a giant asteroid. This time it is not an asteroid colliding with the Earth and wreaking havoe: it is us.").

⁴⁶ Al Gore, *Al Gore: The Climate Crisis Is the Battle of Our Time, and We Can Win*, N.Y. TIMES (Sept. 20, 2019), https://www.nytimes.com/2019/09/20/opinion/al-gore-climate-change.html; *see id.* ("This is our generation's life-or-death challenge.").

⁴⁷ FACT SHEET: Overview of the Clean Power Plan, EPA, https://archive.epa.gov/epa/cleanpowerplan/fact-sheet-overview-clean-power-plan.html.

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important step America has ever taken in the fight against global climate change."⁴⁸ Minor rules do not put thousands of men and women out of work.⁴⁹ And minor rules do not calculate \$10 billion in net benefits as their margin of error.⁵⁰

Rather, the question of how to make this "the moment when the rise of the oceans began to slow and our planet began to heal"⁵¹ — and who should pay for it — requires a "decision[] of vast economic and political significance."⁵² That standard is not mine. It is the Supreme Court's. And no cocktail of factors informing the major-rules doctrine can obscure its ultimate inquiry: Does the rule implicate a "decision[] of vast economic and political significance"?

⁴⁸ Andrew Rafferty, *Obama Unveils Ambitious Plan to Combat Climate Change*, NBC NEWS (Aug. 3, 2015, 3:05 PM), https://www.nbcnews.com/politics/barack-obama/obama-unveils-ambitious-plan-combat-climate-change-n403296.

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⁴⁹ See, e.g., Regulatory Impact Analysis for the Clean Power Plan Final Rule, EPA, 6-25 (Oct. 23, 2015), https://19january2017snapshot.epa.gov/sites/production/files/2015-08/documents/cpp-final-rule-ria.pdf.

⁵⁰ FACT SHEET: Overview of the Clean Power Plan, EPA, https://archive.epa.gov/epa/cleanpowerplan/fact-sheet-overview-clean-power-plan.html.

⁵¹ Barack Obama, *Barack Obama's Remarks in St. Paul*, N.Y. TIMES (June 3, 2008), https://www.nytimes.com/2008/06/03/us/politics/03text-obama.html.

⁵² Utility Air Regulatory Group, 573 U.S. at 324 (quoting Brown & Williamson Tobacco, 529 U.S. at 160) (cleaned up); see Gonzales v. Oregon, 546 U.S. 243, 267 (2006) (quoting Brown & Williamson Tobacco, 529 U.S. at 160) (cleaned up).

Proponents of the 2015 Rule say it doesn't. 53 They have to. If it did, it's invalid — because a clear statement is missing.⁵⁴ And according to the Supreme Court, that is exactly what a major rule requires.

To be sure, if we frame a question broadly enough, Congress will have always answered it. Does the Clean Air Act direct the EPA to make our air cleaner? Clearly yes. Does it require at least some carbon reduction? According to Massachusetts v. EPA, again yes.

But how should the EPA reduce carbon emissions from power plants? And who should pay for it? To those major questions, the Clean Air Act's answers are far from clear.

I admit the Supreme Court has proceeded with baby steps toward a standard for its major-rules doctrine. But "big things have small beginnings."55 And even though its guidance has been neither sweeping nor precise, the Supreme Court has at least drawn this line in the sand: Either a statute clearly endorses a major rule, or there can be no major rule.⁵⁶

Moreover, if Congress merely allowed generation shifting (it didn't), but did not clearly require it, I doubt doing so was constitutional. For example, imagine a Congress that says, "The EPA may choose to consider off-site solutions for its best system of emission reduction, but the EPA may choose not to consider off-site solutions." In that instance, Congress has

⁵³ See Oral Arg. Tr. at 23 (Counsel for State and Municipal Petitioners on the 2015 Rule: "We do not think it implicates the Major Questions Doctrine here for a couple of reasons.").

⁵⁴ See supra p. 9.

⁵⁵ LAWRENCE OF ARABIA (Columbia Pictures, 1962).

⁵⁶ MCI Telecommunications Corp. v. American Telephone & Telegraph Co., 512 U.S. 218, 230-31 (1994); Brown & Williamson Tobacco, 529 U.S. at 126-27, 133; Gonzales, 546 U.S. at 267; Utility Air Regulatory Group, 573 U.S. at 322-25.

clearly delegated to the EPA its legislative power to determine whether generation shifting should be part of the best system of emission reduction — a "decision[] of vast economic and political significance."⁵⁷

Such delegation might pass muster under a constitution amended by "moments" rather than the "reflection and choice" prescribed by Article V.⁵⁸ But if ever there was an era when an agency's good sense was alone enough to make its rules good law, that era is over.⁵⁹

Congress decides what major rules make good sense. The Constitution's First Article begins, "All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives." And every "law" must "pass[] the House of Representatives and the Senate" and "be presented to the President." Thus, whatever multi-billion-dollar regulatory

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⁵⁷ Utility Air Regulatory Group, 573 U.S. at 324 (2014) (quoting Brown & Williamson Tobacco, 529 U.S. at 160) (cleaned up); see also Gonzales, 546 U.S. at 267 (quoting Brown & Williamson Tobacco, 529 U.S. at 160).

⁵⁸ See U.S. CONST. art. V; compare BRUCE ACKERMAN, We the People: Foundations 22 (1991) ("moments") with MICHAEL S. GREVE, The Upside-Down Constitution 13 (2012) ("reflection and choice") (quoting The FEDERALIST No. 1, at 3-7 (A. Hamilton) (J. Cooke ed., 1961)).

⁵⁹ See, e.g., SAS Institute, Inc. v. Iancu, 138 S. Ct. 1348, 1358-59 (2018) ("The Director may (today) think his approach makes for better policy, but policy considerations cannot create an ambiguity when the words on the page are clear. Neither may we defer to an agency official's preferences because we imagine some hypothetical reasonable legislator would have favored that approach. Our duty is to give effect to the text that actual legislators (plus one President) enacted into law.") (cleaned up).

⁶⁰ U.S. CONST. art. I, § 1.

⁶¹ *Id.* § 7.

power the federal government might enjoy, it's found on the open floor of an accountable Congress, not in the impenetrable halls of an administrative agency — even if that agency is an overflowing font of good sense. ⁶²

Over time, the Supreme Court will further illuminate the nature of major questions and the limits of delegation. And under that caselaw, federal regulation will undoubtedly endure. So will federal regulators. Administrative agencies are constitutional, and they're here to stay. 63

Beyond that, I leave it for others to predict what the Supreme Court's emerging jurisprudence may imply for those agencies' profiles. Here, regardless of deference and delegation doctrines, the regulation of coal-fired power plants under § 111 is invalid for a more mundane reason: A 1990 amendment to the Clean Air Act forbids it.

. . .

⁶² See id.; id. § 1; A.L.A. Schechter Poultry Corp. v. United States, 295 U.S. 495 (1935); Marshall Field & Co. v. Clark, 143 U.S. 649, 692 (1892); Gundy v. United States, 139 S. Ct. 2116, 2130-31 (2019) (Alito, J., concurring in the judgment); see generally MIKE LEE, Our Lost Constitution (2015); PHILIP HAMBURGER, Is Administrative Law Unlawful? (2014); Cody Ray Milner, Comment, Into the Multiverse: Replacing the Intelligible Principle Standard With a Modern Multi-Theory of Nondelegation, 28 GEO. MASON L. REV. 395 (2020); cf. Talk America, Inc. v. Michigan Bell Telephone Co., 564 U.S. 50, 68 (2011) (Scalia, J., concurring) ("When the legislative and executive powers are united in the same person, or in the same body of magistrates, there can be no liberty") (quoting MONTESQUIEU, Spirit of the Laws bk. XI, ch. 6, pp. 151-52 (O. Piest ed., T. Nugent transl. 1949)); In re Aiken County, 725 F.3d 255, 264 (D.C. Cir. 2013) (same).

⁶³ *Gundy*, 139 S. Ct. at 2145 (Gorsuch, J., dissenting) ("Nor would enforcing the Constitution's demands spell doom for what some call the administrative state.") (cleaned up).

17

II.

The Clean Air Act Amendments of 1990 prohibit the EPA from subjecting power plants to regulation under § 111 if they are already regulated under § 112. The 2015 Rule and the 2019 Rule rely on § 111 for the authority to regulate coal-fired power plants. Because the EPA already regulates those coal-fired power plants under § 112, the rules are invalid.

A.

Before 1990, the Clean Air Act's § 112 told the EPA to create a list of hazardous air pollutants. Section 112 directed the EPA to regulate the pollutants on that list. And § 111 provided authorization to regulate pollutants *not* on that list.

Carbon is not on the § 112 list. So, under the pre-1990 scheme, the EPA could regulate carbon under § 111.

But Congress amended § 112 in 1990. Rather than just telling the EPA to make a § 112 list of pollutants, Congress created its own § 112 list.

That same year, Congress also amended § 111. As a result, the codified version of § 111 prohibits the regulation of pollutants "emitted from a *source category* which is regulated under [§ 112]."⁶⁴

Coal-fired power plants are a source regulated under § 112.65 Therefore, under the codified version of the Clean Air Act, coal plants cannot be regulated under § 111. And since the 2015 Rule and the 2019 Rule use § 111 to regulate carbon emitted from coal plants, those rules purport to do what the codified version of § 111 says the EPA cannot.

But that is not the whole story. Congress's Office of the Law Revision Counsel codifies statutes. And when it

64 42 U.S.C. § 7411(d) (emphasis added).

65 Their mercury emissions are regulated under § 112.

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mistakenly codifies text different from the Statutes at Large, the Statutes at Large controls.⁶⁶ And the Statutes at Large differs from the codified text here.

The question concerns two amendments, one from each house of Congress, which both ended up in the final bill.⁶⁷

Under the House Amendment:

The Administrator shall prescribe regulations... under which each State shall submit to the Administrator a plan which (A) establishes standards of performance for any existing source for any air pollutant (i) for which air quality criteria have not been issued or which is not included on a list published under section 7408(a) of this title or emitted from a source category which is regulated under section 112 [of the Clean Air Act.]⁶⁸

The Administrator shall prescribe regulations which shall establish a procedure . . . under which each State shall submit to the Administrator a plan which (A) establishes standards of performance for any existing source for any air pollutant (i) for which air quality criteria have not been issued or which is not included on a list published under section 7408(a) or 7412(b)(1)(A) of this title

42 U.S.C. § 7411(d)(1) (1988) (emphasis added).

68 Pub. L. No. 101-549, § 108(g), 104 Stat. 2399, 2467 (1990) (emphasis added); 42 U.S.C. § 7411(d)(1).

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⁶⁶ Cheney Railroad Co. v. Railroad Retirement Board, 50 F.3d 1071, 1076 (D.C. Cir. 1995); see also United States National Bank of Oregon v. Independent Insurance Agents of America, Inc., 508 U.S. 439, 448 & n.3 (1993).

⁶⁷ The section, before the 1990 Amendments, read:

Under the Senate Amendment:

The Administrator shall prescribe regulations... under which each State shall submit to the Administrator a plan which (A) establishes standards of performance for any existing source for any air pollutant (i) for which air quality criteria have not been issued or which is not included on a list published under section 7408(a) of this title or 112(b) [of the Clean Air Act.]⁶⁹

Let's compare those two versions with the most relevant text bolded, the divergent text underlined, and the other text struck through.

House Version:

The Administrator shall prescribe regulations... under which each State shall submit to the Administrator a plan which (A) establishes standards of performance for any existing source for any air pollutant (i) for which air quality criteria have not been issued or which is not included on a list published under section 7408(a) of this title or emitted from a source category which is regulated under section 112....

Senate Version:

The Administrator shall prescribe regulations... under which each State shall submit to the Administrator a plan which (A) establishes standards of performance for any existing source for any air pollutant (i) for

⁶⁹ Pub. L. No. 101-549, § 302(a), 104 Stat. 2399, 2574 (1990) (emphasis added).

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which air quality criteria have not been issued or which is not included on a list published under section 7408(a) of this title or *112(b)*

Finally, let's look at only the most relevant text.

House:

The Administrator shall prescribe regulations for any air pollutant which is not emitted from a source category which is regulated under section 112.

Senate:

The Administrator shall prescribe regulations for any air pollutant which is not included on a list published under 112(b).

To sum up so far, in my view:

- The House said the EPA can't use § 111 to regulate pollutants emitted from a source category regulated under § 112.70
 - o Coal-fired power plants are a source category regulated under § 112.
- The Senate said the EPA can't use § 111 to regulate pollutants published under § 112.
 - o Carbon is not a pollutant published under § 112.

Some parties argue the House and Senate Amendments conflict with each other or otherwise produce an absurd result. Others say they don't. In my view, it doesn't matter. If there's

⁷⁰ The EPA adopts a different interpretation of the House Amendment. That interpretation is addressed below in Part II.C.

21

a conflict, the House Amendment controls. And if there's no conflict, the Senate Amendment takes nothing away from the House Amendment. In *either* scenario — conflict or no conflict — regulation of coal-fired power plants under § 111 is invalid.

В.

Let's start with the first scenario: Assume the two amendments conflict. That creates an absurd result, "a mistake of expression (rather than of legislative wisdom) [may have] been made. The Such a mistake of expression — a "scrivener's error" — is typically viewed as a typo. Where the reading "makes entire sense grammatically but produces a disposition that makes no substantive sense, a "drafter's error" may exist. That said, the distinction between a scrivener's error and a drafter's error is generally not a principled one. Here, the Senate and House Amendments do not have obvious typos or mistakes, but some may think that including both in the statute "makes no substantive sense" — in the same way

⁷¹ Cf. 70 Fed. Reg. 15,994, 16,030-32 (Mar. 29, 2005) ("EPA is therefore confronted with the highly unusual situation of an enacted bill signed by the President that contains two different and inconsistent amendments to the same statutory provision.").

⁷² Antonin Scalia, Common-Law Courts in a Civil-Law System: The Role of United States Federal Courts in Interpreting the Constitution and Laws, in A MATTER OF INTERPRETATION: FEDERAL COURTS AND THE LAW 3, 20 (Amy Gutmann ed., 1997); see also West Virginia v. EPA, No. 15-1363, Oral Arg. Tr. at 111 (Kavanaugh, J.) ("When [a conflict] happens[,] you [may] have a scrivener's error."). ⁷³ See ANTONIN SCALIA & BRYAN A. GARNER, Reading Law: The Interpretation of Legal Texts 234 (2012) (quoting Daniel A. Farber, Statutory Interpretation and Legislative Supremacy, 78 Geo. L.J. 281, 289 (1989)).

⁷⁴ *Id.* at 235.

⁷⁵ *Id*.

Filed: 01/19/2021

that a single order to "always drive fast" and "never drive fast" makes no substantive sense.

In these rare circumstances, judges may read the text in a way that accounts for these errors. In doing so, "we are not revising the apparent meaning of the text."⁷⁶ Instead, we give the text "the meaning that it would convey to a reasonable person, who would understand that misprints had occurred."77 But the "meaning genuinely intended but inadequately expressed must be absolutely clear; otherwise we might be rewriting the statute rather than correcting a technical mistake.",78

How then to discover the "meaning genuinely intended"?

Some might say "defer to the EPA" because of the text's ambiguity. But unintentional ambiguity from a drafter's error is nothing like the intentional ambiguity that typically receives Chevron deference. Chevron applies to deliberate gaps for an

⁷⁶ Id.; see also id. at 234 (quoting Grey v. Pearson, [1857] 6 H.L. Cas. 61, 106 (per Lord Wensleydale)) (cleaned up).

⁷⁸ United States v. X-Citement Video, Inc., 513 U.S. 64, 82 (1994) (Scalia, J., dissenting).

Page 170 of 185

Document #1880546

agency to fill.⁷⁹ So deference is arguably faithful to a statute's meaning — at least in theory.⁸⁰

In contrast, drafter's errors are accidents. So there's no reason to believe deference was "genuinely intended." And to the extent an office or agency with expertise is entitled to deference here — none is⁸¹ — Congress's Office of the Law Revision Counsel is the leading candidate. Its whole job is to produce the United States Code, and it dismissed the Senate Amendment as a drafter's error.

Others might say the default should be freedom from regulation when a drafter's error creates ambiguity over an agency's authority to promulgate a major rule. After all, if Congress doesn't clearly endorse a major regulation, there can be no major regulation.82

⁷⁹ Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc., 467 U.S. 837, 862 (1984); cf. Pereira v. Sessions, 138 S. Ct. 2105, 2121 (2018) (Kennedy, J., concurring) ("Given the concerns raised by some Members of this Court it seems necessary and appropriate to reconsider, in an appropriate case, the premises that underlie *Chevron* and how courts have implemented decision. The proper rules for interpreting statutes and determining agency jurisdiction and substantive agency powers should accord with constitutional separation-of-powers principles and the function and province of the Judiciary.") (cleaned up).

⁸⁰ But see Gutierrez-Brizuela v. Lynch, 834 F.3d 1142, 1153 (10th Cir. 2016) (Gorsuch, J., concurring) ("The fact is, *Chevron*'s claim about legislative intentions is no more than a fiction — and one that requires a pretty hefty suspension of disbelief at that.").

⁸¹ Ganem v. Heckler, 746 F.2d 844, 851 (D.C. Cir. 1984) ("[T]he changes made by the codifiers, whose choice, made without the approval of Congress[,] should be given no weight, are of no substantive moment.") (cleaned up).

⁸² See MCI Telecommunications, 512 U.S. at 230-31; Brown & Williamson Tobacco, 529 U.S. at 126-27, 133; Gonzales, 546 U.S. at 267; Utility Air Regulatory Group, 573 U.S. at 322-25.

Filed: 01/19/2021

But as with *Chevron*, the major-rules doctrine draws *meaning* from ambiguity: Because Congress does not hide elephants in mouseholes, we presume the absence of clarity means Congress intentionally chose not to endorse a major regulation. So as with *Chevron*'s premise, the premise of the major-rules doctrine is inapplicable to a drafter's error. Here, to the extent an elephant's in a mousehole, we don't know whether the misprint is the mousehole or the elephant.

That leaves us with a third option: inquiring into legislative history. True, as a general matter, courts should reject any significant reliance on legislative history. Hamilton did. ⁸³ So did Marshall. ⁸⁴ And Madison. ⁸⁵ And Story. ⁸⁶ "From the beginnings of the republic, American law followed what is known as the 'no-recourse doctrine' — that in the interpretation of a text, no recourse may be had to legislative history." And although many judges abandoned the no-recourse doctrine by the second half of the twentieth century, ⁸⁸ leading textualists like Justice Scalia have made important progress in reviving it.

But "[w]hen you have a scrivener's error[,] everyone, including Justice Scalia, would look at the legislative history." Indeed, he "believed that the *only* time it was

⁸³ ANTONIN SCALIA & BRYAN A. GARNER, *Reading Law: The Interpretation of Legal Texts* 370 (2012).

⁸⁴ *Id.* at 370-71.

⁸⁵ *Id.* at 371.

⁸⁶ *Id.* at 371-72.

⁸⁷ *Id.* at 369.

⁸⁸ Id. at 388.

⁸⁹ West Virginia v. EPA, No. 15-1363, Oral Arg. Tr. at 111 (Kavanaugh, J.); see also John Copeland Nagle, CERCLA's Mistakes, 38 WM. & MARY L. REV. 1405, 1414 (1997) ("[E]ven textualists like Justice Scalia acknowledge that the courts can remedy a 'scrivener's error' notwithstanding plain statutory language.").

appropriate for a court to use legislative history was when there was a credible claim of scrivener's error."90 For example, concurring in the judgment in Green v. Bock Laundry Machine Co., Justice Scalia considered "it entirely appropriate to consult . . . legislative history . . . to verify that what seems . . . an unthinkable disposition . . . was indeed unthought of, and thus to justify a departure from the ordinary meaning of the word" at issue.91

So, to recap: (1) The House and Senate Amendments may conflict; (2) if they do, there may have been a drafter's error; and (3) legislative history can illuminate a drafter's error.

What then, if anything, does the legislative history tell us? (Buckle up.)

In 1990, the House passed a bill with many amendments to the Clean Air Act. The Senate passed a different bill. A Conference Committee reconciled them. But it made (at least) two drafter's errors — assuming again our two amendments conflict.

First, the Conference Committee put both the House and Senate Amendments in the Conference Report, which became the final bill.⁹²

⁹⁰ Megan McDermott, Justice Scalia's Bankruptcy Jurisprudence: The Right Judicial Philosophy for the Modern Bankruptcy Code?, 2017 UTAH L. REV. 939, 974 (2017) (emphasis added).

⁹¹ 490 U.S. 504, 527 (1989) (Scalia, J., concurring in the judgment). ⁹² The Conference Report says "[t]hat the Senate recede[s] from its disagreement to the amendment of the House to the text of the bill and agree[s] to the same with an amendment as follows: In lieu of the matter proposed to be inserted by the House amendment insert the following: . . . Sec. 108. Miscellaneous provisions." H.R. Rep. No. 101-952, 101st Cong., at 1 (1990) (cleaned up). Section 108(g) under "Miscellaneous provisions" was the House Amendment that

Second, the Conference Committee botched the "Joint Explanatory Statement of the Committee of Conference."⁹³

The Joint Statement said, "The House amendment to the text of the bill struck out all of the Senate bill after the enacting clause and inserted a substitute text." That "amendment" refers to the House's entire set of amendments to the Clean Air Act. Clear enough so far.

The Joint Statement then said, "The Senate recedes from its disagreement to the amendment of the House...." Again, that seems straightforward.

But the Joint Statement didn't stop there. The full sentence excerpted just above says:

The Senate recedes from its disagreement to the amendment of the House with an amendment which is a substitute for the Senate bill and the House amendment.⁹⁶

That is drivel. The Senate recedes with an amendment? What amendment? And how is that receding? And did the House recede to the Senate's amendment to the House's amendment that the Senate receded to?

The next day, the bill's Senate Managers issued a statement attempting to clarify the previous day's materials.

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struck "or 112(b)(1)(A)" and inserted "or emitted from a source category which is regulated under section 112." *Id.* at 73. But later in the report we find the Senate's original proposed amendment — replacing "112(b)(1)(A)" with "112(b)." *Id.* at 183. So the Senate says it receded to the House, and yet we still see the Senate's original language in the document.

⁹³ *Id.* at 335-55.

⁹⁴ *Id.* at 335.

⁹⁵ *Id*.

⁹⁶ *Id*.

Filed: 01/19/2021

The statement notes that for two unrelated portions of the § 111 amendments, the House receded to the Senate. ⁹⁷ But it said the Senate receded to the House regarding all other § 111 changes, including the change at issue in this case. ⁹⁸

To the extent a statement by Senate Managers can ever clear up a question of statutory meaning — count me skeptical⁹⁹ — theirs did.

Here's where that leaves me. I'm frankly *not* convinced the House and Senate Amendments are the product of a drafter's error. But *if* they are, the most lucid piece of legislative history says the Senate intended to recede to the House.

That would leave the House Amendment as the last man standing. And under the House Amendment, the EPA can't regulate air pollutants from coal-fired power plants under § 111 when the plants are already regulated under § 112. Therefore, if the House and Senate Amendments conflict, the 2015 Rule and the 2019 Rule are invalid. 100

⁹⁷ Chafee-Baucus Statement of Senate Managers, S. 1630, the Clean Air Act Amendments of 1990, 136 Cong. Rec. 36007, 36067 (Oct. 27, 1990).

⁹⁸ *Id.* The full sentence about the two amendments at issue here reads: "*Conference agreement*. The Senate recedes to the House except that with respect to the requirement regarding judicial review of reports, the House recedes to the Senate and with respect to transportation planning, the House recedes to the Senate with certain modifications." In other words, except for judicial review of reports (immaterial here) and transportation planning (immaterial here), the Senate receded to the House.

⁹⁹ Environmental Defense Fund, Inc. v. EPA, 82 F.3d 451, 460 n.11 (D.C. Cir. 1996).

¹⁰⁰ The EPA doesn't like that result. For thirty years it has either ignored or misconstrued the House Amendment. But the EPA's

Filed: 01/19/2021

28

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As for the second (and more likely) of the two scenarios: Assume the House and Senate Amendments do *not* conflict. In that case, we don't strike the Senate Amendment as a drafter's error. ¹⁰¹ But even then, the House Amendment retains its full effect.

Recall that each amendment does two things. First, it creates a category of air pollutants. And second, it excludes that category from regulations authorized under § 111.

For the House Amendment, that category covers any pollutant "emitted from a source category which is regulated under section 112." And for the Senate Amendment, that category covers any pollutant "published under section . . . 112(b)."

So to see what's in the House Amendment's category, you'd start by making a list of every source regulated under § 112. As far as § 111 regulation goes, any air pollutants from those sources — including coal-fired power plants — are forbidden fruit under the House Amendment.

To create the Senate Amendment's list, you'd simply pull the 180 or so pollutants from § 112(b), as modified by the EPA since 1990. As far as § 111 regulation goes, those pollutants

long-running error is no reason to ignore plain text. To the extent I glean anything from the EPA's thirty-year mistake, it's that the EPA might be entitled to less deference than it thinks it deserves.

101 For the reader's convenience, here again is the codified version of § 111(d): "The Administrator shall prescribe regulations which shall establish a procedure . . . under which each State shall submit to the Administrator a plan which (A) establishes standards of performance for any existing source for any air pollutant (i) for which air quality criteria have not been issued or which is not included on a list published under [§ 108(a)] or emitted from a source category which is regulated under [§ 112]" (emphasis added).

— mercury compounds, asbestos, and more than 180 others — are forbidden fruit under the Senate Amendment. 102

In general, the House Amendment sweeps more broadly than the Senate Amendment. For example, the House Amendment's list includes pollution from coal-fired power plants, since they are regulated for mercury. So under the House Amendment, § 111 cannot be used to regulate coal-fired power plants at all.

In contrast, the Senate Amendment's list includes mercury, but it does not include *all* other pollution from sources that emit mercury. So under the Senate Amendment, § 111 cannot be used to regulate coal-fired power plants' emissions of mercury. But the Senate Amendment does not by itself stop the EPA from using § 111 to regulate coal-fired power plants' emissions of pollutants like carbon, since carbon isn't on the Senate Amendment's list.

That the House Amendment generally sweeps more broadly than the Senate Amendment, however, does not mean that fidelity to the House Amendment fails to give full effect to the Senate Amendment. For example, imagine two parents choosing a name for their child. The father says, "There's no way we're naming our baby after a president from Virginia." And the mother says, "There's no way we're naming our baby after *any* president."

Just like the House and the Senate each took certain regulations off § 111's table, the mother and father have each taken certain names off the table. And just as the House Amendment excludes from § 111 every regulation excluded by

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¹⁰² Initial List of Hazardous Air Pollutants with Modifications, EPA, https://www.epa.gov/haps/initial-list-hazardous-air-pollutants-modifications.

Document #1880546

the Senate Amendment (and then some), the mother has said no way to every name excluded by the father (and then some).

When you give full effect to the mother's no-way list, you are not ignoring the father's no-way list — because the father's list only excludes names and thus does not require the inclusion of any names. And for the same reason, when you give full effect to the father's list, you are not ignoring the mother's because the mother's no-way list does not require the inclusion of names excluded by the father.

Like the father's list, the Senate Amendment has a lot to say about what's excluded from § 111. But like the father's list, the Senate Amendment says nothing about what's included. So when the House Amendment excludes coal-fired power plants from § 111's scope, it doesn't ignore the Senate Amendment. It supplements it — by excluding from § 111's scope a category of regulations not already excluded by the Senate Amendment.

That's the situation that will occur most often — air pollutants excluded from § 111 regulation because they're on the Senate Amendment's list will also be excluded from § 111 regulation because they're on the House Amendment's list.

But there may exist situations, at least in theory, when only the Senate Amendment does any work.

For example, consider a hazardous air pollutant listed under § 112 but "emitted by sources that Section [112] does not reach. 111 regulation by the Senate Amendment (because it's a pollutant listed under § 112), but it is arguably not barred by the House Amendment (because it's emitted from a source not regulated under § 112).

¹⁰³ Majority Op. at 119-20 n.19.

In that scenario, it's possible only the Senate Amendment would bar § 111 regulation. 104

In other words, these § 111 exclusions might form a Venn diagram: Some air pollutants are excluded from § 111 regulation only because of the House Amendment (like carbon from coal-fired power plants), some pollutants are only excluded because of the Senate Amendment (as in the hypothetical I just described), and some pollutants are excluded because of both amendments (like mercury from coal-fired power plants). Recognizing *both* amendments as operative gives "maximum possible effect" to each. ¹⁰⁵

The EPA says *Chevron* applies to this question. Even so, the outcome is the same. At *Chevron* step one, the plain text of the Senate Amendment takes nothing away from the plain text of the House Amendment and vice versa. And because the House Amendment expressly precludes the regulation of coalfired power plants under § 111, the plain text precludes the 2015 Rule and the 2019 Rule — both of which depended on § 111 to regulate coal-fired power plants.

In American Electric Power Co. v. Connecticut, the Supreme Court agreed with this reading. It said the "EPA may not employ § [111(d)] if existing stationary sources of the pollutant in question are regulated under the national ambient

¹⁰⁴ As another theoretical example, consider a source that emits a pollutant on § 112's list and assume the EPA is *required* to regulate that source based on § 112's parameters. But now imagine that,

notwithstanding that requirement, the EPA has not *yet* regulated the source. After all, sometimes these things take time. In that situation too, the Senate Amendment might exclude from § 111 regulation pollutants that the House Amendment might not (yet).

¹⁰⁵ Citizens to Save Spencer County v. EPA, 600 F.2d 844, 870 (D.C. Cir. 1979).

Document #1880546

air quality standard program ... or the 'hazardous air pollutants' program, § [112]."106

The EPA adopts a different approach to the House Amendment. In "any air pollutant . . . emitted from a source category which is regulated under section 112," the EPA reads the phrase "which is regulated under section 112" to modify "air pollutant," rather than "source category." So it would exclude from § 111's scope only an "air pollutant . . . which is regulated under § 112":

¹⁰⁶ American Electric Power Co. v. Connecticut, 564 U.S. 410, 424 n.7 (2011) (citing § 7411(d)(1)). The EPA notes that this footnote was dicta and that it conflicted with national ambient air quality standard regulations at the time. But the EPA can't have it both ways: It can't dismiss an inconvenient part of American Electric Power that is directly on point and then rely on other parts of that case where the precise meaning and contours of § 111(d) were not at

As for American Electric Power's holding, it depended on the Supreme Court's understanding that § 111(d) "speaks directly" to carbon emissions from fossil-fuel plants. Id. at 424. I agree that § 111(d) "speaks directly" to whether the EPA can or cannot regulate carbon from coal-fired power plants: The provision directly says that the EPA can regulate pollutants from existing sources unless the EPA already regulates those sources under § 112. Compare id. with id. at 424 n.7.

issue.

The prescribe Administrator shall regulations . . . under which each State shall submit to the Administrator a plan which (A) establishes standards of performance for any existing source for any air pollutant (i) for which air quality criteria have not been issued or which is not included on a list published under section 108(a) or emitted from a source which regulated category is under section 112

To get to the EPA's preferred reading — to make "which is regulated by section 112" modify "air pollutant" — the EPA needs to read into § 111(d)(1)(A)(i) a triplet of three whiches: 107

The Administrator shall prescribe regulations... under which each State shall submit to the Administrator a plan which (A) establishes standards of performance for any existing source for any air pollutant [1] for which air quality criteria have not been issued or [2] which is not included on a list published under § 108(a) or emitted from a source category [3] which is [not] regulated under § 112....

My alterations — including [1], [2], [3], and [not] — reflect the tripartite division implied by the EPA. But of course the alterations were not in the original. If they were, the EPA's grammatically unconventional reading might work. They're not, so it doesn't.

For four reasons, the EPA's approach is not persuasive.

 107 Cf. William Shakespeare, Macbeth act 1, sc. 1.

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Document #1880546

First, "ordinarily, and within reason, modifiers and qualifying phrases attach to the terms that are nearest." Under that canon, a modifying phrase, such as "which is regulated under section 112," should apply to the closest noun possible — "source category," not "air pollutant."

Second, the EPA all but reads out of § 111 the following words: "emitted from a source category." To be sure, Congress will sometimes "include words that add nothing of substance," so the canon against surplusage has limits. 109 That's why "a court may well prefer ordinary meaning to an unusual meaning that will avoid surplusage." But amputating the words "emitted from a source category" does not clarify § 111's "ordinary meaning." Instead, doing so transforms that meaning.

Third, and most importantly, Congress put a conjunction ("or") between parts one and two of the imagined triplet, but not between parts two and three. If the EPA's triplet exists, Congress's approach to English was, to put it kindly, novel.

In formal English, you usually separate a triplet with a conjunction between the second and third parts. (Life, liberty, **or** property.) Informal English sometimes puts a conjunction between the first and second, *and* between the second and third. (Life **or** liberty **or** property.) Sometimes you see a triplet with no conjunction. (Life, liberty, property.) But you rarely if ever see a triplet's conjunction separate the first and second parts

¹⁰⁸ Grecian Magnesite Mining, Industrial & Shipping Co., SA v. Commissioner, 926 F.3d 819, 824 (D.C. Cir. 2019); see also Lockhart v. United States, 136 S. Ct. 958, 962 (2016); ANTONIN SCALIA & BRYAN A. GARNER, Reading Law: The Interpretation of Legal Texts 144-46 (2012).

¹⁰⁹ ANTONIN SCALIA & BRYAN A. GARNER, Reading Law: The Interpretation of Legal Texts 176 (2012).

¹¹⁰ Id

without also separating the second and third parts. (Life **or** liberty property). That's why it's not:

- Stop and drop roll; or
- Red and white blue; or
- Reduce and reuse recycle; or
- Blood and sweat tears; or
- Huey and Dewey Louie.

Thus, the EPA would require us to read into § 111 a triplet written in a way no one writes.¹¹¹

Fourth and finally, the EPA says a plain-text reading of the House Amendment would leave § 111 almost no work to do.

Whatever else the savings clause in § 112(d)(7) might save, it can't save *that*. *Cf.* 42 U.S.C. § 7412(d)(7) ("No emission standard or other requirement promulgated under this section shall be interpreted, construed or applied to diminish or replace the requirements of a more stringent emission limitation or other applicable requirement established pursuant to section 7411 of this title, part C or D, or other authority of this chapter or a standard issued under State authority.").

Note that § 112(d)(7) applies only to requirements "established pursuant to" § 111. And even the EPA says regulations cannot be established pursuant to § 111 if they target pollutants already regulated under § 112. See also American Electric Power, 564 U.S. at 424 n.7. So everyone agrees the § 111 amendments exclude something from § 111 based on § 112. And § 112(d)(7) does not cover whatever is excluded.

What's more, § 111(d)'s exclusion is more specific than § 112(d)(7)'s generalities, and the specific usually controls the general. See ANTONIN SCALIA & BRYAN A. GARNER, Reading Law: The Interpretation of Legal Texts 183 (2012).

But if so, that was a choice for Congress. After all, the 1990 Clean Air Act Amendments added more than one hundred pollutants to § 112's scope, with a mechanism for the EPA to add even more later. Maybe Congress thought § 111(d) shouldn't be much more than a rarely used gap-filler in light of a beefed up § 112 — at least until Congress passed another law saying otherwise.

Of course, in the end, it doesn't matter what Congress was *thinking*. "It is the *law* that governs, not the intent of the lawgiver." That's because, among other reasons, "it is simply incompatible with democratic government, or indeed, even with fair government, to have the meaning of a law determined by what the lawgiver meant, rather than by what the lawgiver promulgated." 115

Thus, an oddity of timing doesn't trigger *Chevron* deference. Nor does ambiguity arise every time an agency wishes a statutory provision did more work than it does. When statutory text informed by structure and context is clear, "that is the end of the matter." 117

¹¹² Pub. L. No. 101-549, § 301, 104 Stat. 2399, 2532-37 (1990).

¹¹³ *Cf. Gutierrez-Brizuela*, 834 F.3d at 1153 (Gorsuch, J., concurring) ("Trying to infer the intentions of an institution composed of 535 members is a notoriously doubtful business under the best of circumstances.").

¹¹⁴ Antonin Scalia, Common-Law Courts in a Civil-Law System: The Role of United States Federal Courts in Interpreting the Constitution and Laws, in A MATTER OF INTERPRETATION: FEDERAL COURTS AND THE LAW 3, 17 (Amy Gutmann ed., 1997).

¹¹⁶ *Cf.* Public Health & Environmental Respondent-Intervenors' Br. at 10-11.

¹¹⁷ Chevron, 467 U.S. at 842.

37

Document #1880546

This case touches on some of administrative law's most consequential, unresolved issues. What is the reach of Massachusetts v. EPA? What is the meaning of a major question? What are the limits of congressional delegation?

Each of those issues — and a dozen or two more — might have mattered if the EPA had relied on a section of the Clean Air Act other than § 111 to promulgate both rules at issue in this case. But a 1990 amendment to § 111 excluded a category of regulations from § 111's scope. And because that category covers the regulations challenged today, those other legal questions are academic.

Both houses of Congress voted that amendment — the House Amendment — into law. And as explained above, if it conflicts with the Senate-proposed amendment to § 111, the Senate Amendment was a drafter's error

On the other hand, if the House and Senate Amendments can coexist, the House Amendment simply excludes from § 111's scope a category of regulations in addition to the regulations excluded by the Senate Amendment.

Either way, the law precludes what the House Amendment And the House Amendment precludes § 111 precludes. regulations of coal-fired power plants already covered by § 112.

Therefore, the EPA correctly repealed the 2015 Rule, but its replacement rule improperly applied § 111 to coal-fired power plants already regulated under § 112.

Filed: 01/19/2021

Those conclusions lead to this respectful concurrence in part, concurrence in the judgment in part, and dissent in part. 118

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The majority's thoughtful opinion (I) describes this case's regulatory and procedural history; (II) vacates the 2019 Rule; (III.A) rejects most of the Coal Petitioners' arguments, including their contention that the EPA cannot use § 111 to regulate carbon emissions from power plants already regulated under § 112; (III.B) dismisses the Robinson Petitioners' challenge for lack of standing; (IV) vacates the EPA's implementing regulations for emission guidelines promulgated under § 111(d); (V) describes the remedy; and (VI) concludes. I concur in part of the judgment with respect to Part II, concur with respect to Part III.B, and concur in the judgment with respect to Part IV.

From: Reynolds, Joel Joel

Subject: Great news!

Hi Ann – I am so pleased to learn that you will join the Biden Admin as General Counsel at NHTSA. This is great for you and great for the country (not to mention the entire planet). If at any point NRDC can help you succeed in making the most out of this opportunity, please don't hesitate to reach out. I wld be happy to connect you with the best experts NRDC has to offer.

Thanks for taking this on!

Warm regards,

Joel

Joel Reynolds Western Director Senior Attorney Natural Resources Defense Council NRDC Action Fund 1314 Second Street Santa Monica, CA 90401 (310) 434-2300 (310) 434-2399 (fax) From: Phil Barnett

Sent: Saturday, October 31, 2020 9:47 AM PDT To: Carlson, Ann <carlson@law.ucla.edu>

Subject: How a Biden Administration Could Fight Climate Change Without the Senate

Hi Ann — I saw your nice quotes. If Tuesday goes well, we should find a time to talk so I can give you an update on some recent positive developments.

I hope you are staying safe and sane.

Phil

How a Biden Administration Could Fight Climate Change Without the Senate

https://www.gizmodo.com.au/2020/10/how-a-biden-administration-could-fight-climate-change-without-the-senate/ (via Instapaper)

Somewhere between a dream and nightmare is this scenario for Jan. 20, 2021: Joe Biden becomes president, while the Senate remains in Republican control.

The latest election polls (I know, I know) at FiveThirtyEight give Biden an 89% chance of winning the White House and Democrats a 76% chance of gaining a slim majority in the Senate. Not slam dunks, especially given that Republicans are going all-in on voter suppression.

To state the obvious: Given everything we know about President Donald Trump, it's a safe bet he would have zero interest in signing any climate legislation put on his desk if Democrats take the Senate but he somehow wins a second term. But if the inverse outcome occurs, with Biden winning the White House but Democrats failing to scoop up the Senate, then what happens?

The Key to Passing Good Climate Policy Is Having Real People in U.S. Congress

Earlier this week, Rep. Alexandria Ocasio-Cortez featured Taco Mix, objectively the best taco spot in Spanish Harlem, on her Instagram. I tell you this to a) convince you to go there if you are ever in the area, and b) because it speaks to the value of representatives who are...

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Signs point to a sort of purgatory for climate policy in that case. Senate Majority Leader Mitch McConnell calls himself the "grim reaper," and the odds of any climate policy making it to the floor are slim. The <u>conservative Supreme Court</u> also poses a huge hurdle for a potential Biden administration. But just because death incarnate could rule over the Senate and conservative zealots run the Supreme Court doesn't mean there aren't avenues for Biden to manoeuvre and, if not quite get to climate policy heaven, at least keep the world a few heartbeats away from climate hell.

"Biden really needs the Senate to pass massive investment measures," Mark Paul, an economist at the New College of Florida, said. "That said, there's a tremendous amount Biden can do with a split Senate and hostile court."

The most obvious steps Biden can take are putting a halt to the Trump rollbacks of environmental protections and rejoining the Paris Agreement, two things he has said he will do. Good, but those are the barest of minimums. Creating new climate regulations and rules is another obvious avenue, though the new conservative Supreme Court and a judiciary chock-full of Trump judges could be a gauntlet to get through. That's not to say the gauntlet isn't worth running, though.

In fact, if there's one thing Biden could do, it's try everything. As we've seen with the Trump administration, flooding the zone can pay dividends and keep the opposition on defence. Inverting the Trump approach, which has focused on overwhelming the nation with misinformation and policies designed to benefit large corporations at the expense of the planet, Biden could bombard the nation with sound climate policies designed to help people and explain how and why they're being implemented. Ann Carlson, a law professor at the University of California, Los Angeles, pointed to section 115 of the Clean Air Act, which "seems to be tailor-made for addressing greenhouse gas emissions."

"That is a provision that essentially says that if the U.S. is emitting air pollutants that endanger public health and welfare outside of its borders and other countries are as well, then it should be regulating those emissions," she said. "It's a very underutilized provision that was used for a short while to address the acid rain."

A Biden administration could interpret existing laws like the Clean Air Act to create new rules that would protect the environment without requiring Senate approval — though those rules would almost certainly face a Supreme Court challenge. Carlson warned that there, it could face a conservative wing (minus Chief Justice John Roberts) willing to overturn the rules based on a radical legal theory known as the non-delegation doctrine. That doctrine, which says Congress can't pass off its duties to the executive branch, has largely languished since FDR threatened to pack the courts during the New Deal era, but it hasn't truly been tested in the modern era. Now, with a business-friendly, climate-denying court, it's a toss-up whether the justices would embrace it — but then, that's exactly why Biden should push for bolder regulations.

"Never do we see justice occur without struggle."

Another powerful tool at Biden's disposal: public opinion. A<u>majority of Americans</u> want to transition away from fossil fuels, favour environmental justice, and are generally down with climate regulations. While it's easy to peg the court — and legislators — as having static beliefs, turning people out in the streets and getting the public engaged can move those beliefs surprisingly quick.

"I think the best example of that is the Gorsuch majority opinion and the gender discrimination case under Title VII," Carlson said, referring to a case <u>decided earlier this year</u>. "I don't think anybody 10 years ago would have thought a Republican-appointed judge who's very conservative would offer an opinion protecting same-sex and transgender employees. It's hard to think that that doesn't have something to do with changing norms and values."

So just because the court looks like a roadblock doesn't mean it has to be. New regulations are also hardly the only way to meaningfully reduce emissions.

Paul also highlighted the value of installing climate champions as agency heads. Not just the "traditional" climate agencies like Department of Energy and the Environmental Protection Agency, but everywhere, including the Treasury, Department of Transportation, and the Department of Housing and Urban Development. Because climate change is an everything problem, all these agencies have a role to play, whether it's through procurement of things like electric vehicles for the government fleet, budgeting for more energy efficiency grants for public housing, or using the weight of the Treasury to get the World Bank to stop investing in fossil fuel projects globally. Todd Tucker, director of governance studies at the Roosevelt Institute, pointed to an article he co-authored on how Trump's steel and aluminium tariffs provide a roadmap for how Biden could implement a tariff on high-carbon goods.

Paul suggested the Federal Reserve has the licence to<u>nationalize the fossil fuel industry</u>. That might seem far-fetched given Biden's stance on fracking, but we're daring to dream of a habitable planet here, and the Fed has issued some of its <u>most dire warnings</u> about the climate crisis under Trump.

"Under the Fed's relatively broad mandate," Paul said, "it in essence, needs to maintain financial stability, and there's increasing calls that the climate crisis is leading towards financial instability in markets both in the U.S. and globally. It's an open question whether or not the Federal Reserve would take full majority ownership of the fossil fuel industry. There is precedent of the U.S. government nationalizing industries in debt for the public interest."

<u>'2020 Really Belongs to Us': How the Youth Climate Movement Plans to Save the Planet in November</u>

The 2020 U.S. election is, simply put, the most important election the planet has ever seen. It may sound like American hyperbole or bluster, but the reality of four years under the Trump administration combined with what it has telegraphed as its plan for the next four years would be...

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The biggest thing Biden can do, then, is prioritise climate in everything he does and do it loudly. He's been leaning that way as part of his closing pitch, <u>largely due to groups mobilizing</u> to rightfully ensure climate is at the centre of the policymaking universe. But Biden could also create a feedback loop by standing up for those principles and encouraging more people to get engaged and hold obstructionists accountable, too.

"We have never had a climate champion as president," Paul said. "We know in the face of a divided Congress, Biden can and must hit the road to rally Americans behind climate action to get them to continue taking to the streets to demand action from Congress. Never do we see justice occur without struggle."

From: Michael Burger <mburger@law.columbia.edu>
Sent: Thursday, January 21, 2021 7:03 PM PST
To: Carlson, Ann <carlson@law.ucla.edu>

Subject: I guess this means no more panels together for a while!

Congrats, Ann! Can't imagine a better person to lead the legal team at NHTSA.

Mike

From: Richard Day <rday@jbrpt.org>

Sent: Friday, December 18, 2020 11:29 AM PST **To:** Carlson, Ann <carlson@law.ucla.edu>

Subject: Interview Confirmation

Attachment(s): "interview_0.ics", "interview_1.ics", "interview_2.ics"

Dear Ann:

Thank you for submitting your availability.

You are confirmed to interview for the role of Chief Counsel - NHTSA at the Department of Transportation at the below dates and times. *Each time listed is a separate confirmed interview* Please plan to meet at each of the times listed below. Interviews will take place on Google Meet using the provided links. As such, we recommend saving this email for future reference.

Date/Time: Dec 19, 2020 5:00pm-5:45pm EST - meet.google.com

Date/Time: Dec 20, 2020 5:00pm-5:45pm EST - meet.google.com/

Date/Time: Dec 23, 2020 6:45pm-7:20pm EST - meet.google.com

If you have any questions or concerns about the interview or if you require accommodations due to a disability or limited access to technology or high-speed internet, please let us know by responding to this email.

Best,

The Biden-Harris Transition Appointments Team

From: Abby Smith <asmith@washingtonexaminer.com> Sent: Monday, November 09, 2020 2:36 PM PST

To: Carlson, Ann <carlson@law.ucla.edu>

Subject: Interview Request re: Biden climate agenda

Hi Ann

Hope this note finds you well and healthy!

I'm reaching out to see if you might be able to help with a story I'm working on this week about opportunities for the Biden administration to act administratively on climate change, looking in particular at what the EPA's role might be. I'm hoping to get a sense of what the Biden administration's best options would be to regulate greenhouse gas emissions under the Clean Air Act and what challenges they might face.

I'd love to chat with you for this piece. Would you have some time to connect tomorrow or Wednesday? Please let me know. It'd be great to get your insights.

Thanks in advance!

Abby

Abby Smith

Energy & Environment Reporter, The Washington Examiner

Email: asmith@washingtonexaminer.com

Office: 202-496-3330 Cell: 571-239-3728 @AbbySmithDC Subject: Interview with BRP Location: meet.google.com/

Start: Sunday, December 20, 2020 2:00 PM PST **End:** Sunday, December 20, 2020 2:45 PM PST

Show Time As: Busy

Recurrence: None

Meeting Status: Not yet responded

Organizer: Carlson, Ann

Dear Ann:

Thank you for submitting your availability.

You are confirmed to interview for the role of Chief Counsel - NHTSA at the Department of Transportation at the below dates and times. Each time listed is a separate confirmed interview. Please plan to meet at each of the times listed below. Interviews will take place on Google Meet using the provided links. As such, we recommend saving this email for future reference.

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If you have any questions or concerns about the interview or if you require accommodations due to a disability or limited access to technology or high-speed internet, please let us know by responding to this email.

Best,

The Biden-Harris Transition Appointments Team

Subject: Interview with BRP Location: meet.google.com/

Start: Wednesday, December 23, 2020 3:45 PM PST **End:** Wednesday, December 23, 2020 4:20 PM PST

Show Time As: Busy

Recurrence: None

Meeting Status: Not yet responded

Organizer: Carlson, Ann

Dear Ann:

Thank you for submitting your availability.

You are confirmed to interview for the role of Chief Counsel - NHTSA at the Department of Transportation at the below dates and times. Each time listed is a separate confirmed interview. Please plan to meet at each of the times listed below. Interviews will take place on Google Meet using the provided links. As such, we recommend saving this email for future reference.

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Date/Time: Dec 23, 2020 6:45pm-7:20pm EST - meet.google.com/

If you have any questions or concerns about the interview or if you require accommodations due to a disability or limited access to technology or high-speed internet, please let us know by responding to this email.

Best,

The Biden-Harris Transition Appointments Team

Subject: Interview with BRP

Location: meet.google.com Start: Saturday, December 19, 2020 2:00 PM PST End: Saturday, December 19, 2020 2:45 PM PST

Recurrence: None

Dear Ann: Thank you for submitting your availability. You are confirmed to interview for the role of Chief Counsel - NHTSA at the Department of Transportation at the below dates and times. Each time listed is a separate confirmed interview. Please plan to meet at each of the times listed below. Interviews will take place on Google Meet using the provided links. As such, we recommend saving this email for future reference. Date/Time: Dec 19, 2020 5:00pm-5:45pm EST - meet.google.com/ Date/Time: Dec 20, 2020 5:00pm-5:45pm EST - meet.google.com/ Date/Time: Dec 23, 2020 6:45pm-7:20pm EST - meet.google.com/ If you have any questions or concerns about the interview or if you require accommodations due to a disability or limited access to technology or high-speed internet, please let us know by responding to this email. Best, The Biden-Harris Transition Appointments Team

Subject: Interview with BRP Location: meet.google.com

Start: Sunday, December 20, 2020 2:00 PM PST

End: Sunday, December 20, 2020 2:45 PM PST

Recurrence: None

Dear Ann: Thank you for submitting your availability. You are confirmed to interview for the role of Chief Counsel - NHTSA at the Department of Transportation at the below dates and times. Each time listed is a separate confirmed interview. Please plan to meet at each of the times listed below. Interviews will take place on Google Meet using the provided links. As such, we recommend saving this email for future reference. Date/Time: Dec 19, 2020 5:00pm-5:45pm EST -Date/Time: Dec 20, 2020 5:00pm-5:45pm EST - meet.google.com/ meet.google.com/ Date/Time: Dec 23, 2020 6:45pm-7:20pm EST - meet.google.com/ If you have any questions or concerns about the interview or if you require accommodations due to a disability or limited access to technology or high-speed internet, please let us know by responding to this email. Best, The Biden-Harris Transition Appointments Team

Subject: Interview with BRP

Location: meet.google.com
Start: Wednesday, December 23, 2020 3:45 PM PST
End: Wednesday, December 23, 2020 4:20 PM PST

Recurrence: None

Dear Ann: Thank you for submitting your availability. You are confirmed to interview for the role of Chief Counsel - NHTSA at the Department of Transportation at the below dates and times. Each time listed is a separate confirmed interview. Please plan to meet at each of the times listed below. Interviews will take place on Google Meet using the provided links. As such, we recommend saving this email for future reference. Date/Time: Dec 19, 2020 5:00pm-5:45pm EST - meet.google.com

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If you have any questions or concerns about the interview or if you require accommodations due to a disability or limited access to technology or high-speed internet, please let us know by responding to this email. Best, The Biden-Harris Transition Appointments Team

BIDEN-HARRIS TRANSITION

INTERVIEW PROCESS

Scheduling: To schedule your interview(s), please click the "Enter your availability now >" link at the bottom of the interview invitation email and share your availability for the next 7-10 calendar days. Once you have provided your availability and we have matched you with an interviewer, you will receive an email confirming the time of your interview and instructions for connecting to your interviewer. Due to the compressed timeline, we may use your availability to go ahead and schedule several interviews. You must provide your availability within the next 48 hours or your interview will be canceled.

Number of interviews and timeline: Depending on the position, you will be asked to participate in 2-5 interviews with different interviewers. You will meet with a combination of volunteer interviewers and members of the President-Elect's Appointments team, all of whom have been trained to conduct competency-based interviews. We aim to provide every candidate that has been asked to interview with a decision on their candidacy no later than 6 weeks after their initial interview. Note: Your invitation to interview and your interview discussions are strictly confidential; your failure to protect the confidentiality of the process may impact your ability to proceed in the personnel process.

Questions and request for accommodations: If you have any questions or concerns about scheduling an interview or if you require accommodations due to a disability or limited access to technology or high-speed internet, please respond to this email.

Additional information about the interview process is included below under Frequently Asked Questions (FAQs).

OTHER HELPFUL RESOURCES

The Biden-Harris Administration has consulted with stakeholders from across the country to develop its **policy priorities**. For more information, <u>please review content from the transition website</u>.

To learn more about the structure of the federal government and Presidential appointments, <u>USA</u>
<u>Jobs</u> and the <u>Partnership for Public Service's Center for Presidential Transition</u> have many resources available for you to review at your convenience. Additionally, Leadership Connect has compiled a useful

<u>Federal Government Acronym Guide</u>, which may include acronyms you hear during your interviews. We hope these may be useful to you during your interview preparations.

We encourage all potential applicants to consider whether a political appointment is the right fit for their experience, expectations, and goals. The Partnership for Public Service has a <u>helpful checklist</u> of considerations, including:

- the vetting process
- ethics restrictions for political appointees
- financial, employment, or other conflicts of interest that might prevent you from serving in certain positions or may require changes to your financial portfolio
- issues that may impact your ability to secure a security clearance, if required
- financial considerations
- post-employment restrictions

INTERVIEWING FREQUENTLY ASKED QUESTIONS (FAQs)

1. I've been invited to interview for a position. What can I expect during the interview process?

You should expect to complete between 2 and 5 interviews, each lasting around 25 - 60 minutes, over the course of a few weeks. Interviewers may include volunteers with hiring, recruitment or search experience; specialists with subject matter expertise relevant to the position; and members of the Transition Team.

To expedite our process, we ask that candidates remain flexible regarding scheduling and respond to scheduling requests as quickly as possible. At the conclusion of the process, candidates who receive a conditional job offer will be given a limited amount of time to accept or decline the offer. Formal job offers will be made by the respective agency after the candidate has completed and returned, and the agency has processed all required paperwork (which may include security clearance forms).

We aim to inform candidates of the decision on their candidacy no later than 6 weeks after their initial interview.

2. What is the structure of each interview?

Initial interviews will include a series of behavioral questions designed to better understand the candidate's skills and capabilities. These questions will ask candidates to reflect on previous experiences (e.g., "Tell me about a time when...") or respond to hypothetical situations. These interviews may feel structured or formal. You can learn more about behavioral interviews here and the benefits of structured interviews.

Some positions will have follow-up interviews that include technical questions related to the specific subject matter expertise needed for the position. Candidates will also be provided time to ask questions of their interviewers. Note the initial interview will typically be with a volunteer who has been trained to conduct competency-based interviews; subsequent interviews will be with members of the Transition Team who will have more information about the position. Please note that you may be asked the same or similar questions in multiple interviews.

3. Where and how will interviews take place?

Due to public health precautions regarding COVID-19, all interviews will take place virtually. Interviews will be scheduled through the Greenhouse Recruiting platform and will be held on Google Meet. Details regarding how to schedule your interview will be included in the interview invitation email. If you do not receive a Google Meet link, please reach out to your point of contact. We will also be sharing guidance in the future on remote / in-person work models due to COVID-19 for future appointees.

Should a candidate require any accommodations due to a disability, lack of access to Google Meet or limited access to high-speed internet they should respond to the interview invitation email with a request for accommodations.

Thank you again for your interest in serving in the Biden-Harris Administration, and in your commitment to helping to build back better, restore faith in America, and do it alongside a team that looks like—and works for—all Americans.

From: The Biden-Harris Transition Appointments Team <Training@jbrpt.org>

Sent: Monday, January 18, 2021 1:47 PM PST

To: Training training@jbrpt.org

Subject: Invitation: All Appointee Call January 19 at 1:30pm EST

Attachment(s): "Fillable_Agency Onboarding Toolkit_Final.pdf", "Federal Budget, Management & Regulatory Process_1-14-

2021.pdf"

Friends:

We are excited to soon call you Biden-Harris Administration colleagues!

We know you may have questions about what to expect over the coming days as you onboard at your agency. To help answer those questions, the Transition is hosting a call for all incoming appointees with the incoming leaders of the White House Office of Presidential Personnel and the Office of Cabinet Affairs **tomorrow**, **Tuesday**, **January 19**, **from 1:30-2:00pm EST**.

Best,

Biden-Harris Transition Leadership and Training Team

P.S. If you have not already completed appointee training, see below for reminders.

//

Appointee Training Videos [Pre-Recorded; complete prior to Jan. 20]: in order to understand the values, policy priorities, expectations, and diversity, equity, and inclusion priorities of the Biden-Harris administration, please watch all four training videos by January 20 and download and fill out the companion learning guide to jot down questions and takeaways. Please note that these links are for internal use only and should not be shared.

Agency Onboarding Toolkit [Attached PDF]: in order to help prepare you in a virtual setting, please refer to the attached agency onboarding toolkit for team building suggestions, advice from former political appointees, an acronym guide, and other helpful resources. This toolkit is also attached in your Greenhouse Onboarding profile.

Federal Budget and Regulatory Process 101 Training [Attached PDF]: refer to the attached slides from the Federal Budget and Regulatory Process 101 Training offered on January 14, 2021.

Management Training [PDF by request]: if you are an incoming acting office head, chief/deputy chief of staff, or manager of other staff members, please email us for the management training slides shared the week of January 11, 2021.

From: Laetitia Garriott de Cayeux <Laetitia@garriott.com>

Sent: Friday, June 26, 2020 8:47 AM PDT

To: Laetitia Garriott de Cayeux <Laetitia@garriott.com> **Subject:** Invite to next Tuesday's innovators roundtable

Friends.

On Tuesday at 7 pm EST / 4 pm PST, we're convening a technology roundtable and fundraiser with Jake Sullivan, the senior policy official on the Biden campaign. We'll be working to identify groundbreaking innovations that the Biden Administration can harness on behalf of the country, with a focus on digital infrastructure, economic opportunity, and sustainability. Jake Sullivan is likely to play a singularly important role in a future Biden Administration. **We'd love to have your ideas, voice, and support to help shape and share our conversation next week**. Participation levels and details are in the link below.

Innovators for Biden Policy Roundtable with Jake Sullivan

June 30, 2020 7:00 p.m. EDT / 4:00 p.m. PDT RSVP & Contribute Here!

I also wanted to also flag

- NEXT WEEK's **Hope & Democracy** conversation with **VP Biden and Mark Hamill, aka Star Wars' Luke Skywalker**, with a special performance by **cellist extraordinaire Yo-Yo Ma**: RSVP here for 6/30
- Our upcoming campaign virtual conversations on:
 - Clean Energy with former Colorado Governor Bill Ritter, who has been serving as the director of the Center for the New Energy Economy at Colorado State University: RSVP here for 7/01
 - The Economy with Ben Harris, former Chief Economist and Chief Economic Advisor to VP Biden from 2014 to 2016: RSVP here for 7/07
 - Education in a COVID-19 world with Jill Biden and Steven Van Zandt: RSVP here for 7/08

We hope you can join us for one of these! Feel free to share this invitation with friends and colleagues, and to reach out if you have questions.

Laetitia

Laetitia Garriott de Cayeux Biden for President National Finance Committee Innovators for Biden About me | Twitter From: Sean Hecht <envirolaw@law.ucla.edu> Sent: Friday, January 29, 2021 8:50 AM PST To: Carlson, Ann <carlson@law.ucla.edu>

Subject: January 2021 update

View this email in your browser

As we look forward to an important year for U.S. climate action, we are also excited that our faculty co-directo**Ann Carlson** will be taking a leave of absence to serve in the Biden administration. This week we are welcoming students for spring semester with seven environmental law courses, including, for the first time, a class on renewable energy project finance led by our alumnus **Edward Zaelke, '83**. More below.

Sean Hecht, Co-Executive Director, UCLA Emmett Institute on Climate Change and the Environment

Photo credit: Daniel Melling

D.C. Circuit cites grid experts in vacating Trump administration power pollution rule

Last week, the D.C. Circuit <u>ruled to invalidate</u> the Trump administration's Affordable Clean Energy (ACE) Rule, which weakened Obama-era regulation of climate pollutants from power plants.

The court's ruling extensively cited <u>an amicus brief</u> filed last year by Emmett Institute faculty **Cara Horowitz**, **William Boyd**, **Ann Carlson**, **Charlie Corbett** on behalf of a group of engineers with expertise in the operation, structure, economics, and reliability of the U.S. power system.

Read the brief and a Legal Planet blog post from Horowitz explaining the court's decision.

Ann Carlson speaks at a UCLA Law symposium last year

Ann Carlson, Shirley Shapiro Professor of Environmental Law, speaks at a UCLA Law symposium last year. Photo credit: Todd Cheney

Professor Ann Carlson joins the Biden administration

The Emmett Institute congratulations our faculty co-director and Shirley Shapiro Professor of Environmental Law **Ann Carlson** on her <u>appointment</u> as chief counsel of the National Highway Traffic Safety Administration.

Professor Carlson's vision drove the creation of the Emmett Institute as the first law school center to focus on climate change. Together with faculty co-director **Ted Parson**, she has helped build one of the country's <u>leading environmental law programs</u>.

A nationally renowned scholar, beloved teacher, and dedicated public servant, Professor Carlson has served as an inspiration for students, alumni, and colleagues at UCLA Law, where she has served on the faculty since 1994. We are excited for her new role in this important year for climate action.

New renewable energy development course adds to extensive spring course offerings

UCLA Law will offer a course in <u>Renewable Energy Project Finance</u> for the first time this semester. The course was developed on the initiative of Professor **William Boyd** and will be taught by UCLA Law alumnus**Edward Zaelke '83**, head of global energy project finance at McDermott Will & Emery.

Other UCLA Law classes taught by Emmett Institute faculty this spring include:

- Land Use | Professor Jonathan Zasloff
- <u>Future Law</u> | Dan and Rae Emmett Professor of Environmental Law & Emmett Institute Faculty Co-Director <u>Edward Parson</u>
- Natural Resources Law | Donald Bren Distinguished Professor of Environmental Law James Salzman
- <u>Climate Change Law and Policy</u> | Evan Frankel Professor of Policy and Practice & Emmett Institute Co-Executive Director Sean Hecht
- <u>Environmental Justice Law</u> | **Maya Golden-Krasner**, Deputy Director and Senior Attorney, Center for Biological Diversity; **Adrian Martinez**, Staff Attorney, Earthjustice
- Frank G. Wells Environmental Law Clinic | Andrew Sabin Family Foundation Co-Executive Director Cara Horowitz; Emmett Institute Supervising Attorney and Project Director Julia Stein

Traffic on Pacific Coast Highway

The transportation sector is the largest source of climate pollution in the country. Photo credit: Geoff/Flickr

Amicus brief filed on behalf of members of Congress in federal auto emissions standards case

Last week, five Emmett Institute faculty members <u>submitted an amicus brief</u> to the U.S. Court of Appeals for the D.C. Circuit challenging the Trump administration's rollback of federal vehicle pollution and fuel economy standards.

Filed on behalf of Sen. Tom Carper, chairman of the Senate Environment and Public Works Committee, and Rep. Frank Pallone Jr., chairman of the House Committee on Energy and Commerce, the brief was written by Cara Horowitz, Julia Stein, Benjamin Harris, Beth Kent, and Siyi Shen.

Read a press release and a Q&A with Horowitz in UCLA Newsroom.

RSVP: Discussion tonight on DDT pollution and other California coastal stories

Join our co-executive director **Sean Hecht** today, January 29, at 4 p.m., for a <u>conversation</u> on ocean pollution and other California coastal stories. The event will feature Rosanna Xia, reporter at the *Los Angeles Times*, Mark Gold, executive director at the California Ocean Protection Council, and Jon Christensen, adjunct assistant professor at UCLA Institute of the Environment and Sustainability. <u>Details/RSVP.</u>

Alumni take on new public interest roles

Crescent Cheng '18 is now the Land Use and Associate Corporate Counsel at Wishtoyo Foundation/Ventura Coastkeeper. Crescent previously served as an associate at Nossaman LLP, a major California law firm.

Heather Leslie '15 joined the California Natural Resources Agency as an Assistant General Counsel. Leslie previously served for five years as a Deputy Attorney General at the California Department of Justice.

Report: Building toward decarbonization

A <u>new report</u> from the Emmett Institute and Berkeley Law's Center for Law, Energy and the Environment explores challenges and policy solutions to building electrification, a key component of California's transition to a carbon neutral economy.

Read the report and RSVP for a webinar on February 23.

Support our work

The Emmett Institute relies on the generous support of donors to fund our educational and research programs. Please consider supporting our work:

Donate

Trivia corner

"It's a big day for Boston every day," quipped one Biden appointee for climate policy in response to a media question this week.

Can you name the official?

Please send responses to Daniel Melling, melling@law.ucla.edu, to win an Emmett Institute t-shirt!

Our previous question asked to the nearest percentage point, how much did global greenhouse gas emissions decline in 2020? The correct answer: 7 percent. We had no correct submissions last month.

Daniel Melling writes the Emmett Institute newsletter with editing from Sean Hecht and Cara Horowitz. Please send any feedback to melling@law.ucla.edu.

About the Emmett Institute on Climate Change and the Environment at UCLA School of Law
The Emmett Institute on Climate Change and the Environment is among the leading environmental law programs in the country, with faculty members renowned for their public service, teaching excellence, and scholarship in state, federal, and international law. Located in Los Angeles, a diverse city facing unique environmental justice and climate change challenges, the Emmett Institute provides J.D. and LL.M. students unmatched opportunities for mentoring, career placement, and experiential learning. Through groundbreaking research and public interest initiatives, the Emmett Institute helps shape climate change and environmental law and policy in California, the United States, and jurisdictions around the world. law.ucla.edu/emmett
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Los Angeles, CA 90095-0001
Add us to your address book
Want to change how you receive these emails?
You can <u>update your preferences</u> or <u>unsubscribe from this list</u> .

From:

Sent: Sunday, October 04, 2020 5:43 PM PDT **To:** Carlson, Ann <carlson@law.ucla.edu>

Subject: Law 290 Question

Hi Professor Carlson,

I had a question related to the transfer of court cases/litigation between executive administrations. Basically, I want to know how that works! The question below is rather lengthy, so if you'd rather discuss via Zoom during Office Hours I am happy to do so! I am free Wednesdays at 3:30 (or we could schedule another time).

If an agency like the EPA is engaged in litigation under one executive administration and the court/appeals process lasts years, and the EPA leadership changes and is run under a new executive administration, how then does a case/litigation transfer from one administration to another (and between vastly different administrations - such as from W. Bush to Obama to Trump to Biden, potentially)?

Is the "new" EPA then stuck in litigation they do not agree with? Would former EPA appointees be involved? Or does it just become a moot point?

Moving forward then, will all of the litigation the Trump administration is currently engaged in just cease to exist should Biden assume office? Or could the Biden administration feel the effects of the Trump administration through our judicial system even after he has left office?

Sorry if this might be an obvious question! My lack of technical law expertise is probably showing.

Again, I'm also to happy to discuss "in person" (via Zoom) if that's easier!

Best,

From: Rick Frank

Sent: Tuesday, January 26, 2021 11:04 PM PST

To: Vicki Arroyo <arroyo@law.georgetown.edu>; Carlson, Ann <carlson@law.ucla.edu>

Subject: Legal Planet Post

Vicki & Ann-

 $\texttt{Congratulations} \ \ \text{and} \ \ \texttt{FYI:} \ \ \texttt{https://legal-planet.org/2021/01/26/legal-planteteer-ann-carlson-joins-biden-administration/} \\$

Best wishes,

Rick