

## In this week's Washington Update:

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We also provide links to information on events taking place during the week ahead.

## ***This Week in Review***

**(1) NACAA Meets with OMB About Forthcoming Final SAFE Vehicles Rule Part 2 (January 23, 2020)** – Representatives of NACAA met with representatives of the White House Office of Management and Budget's Office of Information and Regulatory Affairs (OIRA) and several other federal agencies to articulate the association's concerns regarding the forthcoming EPA-NHTSA final rule revising light-duty vehicle greenhouse gas (GHG) emission standards and Corporate Average Fuel Economy (CAFE) standards set by the two agencies in 2012 (i.e., the remaining portions of the "SAFE Vehicles Rule"). The draft final rule, which is not publicly available, was submitted to OIRA for interagency review on January 14, 2020. Among the key messages on which NACAA elaborated for OIRA are that the existing GHG emission standards for model years 2021 through 2025 are 1) based on a strong technical record, 2) fully achievable with already-existing technology, 3) even more cost effective than originally anticipated and 4) extremely important to the efforts of many state and local air agencies across the country that are relying on the anticipated reductions to meet and sustain their clean air and environmental goals. In addition, EPA and NHTSA have premised their "SAFE Vehicles Rule" on the erroneous conclusion that the standards set in 2012 are no longer appropriate. Further, NHTSA's analyses of the environmental impacts of the proposed "SAFE Vehicles Rule" were unprecedented and

inappropriate and the conclusions reached and any decisions based on them are faulty. NACAA's recommendation to OIRA was that the only justifiable outcome of this portion of the "SAFE Vehicles Rule" is to retain the standards, implementation schedule and other key program components adopted by EPA and NHTSA in 2012.

**(2) Senator Carper Registers Concerns with OMB About Draft Final SAFE Vehicles Rule Part 2 (January 22, 2020)** – Senator Tom Carper (D-DE) sent a letter to Paul Ray, Administrator of the White House Office of Management and Budget's Office of Information and Regulatory Affairs (OIRA), to express his "deep concerns" with the draft final Part 2 of the "SAFE Vehicles Rule" submitted to OIRA on January 14, 2020. Although the draft final rule is not publicly available, Carper states in his letter that a copy of the document submitted to OIRA was obtained by his office from a non-governmental source. The Senator goes on to say that this draft final rule "would dramatically weaken future vehicle fuel economy and greenhouse gas standards, without providing the purported safety or economic benefits that were touted by the Trump Administration. In short, the SAFE Vehicles rule, if finalized in its present form, will lead to vehicles that are neither safer, nor more affordable or fuel efficient. I urge you to require EPA and DOT to abandon these efforts entirely." Carper also notes that the rule would "undermine efforts to combat global warming pollution." Among the most serious concerns Carper raises with the draft final rule are 1) the stringency of the standards is "drastically weakened," 2) the costs exceed the benefits, 3) the vehicles are not affordable, 4) there is no appreciable safety benefit, 5) the vehicles are not fuel efficient and 6) the only new compliance flexibilities are those supported by producers of fossil fuels. Carper concludes his letter by asking that, at a minimum, Ray provide his commitment that he "will not allow the finalization of these extreme and unlawful environmental rollback in any form that even remotely resembles the document submitted to OIRA on January 14." Carper requests a response by February 14, 2020. For further information: [http://www.4cleanair.org/sites/default/files/Documents/SAFE\\_Rule-Carper\\_Letter\\_to\\_OMB\\_OIRA\\_on\\_draft\\_final\\_Part\\_2-012220.pdf](http://www.4cleanair.org/sites/default/files/Documents/SAFE_Rule-Carper_Letter_to_OMB_OIRA_on_draft_final_Part_2-012220.pdf)

**(3) Bipartisan House Group Urges Abandonment Of NEPA Reform Proposal (January 21, 2020)** - A group of 150 Democratic and one Republican member of the House of Representatives has written to White House Council on Environmental Quality (CEQ) Mary Neumayr to urge the Trump Administration to reverse course on a proposal to restrict the evaluation of climate change in reviews of federal actions under the National Environmental Protection Act (NEPA). "We appreciate the value of rationalizing, and where appropriate, hastening federal decision-making," the letter asserts, "but any attempt to modernize the Federal environmental review and decision-making process... must heed, rather than ignore, the latest warnings science is giving us about the effects that federal actions can have on the stability of our climate." Led by Representatives Diana DeGette (D-CO) and Francis Rooney (R-FL), the letter argues that the decision to chance NEPA reviews in ways that exclude climate change considerations will ultimately face challenges in court that will be

detrimental to efficient infrastructure development, noting that “Hampering agencies’ ability to account for climate change could delay much -needed projects from taking place.” The signatories urged CEQ not to go forward with the proposed revisions. For further information: <https://degette.house.gov/sites/degette.house.gov/files/DeGette-Rooney%20NEPA%20Letter.pdf>

**(4) Appeals Court Won’t Revisit Decision Upholding “Once in, Always in” Rescission (January 22, 2020)** – The U.S. Court of Appeals for the District of Columbia Circuit denied petitions for rehearing and rehearing *en banc* that asked the court to reconsider its dismissal last August of a legal challenge to EPA’s withdrawal of the “once in, always in” (OIAI) policy for the permitting of sources that emit hazardous air pollutants (HAPs). The OIAI policy had provided that once a source of HAPs is considered a “major source” under CAA Section 112, it remains major even if its emissions drop below major-source levels. In the January 2018 “Wehrum Memorandum,” EPA announced that henceforth, HAP sources previously classified as “major” sources may be reclassified as “area” sources at any time, provided the facility limits its potential to emit below major-source thresholds. A D.C. Circuit panel subsequently dismissed the legal challenge to the memorandum brought by California Communities Against Toxics and others, holding that it did not constitute “final agency action” subject to judicial review. The court did not rule on the merits of rescission itself, stating, “We express no opinion as to whether the Wehrum Memo is prudentially ripe, an interpretive rule or a legislative rule, or on the merits of its interpretation of § 112.” Judge Rogers dissented from that opinion, writing that the memorandum “creates a binding norm that alters the legal regime.” In the court’s order denying the petition for rehearing *en banc*, Judge Rogers again wrote a short dissent, opining that the court had misapplied its own precedent and that of the Supreme Court and thereby abdicated its “responsibility to review an issue of national importance.” On July 25, 2019, EPA issued a proposal that would put the provisions of the OIAI rescission into regulation; the rule has not yet been finalized. For further information: [http://4cleanair.org/sites/default/files/Documents/California\\_Communities\\_Against\\_Toxics\\_v\\_EPA-Order\\_Denying\\_Rehearing\\_1-22-20.pdf](http://4cleanair.org/sites/default/files/Documents/California_Communities_Against_Toxics_v_EPA-Order_Denying_Rehearing_1-22-20.pdf) and [http://4cleanair.org/sites/default/files/Documents/California\\_Communities\\_Against\\_Toxics\\_v\\_EPA-Denial\\_of\\_Rehearing\\_En\\_Banc\\_1-22-20.pdf](http://4cleanair.org/sites/default/files/Documents/California_Communities_Against_Toxics_v_EPA-Denial_of_Rehearing_En_Banc_1-22-20.pdf)

**(5) Researchers Find Montreal Protocol Responsible for Limiting Climate Damage (January 20, 2020)** – Researchers at Columbia University released a study, titled “Substantial twentieth-century Arctic warming caused by ozone-depleting substances,” in which they examine the direct effects of ozone-depleting substances (ODS) on global temperatures. In the study, published in the journal *Nature Climate Change*, the researchers detail how they compared two models: one where ozone-depleting chemicals remained static at 1955 levels and another

showing growth in ozone-depleting chemicals along historical levels to 2005. “We show that, when ODS are kept fixed, forced Arctic surface warming and forced sea-ice loss are only half as large as when ODS are allowed to increase,” write the researchers, who found that direct radiative warming, not ozone depletion, resulting from the addition of ODS, caused the warming. They state that their findings “reveal a substantial contribution of ODS to recent Arctic warming, and highlight the importance of the Montreal Protocol as a major climate change-mitigation treaty.” For further information: <https://www.nature.com/articles/s41558-019-0677-4>

**(6) CASAC to Hold Public Teleconference to Take Comments on and Discuss Disposition of Reports on Ozone Assessment Documents (January 22, 2020)** – The Clean Air Scientific Advisory Committee (CASAC) announced that it will hold a public teleconference on February 11-12, 2020 to take public comment on and discuss disposition of draft Committee comments on two EPA documents prepared as part of the review of the National Ambient Air Quality Standards for ozone. The CASAC documents under consideration are the Committee’s draft “Report on EPA’s Integrated Science Assessment for Ozone and Related Photochemical Oxidants (External Review Draft – September 2019)” and the draft “Report on EPA’s Policy Assessment for the Review of the Ozone National Ambient Air Quality Standards (External Review Draft).” For further information: <https://yosemite.epa.gov/sab/sabproduct.nsf//MeetingCalCASAC/CDB2E140F088220F852584E6006CDB44?OpenDocument>

**(7) EPA Publishes ANPRM Seeking Comments on Various Aspects of Forthcoming Proposed Cleaner Trucks Initiative Rule, Sets February 20 Comment Deadline (January 21, 2020)** – EPA published in the *Federal Register* (85 Fed. Reg. 3306) an Advanced Notice of Proposed Rulemaking seeking comments on a number of issues the agency is contemplating for its forthcoming proposed highway heavy-duty NO<sub>x</sub> rule – referred to as the Cleaner Trucks Initiative. Publication started a 30-day comment period that will run through February 20, 2020. For further information: <https://www.govinfo.gov/content/pkg/FR-2020-01-21/pdf/2020-00542.pdf>, <https://www.epa.gov/regulations-emissions-vehicles-and-engines/advance-notice-proposed-rule-control-air-pollution-new> and <https://www.epa.gov/regulations-emissions-vehicles-and-engines/cleaner-trucks-initiative>

**(8) Parties File Reply Briefs on Motions to Expedite and to Hold in Abeyance SAFE Rule Part One Litigation (January 17, 2020)** – Parties to litigation challenging EPA’s and NHTSA’s “SAFE Vehicles Rule Part One: One National Program” filed, in the U.S. Court of Appeals for the District of Columbia Circuit, replies to January 12, 2020 responses to petitioners’ December motions to hold the case in abeyance and respondents’ and respondent-intervenor’s December motions to expedite the case (see related articles in the December 28, 2019-

January 3, 2020 and January 11-17, 2020 *Washington Updates*). Among the arguments made by state petitioners and public interest petitioners in their separate replies are that the D.C. Circuit should hold the case in abeyance until the issues are clarified by EPA's decision on the reconsideration petitions and the district court resolves the challenges to NHTSA's preemption regulations; that no hardship outweighs the benefits of abeyance; and that judicial economy favors abeyance. Among the arguments made by federal respondents in their reply are that they have established good cause for expedition; the D.C. Circuit has jurisdiction to consider the preemption regulations; they are not barred from seeking expedition; and their proposed schedule is reasonable. Among the arguments made by the respondent-intervenors are that they have shown irreparable injury from delay of the litigation and the public has "unusual interest" in expedition. For further information:

[http://www.4cleanair.org/sites/default/files/Documents/Litigation-SAFE\\_Part\\_1-State\\_Petitioners-Reply\\_Brief\\_Supporting\\_Abeyance-011720.pdf](http://www.4cleanair.org/sites/default/files/Documents/Litigation-SAFE_Part_1-State_Petitioners-Reply_Brief_Supporting_Abeyance-011720.pdf),  
[http://www.4cleanair.org/sites/default/files/Documents/Litigation-SAFE\\_Part\\_1-Pub\\_interest\\_Petitioners-Reply\\_Brief\\_Supporting\\_Abeyance-011720.pdf](http://www.4cleanair.org/sites/default/files/Documents/Litigation-SAFE_Part_1-Pub_interest_Petitioners-Reply_Brief_Supporting_Abeyance-011720.pdf),  
[http://www.4cleanair.org/sites/default/files/Documents/Litigation-SAFE\\_Part\\_1-Federal\\_Respondents-Reply\\_Brief\\_Supporting\\_Expedition-011720.pdf](http://www.4cleanair.org/sites/default/files/Documents/Litigation-SAFE_Part_1-Federal_Respondents-Reply_Brief_Supporting_Expedition-011720.pdf) and  
[http://www.4cleanair.org/sites/default/files/Documents/Litigation-SAFE\\_Part\\_1-Autos-Reply\\_Brief\\_Supporting\\_Expedition-011720.pdf](http://www.4cleanair.org/sites/default/files/Documents/Litigation-SAFE_Part_1-Autos-Reply_Brief_Supporting_Expedition-011720.pdf)

**(9) Bernard McNamee to Leave FERC (January 23, 2020)** – Commissioner Bernard McNamee of the US Federal Energy Regulatory Commission (FERC) announced yesterday that he would not seek reappointment when his term expires June 30, 2020. The FERC has faced lapses in its ability to maintain quorum in recent years, with unusually high turnover among its commissioners since 2017. McNamee's departure would rekindle that concern as there are already two vacancies on the 5-member commission, and a third vacancy would return FERC to a situation where it does not have the quorum necessary to issue orders. This year controversy arose as the White House only named one candidate to fill the two vacancies. Senate has traditionally paired Republican and Democratic nominees to fill two current vacancies; last year the White House nominated James Danly, who currently serves as general counsel at FERC, but did not nominate the Democratic party's recommendation, Alison Clements. For further information: [http://ferc.capitolconnection.org/012320/fercarchive\\_flv.htm](http://ferc.capitolconnection.org/012320/fercarchive_flv.htm)

**(10) ECOS Launches Research Website, Invites Submissions (January 23, 2020)** – The Environmental Research Institute of the States (ERIS), ECOS' science and education subsidiary, recently launched a website to showcase research and other items of interest to environmental agencies. The site is home to research and tools from state and federal agencies; ERIS projects, including the new PFAS Risk Communication Hub; and a calendar of events for easy access to trainings and webinars. ECOS welcomes submissions from NACAA agencies, including science and research items, tools and events of interest to other states. For further information: [www.eristates.org](http://www.eristates.org)

## ***The Week Ahead***

- [House Energy and Commerce Subcommittee on Energy Hearing on “Out of Control: The Impact of Wildfires on Our Power Sector and the Environment,”](#) in Washington, DC – January 28, 2020
  - [House Natural Resources Committee Hearing on the Importance of Public Disclosure Requests for Protecting Human Health, the Climate, and the Environment](#), in Washington, DC – January 28, 2020
  - [House Agriculture Subcommittee on Conservation and Forestry Hearing to Review Implementation of Farm Bill Conservation Programs](#), in Washington, DC – January 28, 2020
  - NACAA Board of Directors and Committee Chairs’ Winter Meeting, Memphis, TN – January 30-31, 2020
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