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

**(1) EPA and DOT Take Final Action to Roll Back GHG and Fuel Efficiency Standards for Cars (March 31, 2020)** – Leaders of EPA and the U.S. Department of Transportation (DOT) announced a joint final rule – the so-called Safer Affordable Fuel-Efficient (“SAFE”) Vehicles Rule – completing a three-year effort to roll back model year (MY) 2021 through 2025 light-duty vehicle (LDV) greenhouse gas (GHG) and Corporate Average Fuel Economy (CAFE) standards at the expense of public health and the economy. The existing standards were established jointly by EPA and DOT’s National Highway Traffic Safety Administration (NHTSA) in 2012 as part of a unified national program that was agreed to by all stakeholders and supported by a strong technical and analytical record that has withstood the test of time. However, EPA and NHTSA began in 2017 to revoke and replace the 2012 standards based on the premise that they were no longer appropriate. Under the final “SAFE Vehicles” Rule, CAFE and GHG emission standards will increase in stringency at a rate of 1.5 percent per year from MY 2020 through MY 2026 – this, compared to the existing rule’s annual increase in stringency of 5 percent per year through MY 2025. In a fact sheet accompanying the final rule DOT and EPA assert the benefits of the rollback,

including “[l]ower costs, thousands of lives saved, and minimal impact to fuel consumption and the environment,” elaborating on the claimed cost reductions and safety advantages (but not on the “minimal impact to fuel consumption and the environment”). Upon release of this final action DOT Secretary Elaine Chao stated, “This rule reflects the Department’s #1 priority – safety – by making newer, safer, cleaner vehicles more accessible for Americans who are, on average, driving 12-year old cars. By making newer, safer, and cleaner vehicles more accessible for American families, more lives will be saved and more jobs will be created.” EPA Administrator Andrew Wheeler stated, “We are delivering on President Trump’s promise to correct the current fuel economy and greenhouse gas emission standards. Our final rule puts in place a sensible one national program that strikes the right regulatory balance that protects our environment, and sets reasonable targets for the auto industry. This rule supports our economy, and the safety of American families.” The final rule is set to take effect 60 days after it is published in the *Federal Register*. For further information: <https://www.nhtsa.gov/corporate-average-fuel-economy/safe>, <https://www.epa.gov/regulations-emissions-vehicles-and-engines/safer-affordable-fuel-efficient-safe-vehicles-final-rule> and <http://www.4cleanair.org/sites/default/files/Documents/For Immediate Release SAFE Part 2.pdf>

**(2) Volvo to Enter Voluntary Clean Cars Agreement with California (March 31, 2020)** – On the heels of the Administration’s announcement of the final SAFE Vehicles Rule rolling back light-duty vehicle greenhouse gas emission standards and fuel economy standards, Volvo Cars announced it would enter into a voluntary agreement with California to comply with the state’s more rigorous light-duty vehicle standards. In doing so, Volvo will join Ford, Honda, Volkswagen and BMW, each of which entered into such voluntary agreements with California last year. Following is Volvo’s statement: “Volvo Cars is committed to low carbon mobility and our current plan is to electrify our entire vehicle line up starting with new vehicles this year. We have consistently stated that the goal of achieving one single national harmonized program (California, EPA and NHTSA) is the preferred path forward to increase fuel economy and lower emissions year over year. However, a nationwide agreement that is consistent with Volvo Cars global electrification strategy and our goal to be climate neutral by 2040 has not happened. Therefore, Volvo Cars has been working with the California Air Resources Board (CARB) to align with the California Voluntary Agreement. We believe this is the best path forward for US regulatory certainty and will serve as a national path forward that will allow us to meet federal and state requirements.”

**(3) House Committee Chairs Seek More Time for Public Participation in Science Transparency Rulemaking; EPA Extends Comment Period by 30 Days (April 2, 2020)** – In a letter to the White House Office of Management and Budget, the Chairs of 14 House Committees, led by Rep. Frank Pallone (D-NJ), call on the Trump Administration to decelerate the pace of a number of EPA rulemakings, particularly the “Strengthening Transparency in Regulatory Science” supplemental proposal published on March 18, 2020 (see related article in the

March 20, 2020 *Washington Update*). "In light of the evolving situation concerning the coronavirus ('COVID-19') pandemic, we write to urge you to direct federal agencies to immediately reschedule all public hearings and meetings and extend public comment periods," the House Committee Chairs write, noting that hundreds of thousands of Americans are known to be infected and thousands have died. In particular, the Committee Chairs call out the Science Transparency Rule as one that "includes major provisions which would limit the Agency's ability to use critical studies that demonstrate the consequences of pollution on public health" and note that the accelerated comment period allows "for only 30 days until the April 17 comment deadline." On March 20, 2020, NACAA requested an additional 60 days for public comment on the Science Transparency Rule (see related article in the March 20, 2020 *Washington Update*); the National Governors' Association, attorneys general in 20 states and others also requested a deadline extension. EPA subsequently announced a 30-day extension of the comment period. "EPA is committed to giving the public ample time to participate in the rulemaking process," said EPA Administrator Andrew Wheeler in a press release announcing the extension. "By extending the comment period, we are listening to stakeholders and giving them more time to provide valuable input on how EPA can improve the science underlying its rules." Comments on the EPA proposal are now due May 18, 2020. For further information: <http://4cleanair.org/sites/default/files/resources/pallone%20et%20al%20extension%20letter.pdf>, <http://4cleanair.org/sites/default/files/resources/NACAA%20Science%20Transparency%20SNPRM%20Extension%20Letter.pdf> and <https://www.epa.gov/newsreleases/epa-announces-extended-comment-period-supplement-science-transparency-proposed-rule>

**(4) EPA Inspector General Calls upon EPA to Communicate EtO Risks to Public; Administrator Refutes Alert (March 31, 2020)** – The EPA Office of Inspector General (OIG) released a "management alert" calling upon EPA to inform the public living near facilities with significant ethylene oxide (EtO) emissions about their estimated elevated cancer risks. The alert was issued while the OIG conducts an audit of EPA's efforts to address emissions of air pollutants through the agency's residual risk and technology review (RTR) program. In response, EPA Administrator Andrew Wheeler issued a news release taking issue with the management alert and requesting that it be rescinded and updated prior to issuance of the OIG report on its audit. The OIG document is entitled, "Management Alert – Prompt Action Needed to Inform Residents Living Near Ethylene Oxide-Emitting Facilities About Health Concerns and Actions to Address Those Concerns." It reports that during an audit of the agency's RTR program the OIG identified an "urgent matter" related to whether EPA had informed the public near significant emitters of EtO about risks to their health from exposure to the pollutant. The OIG, therefore, issued the management alert suggesting that while it completes its audit EPA take action to provide residents of all communities near 25 high-priority EtO-emitting facilities with an opportunity for interactive exchange of information with EPA or state officials on health concerns related to EtO exposure. The OIG states in the alert that it did not identify any specific

requirements for EPA to provide additional information to communities surrounding the EtO-emitting facilities but that EPA's mission statement suggests it should ensure direct and prompt communication about health risks to the residents that live near the high-priority facilities. The OIG further states that EPA had suggested that it instead complete more refined investigations of risk before conducting significant public outreach. In response, the OIG recommended that EPA not delay providing outreach to residents in those communities. Immediately following the OIG's release of the alert Administrator Wheeler issued a news release in which he states, "The tone and substance of this report indicates a disconnect in the US EPA IG's office....Most surprising is that in our final meeting with the IG's office on this matter they provided no indication that there would be any unresolved issues. As a result, we are formally requesting the EPA IG rescind the report so it can be appropriately updated." The release notes that EPA has been "vigorously working with all manner of impacted communities" and regularly updating them and lists specific actions the agency has taken to address the EtO issue and work with the affected communities. For further information: <https://www.epa.gov/office-inspector-general/report-management-alert-prompt-action-needed-inform-residents-living-near> and <https://www.epa.gov/newsreleases/epa-administrator-wheeler-responds-office-inspector-general-report-ethylene-oxide>

**(5) Environmental Groups Petition EPA to Disclose Enforcement Discretion Actions (April 1, 2020)** – A coalition of environmental groups asked EPA to more fully disclose its enforcement discretion following release by the agency on March 26, 2020 of a memorandum – "COVID-19 Implications for EPA's Enforcement and Compliance Assurance Program" – allowing regulated entities to suspend some monitoring and reporting activities during the coronavirus pandemic. EPA has faced criticism from environmental groups that characterize the memo as an abdication of EPA's duty to enforce the law. "We fully appreciate the disruption and harm caused by the COVID-19 pandemic. But EPA's unprecedented non-enforcement policy creates a clear opportunity for abuse," state the petitioners – 21 environmental groups led by the Natural Resources Defense Council. The petitioners call for EPA to disclose publicly, in a searchable database, which companies have suspended environmental monitoring as well as when they return to compliance. The signatories also state that "EPA has created an emergency by inviting widespread noncompliance, providing good cause for such action." For further information: <https://www.nrdc.org/sites/default/files/petition-emergency-rulemaking-20200401.pdf> and <https://www.epa.gov/sites/production/files/2020-03/documents/oecamemooncovid19implications.pdf>

**(6) EPA Inspector General Finds 'General Decline' in Environmental Enforcement (March 30, 2020)** – Following an audit of EPA enforcement data, the agency's Office of Inspector General (OIG) issued a report documenting a drop in enforcement by the agency over a 12-year period across most metrics measured. For the audit, the OIG looked at EPA data on compliance monitoring activities, including inspections; enforcement actions, such as case initiations and conclusions; and enforcement results, such as penalties, injunctive relief and

supplemental environmental projects. The OIG found that numbers of enforcement actions initiated and concluded by EPA each decreased by more than half. Inspections fell by 33 percent between fiscal years 2007 and 2018, while enforcement actions with penalties declined by 53 percent. Cases where EPA required companies to pay for pollution controls declined by 50 percent. Funding was reduced by 18 percent and staffing for EPA's enforcement program declined by 21 percent over the 12-year period. These statistics do not account for the implications of the March 12, 2020 Department of Justice decision to exclude supplemental environmental projects from its enforcement activities (see related article in the March 13, 2020 *Washington Update*) as that decision was not in effect during the period considered by the OIG for its audit. The OIG did not make any recommendations for EPA action. For further information: <https://www.epa.gov/office-inspector-general/report-epas-compliance-monitoring-activities-enforcement-actions-and>

**(7) EPA Issues Draft Risk Evaluation Finding ‘Unreasonable Risks’ Related to Asbestos (March 30, 2020)** – EPA issued a “Draft Risk Evaluation” for asbestos with an initial finding that there are “unreasonable risks” to workers, occupational non-users, consumers and bystanders under certain conditions of asbestos use. The evaluation focused on inhalation exposure and estimates of cancer risk but did not include hazards or exposures to the general population. EPA also determined preliminarily that there are no unreasonable risks to the environment from these uses. In conducting the evaluation, EPA did not examine legacy uses of asbestos and associated disposal (e.g., maintenance or removal of asbestos-containing products) but the agency intends to consider these in a supplemental process. For the risk evaluation, which was conducted pursuant to the Toxic Substances Control Act, EPA considered asbestos in manufacturing, processing, distribution in commerce, occupational and consumer uses and disposal. More specifically, it focused on the use of diaphragms in the chlor-alkali industry, sheet gaskets in chemical production facilities, oilfield brake blocks, aftermarket automotive brakes/linings, other vehicle friction products and other gaskets. The evaluation will undergo a peer review process and public comment. If EPA retains the finding of unreasonable risk in the final risk evaluation, the agency will propose actions under TSCA, which could include regulations to prohibit or limit the manufacture, processing, distribution in the marketplace, use or disposal of asbestos. There will be a 60-day public comment period on EPA’s findings as presented in the draft evaluation after publication in the *Federal Register*. For further information: <https://www.epa.gov/assessing-and-managing-chemicals-under-tsca/draft-risk-evaluation-asbestos#findings>

**(8) COP26 Postponed (April 1, 2020)** – The 26th Conference of the Parties (COP26) to the United Nations Framework Convention on Climate Change, scheduled to take place in Glasgow, Scotland in November 2020, has been postponed due to the global COVID-19 pandemic. Dates for a rescheduled conference have not yet been determined. The Glasgow COP was seen as particularly important as a venue for nations to boost their commitments for reducing greenhouse gas emissions in line with the framework of the Paris Climate

Agreement. It would have been the first COP meeting at which the U.S., which withdrew from the Agreement in November 2019, would have been an observer. UN Climate Change Executive Secretary Patricia Espinosa said, “COVID-19 is the most urgent threat facing humanity today, but we cannot forget that climate change is the biggest threat facing humanity over the long term.” For further information: <https://unfccc.int/news/cop26-postponed>

**(9) EPA Seeks Nominations, by May 1, for Science Advisory Board and Standing Committees (April 1, 2020)** – EPA published in the *Federal Register* (85 Fed. Reg. 18,225) a notice inviting nominations of scientific experts to serve on the agency’s chartered Science Advisory Board (SAB) and four of the Board’s standing committees. Nominations must be received by EPA by May 1, 2020. The SAB – comprised of preeminent non-EPA experts in the fields of science, engineering and economics – was established to provide independent scientific and technical peer review, consultation, advice and recommendations to the EPA Administrator. Nominations are solicited for individuals with expertise in the following scientific disciplines as they relate to human health and the environment: analytic chemistry; benefit-cost analysis; causal inference; complex systems; ecological sciences and ecological assessment; economics; engineering; forestry; geochemistry; health sciences; hydrology; hydrogeology; medicine; microbiology; modeling; pediatrics; public health; risk assessment; social, behavioral and decision sciences; statistics; toxicology; epidemiology; and uncertainty analysis. The SAB Staff Office is particularly interested in those within these disciplines who have knowledge and expertise related to air quality. The SAB Staff Office also seeks nominations of experts for potential vacancies on four SAB standing committees: Agricultural Science Committee, Chemical Assessment Advisory Committee, Drinking Water Committee and Radiation Advisory Committee. The *Federal Register* notice includes selection criteria as well as instructions for making nominations. Individuals may self-nominate; appointments, made by the EPA Administrator, are for three-year terms. EPA expects that the appointments will be made by October 2020. For further information: <https://www.govinfo.gov/content/pkg/FR-2020-04-01/pdf/2020-06660.pdf>

**(10) Proposed Changes to Standards for Auto Shop Handling of Ozone Depleting Substances Published in *Federal Register* (March 30, 2020)** – EPA published in the *Federal Register* (85 Fed. Reg. 17,520) a Notice of Proposed Rulemaking to adopt updated international standards for the handling of ozone depleting substances in auto repair shops that service vehicle air conditioning units. The proposal would adopt the latest updates to three technical standards developed by SAE International that apply to equipment that recovers, recycles and/or recharges the refrigerant 2,3,3,3-Tetrafluoroprop-1-ene (HFO-1234yf or R-1234yf). The proposal would adopt the most current versions of the SAE J2843, SAE J2851 and SAE J3030 standards by incorporating them by reference into the regulations related to the protection of stratospheric ozone. EPA will accept public comments through May 14, 2020. For further information: <https://www.federalregister.gov/documents/2020/03/30/2020-05197/protection-of-the-stratospheric-ozone-motor-vehicle-air-conditioning-system-servicing>

**(11) EPA Publishes Final Amendments to Wood Heating Device NSPS (April 2, 2020)** – EPA published in the *Federal Register* (85 Fed. Reg. 18,448) final amendments to the New Source Performance Standards (NSPS) that took effect on May 15, 2015 for New Residential Wood Heaters, New Hydronic Heaters and Forced-Air Furnaces. On November 30, 2018, EPA proposed amendments to the 2015 NSPS (83 Fed. Reg. 61,574). One proposed amendment was for a two-year “sell-through” to allow retailers additional time, beyond the May 15, 2020 compliance date for Step 2 wood heating devices, to continue to sell Step 1 devices (i.e., devices with less rigorous emission controls that, under the 2015 rule, cannot be sold after May 15, 2020). In January 19, 2019 comments to EPA, NACAA opposed the sell-through and other aspects of the proposed rulemaking. In the final rule published this week, EPA maintains the Step 2 regulatory compliance date established in the 2015 NSPS and announces its decision to not provide for a sell-through, which means that as of May 15, 2020, retailers may no longer sell Step 1 devices. The agency also revises the 2015 requirements for pellet fuels. The final rule took effect April 2, 2020. For further information: <https://www.govinfo.gov/content/pkg/FR-2020-04-02/pdf/2020-05961.pdf>

**(12) EPA Proposes to Amend Phosphoric Acid Air Toxics Rule (March 30, 2020)** – EPA announced a proposal to amend the National Emissions Standards for Hazardous Air Pollutants (NESHAP) for the Phosphoric Acid Manufacturing source category. In response to an industry petition, EPA reviewed the NESHAP, which was set in 2015, taking into consideration newly available data. Based on that analysis, EPA proposes to change the mercury Maximum Achievable Control Technology floor for existing calciners from 0.14 milligrams (mg) per dry standard cubic meter (dscm) at 3 percent oxygen to 0.23 mg/dscm at 3 percent oxygen. According to EPA, the proposal maintains the intent of the emission and operational standards of the 2015 NESHAP. There will be a 45-day public comment period beginning with publication of the proposal in the *Federal Register*. For further information: <https://www.epa.gov/stationary-sources-air-pollution/proposed-amendment-national-emission-standards-hazardous-air>

**(13) EPA Makes Technical Corrections to 2012 Light-Duty Vehicle GHG Program (March 31, 2020)** – EPA announced a final rule making two technical corrections to the light-duty vehicle greenhouse gas (GHG) emission standards adopted in 2012. The first technical correction relates to how automakers calculate credits for the GHG program's optional advanced technology incentives and ensures that the manufacturers receive the appropriate amount of credits for electric vehicles, plug-in hybrid electric vehicles, fuel cell electric vehicles and natural gas-fueled vehicles. The second technical correction relates to how manufacturers must calculate certain types of off-cycle credits. EPA states in the final rule, “Both of these corrections allow the program to be implemented as originally intended. The corrections are not expected to result in any additional regulatory burdens or costs.” The provisions of the 2012 light-duty vehicle rule that are the focus of these final technical corrections carried over, unchanged, to the SAFE Vehicles Rule announced this week; therefore, the technical corrections

will apply to the provisions in that rule. For further information: <https://www.epa.gov/sites/production/files/2020-03/documents/ld-ghg-technical-amendments-fr-2020-03-31.pdf>

**(14) EPA Develops Grant FAQ Document Related to COVID-19 (April 1, 2020)**

– EPA prepared a frequently asked questions (FAQ) document providing responses to grant-related inquiries from state and local governments and others about the impact of the COVID-19 crisis on EPA financial assistance agreements. The 10-page document addresses such issues as extensions, waivers, amendments, allowability of expenditures and project disruptions, among others. EPA plans to continue to update the FAQ as more information becomes available. For further information: <https://www.epa.gov/grants/epa-frequent-questions-grant-issues-response-novel-coronavirus-covid-19-public-health> and <https://www.epa.gov/coronavirus>

## ***The Week Ahead***

- Congress in Recess – April 3-20, 2020

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