

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) EPA Publishes PM NAAQS Proposal in *Federal Register*; Public Hearing Teleconference May 20-21, Comments Due June 29 (April 30-May 1, 2020) – EPA Administrator Andrew Wheeler's proposed decision to retain the current National Ambient Air Quality Standards (NAAQS) for particulate matter (PM) without revision was published in the *Federal Register* (85 Fed. Reg. 24,094). The proposed decision, which was announced on April 14, 2020 (see related article in the April 11-17, 2020 *Washington Update*), follows a multi-year NAAQS review process undertaken by EPA staff and the Administrator's seven-member independent advisory body, the Clean Air Scientific Advisory Committee (CASAC). The Administrator's proposed decision to retain the current standards without change applies to the primary and secondary NAAQS for fine and coarse particulate matter (PM_{2.5} and PM₁₀, respectively) and, regarding the primary PM_{2.5} standards, is counter to the recommendations he received from his staff, who concluded the following in their January 2020 final *Policy Assessment for the Review of the National Ambient Air Quality Standards for Particulate Matter* (PM PA): "When taken together, we reach the conclusion that the available scientific evidence, air quality analyses, and the risk assessment, as summarized above, can reasonably be viewed as calling into question the adequacy of the public health protection afforded by the combination of the current annual and 24-hour primary PM_{2.5} standards." EPA staff advised the Administrator that available information

suggests that an annual primary PM_{2.5} standard in the range of 8 micrograms per cubic meter ($\mu\text{g}/\text{m}^3$) to $<10 \mu\text{g}/\text{m}^3$ (versus the current standard of $12 \mu\text{g}/\text{m}^3$) is supported and a 24-hour PM_{2.5} standard as low as $30 \mu\text{g}/\text{m}^3$ (versus the current standard of $35 \mu\text{g}/\text{m}^3$) is supported. This EPA staff conclusion differs from the conclusions of both the majority and minority of CASAC members. In its December 2019 “consensus responses” to EPA on the September 2019 draft PM PA CASAC reported that its membership was split and that some members (a majority) conclude that “the Draft PM PA does not establish that new scientific evidence and data reasonably call into question the public health protection afforded by the current 2012 PM_{2.5} annual standard” while others conclude that “the weight of the evidence, particularly reflecting recent epidemiology studies showing positive associations between PM_{2.5} and health effects at estimated annual average PM_{2.5} concentrations below the current standard, does reasonably call into question the adequacy of the 2012 annual PM_{2.5} National Ambient Air Quality Standards (NAAQS) to protect public health with an adequate margin of safety.” EPA will accept public comments on the Administrator’s proposal for 60 days, until June 29, 2020. The agency announced online on May 1, 2020 that it will hold a public hearing on the proposal via teleconference on May 20-21, 2020; registration will open once the announcement is published in the *Federal Register*. The Administrator has indicated his intention to issue a final decision on the PM NAAQS review by the end of this calendar year. For further information: <https://www.govinfo.gov/content/pkg/FR-2020-04-30/pdf/2020-08143.pdf>, <https://www.epa.gov/pm-pollution/public-hearing-notice-proposal-retain-national-ambient-air-quality-standards> and <https://www.epa.gov/pm-pollution/national-ambient-air-quality-standards-naaqs-pm>

(2) EPA Science Advisory Board Weighs in on “Science Transparency” Proposal and Supplement (April 28, 2020) – EPA’s Science Advisory Board (SAB) transmitted a report to EPA Administrator Andrew Wheeler conveying its advice and comments on the scientific and technical bases of EPA’s April 2018 proposed rule, *Strengthening Transparency in Regulatory Science*, and on the agency’s March 2020 Supplemental Notice of Proposed Rulemaking (SNPRM) that amends and clarifies some aspects of the proposal. The proposal and its supplement would require EPA to ensure that data and models underlying the scientific studies on which significant regulatory decisions are based are “publicly available in a manner sufficient for independent validation.” They would also, among other things, impose requirements for the analysis of models used in scientific studies upon which EPA relies. In the letter transmitting its report, the SAB states that it “recognizes the importance of this rule and its purpose, establishing transparency of the influential scientific information used for significant regulations and enhancing public access to scientific data and analytical methods to help ensure scientific integrity, consistency and robust analysis.” But the Board goes on to express significant reservations about the proposal: “[T]he SAB finds that key considerations that could inform the Proposed Rule are not present in the proposal or presented without analysis and explanation of scope. In addition, certain key terms and implementation issues have not been adequately defined or described.” The SAB finds that many of the proposed requirements are overly

vague and do not contain enough detail about how they can be met; it “strongly encourages” the development of additional policy and guidance documents to flesh out the proposal’s requirements and implementation details. With respect to the provision of the proposal that allows the EPA Administrator to make case-by-case exceptions to the rule’s requirements, the SAB recommends that EPA develop specific criteria for making such exceptions, and that the Administrator consider recommendations from a scientific advisory committee when making such decisions. The SAB’s recommendations are described in a 25-page report accompanied by a five-page cover letter summarizing its major findings. For further information:

[https://yosemite.epa.gov/sab/sabproduct.nsf/LookupWebReportsLastMonthBOARD/2DB3986BB8390B308525855800630FCB/\\$File/EPA-SAB-20-005.pdf](https://yosemite.epa.gov/sab/sabproduct.nsf/LookupWebReportsLastMonthBOARD/2DB3986BB8390B308525855800630FCB/$File/EPA-SAB-20-005.pdf)

(3) EPA Releases Complete 2017 National Emissions Inventory (April 30, 2020) – EPA announced the availability of the complete 2017 National Emissions Inventory (NEI). The 2017 NEI is the first to have been released incrementally; this full release supersedes the February 2020 and August 2019 partial releases. The full 2017 NEI adds the following components that were not provided in February 2020: the nonpoint data category (including biogenics, commercial marine vessels and rail line emissions), the onroad data category, minor data additions and corrections provided by state, local and tribal agencies, and the components of particulate matter. The complete NEI Technical Support Documentation, data queries and data tools are available on EPA’s 2017 NEI Data webpage. For further information: <https://www.epa.gov/air-emissions-inventories/2017-national-emissions-inventory-nei-data>

(4) Final “SAFE” Vehicles Rule Published in *Federal Register* (April 30, 2020) – The EPA-NHTSA joint final “Safer, Affordable, Fuel-Efficient Vehicles Rule” was published in the *Federal Register* (85 Fed. Reg. 24,174). The so-called “SAFE” Vehicles Rule is the culmination of a three-year effort to roll back existing greenhouse gas (GHG) and fuel efficiency standards for model year (MY) 2021 through 2025 light-duty vehicles. The existing standards were established by EPA and NHTSA in 2012 as part of a unified national program that was agreed to by all stakeholders and supported by a robust and durable technical and analytical record. Under the final “SAFE” Vehicles Rule, fuel efficiency 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. When they announced the rollback, EPA and NHTSA touted “[l]ower costs, thousands of lives saved, and minimal impact to fuel consumption and the environment,” but did not cite the results of their own analyses, which tell a different story. EPA and NHTSA have estimated that the final rule comes at a total net cost to society of \$22 billion. Among other things, although the cost of a new car may decrease by nearly \$1,000, lifetime refueling costs (discounted to the current value of money) will increase by almost \$1,500, leaving the consumer with a net loss of close to \$500. In addition, although EPA and NHTSA highlight that lives will be saved due to a decrease in crash fatalities from vehicles meeting the new standards, they did not

highlight the premature deaths to result from degraded air quality due to the rule; the agencies estimate that such deaths will overtake the number of lives “saved” by about two to four times. Also not mentioned was the 78.3-billion-gallon increase in fuel used by the automotive fleet under the final rule. The final “SAFE” Vehicles Rule will take effect on June 29, 2020. For further information: <https://www.govinfo.gov/content/pkg/FR-2020-04-30/pdf/2020-06967.pdf> and <https://www.nhtsa.gov/corporate-average-fuel-economy/safe>

(5) First Challenge to “SAFE” Vehicles Rule Filed in D.C. Circuit, Alleges Rule Is Too Stringent and Unsafe (April 30-May 1, 2020)

– The Competitive Enterprise Institute (CEI) was poised on the morning of April 30, 2020 to file a petition in the U.S. Court of Appeals for the District of Columbia Circuit seeking review of the EPA-NHTSA joint final “Safer, Affordable, Fuel-Efficient (‘SAFE’) Vehicles Rule.” However, although the final “SAFE” Vehicles Rule was scheduled for publication in the *Federal Register* on April 30, 2020, due to technical difficulties experienced by the Office of the *Federal Register*, the April 30, 2020 edition was not posted online until the morning of May 1, 2020. Nonetheless, on April 30, CEI announced its intent to sue and made public its petition for review, which it ultimately filed in the D.C. Circuit on May 1. Although CEI does not state in the petition the basis of its challenge, in a press statement, Sam Kazman, the group’s general counsel said, “The agency was right to roll back the scheduled increases in fuel economy standards, which would have made cars less crashworthy and increased highway fatalities. But NHTSA should have reduced those standards even more, and perhaps frozen them entirely.” Kazman indicated that CEI had conducted its own cost-benefit analysis and concluded that less stringent standards, compared to those included in the final rule, would result in more benefits than costs. CEI describes itself as “a non-profit public policy organization dedicated to advancing the principles of limited government, free enterprise, and individual liberty. CEI’s mission is to promote both freedom and fairness by making good policy good politics. We make the uncompromising case for economic freedom because we believe it is essential for entrepreneurship, innovation, and prosperity to flourish.” For further information: https://cei.org/sites/default/files/CEI_Petition_for_Review_SAFE_rule.pdf

(6) IEA Predicts Plunging Energy Sector Demand, Lower Greenhouse Gas Emissions in 2020 (April 27, 2020)

– In *Global Energy Review 2020*, the International Energy Agency (IEA) predicts that energy demand in the U.S. will decrease by 9 percent this year, with electricity demand at its lowest level in 70 years. IEA attributes lower energy demand to lockdowns and economic shutdowns prompted by the novel coronavirus pandemic, contributing to a record annual global decline in carbon emissions, including in the U.S., which the agency says should see an 8-percent decline from 2019 levels. In its annual review, IEA extrapolated its projections from 100 days of data from 2020 and builds on a scenario where global lockdowns are “progressively eased” this summer, followed by a gradual economic recovery. All fuel types are affected, although renewable energy is the only energy source IEA anticipates will not experience steep declines, despite slowed growth for that sector: “In most cases, renewables receive priority in the grid

and are not asked to adjust their output to match demand, insulating them from the impacts of lower electricity demand." Nuclear, fossil fuel and other energy resources are all anticipated to see steep drops in their use as shelter-in-place orders and social distancing result in lower demand for electricity and less energy use for transportation, manufacturing and other economic activity. For further information: <https://www.iea.org/reports/global-energy-review-2020>

(7) House, Senate Efforts Highlight Links Between Environmental Justice and Pandemic (April 28, 2020) – Democratic members of the U.S. House of Representatives Natural Resources Committee conducted a virtual roundtable event to explore the links between the COVID-19 pandemic and the impacts of pollution on vulnerable communities. Committee Chairman Raúl Grijalva (D-AZ) and Reps. Donald McEachin (D-VA), Deb Haaland (D-NM) and Alan Lowenthal (D-CA) convened the virtual roundtable – featuring testimony from environmental justice advocates and others – as part of a larger Democratic initiative focused on this issue. Witnesses included Wayne Henley, Reverend at the Cedar Grove Baptist Church; Francesca Dominici, Professor of Biostatistics at the Harvard T.H. Chan School of Public Health; Michele Roberts, Co-Coordinator at the Environmental Justice Health Alliance for Chemical Policy Reform; Matt Bruenig, President of the People's Policy Project; Sylvia Betancourt, Project Manager for the Long Beach Alliance for Children With Asthma; and Cecilia Martinez, Executive Director at the Center for Earth, Energy and Democracy. In the Senate, 16 Democrats who are members of the Environmental Justice Caucus, led by Sen. Tammy Duckworth (D-IL), wrote a detailed seven-page letter to Majority Leader Mitch McConnell (R-KY) and Minority Leader Charles Schumer (D-NY) with policy proposals to address the impacts of the pandemic on environmental justice communities. "Americans under orders to shelter in place should have power, heat, and a safe environment," the Senators wrote. They outlined four areas for additional funding: extending utility aid programs; funding new EPA spending on anti-pollution measures and cleanup of toxic sites; expanding access to clean, safe and affordable drinking water and wastewater systems; and creating environmental and clean energy jobs. The Senators urge that these items be included in future economic stimulus packages. For further information: <https://naturalresources.house.gov/hearings/environmental-justice-virtual-round-table-on-community-impacts-from-the-coronavirus-health-and-economic-crises> and <https://www.duckworth.senate.gov/imo/media/doc/04.20.20-Letter%20from%2016%20members%20requesting%20EJ%20priorities%20in%20next%20stimulus.pdf>

(8) Senator Warns EPA Against Making COVID-19 Enforcement Discretion Permanent (April 22, 2020) – The Ranking Member of the U.S. Senate Environment and Public Works Committee, Senator Tom Carper (D-DE), wrote to EPA Administrator Andrew Wheeler cautioning against any effort to try to make permanent the temporary enforcement discretion policy EPA put in place on March 26, 2020, to enable social distancing during the COVID-19 pandemic. In his letter, Senator Carper flags internal EPA redlined materials that illustrate the agency's deliberations over whether to make the interim policy permanent. Carper writes in

his letter that any discretion “adjustments” used by EPA during pandemic shutdowns “must be temporary, targeted and transparent.” Although EPA has sought to dismiss concerns about the internal materials showing that the agency has considered making interim policies permanent the concept has support in some quarters. For example, the Heritage Foundation, through its National Coronavirus Recovery Commission, this week advocated for EPA to turn interim policies and guidance put in place to provide relief during the pandemic into permanent actions. For further information: <http://www.4cleanair.org/sites/default/files/resources/Carper%20Enforcement%20Letter%20April%202020.pdf> and <https://www.coronaviruscommission.com/recommendations>

(9) California Proposes to Amend ZEV Requirements of State’s Proposed Advanced Clean Trucks Rule (April 28 2020) – Staff of the California Air Resources Board (CARB) released for public comment proposed amendments to regulatory language in response to a December 2019 directive by the Board that staff consider modifications to the Zero Emission Vehicle (ZEV) manufacturer mandate in the state’s proposed Advanced Clean Trucks rule. In particular, the Board directed staff to increase the pace of widespread adoption of ZEVs in the medium- and heavy-duty truck sector in order to accelerate emission reductions, especially in disadvantaged communities. In response, CARB staff proposes to increase manufacturer ZEV sales requirements by 2 to 15 percentage points for model years (MYs) 2024 through 2030, add increasingly higher sales goals for the ensuing five years (MYs 2031 through 2035 and beyond) and streamline the one-time reporting requirements for large fleets. Public comments on the proposal will be accepted for 30 days, until May 28, 2020. It is expected that the Board will consider and adopt the final rule at a June 25-26, 2020 public hearing. For further information: <https://ww2.arb.ca.gov/rulemaking/2019/advancedcleantrucks>

(10) EPA Announces Availability of EJ Grants to Assist Communities Facing COVID-19 (April 29, 2020) – EPA announced that it will issue grants addressing the impact of the COVID-19 pandemic on vulnerable communities. Eligible applicants include state, local, tribal and U.S. territorial agencies. The grant funds may be used to support public education, training and emergency planning for communities impacted by COVID-19. In the announcement, EPA Administrator Andrew Wheeler said, “These grants are part of EPA’s effort to actively fight the COVID-19 pandemic that is having a disproportionate impact on low-income and minority communities.” EPA anticipates awarding five grants of approximately \$200,000 each for up to a two-year funding period. Proposals are due on June 30, 2020. For further information: <https://www.epa.gov/environmentaljustice/state-environmental-justice-cooperative-agreement-program#tab-2> and <http://epa.gov/environmentaljustice/state-environmental-justice-cooperative-agreement-program>

The Week Ahead

- [Air Quality Awareness Week](#) – May 4-8, 2020
 - House in Recess – May 4-8, 2020
 - [Senate Committee on Commerce, Science, and Transportation Hearing on “The State of the Aviation Industry: Examining the Impact of the COVID-19 Pandemic.”](#) in Washington, DC – May 6, 2020
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NACAA
1530 Wilson Blvd., Suite 320
Arlington, VA 22209
(571) 970-6678
4cleanair@4cleanair.org