

In this week's Washington Update:

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This Week in Review

(1) EPA Publishes Fourth Round of SO₂ Area Designations (March 25, 2021)

– EPA published in the *Federal Register* (86 Fed. Reg. 16,055) the fourth and final round of designations under the 2010 one-hour primary sulfur dioxide (SO₂) NAAQS. The final designations were initially signed by former EPA Administrator Andrew Wheeler on December 21, 2020, but not published in the *Federal Register*. The final action then underwent review by the Biden Administration, according to the January 20, 2021, Regulatory Freeze Pending Review memorandum, and was re-signed on March 10, 2021 by then-Acting EPA Administrator Jane Nishida; the substance of the regulatory package is unchanged from the December 21, 2020 version. Under this action, all remaining portions of the U.S. are designated as follows: 1) Nine areas in seven states are designated nonattainment (not meeting the standard); 2) two areas in one state are designated unclassifiable (not enough information to make a determination); and 3) 33 areas in 19 states are designated attainment/unclassifiable (meeting the standard and not contributing to a violation of the standard). These designations take effect April 30, 2021. For further information:

<https://www.govinfo.gov/content/pkg/FR-2021-03-26/pdf/2021-05397.pdf>

(2) Members of Congress Weigh in with President Biden on Clean Car Standards (March 22 & 24, 2021)

– In three separate letters, members of Congress urged President Biden to take aggressive action to revise rolled-back greenhouse gas (GHG) emission standards and fuel economy standards for passenger cars and trucks. On Monday, California Senators Alex Padilla and Dianne Feinstein wrote to the President urging that he maintain California's authority to set GHG and zero-emission vehicle (ZEV) standards and "restore pollution standards that actually protect public health and welfare, set fuel economy standards at the maximum level feasible, and advance national standards for zero-emission vehicles and equipment to ensure the United States

remains a leader in clean technology, engineering, and manufacturing.” On Wednesday, Senator Ed Markey (D-MA) and Rep. Doris Matsui (D-CA) partnered to coordinate Senate and House letters to President Biden. In the Senate letter, Markey was joined by nine colleagues in calling on the President to “set bold new emission and fuel economy standards, which will help fulfill the goals of your Build Back Better agenda, spur transformation of the transportation sector, and avoid the most catastrophic effects of the climate crisis.” In particular, they ask Biden to direct EPA and NHTSA to establish GHG and fuel economy standards that, “at a minimum,” match the 5-percent annual improvement rate through 2025 of the standards established under the Obama-Biden Administration. They further encourage “more ambitious long-term standards that will ensure both emission reductions from internal combustion engines and the widespread adoption of ZEVs,” as well as the establishment of an end date for sales of new fossil-fueled vehicles – noting action by California and Massachusetts to end such sales by 2035 – “to ensure that we are on a trajectory to achieve the near-zero emission fleet scientists have called for by 2050.” Meanwhile, Matsui and 70 of her House colleagues wrote that “with more than half a million COVID-19 deaths in our nation and communities of color and low-wealth populations bearing the brunt of this pandemic, it is more vital than ever to prioritize pollution reduction on roads and clean air for everyone, especially for communities that have historically suffered from disproportionate air pollution and, subsequently, higher rates of respiratory illnesses.” The Representatives call on the President to, “at a minimum,” restore the waivers of federal preemption previously granted to California to set and enforce the state’s GHG and ZEV standards and reinstate the GHG and fuel economy standards put in place by the Obama-Biden Administration, noting that technological progress since those standards were set “has made it easier to meet or even exceed them, which is why we believe the Obama-Biden standards should serve as the baseline for vehicles sold through 2026 and embolden the next set of more ambitious standards that will move us towards our shared goal of transitioning the fleet to zero-emission vehicles.” The House members also urge for post-2026 standards that create a path to all zero-emission light-duty vehicles by 2035 and, to attain that goal, establishment of a standard to assure that 60 percent of new passenger cars and trucks sold by 2030 are zero-emission. For further information: <https://www.padilla.senate.gov/wp-content/uploads/Padilla-Feinstein-Clean-Cars-Letter.pdf>, [https://www.markey.senate.gov/imo/media/doc/\(3.24.21\)%20Fuel%20Economy_Vehicle%20GHG%20Letter.pdf](https://www.markey.senate.gov/imo/media/doc/(3.24.21)%20Fuel%20Economy_Vehicle%20GHG%20Letter.pdf) and https://matsui.house.gov/uploadedfiles/obama-biden_standards_california_waiver_reinstatement_letter_final.pdf

(3) EPA Extends RFS Compliance Deadlines for 2019 and 2020 (March 23, 2021) – EPA issued a final rule extending the Renewable Fuel Standard (RFS) program compliance deadlines for 2019 and 2020. EPA has noted that because the agency has not yet established the annual renewable fuel volume standards for 2021, “it is difficult for obligated parties to effectively plan compliance strategies for the 2020 standard.” Under this final rule, 2020 compliance documentation is due by January 31, 2022 and associated attest engagement reports by June 1, 2022. In addition, EPA has extended the deadline for submittal of attest

engagement reports for the 2021 compliance year to September 1, 2022; the deadline for submitting compliance documentation for the 2021 compliance year remains unchanged. Also, due to ongoing litigation that has created uncertainty regarding the availability of small refinery exemptions under the RFS program, EPA has extended the compliance deadlines for the 2019 volume standards to allow these refineries to comply after the case is decided: Compliance documentation is due by November 30, 2021 and related attest engagement reports by June 1, 2022. For further information: <https://www.epa.gov/renewable-fuel-standard-program/extension-2019-and-2020-renewable-fuel-standard-compliance-and>

(4) Advocacy Groups Urge President Biden to Address Pollution from Trucks (March 23, 2021) – Seventeen advocacy groups sent a letter to President Biden urging that he establish as a priority action to address pollution from medium- and heavy-duty trucks. In particular, the signatories call for adoption by the Administration, by fall 2022, of final standards for medium- and heavy-duty freight truck emissions of nitrogen oxide, particulate matter and greenhouse gases “that are based on and fully mobilize the availability of zero-emitting solutions.” They further write that achieving this will require the elimination of emissions from all new freight trucks by 2040 and from urban and community applications by 2035. Noting the high concentration of freight-related air pollution in low-income communities and communities of color, the groups call on the President to “ensure environmental justice communities and leaders are thoroughly engaged – and heard – in sharing and designing our nation’s pollution control priorities and policies.” For further information: http://www.4cleanair.org/sites/default/files/Documents/MD-HD_Trucks-Advocacy_Groups_Letter_to_Biden-032321.pdf

(5) EPA Withdraws Plantwide Applicability Limit Permit for Refinery and Fuel Storage Facility in U.S. Virgin Islands (March 25, 2021) – Citing concerns raised by environmental organizations and community groups, EPA withdrew the Clean Air Act plantwide applicability limit (PAL) permit for the Limetree Bay Terminals and Limetree Bay Refining facility on St. Croix in the U.S. Virgin Islands. “The facility is located a community with Environmental Justice concerns, which is a priority for EPA,” the agency noted. The PAL permit established facility-wide emission limits to be used for determining whether future modifications to the facility trigger Prevention of Significant Deterioration (PSD) permitting requirements under EPA regulations. EPA issued the permit on December 2, 2020, but it never became effective due to timely appeals filed with EPA’s Environmental Appeals Board by a consortium of environmental and community groups and by the facility itself. The withdrawal does not require the facility to discontinue operations, but it may not presently avail itself of the operational flexibilities allowed by the PAL provisions under the PSD regulations. EPA will reconsider the PAL permit in light of information received during the permitting process and President Biden’s executive order requiring it to review environmental actions taken during the previous administration. “Withdrawing this permit will allow EPA to reassess what measures are required at the Limetree facility to

safeguard the health of local communities in the Virgin Islands, while providing regulatory certainty to the company,” said EPA acting Regional Administrator Walter Mugdan. “Today’s decision exemplifies good governance and EPA’s commitment to addressing critical environmental justice and economic concerns in the Virgin Islands with a broad range of stakeholders.” For further information: <https://www.epa.gov/caa-permitting/caa-permits-issued-epa-region-2#palpermits> and <https://www.epa.gov/caa-permitting/plantwide-applicability-limitation-pal-withdrawal-fact-sheet-limetree-bay-terminals>

(6) Democrats File CRA Actions Against Oil and Gas Methane Rules (March 25, 2021) - Companion resolutions introduced in the U.S. Senate and the U.S. House of Representatives aim to use the Congressional Review Act (CRA) to overturn methane rules enacted by the Trump Administration for the oil and gas sector. The resolutions state that “Congress disapproves the rule submitted by the Administrator of the Environmental Protection Agency relating to ‘Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources Review’”. The action being rescinded are amendments (85 Fed. Reg. 57018 September 14, 2020) to the oil and natural gas new source performance standards (NSPS) originally promulgated in 2012 and 2016. These now-rescinded 2020 amendments removed transmission and storage from the regulated source category, excluded methane requirements of the NSPS in the production and processing segments, and adopted an interpretation of the Clean Air Act requiring EPA to make a “significant contribution finding” before enacting any regulation under section 111. The Senate resolution was introduced by Sens. Martin Heinrich (D-MN) and Ed Markey (D-MA) as well as Sen. Angus King (I-ME). The U.S. House of Representatives resolution was filed by Reps. Diana DeGette (D-CO), Scott Peters (D-CA) and Conor Lamb (D-PA). The CRA allows Congress and to act to repeal a regulation finalized within 60 legislative days. The deadline for filing CRA resolutions of disapproval is April 4, 2021. For further information: <http://www.4cleanair.org/sites/default/files/resources/DeGette-Peters-Lamb%20methane%20CRA%20res.pdf> and <http://www.4cleanair.org/sites/default/files/resources/CRA%20methane%20Senate.pdf> and <https://www.federalregister.gov/documents/2020/09/14/2020-18114/oil-and-natural-gas-sector-emission-standards-for-new-reconstructed-and-modified-sources-review>

(7) EPA, CEQ Nominees Advance (March 25, 2021) - The Biden Administration’s nominees to be Deputy EPA Administrator and Chair of the White House Council on Environmental Quality (CEQ) have had their nominations forwarded by the U.S. Senate Committee on Environment and Public Works to a full floor vote. Janet McCabe of Indiana University previously worked in the EPA’s Office of Air and Radiation in the Obama Administration, and would take the number two spot at EPA with Administrator Michael Regan. Brenda Mallory, of the Southern Environmental Law Center, was general counsel at CEQ in the Obama Administration. Both won bipartisan support, clearing the committee after an 11-9 roll call. No date is yet set for a full Senate confirmation vote for either nomination. For further information:

<https://www.carper.senate.gov/public/index.cfm/2021/3/epw-committee-sends-nominations-of-brenda-mallory-for-ceq-chair-and-janet-mccabe-for-deputy-epa-administrator-to-senate-floor>

(8) EPA Outlines Steps to Review and Reaffirm Scientific Integrity in Agency Activities (March 23, 2021) – In a memo to EPA staff, EPA Administrator Michael Regan announced that he was “reaffirming scientific integrity as a core value at EPA and outlining concrete steps to reinforce the agency’s commitment to science.” These steps include forming a dedicated team to implement President Biden’s January 27, 2021 “Presidential Memorandum on Restoring Trust in Government Through Scientific Integrity and Evidence-Based Policymaking.” The team’s mandate will include reviewing and evaluating EPA’s Federal Advisory Committees with respect to membership and safeguards against conflicts of interest, updating agency policies or practices that impede the use of best available science and data and fostering a culture of evaluation and continuous learning. The memo also asks EPA staff to review and call attention to any EPA reports, data or other materials that are inconsistent with the Administration’s commitment to scientific integrity, respond to an upcoming agency scientific integrity survey and participate in an agency-wide Annual Meeting on Scientific Integrity. In his memo, Regan also pledged to encourage the open exchange of differing positions and promised that “retaliation, retribution, intimidation, bullying, or other reprisals will not be tolerated.” The memo provided a confidential hotline for staff who wish to use it in reporting any concerns about scientific integrity. For further information: <https://www.epa.gov/sites/production/files/2021-03/documents/regan-messageonscientificintegrity-march232021.pdf>

The Week Ahead

- Congress in Recess – March 29-April 9, 2021
- [White House Environmental Justice Advisory Council \(WHEJAC\) Virtual Meeting](#) – March 30, 2021
- [Citizens for Responsible Energy Solutions \(CRES\) Forum Webinar on Driving Innovation: How Can Private and Public Sectors Speed EV Deployment](#) – March 31, 2021
- [U.S. Chamber of Commerce and Global Energy Institute EnergyInnovates Series: Funding Our Energy Future](#) – April 1, 2021

NACAA
1530 Wilson Blvd., Suite 320
Arlington, VA 22209

(571) 970-6678
4cleanair@4cleanair.org