



MEMORANDUM

To: Interested Parties

From: The Franklin Partnership, LLP

Date: January 6, 2020

RE: Trump Administration's 2020 Regulatory Agenda

Twice a year, every administration releases its Unified Regulatory Agenda, outlining the priorities and regulatory actions for each agency for the coming six to twelve months. This comprehensive document provides insight into the current priorities for each of the government's major regulators from the EPA to OSHA to new apprenticeship requirements. Below is more detail in chronological order sampling many of the regulatory actions pending that affect manufacturing businesses and associations.

The Family and Medical Leave Act of 1993 – *Request for Information November 2019*; The Family and Medical Leave Act (FMLA) provides eligible employees up to 12 workweeks of unpaid leave a year, and requires group health benefits to be maintained during the leave as if employees continued to work instead of taking leave. In this Request for Information, the Department will solicit comments on ways to improve its regulations under the FMLA to: (a) better protect and suit the needs of workers; and (b) reduce administrative and compliance burdens on employers.

<https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=201910&RIN=1235-AA30>

The Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule for Model Years 2021-2026 Passenger Cars and Light Trucks – *Final Rules Effective Part I and Part II November 2019*; On August 24, 2018, the Environmental Protection Agency (EPA) and the Department of Transportation's National Highway Traffic Safety Administration (NHTSA) jointly published in the Federal Register a notice of proposed rulemaking entitled, "The Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule for Model Years 2021-2026 Passenger Cars and Light Trucks." In the NPRM, the agencies proposed new greenhouse gas (GHG) and Corporate Average Fuel Economy (CAFE) standards for model year 2021 to 2026 light duty vehicles. EPA also proposed to withdraw the waiver it had previously provided to California for that State's GHG and ZEV programs under section 209 of the Clean Air Act, while NHTSA proposed regulatory text that made clear that those State programs would also be preempted under NHTSA's authorities. In the finalized Part One action, the agencies finalized the two actions related to the waiver and preemption. Accordingly: (1) EPA announced its decision to withdraw the waiver; and (2) NHTSA finalized regulatory text related to preemption.

<https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=201910&RIN=2060-AU09>

Joint Employer Status Under the Fair Labor Standards Act – *Final Rule December 2019*; In this Notice of Proposed Rulemaking, the Department proposed to update and clarify the contours of the joint employer relationship status under the Fair Labor Standards Act to assist employers in complying with the Act.

<https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=201910&RIN=1235-AA26>

Powered Industrial Trucks – *Analyze Comments received November 2019*; Powered Industrial Trucks (e.g., fork trucks, tractors, lift trucks, and motorized hand trucks) are ubiquitous in industrial (and many retail) worksites. The agency's standard still relies upon ANSI standards from 1969. OSHA issued a Request for Information (RFI) on March 11, 2019 (84 FR 8633), to determine if changes need to be made to locations of use, maintenance, training, and operation of powered industrial trucks. On a separate track, OSHA also intends to issue a separate proposal for updating the consensus standard incorporated for design and construction of powered industrial trucks. The current standard covers 11 types of trucks, and there are now 19 types. In addition, the standard itself incorporates an out-of-date consensus standard.
<https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=201910&RIN=1218-AC99>

Lock-Out/Tag-Out Update – *Analyze Comments received December 2019*; Recent technological advancements that employ computer-based controls of hazardous energy (e.g., mechanical, electrical, pneumatic, chemical, and radiation) conflict with OSHA's existing lock-out/tag-out standard. The use of these computer-based controls has become more prevalent as equipment manufactures modernize their designs. Additionally, there are national consensus standards and international standards harmonization that govern the design and use of computer-based controls: this approach of controlling hazardous energy is more accepted in other nations, which raises issues of needing to harmonize U.S. standards with those of other countries. The agency may also hold a stakeholder meeting and open a public docket to explore the issue.
<https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=201910&RIN=1218-AD00>

Exposure to Beryllium to Review General Industry Provisions – *Final Rule December 2019*; On January 9, 2017, OSHA published its final rule Occupational Exposure to Beryllium and Beryllium Compounds in the Federal Register (82 FR 2470). OSHA concluded that employees exposed to beryllium and beryllium compounds at the preceding permissible exposure limits (PELs) were at significant risk of material impairment of health, specifically chronic beryllium disease and lung cancer. OSHA also concluded that the new 8-hour time-weighted average (TWA) PEL of 0.2 µg/m³ reduced this significant risk to the maximum extent feasible. In response to the stakeholder feedback, and to resolve pending litigation, OSHA promulgated a direct final rule to clarify aspects of the general industry standard in May 2018 and proposed additional revisions to certain provisions in the standard in December 2018. The revisions OSHA proposed are generally designed to clarify the standard in response to stakeholder questions or to simplify compliance, while in all cases maintaining a high degree of protection from the adverse health effects of beryllium exposure.

Fiduciary Rule and Prohibited Transaction Exemptions – *Notice of Proposed Rulemaking December 2019*; The Department of Labor in 1975 issued a regulation defining who is a "fiduciary" under section 3(21)(A)(ii) of the Employee Retirement Income Security Act (ERISA) as a result of giving investment advice for a fee or other compensation. On April 8, 2016, the Department replaced the 1975 regulation with a new regulatory definition. The new regulatory definition was vacated in toto in *Chamber of Commerce v. Department of Labor*, 885 F.3d 360 (5th Cir. 2018). The Department is considering regulatory options in light of the Fifth Circuit opinion.
<https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=201910&RIN=1210-AB82>

Increasing Consistency and Transparency in Considering Benefits and Costs in the Clean Air Act Rulemaking Process – *Notice of Proposed Rulemaking December 2019*; On June 13, 2018, the EPA published an Advance Notice of Proposed Rulemaking in the Federal Register (83 FR 27524), which solicited comments on whether and how the EPA should promulgate a transparent and consistent regulation affecting all future EPA regulations. As a part of developing a consistent and transparent regulation Agency-wide, the EPA has decided to first develop proposed changes to the regulatory development process to improve consistency, reliability, and transparency of its treatment of Clean Air

Act provisions related to benefits and costs. This action will provide the public with a better understanding on how EPA is evaluating benefits and costs when developing Clean Air Act regulatory actions and allow the public to provide better feedback to EPA on potential future proposed rules.
<https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=201910&RIN=2060-AU51>

Small Manufacturer Definition Update Under TSCA Section 8(a) – *Final Rule January 2020*; EPA is considering public comments and intends to take final action on proposed modifications to the small manufacturers definition under section 8(a) of the Toxic Substances Control Act (TSCA). The updated small manufacturer definition would impact certain reporting and recordkeeping requirements for TSCA section 8(a) rules, including the TSCA Chemical Data Reporting (CDR) rule, and were proposed in accordance with TSCA section 8(a)(3)(C) and EPA's determination that a revision to the current size standards is warranted. The updates to the size standards were proposed together with revisions to the TSCA CDR rule (CDR Revisions) on April 25, 2019 (84 FR 17692). [Small business definition under TSCA proposed: \$110 million or less in sales if they import/manufacture less than 100,000 pounds of a covered substance – any company less than \$11 million in sales considered a small business].
<https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=201910&RIN=2070-AK57>

Strengthening Transparency in Regulatory Science – *Supplemental Notice of Proposed Rulemaking January 2020*; This action is intended to strengthen the transparency of EPA regulatory science. As a result of this action, EPA would ensure that the regulatory science underlying its actions is publicly available in a manner sufficient for independent validation. This action would increase transparency of the assumptions underlying dose-response data and models that support these EPA regulatory decisions. The Agency proposes to take this action under the authority of the Federal housekeeping statute, 5 U.S.C. section 301, and of the statutes it administers, including provisions providing general authority to promulgate regulations necessary to carry out the Agency's functions.
<https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=201910&RIN=2080-AA14>

Revised Definition of "Waters of the United States" (Step 2) – *Final Rule January 2020*; In 2015, the Environmental Protection Agency (EPA) and the Department of the Army (the agencies") published the Clean Water Rule: Definition of Waters of the United States"(80 FR 37054, June 29, 2015). On February 28, 2017, the President issued Executive Order 13778 entitled Restoring the Rule of Law, Federalism, and Economic Growth by Reviewing the 'Waters of the United States' Rule" which instructed the agencies to review the 2015 rule and rescind or replace it as appropriate and consistent with law. On July 27, 2017, the agencies published a proposed rule as the first in a two-step process. On February 14, 2019, the agencies published a Federal Register notice proposing to revise the definition of 'waters of the United States' consistent with Executive Order 13778; the 60-day comment period closed on April 15, 2019. In this second step, the agencies are conducting a substantive re-evaluation and revision of the definition of waters of the United States" in accordance with the Executive Order. The agencies plan to finalize the revised definition after reviewing public comments on the proposal.
<https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=201910&RIN=2040-AF75>

Petition to Add n-Propyl Bromide to the List of Hazardous Air Pollutants – *January 2020 Notice*; The Clean Air Act (CAA) requires EPA to regulate compounds that are listed as air toxics, also known as hazardous air pollutants (HAP). Air toxics are those pollutants known, or suspected, to cause cancer and other serious human health problems. The CAA allows the EPA to consider petitions to modify the list by adding or removing substances. Individuals seeking to add a substance must demonstrate the substance is an air pollutant and that emissions, ambient concentrations, bioaccumulation, or deposition of the substance are known to cause or may reasonably be anticipated to cause adverse effects to human health or adverse environmental effects. The Agency received two petitions to add n-Propyl Bromide to the HAP list from the Halogenated Solvents Industry Alliance in October 2010 and from the State of New York in November 2011. Once the EPA receives a petition, it conducts two reviews: (1) A completeness review,

to determine whether there is sufficient information on which to base a decision; and (2) a technical review, to evaluate the merits of the petition. The petitions were determined to be complete and a notice of receipt of a complete petition was published in the Federal Register on February 6, 2015. A draft action seeking comments on the technical review of the petitions and on the EPA's initial determination of granting the petitions was published January 19, 2017. This action considers comments on the technical review and proceeds with the determination of the petitions.

<https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=201910&RIN=2060-AS26>

Control of Air Pollution From Aircraft and Aircraft Engines: Proposed GHG Emissions Standards and Test Procedures – *Notice of Proposed Rulemaking February 2020*; This rulemaking follows on the

EPA's final endangerment and cause or contribute findings for aircraft GHG emissions, which was published on August 15, 2016 (81 FR 54422). As a result of these positive findings, the EPA is obligated under section 231 of the Clean Air Act to set emission standards applicable to GHG emissions from the classes of aircraft engines used in certain types of aircraft covered in the finding. The International Civil Aviation Organization (ICAO) adopted international aircraft CO₂ standards in 2017, and the EPA anticipates adopting domestic GHG standards that would be at least as stringent as ICAO's standards.

<https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=201910&RIN=2060-AT26>

NESHAP: Surface Coating of Automobiles and Light-Duty Trucks, Plastic Parts, and Miscellaneous Metal Parts Residual Risk and Technology Review – *Final Rule March 2020*; This

proposal addresses the Agency's residual risk and technology review (RTR) for 3 National Emission Standards for Hazardous Air Pollutants (NESHAP): the NESHAP for Surface Coating of Automobiles and Light-Duty Trucks (ALDT), the NESHAP for Surface Coating of Plastic Parts and Products, and the NESHAP for the Surface Coating of Miscellaneous Metal Parts and Products. These NESHAP were promulgated pursuant to section 112(d) of the Clean Air Act (CAA) and establish emission limitations and work practice requirements based on maximum achievable control technology (MACT) for controlling emissions of hazardous air pollutants (HAP) from new, reconstructed or existing affected sources. The Surface Coating of Miscellaneous Metal Parts and Products NESHAP, subpart MMMM, was promulgated on January 2, 2004. The NESHAP applies to affected sources located at facilities that apply coatings to miscellaneous metal parts and products. Miscellaneous metal parts and products include metal components of the following types of products as well as the products themselves: motor vehicle parts and accessories, bicycles and sporting goods, recreational vehicles, extruded aluminum structural components, railroad cars, heavy duty trucks, medical equipment, lawn and garden equipment, electronic equipment, magnet wire, steel drums, industrial machinery, metal pipes, and numerous other industrial, household, and consumer products. The primary HAP emitted from this category include xylenes, toluene, methyl isobutyl ketone, ethylbenzene, styrene, glycol ethers, methanol, methyl methacrylate, cumene, hexane, formaldehyde, and naphthalene. This action implements residual risk review requirements of CAA section 112(f)(2) and technology review requirements of CAA section 112(d)(6). CAA 112(f)(2) directs EPA to revise the NESHAP if such revisions are required to provide an ample margin of safety to protect public health or to prevent, taking relevant factors into account, an adverse environmental effect. CAA section 112(d)(6) requires EPA to review and revise the MACT standards as necessary, taking into account developments in practices, processes and control technologies, no less often than every 8 years. Pursuant to a court order, the EPA is obligated to complete the final action by March 13, 2020.

<https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=201910&RIN=2060-AT49>

Apprenticeship Programs, Labor Standards for Registration (Standards Recognition Entities for Industry Apprenticeships) – *Final Rule April 2020*; Executive Order 13801 issued by the President on June 15, 2017, directed the Secretary of Labor to consider proposing regulations that would promote the development of apprenticeship programs by third parties. These third parties may include trade and

industry groups, companies, non-profit organizations, unions, joint labor-management organizations, and other organizations.

<https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=201910&RIN=1205-AB85>

Review of the Primary National Ambient Air Quality Standards for Ozone – Notice of Proposed Rulemaking April 2020; Under the Clean Air Act Amendments of 1977, EPA is required to review and if appropriate revise the air quality criteria for the primary (health-based) and secondary (welfare-based) national ambient air quality standards (NAAQS) every 5 years. On October 26, 2015, EPA published a final rule revising the NAAQS for ozone to provide increased protection for public health and welfare. The current review includes the preparation by EPA of an Integrated Review Plan, an Integrated Science Assessment, and, if warranted, a Risk/Exposure Assessment, which includes a risk/exposure assessment and also a Policy Assessment by EPA, with opportunities for review by EPA's Clean Air Scientific Advisory Committee and the public. These documents inform the Administrator's proposed decision as to whether to retain or revise the current standards. This decision will be published in the Federal Register with opportunity provided for public comment. The Administrator's final decisions will take into consideration these documents, CASAC advice, and public comment on the proposed decision.

<https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=201910&RIN=2060-AU40>

Review of the National Ambient Air Quality Standards for Particulate Matter – Notice of Proposed Rulemaking April 2020; Under the Clean Air Act Amendments of 1977, EPA is required to review, and if appropriate, revise the air quality criteria for the primary (health-based) and secondary (welfare-based) national ambient air quality standards (NAAQS) every five years. On January 13, 2013, the EPA published a final rule revising the NAAQS for particulate matter to provide increased protection for public health. The current review includes the preparation by EPA of an Integrated Review Plan, an Integrated Science Assessment and also, if warranted, a Risk/Exposure Policy Assessment, which includes a risk/exposure assessment and also a Policy Assessment by EPA, with opportunities for review by EPA's Clean Air Scientific Advisory Committee and the public. These documents will inform the Administrator's proposed decision as to whether to retain or revise the standards. This proposed decision will be published in the Federal Register with opportunity provided for public comment.

<https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=201910&RIN=2060-AS50>

Reclassification of Major Sources as Area Sources Under Section 112 of the Clean Air Act – Final Action April 2020; This rulemaking will take final action on the proposed amendments to the General Provisions of the National Emission Standards for Hazardous Air Pollutants (NESHAP) (40 CFR 63, subpart A) included in EPA's proposal "Reclassification of Major Sources as Area Sources Under section 112 of the Clean Air Act" (See 84 FR 36304, July 26, 2019). The amendments allow a major source to become an area source at any time by taking enforceable limits on its potential to emit hazardous air emissions, and, thus, become not subject to NESHAP for major sources under Clean Air Act (CAA) section 112. The amendments would implement the EPA's plain language reading of the CAA section 112 definitions of 'major' and 'area' sources as discussed in the January 2018 William Wehrum memorandum titled "Reclassification of Major Sources as Area Sources Under section 112 of the Clean Air Act."

<https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=201910&RIN=2060-AM75>

Control of Air Pollution from New Motor Vehicles: Heavy-Duty Engine Standards – Notice of Proposed Rulemaking June 2020; Heavy-duty engines have been subject to emission standards for all criteria pollutants, including particulate matter (PM), hydrocarbon (HC), carbon monoxide (CO), and oxides of nitrogen (NOx), for nearly half a century; however, current data suggest that the existing standards do not ensure full in-use emission control. In particular, in-use engine NOx emission levels from heavy-duty vehicles can be significantly higher than their certified values under certain conditions. NOx emissions are major precursors of ozone and significant contributors to secondary PM2.5 formation. Ozone and ambient PM2.5 concentrations continue to be a nationwide health and air quality issue.

Reducing NOx emissions from on-highway heavy-duty trucks and buses is an important component of improving air quality nationwide and reducing public health and welfare effects associated with these pollutants, especially for vulnerable populations and in highly impacted regions. This action will evaluate data on current NOx emissions from heavy-duty vehicles and engines, and options available to improve control of all criteria pollutant emissions through revised emissions standards. Additionally, this action will evaluate ways to streamline existing requirements.

<https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=201910&RIN=2060-AU41>

Mechanical Power Presses Update – *Request for Information July 2020*; The current OSHA standard on mechanical power presses does not address the use of hydraulic or pneumatic power presses. Additionally, the existing standard is approximately 40 years old and does not address technological changes. OSHA previously published an ANPRM on Mechanical Power Presses (June 2007) in which it identified several options for updating this standard.

<https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=201910&RIN=1218-AC98>