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## **ENERGY AND ENVIRONMENT UPDATE** **January 27, 2013**

### **Energy and Climate Debate**

Energy issues received some significant national attention last week as both houses of Congress began to lay out their plans for the 113th Congress, and President Obama delivered his second inaugural address after he was sworn in for his second term.

President Obama highlighted climate change in his inaugural address January 21, signaling a renewed commitment to action on the issue, but it is too early to tell whether and how that will translate into a broad agenda or a new push for legislation this year. Legislation, however, is not the only path forward for addressing climate issues in the coming months. The Environmental Protection Agency has already released a rulemaking agenda that includes regulation to address emissions from new power plants, and the president has wide-ranging administrative authority that allows him to use executive orders and new regulations to benefit the clean energy sector. Senate Majority Leader Harry Reid (D-NV) included a climate-related measure, "Preparing for Extreme Weather," in a January 22 list of his top ten legislative priorities for the 113th Congress, and other potential areas for forward movement include energy efficiency legislation and the renewal of clean energy tax credits, as well as a renewed discussion about carbon taxes during the comprehensive tax reform negotiations.

The Senate is expected to vote this week on the Hurricane Sandy disaster relief bill (H.R. 152) and on President Obama's nomination of Senator John Kerry (D-MA) to succeed Hillary Clinton as Secretary of State. During a January 24 confirmation hearing before the Senate Foreign Relations Committee, Senator Kerry said that he plans to make "appropriate judgments" regarding the approval of the Keystone XL pipeline soon.

### **Congress**

#### **Senate Democratic Priorities**

Senate Majority Leader Harry Reid (D-NV) outlined Democrats' top ten legislative priorities for the 113th Congress January 22. Immigration reform, climate change, an overhaul of the U.S. tax code, gun control, the farm bill, a veterans' jobs initiative, and infrastructure development join holdovers from last Congress. Majority Leader Reid plans to focus early this week on the Hurricane Sandy supplemental package.

#### **Murkowski's Energy Plans**

Senator Lisa Murkowski (R-AK) said January 23 that the Japanese government is eager to become a significant purchaser of American liquefied natural gas exports, as it faces an uncertain energy future after the March 2011 tsunami and Fukushima nuclear disaster. The Senate Energy and Natural Resources Committee will hold one of its first hearings on the issue of LNG exports. Senator Murkowski

will release her energy legislation blueprint this week, and will soon follow that with a revenue-sharing bill that she will cosponsor with Senator Mary Landrieu (D-LA). She will also continue to meet with Senators Dianne Feinstein (D-CA), Lamar Alexander (R-TN), and Ron Wyden (D-OR) to develop a proposal for an interim nuclear waste storage site while negotiating on a permanent solution.

#### Natural Resource Committee Priorities

House Natural Resources Committee Chairman Doc Hastings (R-WA) said January 23 that the committee will continue to focus this Congress on reducing federal environmental regulation and maintaining strong oversight of executive actions. Chief among the Committee's priorities will be reforming the National Environmental Policy Act as well as the Endangered Species Act.

#### House Science Committee Priorities

The House Committee on Science, Space, and Technology approved an oversight plan January 23 to continue to examine the Environmental Protection Agency's integration of scientific information into regulatory decision making, oversee energy research, and encourage federal research in technologies that boost domestic competitiveness. The committee also split a subcommittee into two new subcommittees – the Subcommittee on Energy and the Subcommittee on Environment.

#### Keystone Approval Urged

Led by Senators John Hoeven (R-ND) and Max Baucus (D-MT), 44 Republican and nine Democratic senators sent a letter January 23 to President Obama urging him to quickly approve the Keystone XL pipeline. The senators also asked the president to clarify the time frame for the State Department to complete the federal review.

#### Energy and Commerce Committee Priorities

The House Energy and Commerce Committee announced January 22 its priorities for 2013, placing the prevention of federal fracking regulation, continued Environmental Protection Agency rulemaking oversight, and the reduction of electricity generator burdens at the top of the list, with nuclear waste, coal ash, and renewable fuel standard issues following close behind. The committee will hold a hearing in early February with state regulators highlighting the actions they are taking on fracking.

#### Climate Change Task Force

House and Senate Democrats led by Energy and Commerce ranking member Henry Waxman (D-CA) and Senator Sheldon Whitehouse (D-RI) created a bicameral climate change task force January 24, and acknowledged that much of the burden to act lies with the Obama administration due to congressional gridlock. They and Representative Ed Markey, the third original member, sent a letter the same day to the president asking him to create a comprehensive climate change plan as quickly as possible that includes steps for federal agencies to reduce domestic emissions by at least 17 percent below 2005 levels by 2020, accelerates clean energy investments, and creates a strategy for protecting the nation's most vulnerable regions from the worst effects of climate change.

#### Farm Bill Prospects

House Agricultural Committee ranking member Collin Peterson (D-MN) said January 23 that he is hopeful that Congress will pass a farm bill this year.

#### Legislation Introduced

Senator Barbara Boxer (D-CA) introduced legislation (S. 52) January 22 to require the General Services Administration to conduct energy audits of its buildings to improve energy efficiency. The Promoting Efficiency and Savings in Government Act would require the agency to identify measures to improve efficiency, reduce costs, pay for themselves within 10 years through energy savings, set minimum energy intensity and lighting efficiency standards for all new leases, and provide detailed energy and water information in the leases it submits to Congress for approval.

Senator Frank Lautenberg (D-NJ) introduced legislation (S. 67) January 23 to amend the Safe Drinking Water Act and the Federal Water Pollution Control Act to authorize the Administrator of the Environmental

Protection Agency to reduce or eliminate the risk of releases of hazardous chemicals from public water systems and wastewater treatment works.

The same day, Senator David Vitter (D-LA) introduced legislation (S. 107) to prohibit CO2 emissions regulations until China, India, and Russia implement similar reductions.

Representative Lois Capps (D-CA) introduced legislation (H.R. 373) January 23 to amend title VII of the Oil Pollution Act of 1990.

Representative Doris Matsui (D-CA) introduced legislation (H.R. 400) to establish a Clean Energy Technology Manufacturing and Export Assistance Fund to assist American businesses with exporting clean energy technology products and services.

The same day, Representative José Serrano (D-NY) introduced legislation (H.R. 407) to amend the Internal Revenue Code of 1986 to provide a business credit relating to the use of clean-fuel and fuel efficient vehicles by businesses within areas designated as nonattainment areas under the Clean Air Act.

## **Department of Commerce**

### EETAC Meeting

The Environmental Technologies Trade Advisory Committee will meet February 26 to overview the roles and responsibilities of members and discussion of committee structure, review the previous committee's work, and discuss the status of the U.S. Environmental Export initiative.

## **Department of Energy**

### LNG Export Economic Impacts Questioned

The Sierra Club filed a Freedom of Information Act request January 22 with the Department of Energy to determine how the agency chose NERA Economic Consulting to conduct its analysis of the economic impacts of liquid natural gas exports. The Sierra Club is critical of the organization's findings. The agency received many comments January 24 both in support of and in opposition to exporting natural gas to overseas markets, including one supportive letter led by Ohio Representatives Bill Johnson (R) and Tim Ryan (D) and signed by 108 of their colleagues; DOE will accept reply comments until February 25.

### Funds for Nuclear Waste Management

The Department of Energy filed an assessment with the U.S. Court of Appeals for the District of Columbia Circuit January 18 announcing that it is collecting sufficient fees from nuclear power utilities for the management of nuclear waste and does not need to adjust the rates. The Nuclear Waste Policy Act of 1982 mandates that utilities pay 0.1 cent/KWh into the Nuclear Waste Fund; little of the \$28 billion that has been collected has been used because Yucca Mountain has not opened

## **Department of Interior**

### Fracking Disclosure Revisions

The Interior Department sent a revised version of a proposed rule for fracking regulations on federal land to the White House Office of Management and Budget for interagency review January 22. The rule would require companies to disclose fracking chemicals and address issues of well-bore integrity and flowback water. The revised rule replaces a version released last year that was widely criticized by the oil and gas industry and some state regulators as expensive and impractical. The rule will be finalized by July.

## **Environmental Protection Agency**

### CSAPR Rehearings Denied

The U.S. Court of Appeals for the District of Columbia Circuit denied January 24 petitions for continuing to rehear a case in which the court vacated the Environmental Protection Agency's Cross-State Air Pollution Rule.

#### RFS Standard Ruling

The U.S. Court of Appeals for the District of Columbia Circuit vacated January 25 the cellulosic biofuel portion of the Environmental Protection Agency's 2012 Renewable Fuels Standard. The court denied a challenge from the American Petroleum Institute over the agency's refusal to reduce the overall volume of advanced biofuels for 2012.

#### Air Plan Review Questioned

The Sierra Club, National Parks Conservation Association, and Natural Resources Defense Council asked the U.S. Court of Appeals for the District of Columbia Circuit January 18 to examine a November 2012 Environmental Protection Agency decision to review state air pollution plans to ensure the states can meet the emissions reduction goals.

#### Air Quality Monitoring Mandated

The U.S. Court of Appeals for the District of Columbia Circuit vacated January 22 an Environmental Protection Agency rule that exempted sources from monitoring air quality for fine particulate matter before applying for prevention of significant deterioration permits. The court sided with the Sierra Club, saying that the Clean Air Act is rigid in requiring new or modified sources to conduct monitoring, even if facilities only emit small amounts of particulate matter.

#### Mercury Rule Appropriate Given Health Concerns

The Environmental Protection Agency filed a brief in the U.S. Court of Appeals for the District of Columbia Circuit January 22 saying that its decision to regulate mercury and air toxics emissions from power plants is based on exhaustive scientific evidence showing mercury's health hazards. A 2000 finding triggered the February 2012 final rule establishing emissions limits for mercury, filterable particulate matter as a surrogate for toxic metals, and hydrogen chloride as a surrogate for acid gases. The mercury rule is expected to cost industry \$9.6 billion annually, but create \$90 billion in health benefits.

#### SO2 Standard Upheld

The Supreme Court declined to review January 22 a U.S. Court of Appeals for the District of Columbia Circuit decision upholding the Environmental Protection Agency's SO2 air quality standard. ASARCO LLC had petitioned the court October 18 to take up the case, arguing that the standard is more stringent than necessary to protect the public health; the agency set the hourly national ambient air quality standard for SO2 at 75 ppb in June 2010. The court denied the petition without comment.

#### HCFC Challenge Denied

The U.S. Court of Appeals for the District of Columbia Circuit denied a petition to review the Environmental Protection Agency's approval of interpollutant transfers of HCFCs January 22. Honeywell International and DuPont challenged four occasions in which the agency approved the transfer of allowances by their competitors, thus increasing competitor baseline allowances under a federal cap and trade market and reducing the market share and allowances for them; the two could request a rehearing.

#### Light-Duty Reconsideration Denied

The Environmental Protection Agency denied a petition to reconsider January 25 the GHG emissions standards for model year 2012 through 2016 vehicles. The agency denied the Pacific Legal Foundation's petition to reconsider the light-duty vehicle emissions rule because its concerns should have been raised during the public comment period. The agency also rejected the group's argument that the rule must be reconsidered because it failed to seek a review from its Science Advisory Board, which the Clean Air Act does not require.

### **Federal Trade Commission**

#### EnergyGuide Revisions

The Federal Trade Commission released a notice January 25 announcing changes to its Energy Labeling Rule for home heating and cooling equipment that will add regional information to the EnergyGuide label.

The additional information will help consumers purchase equipment that meets location-appropriate standards.

## **General Services Administration**

### Green Building Rating Systems Reviewed

The General Services Administration announced January 24 that it will soon release a recommendation on the federal government's use of green building rating systems. The Energy Independence and Security Act of 2007 requires the agency to review the government's use of green building certification systems every five years, and the agency is reviewing three rating systems: the Leadership Energy and Environmental Design program, which is currently used; the Green Building Initiative's Green Globes; and the International Living Future Institute's Living Building Challenge.

## **International**

### EU ETS Registry Amendments

The European Union Climate Change Committee voted January 23 to back several technical updates to the regulation that governs the registry in which the EU Emissions Trading System carbon allowances are recorded. The registry regulation establishes the rules for the registry for the third trading phase, 2013-2020.

### Japan's Solar Price to Reduce

In response to rapidly declining equipment prices, Japan's Minister of Economy, Trade, and Industry, Toshimitsu Motegi, said January 21 that the government plans to reduce its set purchase price for solar-powered electricity from 42 yen/KWh to 40 yen in fiscal year 2013, which begins April 1. The purchase price for other forms of renewable energy will remain unchanged.

### Tokyo GHG Emissions Reductions

Due in part to substantial electricity use reduction because of the Spring 2011 nuclear disaster, the Tokyo municipal government's cap and trade program scored a 10 percent reduction in greenhouse gas emissions in fiscal year 2011 compared to fiscal year 2010 and a 23 percent reduction when compared to the average annual emissions levels between 2002 and 2007.

### Indian Wind Energy Relies on Government Support

Dilip Nigam, director of wind policy at the Ministry of New and Renewable Energy, said during the January 17-18 Wind IPP Summit that despite years of concessions, exemptions, and incentives, India's wind energy industry is still unable to stand on its own. The Ministry of Finance is questioning why the industry continues to struggle despite income tax holidays, excise duty relief, concessions on import duties for parts, easy loans, and preferential tariffs, and is considering whether to renew the Generation-Based Incentive and the Accelerated Depreciation scheme.

### Chinese GHGs Highest on Record

The China Meteorological Administration published its first Greenhouse Gas Bulletin January 14, showing that CO<sub>2</sub> levels were at their highest in 2011 since the agency began collecting data in 1990. Average annual concentrations of CO<sub>2</sub>, CH<sub>4</sub>, and NO<sub>x</sub> for 2011 were higher than global averages, with readings of 38.2 ppm for CO<sub>2</sub>, 1,861 ppb for CH<sub>4</sub>, and 324.7 ppb for NO<sub>x</sub>.

### Chinese GHG Accounting and Reporting Regs

Shanghai's Development and Reform Commission announced January 15 that it has published rules for GHG emissions accounting and reporting for nine industries that will be included in pilot programs for emissions monitoring and trading. The nine industries are aerospace, building materials, electricity, ground transportation, large buildings, nonferrous metals, paper, steel, and textiles. Shanghai will launch pilot carbon trading in 2013 and have a market fully operational by the end of 2015; it is further ahead than six other nationally designated pilot areas.

### Chinese Shale Gas

China's Ministry of Land and Resources awarded January 22 16 companies exploration rights for 19 shale gas blocks in the country in the second round of such tenders. All but two of the winners are state-owned enterprises, and no foreign joint ventures were involved in the winning bids.

#### Sustainable Businesses

During the World Economic Forum in Davos January 23, Corporate Knights released rankings finding that Umicore, a Brussels-based materials technology and recycling company, is the most sustainable company in the world. The report, *Global 100 Most Sustainable Corporations in the World*, measures energy use, GHG emissions, waster use, waste produced, leadership diversity, and employee turnover. The United States and Canada had the most companies on the list, with 10 each.

#### Chinese Energy Development Plan

China's State Council released a development plan January 23 establishing nonbinding targets for renewable energy and limiting total energy demand to the equivalent of 4 billion MT of coal by 2015 in the hope of keeping the annual average electricity growth rate at 8 percent. By 2015, installed capacity of wind will total 100 GW, nuclear power will reach 40GW, solar power will reach 21 GW, and biomass power will reach 1.3 GW. The share of energy from coal-fired generation is expected to decrease from 68 percent to 65 percent while the share from natural gas will increase 7.5 percent. China will soon announce a plan to put hydropower on par with the price of coal-fired power.

#### Japanese Business GHG Reductions

The Japan Business Federation, the country's largest business lobby, whose members account for over half of the country's GHG emissions, unveiled their 2013-2020 emissions reduction plan January 17, encouraging member companies to continue voluntary 2020 reduction efforts, and outlining continued uncertainties about Japanese nuclear generation. 46 industries will participate in the new long-term GHG reduction plan with the steel, paper, and chemical industries setting a three percent reduction target by 2020 compared with 1990 levels, and the auto industry hoping to reduce emissions by 28 percent.

#### Japanese HCF Reductions Planned

Japanese officials said January 17 that the country plans to amend its law to require a substantial reduction in HFC consumption and production. HCFC use in 2011 was 90 percent below 1996 levels, but HFC use is skyrocketing as manufacturers switch from CFCs and HCFCs. Five ministries are consulting with relevant industries before drafting amendments to the 1988 law.

#### South Korea's Clean Cars

South Korea's Ministry of Environment announced January 21 that the promotion of environmentally friendly vehicles will remain a high priority this year, citing quick progress in putting more electric and hybrid vehicles on the road. About one of every 30 new cars sold in the country last year had electric-car technology. South Korea launched a subsidized hybrid vehicle program in 2004 and switched to tax breaks for purchasers in 2009. The 2013 plan calls for 40,000 hybrid vehicles to be sold this year.

#### Improving the US-China Trade Agenda

The US-China Business Council released a report January 23 seeking to advance an agenda for American policymakers based on American companies' concerns about doing business with China. The report, *China and the U.S. Economy: Advancing a Winning Trade Agenda*, outlines its top agenda items as intellectual property protection; the reduction of regulatory and market access barriers; and the removal of favoritism toward Chinese companies that can make it difficult for foreign companies to compete on an even playing field.

#### EU Carbon Price Falls

Following a voce in the European Parliament's Industry and Energy Committee that advised against a plan to give the European Commission more power to intervene in the European Union Emissions Trading System, the EU's carbon price fell to a record low of \$3.74 January 24 before closing at \$5.70 later in the day. A binding vote on the proposal will take place in the Environment Committee February 19 before the full parliament votes on the issue.

#### US-Mexico Climate Cooperation

Nancy Sutley, chair of the White House Council on Environmental Quality, said January 23 that the administration is open to working with the Mexican government on preparing for climate change impacts. The United States is hoping to build on environmental commitments made with Mexico in the Border 2020 initiative, a program designed to address environmental and public health problems along the border. The program created goals for reducing air pollution, improving clean and safe water access, promoting materials and water management, coordinating environmental response, and pursuing environmental stewardship in the region.

#### Global Mercury Phaseout Planned

The United Nations Environment Program and negotiators from 140 countries reached an agreement January 19 to phase out mercury in a number of products and processes by 2020, ban primary mercury mining, and promote the use of technologies in controlling emissions and releases from several industrial sources. The Minamata Convention on Mercury will be opened for signature at a diplomatic conference this October in Japan.

#### Japan Reviews GHG Reduction Target

Japanese Prime Minister Shinzo Abe instructed his Cabinet January 25 to halt the country's pledge to reduce GHG emissions 25 percent below 1990 levels by 2020. The reduction target was originally agreed to in 2009 by former Prime Minister Yukio Hatoyama of the Democratic Party of Japan. It was thought that the emission reduction goal could be met via the construction of more nuclear power reactors, but the Spring 2011 nuclear accident caused the country to shut down all of its 54 reactors and reconsider the role of nuclear power in its energy portfolio. The prime minister directed his Cabinet to review the target in advance of the U.N. climate summit in November.

#### European Green Energy Infrastructure

The European Commission proposed January 24 legislation that would require European Union member states to increase substantially the number of charging stations for electric cars, fueling stations for hydrogen-powered vehicles, and liquefied natural gas depots for ships. The commission also offered language that would encourage harmonization of technological standards, increase production, and lower the cost of electric cars.

### **States**

#### IA Coal Phaseout

MidAmerican Energy Company announced January 22 that it has settled a Clean Air Act lawsuit filed by the Sierra Club by agreeing to phase out coal at seven boilers at its Iowa power plants. The U.S. District Court for the Southern District of Iowa settlement requires the company to clean up to other coal-fired boilers and build a 60kw solar installation at the Iowa State Fair and pay \$35,000 in attorney's fees.

#### CA GHG Reductions

The California Air Resources Board released emissions data January 11 finding that GHG emissions from the state's industrial sources decreased in 2011 for the third year in a row. Emissions dropped from 117.6 MMT in 2010 to 11 MMT in 2011. The largest drop came from the steady decline in CO2 emissions from electricity generation.

#### State Clean Air Agencies

The Ohio Environmental Protection Agency and representatives from Indiana, Louisiana, North Dakota, and Texas announced January 23 the membership of a new organization as an alternative to the National Association of Clean Air Agencies. The new group, the Association of Air Pollution Control Agencies, will provide technical assistance with implementing the Clean Air Act that the original agency formerly provided.

#### CA Ethanol

The Renewable Fuels Association sent a letter January 17 to California Air Resources Board Chairman Mary Nichols encouraging it to revise the carbon intensity values assigned to corn ethanol under the

state's low-carbon fuel standard. Most Midwestern ethanol will not be a viable alternative to help fuel producers meet the higher carbon intensity standards for 2013 and 2013 without the revisions. The board has been silent on the issue of updating direct and indirect ethanol carbon intensity values.

#### DC Building Efficiency Reporting

The District of Columbia's Department of Environment published a regulation January 16 requiring owners or property managers to evaluate the energy and water efficiency of their buildings and report that information to the agency beginning this year for owners of buildings of 100,000 square feet or more this year, or next year for owners of 50,000 square feet or more, with annual filing requirements beginning in 2014.

#### PA Fracking Threatens Wastewater Infrastructure

Duke University and Kent State University released a study January 22 finding that natural gas production in the Marcellus Shale in Pennsylvania and neighboring states is generating wastewater at a rate that threatens to overwhelm water disposal infrastructure. The problem is less a result of fracking fluid as it is the aggregate volume of brine and other water that comes up when the gas is produced. The Marcellus Shale development has increased regional wastewater generation by 570 percent since 2004.

#### NE Approves Keystone Route

Nebraska Governor Dave Heineman (R) approved a revised route January 22 for the Keystone XL oil sands pipeline through the state, removing a major hurdle for the proposed project. The governor also sent a letter to President Obama and Secretary of State Hillary Clinton informing them of his approval of the route. The State Department is drafting a supplemental environmental impact statement that will include the revised route and the governor's approval; the draft will be released for public comment at the end of the first quarter.

#### CA Climate Leadership

During his State of the State address January 24, California Governor Jerry Brown (D) said that he will continue to work to reform the California Environmental Quality Act and make improvements to water supply infrastructure, energy efficiency, and GHG controls. Governor Brown praised the state for its leadership on climate change and GHG emissions reductions.

#### CA Fracking Suit

The Center for Biological Diversity sued the California Division of Oil, Gas, and Geothermal Resources in the Alameda County Superior Court January 24, alleging that the state has failed to properly oversee fracking operations. The group asked the court to prohibit oil and natural gas fracking until the state takes steps to regulate the wells and ensure that the operations pose no health or environmental risk.

#### D.C. Leads in LEED

The U.S. Green Building Council released rankings January 23 showing that Washington, D.C. significantly leads the country in the amount of building space per capita certified to the Leadership in Energy and Environmental Design green building standards, due primarily to the number of federal standards that participate in the program. DC certified 36.97 square feet of LEED building space per resident in 2012.

### **Miscellaneous**

#### RE Training Accreditation

The American National Standards Institute and the Interstate Renewable Energy Council announced January 22 that they are accepting applications from schools, colleges, and other institutions that award professional certificates related to renewable energy and energy efficiency industries.

#### Corporate Climate Risks

The Carbon Disclosure Project released a report January 22 finding that 73 percent of companies investing in emissions reductions say that climate change presents a physical risk to their operation. The report, *Reducing Risk and Driving Business Value*, concludes that companies that do invest in emissions

reduction strategies are driven by concerns about disruption to the supply chain rather than by regulations.

#### Oleochemicals at Disadvantage

The American Cleaning Institute said recently that biodiesel tax and market incentives are increasing the cost of feedstocks and forcing them to use other ingredients that have environmental drawbacks. The manufacturers are urging Congress to exclude animal fat-based fuel from legislation when promoting biodiesel and to remove them from the Environmental Protection Agency list of renewable fuel standard-compliant renewable biomass.

#### Shale Energy Boosts North American Manufacturing

IHS Inc. released a report January 21 finding that new techniques for extracting oil and gas from shale and other dense rocks put North American energy and manufacturing companies at an advantage to their international counterparts. The report, *Energy and the New Global Industrial Landscape: A Tectonic Shift?*, concluded that non-conventional oil and gas extraction has 1.7 million jobs and \$62 billion to the U.S. economy recently.

#### Low-Carbon Technologies Supply More Energy

Swiss Re released a report released January 21 finding that low-carbon technologies could supply 92 percent of the global power supply by 2050, thus capping the global temperature rise at 3 degrees Celsius; currently, low-carbon technologies comprise 33 percent of the global power mix. The report, *Building a Sustainable Energy Future*, concluded that in order to reach that goal, governments would need to reach a stringent GHG agreement by 2015 that would go into effect by 2020.