

Young / Sommer LLC

ENVIRONMENTAL BREAKFAST CLUB REGULATORY SUMMARY

August 14, 2015

Prepared by:
Elizabeth Morss
Young/Sommer LLC
5 Palisades Drive
Albany, NY 12205
(518) 438-9907, ext. 232
emorss@youngsommer.com
<http://www.youngsommer.com>

Final Statutes, Rulemakings, Guidance and Cases

| Citation | Summary | Implications | Schedule/Notes |
|---|---|---|--|
| CLIMATE CHANGE | | | |
| <p>FEDERAL Guidelines for Greenhouse Gas Emissions from Existing Power Plants 40 CFR Part 60, subpart UUUU Pre-Publication Final Rule</p> | <p>The Obama administration announced that it has finalized its Clean Power Plan (CPP), a complex regulatory scheme designed to reduce carbon dioxide (CO₂) emissions from existing power plants 32% from 2005 levels by 2030. EPA is adopting the CPP under Clean Air Act (CAA) § 111(d), 42 USC § 7411(d), which requires EPA to set emission guidelines for any pollutant regulated under a New Source Performance Standard (NSPS) that is not a “criteria pollutant.” To achieve the CPP goal, EPA set CO₂ emission performance rates for two categories of fossil fuel-fired electric generating units (EGUs)—coal-and oil-fired power plants and natural gas-fired combined cycle generating units. In setting these standards, EPA determined the ranges of reductions that can be achieved by applying the following three “building blocks:” (1) reducing the carbon intensity of generation at individual units through heat rate improvements; (2) substituting less carbon-intensive generating units (e.g., replacing coal with natural gas); and (3) increasing reliance on low or zero-carbon generation sources (such as solar and wind). EPA applied each of the three building blocks to all of the coal plants and natural gas plants in each of three interconnected regional grids to determine the regional performance rate for each category and selected the most achievable rate to arrive at the standards. These CO₂ emission rates were then applied to all affected sources to arrive at state-specific goals.</p> <p>The required reductions must be achieved through development of state-specific plans designed to achieve the interim and final goals using a rate-based (pounds of CO₂ per megawatt hour) or mass-based (total short-tons of CO₂) approach. States must develop one of two types of plans to achieve the necessary reductions: an emission standards plan that requires affected power plants to implement source-specific requirements to ensure that all plants meet their required emission performance goals or a state measures plan that may include a mixture of measures, including renewable energy standards and residential energy efficiency programs.</p> <p>Information about the CPP can be found on EPA’s website at: www2.epa.gov/cleanpowerplan.</p> | <p>The CPP is being touted by the Obama administration as a major step toward reducing emissions that contribute to global climate change. The rule received strong support from environmentalists and certain states; opposition has come from business interests and other states, including those with large numbers of coal-fired power plants and/or coal mines.</p> <p>EPA significantly revised the rule in response to the more than 4.3 million comments received. Changes include: (1) establishing source category-specific emission performance rates; (2) selecting the rates using information on regionwide emissions associated with each of the three “building blocks;” (3) allowing states to select either rate or mass-based goals for demonstrating CPP compliance; (4) eliminating demand-side energy efficiency as a “building block” while allowing states to consider such programs when demonstrating compliance with their emission-reduction goals; and (5) adding provisions to address reliability concerns and facilitate emission trading.</p> | <p>The final CPP program was announced by the administration on August 3, 2015; to date, however, the regulations have not been published in the Federal Register.</p> <p>States must submit final plans or an initial submittal with an extension request by September 6, 2016. Final complete plans must be submitted no later than September 6, 2018. The plan must show that the state will achieve its CO₂ emission reduction goals by 2030. In response to comments, EPA has established several interim deadlines for states to demonstrate that they are achieving the emission reductions necessary to meet their final CO₂ reduction goal.</p> <p>In light of the significant state opposition to the program, EPA has drafted for comment a federal implementation plan, which will be used by EPA to ensure compliance in states that decline to submit plans under the CPP.</p> |

| Citation | Summary | Implications | Schedule/Notes |
|---|---|--|---|
| CLIMATE CHANGE | | | |
| <p>FEDERAL GHG Emission Standards for New, Reconstructed and Modified Power Plants 40 CFR Part 60, subpart TTTT, et al. Pre-Publication Final Rule</p> | <p>The same day EPA announced the Clean Power Plan regulations for existing fossil fuel-fired electric generating units, the agency also published final New Source Performance Standards for new, modified and reconstructed units in accordance with CAA § 111(b), 42 USC § 7411(b). The rule applies to stationary combustion turbines (generally firing natural gas) and electric utility steam generating units (generally firing coal) and contains the following standards.</p> <ul style="list-style-type: none"> • <i>New and reconstructed natural gas units.</i> Under the final regulation, the best system of emission reduction (BSER) for these units is natural gas combined cycle technology. The rule imposes a CO₂ emission limit of 1,000 pounds of CO₂ per megawatt hour on a gross output basis (lbs CO₂/MWh-gross) regardless of unit size for baseload units; non-baseload units must meet a clean fuels input-based standard. • <i>Modified natural gas units.</i> EPA declined to set CO₂ emission limits for modified natural gas units after concluding that it needed additional information before setting standards. • <i>New coal-fired power plants.</i> EPA set a CO₂ emission limit of 1,400 lbs CO₂/MWh-gross, which can be achieved by new highly efficient supercritical pulverized coal units with carbon capture or storage (CCS) capturing about 20% of the unit’s carbon pollution. • <i>Modified coal-fired power plants.</i> EPA will set limits for modified units based on each unit’s own best potential performance. These limits will apply to modifications resulting in an increase in hourly CO₂ emissions of more than 10% relative to the emissions of the five most recent years from the unit. Smaller modifications will not trigger the NSPS. • <i>Reconstructed coal-fired power plants.</i> Units with a heat input greater than 2,000 million British thermal units per hour must meet a CO₂ emission limit of 1,800 lbs CO₂/MWh-gross (2,000 lbs CO₂/MWh for smaller reconstructed units). <p>Information about the NSPS can be found at: www2.epa.gov/cleanpowerplan.</p> | <p>The rule, which is primarily of interest to owners/operators of power plants, has been significantly revised since proposal. Major changes include: (1) establishing separate emission limits for baseload and non-baseload new and reconstructed natural gas-fired units; (2) postponing adoption of emission limits for modified natural gas units; (3) increasing the emission limit for new coal-fired power plants from 1,100 to 1,400 lbs CO₂/MWh-gross; (4) increasing the emission limits for reconstructed coal-fired power plants; and (5) declining to regulate smaller modifications at coal-fired power plants. Although the final standards are less rigorous than those proposed, EPA is continuing to rely on CCS for new coal-fired units; business has objected from the outset that CCS is an experimental technology and thus not a proper basis for BSER.</p> | <p>The final regulations for new, reconstructed and modified units were announced together with the CPP program on August 3, 2015; to date, however, the regulations have not been published in the Federal Register.</p> |

| Citation | Summary | Implications | Schedule/Notes |
|--|--|---|---|
| BULK STORAGE | | | |
| <p>FEDERAL Underground Storage Tank Regulations 40 CFR Parts 280 and 281 80 Fed. Reg. 41566 (July 15, 2015)</p> | <p>EPA adopted major revisions to its underground storage tank (UST) regulations to implement the Energy Policy Act (EPA) of 2005 and revise/update other UST requirements. Changes adopted to implement the EPA Act include:</p> <ul style="list-style-type: none"> • Training. Tank owners/operators must obtain training tailored to three classes of tank operators—Class A (responsible for UST system), Class B (responsible for implementing UST requirements on a day-to-day basis), and Class C (responsible for initially addressing spills or releases). The training must be documented. • Secondary containment. New or replaced tanks and piping installed after the effective date of the regulation must be equipped with secondary containment (including interstitial monitoring). Under-dispenser containment is required beneath new dispenser systems. Additional changes to the UST regulations adopted by EPA include: • Operation and maintenance. EPA adopted new operation and maintenance requirements, including: (1) periodic walkthrough inspections (every 30 days); (2) annual inspections of containment sumps and handheld release detection equipment; (3) annual release detection equipment tests; and (4) overfill prevention equipment inspection and spill prevention equipment and containment sump tests (every three years). • Deferrals. EPA eliminated deferrals for the following tanks/tank systems: UST systems storing fuel solely for use by emergency power generators; airport hydrant systems; and UST systems with field-constructed tanks. Special rules apply to certain previously deferred tanks. • Other changes. EPA adopted other changes, including: eliminating flow restrictors in vent lines as an overfill prevention option for new tanks; requiring closure within three years of tanks that use internal lining as the sole method of corrosion protection if the lining fails; and adding various notification provisions, including requiring notification when switching to fuels containing specified quantities of ethanol or biodiesel to address tank compatibility concerns. <p>The final regulations can be found in the July 15, 2015 Federal Register at: www.gpo.gov/fdsys.</p> | <p>The revisions to the federal UST regulations, set forth at 40 CFR Part 280, apply in Indian country and in states and territories with programs that have not been approved by EPA. States seeking to maintain EPA approval of their UST programs must revise their UST regulations consistent with state program approval (SPA) requirements set forth in 40 CFR Part 281. These SPA requirements are consistent with, but less prescriptive than, the UST regulations contained in Part 280.</p> <p>Currently, New York’s UST program is not approved by EPA. Owners/operators must therefore comply both with the federal UST regulations and with the state’s petroleum and chemical bulk storage (PBS/CBS) regulations, contained in 6 NYCRR Parts 595-599 and 610-612. In 2014, DEC proposed major revisions to the PBS and CBS regulations to update the requirements and implement the EPA Act and 2008 changes to the PBS/CBS enabling statute. However, many of the recent revisions to the federal UST regulations are not part of DEC’s rulemaking</p> | <p>The final UST regulations take effect October 13, 2015. Most of the new requirements relating to operator training, testing/inspections and notification must be implemented within three years of the effective date.</p> <p>DEC plans to implement certain changes in the recent EPA rulemaking in a second round of revisions to the state PBS/CBS regulations.</p> |

| Citation | Summary | Implications | Schedule/Notes |
|---|---|--|---|
| WATER | | | |
| <p>NEW YORK STATE Aquatic Invasive Species Management Plan</p> | <p>DEC issued its final <i>New York State Aquatic Invasive Species Management Plan</i>, outlining the state’s strategy for preventing, detecting and responding to aquatic invasive species (AIS) during the next five years. The plan, which focuses on fresh waters, provides an overview of the AIS issue both generally and in New York State and identifies four basic objectives: prevention (stopping the introduction and spread of AIS in New York); detection (conducting and promoting surveillance and monitoring activities to identify new invaders and document the distribution/impacts of AIS); response (identifying and implementing the appropriate response to AIS introductions); and capacity (securing adequate long-term funding for AIS programs). For each objective, the plan generally includes an issue statement and immediate and other actions relating to education and outreach, leadership and coordination, research and information, and regulation and legislation. The plan identifies more than 50 action items, with the following actions classified as “high priority:”</p> <ul style="list-style-type: none"> • Expand the state’s existing boat launch steward programs for public and private boat launch sites and ensure consistency across the state. • Develop an AIS response framework, i.e., a systematic process for evaluating AIS introductions and formulating appropriate responses. • Implement and maintain a statewide, coordinated AIS management program. • Implement an AIS public awareness campaign and evaluate its effectiveness. • Provide DEC leadership for the AIS program to achieve productive and coordinated actions. • Identify legal, regulatory and institutional barriers that could impede rapid response to an AIS introduction. • Expand the use of AIS disposal stations at boat launch sites. • Create regional “first responder” AIS teams to incorporate local expertise in planning and implementing local responses to AIS. • Identify and evaluate risks associated with various pathways for AIS introduction and movement within New York. <p>The AIS Management Plan can be found on DEC’s website at: www.dec.ny.gov/animals/99053.html.</p> | <p>The plan is potentially of interest to anyone who lives near or uses the state’s freshwater resources, including homeowners, marina operators, boaters, municipalities, and others. The plan is part of a larger effort by DEC to address invasive species. Recent measure include: regulations restricting the commercial importation and sale of invasive plant and animal species; rules requiring boaters to take precautions to ensure AIS are not introduced at state-operated boat launch facilities; and a regulation adopted by the Lake George Park Commission requiring third party inspections and other measures prior to launching boats into Lake George. In 2014, the state legislature enacted a pair of laws intended to prevent the spread of AIS. The first requires operators of watercraft launching at a public water body to take “reasonable precautions” to prevent the spread of AIS while the second requires DEC to develop a universal, downloadable AIS-prevention sign and requires owners of public boat launches to display the sign.</p> | <p>DEC made a draft version of the plan available to the public last fall and received nearly 300 comments.</p> |

Other Recent Developments (Final)

AIR

FEDERAL: In a split decision, the **Supreme Court concluded that EPA unreasonably deemed cost irrelevant when deciding whether to regulate hazardous air pollutant emissions from power plants.** Under Clean Air Act § 112, 42 USC § 7412, Congress required EPA to study the hazards to public health of emissions of hazardous air pollutants from power plants and decide whether it was “appropriate and necessary” to regulate those emissions under the National Emission Standards for Hazardous Air Pollutants (NESHAP) program. After completing the necessary study, EPA decided to establish a NESHAP for power plants without considering compliance costs. The court in *Michigan v. EPA*, 135 S. Ct. 2699 (2015), rejected EPA’s conclusion that cost was irrelevant to its initial decision to regulate after concluding, among other things, that: (1) the phrase “appropriate and necessary” requires at least some attention to cost; (2) other power plant-specific study provisions of the CAA required consideration of costs; (3) the fact that cost must be considered in deciding *how* to regulate HAP emissions from power plants does not mean they need not be considered in deciding *whether* to regulate power plant HAP emissions; and (4) the fact that the CAA does not consider costs in deciding whether to regulate other source categories does not mean they are irrelevant to power plants, which are subject to special CAA requirements. The dissent argued that EPA did not need to explicitly analyze costs before deciding whether to regulate HAP emissions from power plants because other aspects of the program ensure the cost-effectiveness of the regulations. The court reversed the lower court decision upholding the power plant NESHAP and remanded the case for further proceedings consistent with its opinion.

Implications: The rule is primarily of interest to owners/operators of coal and oil-fired power plants.

FEDERAL: EPA revised the **National Emission Standards for Hazardous Air Pollutants for mineral wool production and wool fiberglass manufacturing** following a residual risk/periodic technology review that included an extended assessment of the standards. Under CAA § 112, EPA must assess whether any residual risk remains after imposing technology-based NESHAPs and revise the standard as necessary; EPA also must conduct a periodic review of the underlying technology to confirm that it remains current. As part of that review, EPA conducted a thorough assessment of the NESHAPs and reached the following decisions:

- *Mineral wool production (major source), 40 CFR Part 63, subpart DDD*: EPA concluded that the risks from the source category are acceptable and that there were no technological developments that warranted revisions to the standard. In addition, EPA: finalized the removal of formaldehyde as a surrogate for phenol and ethanol and the removal of carbon monoxide as a surrogate for carbonyl sulfide, set direct emission limits for these pollutants, and revised the limits for other pollutants.
- *Wool fiberglass manufacturing (major source), 40 CFR Part 63, subpart NNN*: EPA adopted a new chromium emission limit for gas-fired glass melting furnaces to provide an ample margin of safety to protect public health; EPA also revised the

particulate matter emissions standard for these furnaces to address recent technological developments. In addition, EPA revised other emission standards, including removing the use of formaldehyde as a surrogate for methanol and phenol.

- *Wool fiberglass manufacturing (area sources), 40 CFR Part 63, subpart NN*: In the first supplemental proposal, EPA listed gas-fired glass melting furnaces at wool fiberglass manufacturing facilities that are area sources as a source category. EPA adopted chromium emission standards identical to those for major sources after concluding that the same control measures were available to both sources.

In addition, EPA is requiring all regulated sources to comply with work practice standards during periods of startup and shutdown. Finally, regulated sources must submit certain required reports electronically through EPA's Electronic Reporting Tool. The rule took effect July 29, 2015; it can be found in the Federal Register issued on that date at: www.gpo.gov/fdsys.

Implications: The revisions are primarily of interest to wool fiberglass and mineral wool production facilities. EPA estimates that there are eight mineral wool facilities and 30 wool fiberglass facilities operating nationwide; most of the wool fiberglass production facilities are area sources.

FEDERAL: EPA revised the NESHAP and NSPS for portland cement plants to make changes/corrections identified after the rule was revised in 2013 and address a recent appellate court case relating to the rule's malfunction defense. Key changes to the portland cement plant NESHAP, set forth at 40 CFR Part 63, subpart LLL, include: (1) providing a scaling alternative for demonstrating compliance with the hydrogen chloride (HCl) standard for sources equipped with wet scrubbers, tray towers or dry scrubbers; (2) adding a temperature parameter to the startup and shutdown requirements; (3) clarifying the language relating to span values for both mercury and HCl; and (4) correcting and clarifying various inconsistencies or errors. In addition, EPA deleted an affirmative defense to civil penalties for excess emissions occurring during malfunctions in the wake of a court of appeals decision holding that EPA lacked authority to establish the defense. Finally, EPA clarified the definitions of rolling average, operating day and run average in both the NSPS and NESHAP regulations. The rule took effect July 27, 2015 and can be found in the Federal Register issued on that date at: www.gpo.gov/fdsys.

Implications: The revisions are primarily of interest to owners/operators of portland cement plants.

CLIMATE CHANGE

FEDERAL: EPA finalized a rule intended to encourage the transition from hydrofluorocarbons (HFCs) to substitutes with a lower global warming potential (GWP). Title VI of the Clean Air Act requires EPA to phase out the manufacture and use of chlorofluorocarbons (CFCs) and hydrochlorofluorocarbons (HCFCs)—two categories of substances that deplete the stratospheric ozone layer and are also powerful greenhouse gases. Over the years, users have substituted HFCs for CFCs and HCFCs as a refrigerant, aerosol propellant and foam blowing agent. However, HFCs also are powerful GHGs and EPA is concerned that increased use could aggravate the global climate change problem. As part of the Obama administration's Climate Action Plan, EPA is using its authority under the Significant New Alternatives Policy (SNAP) to approve HFC substitutes with comparatively low GWPs. In the

recent rulemaking, EPA modified the listing of certain HFC and HFC blends under the SNAP program from acceptable to unacceptable; acceptable, subject to special use conditions; or acceptable, subject to narrowed use limits. The change affects uses of these substances in certain aerosol, foam blowing and air conditioning and refrigerant end uses where other alternatives are available or potentially available. As part of the rulemaking, EPA also changed the status from acceptable to unacceptable for certain HCFCs that are being phased out of production under the international agreement relating to stratospheric ozone protection. The final rule, which takes effect August 19, 2015, can be found in the July 20, 2015 Federal Register at: www.gpo.gov/fdsys.

Implications: The rule is primarily of interest to companies that manufacture and use HFCs and HFC substitutes in refrigeration, air conditioning, and other equipment/uses.

REMEDIATION

NEW YORK STATE: The New York Appellate Division, Third Department, upheld a lower court decision which found that **perchloroethylene (perc) is not petroleum under New York's Navigation Law**. A shopping center owner sued the current and former owners of a laundry/dry cleaner in *Fairview Plaza, Inc. v. Estate of Rigos*, 129 A.D.3d 1259 (3d Dept. 2015) seeking compensation under the New York Navigation Law's oil spill program, arguing that since perc is derived from petroleum it is regulated as petroleum for purposes of the Navigation Law. The appellate court upheld a lower court decision dismissing the plaintiff's Navigation Law claims after concluding that the plaintiff's argument would "constitute a novel expansion of the law." The court went on to note that several other courts had rejected similar arguments and that extending the Navigation Law to products derived from petroleum would create a "per se rule" imposing liability for the discharge of any petroleum-derived substance under the Navigation Law regardless of the dangers it poses.

Implications: The decision is generally of interest to anyone involved in Navigation Law litigation.

WATER

FEDERAL: EPA issued **updated recommended ambient water quality criteria for the protection of human health for 94 chemical pollutants**. The Clean Water Act requires EPA to develop and periodically revise criteria for protecting water quality and human health to ensure they accurately address the latest scientific knowledge. In the 2015 update, EPA revised 94 of the existing human health criteria to reflect current scientific information, including updated exposure assumptions, bioaccumulation factors, updated health risk factors, and relative source contribution. States must consider these criteria when developing their own water quality standards, which consist of designated uses, water quality criteria to protect those uses, and an antidegradation policy. States must conduct a triennial review of water quality standards and are expected to consider updated EPA criteria as part of that process. EPA developed a fact sheet and summary of the input parameters that were used to derive the updated criteria for each of the 94 chemicals reviewed. The final notice of availability can be found in the June 29, 2015 Federal Register at: www.gpo.gov/fdsys.

Implications: The revised water quality criteria may result in the establishment of stricter water quality standards, which, in turn, will result in stricter wastewater discharge permit limits.

FEDERAL: EPA published its **Final 2014 Effluent Guidelines Program Plan and Annual Effluent Guidelines Review Report identifying new or existing industrial wastewater dischargers that have been selected for development or review of effluent guidelines and/or pretreatment standards**. The guidelines establish technology-based effluent limits for specific categories of direct and/or indirect wastewater dischargers. These effluent limits are then incorporated into National/State Pollutant Discharge Elimination System (NPDES/SPDES) permits or pretreatment permits unless superseded by stricter water quality-based limits. With the recent notice, EPA announced that it planned to continue its review of the metal finishing and pesticide chemical manufacturing point source categories, both of which are currently regulated. EPA also is continuing to gather information about industrial wastewater discharges that may contain engineered nanoscale materials from manufacturing and formulating. In addition, as announced in the preliminary 2014 plan, EPA has begun a study of the existing centralized waste treatment and petroleum refining categories. EPA concluded no further review was required of discharges from brick and structural clay products manufacturing. The announcement concerning the final plan and report can be found in the August 4, 2015 Federal Register at: www.gpo.gov/fdsys.

Implications: The notice is primarily of interest to facilities in the named source categories.

OCCUPATIONAL SAFETY AND HEALTH

FEDERAL: The Occupational Safety and Health Administration (OSHA) has issued a pair of documents addressing key elements of the OSHA program. The first document, *Training Requirements in OSHA Standards*, summarizes OSHA's approximately 190 training-related program requirements under the five categories of OSHA standards: general industry, maritime, construction, agricultural and federal employee programs. The document emphasizes the importance of training as well as the wisdom of keeping training-related records; it also provides information about other OSHA training-related resources. The training document can be found on OSHA's website at: www.osha.gov/Publications/osha2254.pdf. In another important development, OSHA released its *Inspection Procedures for the Hazard Communication Standard*, to provide instruction to OSHA inspectors on enforcing OSHA's 2012 revisions to the Hazard Communication (Hazcom) standards. The Hazcom program establishes a framework for employers to inform workers about the risks associated hazardous chemicals in the workplace, including standards for hazard classification, labeling, safety data sheets, and training. In 2012, EPA revised its Hazcom regulations, set forth at 29 CFR § 1910.1200, to conform them to the uniform international standards known as the Globally Harmonized System of Classification and Labeling of Chemicals. The new document provides guidance to compliance safety and health officers enforcing the revised Hazcom standard during its transition period and when fully implemented. The enforcement guidance can be found on the OSHA website at: www.osha.gov/OshDoc/Directive_pdf/CPL_02-02-079.pdf.

Implications: The two guidance documents are of interest to all employers regulated by OSHA.

Other Recent Developments (Proposed)

CLIMATE CHANGE

FEDERAL: EPA and the National Highway Traffic Safety Administration (NHTSA) **proposed stricter greenhouse gas emission standards and improved fuel efficiency standards for heavy-duty trucks and buses.** The standards apply to vehicles in the following categories: (1) combination tractors (i.e., semi trucks); (2) certain trailers, including highway and non-highway box trailers (dry and refrigerated) and non-box highway trailers; (3) heavy-duty pickup trucks and vans (i.e., conventional vehicles that are too large to be subject to the standards for light-duty vehicles and trucks); and (4) vocational vehicles (e.g., delivery, refuse, utility, dump, and cement trucks; transit, shuttle and school buses; emergency vehicles; and tow trucks). The regulation also includes standards and test cycles for tractor engines, vocational diesel engines and vocational gasoline engines. In general, the standards differ among vehicle categories depending on the size and configuration of the vehicle. To achieve the necessary reductions, the regulations anticipate that manufacturers will implement engine and transmission upgrades, aerodynamic improvements, and/or tire rolling resistance improvements, among other changes. The new standards will be phased from 2018 to 2027, beginning with trailers in 2018. The schedules differ for each of the regulated truck categories. Although the focus of the standards is on reducing emissions of combustion-related greenhouse gases, the program includes standards to control leakage from air conditioners as well as emissions of nitrous oxide. According to EPA, the savings associated with reduced fuel use will outweigh the costs of the technology improvements, particularly for semi trucks, which typically are driven many miles each year. EPA is accepting comments on the proposed standards until **September 11, 2015**. The new standards can be found in the July 13, 2015 Federal Register at: www.gpo.gov/fdsys.

Implications: The rules are primarily of interest to heavy-duty vehicle and engine manufacturers and importers and to potential purchasers of vehicles/engines.

OCCUPATIONAL SAFETY AND HEALTH

FEDERAL: In the wake of a recent court decision, OSHA **proposed to amend its recordkeeping regulations to clarify that the duty to make and maintain accurate records of work-related injuries and illnesses is an ongoing obligation.** As a general rule, employers with more than 10 employees must keep records of occupational injuries and illnesses at their establishments under 29 CFR Part 1904. These records include a log of workplace injuries/illnesses, supplementary injury/illness incident reports, and an annual summary of work-related injuries and illnesses that must be posted in the workplace. Traditionally, OSHA has concluded that the failure to record injuries/illnesses is a continuing one and that the agency can cite employers for such recordkeeping violations for up to six months after the five-year record retention period mandated under Part 1904. However, a federal court recently concluded that OSHA must cite an employer for failing to record an injury or illness under the current regulations within six months of the first day on which the regulation requires the record. With this rulemaking, OSHA is proposing to revise the Part 1904 regulations to clarify

that the duty to make and maintain an accurate record of a work-related injury or illness is an ongoing obligation that continues until the required record is made or the five-year record retention period ends. OSHA is accepting comments on the proposed rule until **September 28, 2015**; it can be found in the July 29, 2015 Federal Register at: www.gpo.gov/fdsys.

Implications: The proposed revision is potentially of interest to any facility with more than 10 employees that is subject to the OSHA injury/illness recordkeeping requirements

FEDERAL: OSHA proposed major **changes to its existing permissible exposure limits (PEL) for beryllium**, together with additional work practice, equipment and other requirements designed to protect workers from the adverse health effects of beryllium exposure. The beryllium PEL was adopted in 1971 and has not been updated since despite increasing evidence of the cancer and other health risks associated with beryllium. With this rulemaking, OSHA is proposing to reduce the time-weighted PEL for beryllium from 2.0 micrograms per cubic meter ($\mu\text{g}/\text{m}^3$) of air to 0.2 $\mu\text{g}/\text{m}^3$ in general industry and require compliance with ancillary requirements relating to exposure assessment, personal protective clothing and equipment, medical surveillance, medical removal, training, and regulated areas or access controls. The proposal includes alternatives to each of the key components of the rule. Most of the requirements would take effect 90 days after the rule is adopted. OSHA is accepting comments on the proposed rule until **November 5, 2015**; it can be found in the August 7, 2015 Federal Register at: www.gpo.gov/fdsys.

Implications: According to EPA, about 35,000 workers are exposed to beryllium in the workplace. Beryllium is primarily used in specialty alloys and beryllium oxide ceramics and composites with industrial applications such as consumer electronics components and satellite communication modules.

Upcoming Deadlines

NOTE: This calendar contains items of general interest.

August 24, 2015: Public hearing on DEC's proposal to: (1) incorporate by reference federal NSPS and NESHAP rules and (2) adopt California's motor vehicle GHG emission and ZEV standards to be held at 1:00 p.m. at DEC Headquarters, 625 Broadway, Albany. See DEC's web site at www.dec.ny.gov/regulations/propregulations.html for details.

August 31, 2015: Deadline for submitting comments on EPA's proposed endangerment finding and ANPR addressing the regulation of GHG emissions from aircraft. See the July 1, 2015 Federal Register at www.gpo.gov/fdsys for details.

September 1, 2015: Deadline for submitting comments on DEC's proposal to: (1) incorporate by reference federal NSPS and NESHAP rules and (2) adopt California's motor vehicle GHG emission and ZEV standards. See DEC's website at www.dec.ny.gov/regulations/propregulations.html for details.

September 11, 2015: Deadline for submitting comments on EPA's/NHTSA's joint standards to reduce fuel consumption and GHG emissions from medium and heavy-duty engines and vehicles, including trailers. See the July 13, 2015 Federal Register at www.gpo.gov/fdsys for details.

September 28, 2015: Deadline for submitting comments on OSHA's proposed revisions to its injury/illness recordkeeping requirements. See the July 29, 2015 Federal Register at www.gpo.gov/fdsys for details.

September 30, 2015: Deadline for submitting data to assist DEC in identifying impaired waters that do not meet water quality standards. See DEC's website at www.dec.ny.gov/chemical/31290.html for details.

October 9, 2015: Deadline for submitting information in response to OSHA's RFI on alternative approaches to workplace chemical management, including possible updating of permissible exposure limits (extended from April 8, 2015). See the October 10, 2014 Federal Register at www.gpo.gov/fdsys for details.

November 5, 2015: Deadline for submitting comments on OSHA's proposed update to its beryllium standards. See the August 7, 2015 Federal Register at www.epa.gov/fdsys for details.