**Regulatory Updates**
**Compiled for the Pine Chemicals Association**
**July 12, 2021**

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## SAFETY

**US Department of Labor's OSHA Issues Emergency Temporary Standard for COVID-19** - "OSHA has announced it will issue an emergency temporary standard to protect healthcare workers from contracting coronavirus. The standard focuses on healthcare workers most likely to have contact with someone infected with the virus. OSHA announced the new standard alongside new general industry guidance, both of which are aligned with Centers for Disease Control and Prevention guidance . . . The emergency temporary standard establishes new requirements for settings where employees provide healthcare or health care support services, including skilled nursing homes and home healthcare, with some exemptions for healthcare providers who screen out patients who may have COVID-19. OSHA will update the standard, if necessary, to align with CDC guidelines and changes in the pandemic. . . <*See related article below*> (OSHA website, 6/10/2021.)

**OSHA COVID-19 Enforcement in Other Industries** - OSHA has revised its National Emphasis Program on COVID-19 and updated its Interim Enforcement Response Plan. According to a press release, the agency has included its emergency temporary standard on COVID-19 for health care workers in the NEP. OSHA also has removed Appendix B – a list of "secondary target industries" that include building construction, food manufacturing and chemical manufacturing. Meat and poultry processing is among the industries still covered by the NEP. For non-health care establishments, OSHA inspectors will use the updated Interim Enforcement Response Plan published July 7. For health care establishments, the inspection procedures for the ETS apply. The agency issued those procedures June 28.
According to the release, revisions to the Interim Enforcement Response Plan include:

- Enforcing protections for workers in non-health care industries who are unvaccinated or not fully vaccinated.
- Where respirator supplies and services are readily available, OSHA will stop exercising enforcement discretion for temporary noncompliance with the standard on respiratory protection based on employer claims of supply shortages as a result of the pandemic.
- OSHA will no longer exercise enforcement discretion for the same requirements in other health standards, where full compliance may have been difficult for some non-health care employers because of the pandemic.
- Updated instructions and guidance for OSHA area offices and inspectors for handling COVID-19-related complaints, referrals and severe illness reports.
- Ensuring workers are protected from retaliation.

(Safety and Health website, 7/9/2021.)

**CDC COVID-19 Guidance** - CDC's Interim Public Health Recommendations for Fully Vaccinated People explain that under most circumstances, fully vaccinated people need not take all the precautions that unvaccinated people should take. For example, CDC advises that most fully vaccinated people can resume activities without wearing masks or physically distancing, except where required by federal, state, local, tribal, or territorial laws, rules and regulations, including local business and workplace guidance. People are considered fully vaccinated for COVID-19 two weeks or more after they have completed their final dose of a

COVID-19 vaccine authorized by the U.S. Food and Drug Administration in the United States. However, CDC suggests that people who are fully vaccinated but still at-risk due to immunocompromising conditions should discuss the need for additional protections with their healthcare providers. CDC continues to recommend precautions for workers in certain transportation settings. . . This guidance contains recommendations as well as descriptions of mandatory safety and health standards, the latter of which are clearly labeled throughout as 'mandatory OSHA standards.' The recommendations are advisory in nature and informational in content, and are intended to assist employers in providing a safe and healthful workplace free from recognized hazards that are causing or likely to cause death or serious physical harm. Read the full article here. (OSHA website, 6/10/2021.)

**EEOC Updates COVID-19 Vaccination Guidance** – On June 28, the EEOC issued much-anticipated updated FAQ's about the legal landscape of various employer vaccinations policies. Read the full article here. (EEOC website, 6/28/2021.)

**OSHA Spring 2021 Regulatory Agenda –** *JMA comment: Note that Process Safety Management and Powered Industrial Trucks have moved from the long-term list to the active list. Bold font below was added by me for emphasis.* "As expected, the Department of Labor's regulatory agenda for Spring 2021 – the first under the Biden administration – features some changes, most significantly a forthcoming proposed rule from OSHA that would restore two parts of the agency's injury and illness recordkeeping regulations.
Released June 11, the agenda – issued by the Office of Information and Regulatory Affairs twice a year – gives the status of and projected dates for all potential regulations listed in three stages: pre-rule, proposed rule and final rule. Listings marked'long term' aren't expected to be worked on for at least six months. OSHA will propose that establishments with 250 or more employees provide electronic submissions of their injury and illness data from Forms 300 and 301. The agency currently requires submission of only Form 300A – a yearly summary of injury and illness data – instead of the two more detailed forms. The agency's Improve Tracking of Workplace Injuries and Illnesses final rule, issued in May 2016, required those employers to submit all three forms. Under the Trump administration, OSHA changed the rule in February 2019 to require only Form 300A. A notice of proposed rulemaking is scheduled to be published in December.

OSHA's long-term list saw the most movement since DOL's regulatory agenda for Fall 2020, released Nov. 9. Three OSHA regulations moved from the long-term list to the active one, with perhaps the most notable being the standard on infectious diseases, which now appears in the proposed rule stage. An NPRM is scheduled to be published in December, about six months after OSHA issued an emergency temporary standard on COVID-19 that focuses on health care workers. The other two regulations that moved from the long-term list <*to the active one*>:

- **Process Safety Management and Prevention of Major Chemical Accidents (pre-rule stage)**
- Shipyard Fall Protection – Scaffolds, Ladders and Other Working Surfaces (proposed rule stage)

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Two regulations that moved to the long-term list from the active list are a **powered industrial trucks update** and OSHA's rule on drug testing and safety incentive programs. New on the active list is a regulation on preventing heat illness in outdoor and indoor work settings, listed in the pre-rule stage." (Safetyandhealth.com, 6/14/2021)

**Clarifications to the Walking-Working Surface Standards** – "OSHA is proposing changes to the Walking-Working Surfaces standards to clarify which handrail and stair rail system requirements apply to new stair rail systems. OSHA is taking comments until July 19, 2021. On November 18, 2016, OSHA published a final rule on Walking-Working Surfaces and Personal Protective Equipment (Fall Protection Systems). . . OSHA believes there is confusion in the stakeholder community regarding when handrails are required on stairs as well as what the height requirements are for handrails on stairs and for stair rail systems, depending on date of installation. With this notice, OSHA is proposing language that it believes is clearer without changing the intent of the 2016 final rule." (OSHA website, 5/20/2021.)

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## ENVIRONMENT

**EPA Proposes PFAS Reporting Rule –** *JMA comment: I'm not sure that this is an issue for the Pine Chemicals Industry, but I'm including it just in case. I'm interest in feedback on whether it's necessary to include future PFAS articles.*

> Amidst the rise of private party litigation, state regulatory activity, and global phase outs of per- and polyfluoroalkyl substances (PFAS), on June 28, 2021, EPA published a sweeping proposed rule under Section 8(a) of the Toxic Substances Control Act (TSCA) to collect detailed information from manufacturers and importers of PFAS chemicals, including products containing PFAS, in any year since 2011. The proposed rule is an expansive information collection effort under TSCA, and it will provide EPA with a robust data set of the PFAS manufactured and imported in the United States for the last ten years. Once obtained, this data on PFAS use, exposure, and effects could be used to assist EPA in developing assessments of new and existing chemicals under TSCA, as well to inform planned new regulatory activities under the Safe Drinking Water Act (SDWA), the Resource Conservation and Recovery Act (RCRA), and the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).
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> The one-time reporting requirement would be unprecedented in many respects, and it has the potential to impact many non-traditional TSCA stakeholders. The proposal is noteworthy for the number of PFAS chemicals it covers, the 10-year 'look back" period for PFAS activities, and the lack of exclusions for PFAS present in trace amounts as an impurity, byproduct or in articles (i.e., finished products). The proposal would present substantial regulatory burdens on companies to better know the chemical identity of their products, including entities with complex and international supply chains, to ensure compliance. EPA seeks comments by August 27, 2021

Read the full article here. (Lexology, Hunton Andrews Kurth LLP - Matthew Z. Leopold, et al., 7/7/2021.)

**EPA to Accept TSCA Export Notifications Electronically** – "On June 14, 2021, the Environmental Protection Agency (EPA) published in the *Federal Register* a notice [EPA-HQ-OPPT-2021-0286; FRL-10023-61] announcing the availability of an electronic option for submitting the export notifications that are required under the *Toxic Substances Control Act* (TSCA). As an alternative to the hardcopy approach, which is still available, EPA is also now accepting the required export notifications electronically using EPA's electronic document submission system, the Central Data Exchange (CDX). Use of CDX to prepare and submit the required export notifications to EPA will help streamline and reduce the administrative costs and burdens associated with submitting paper-based export notifications for both the submitters and the Agency. TSCA export notifications may be submitted electronically using CDX as of June 14, 2021." (Lexology, Baker McKenzie - Stuart P. Seidel, 6/28/2021.)

**Key Takeaways and Timelines from EPA's Recent Regulatory Agenda** – "On Friday, June 11, 2021, the Biden administration released the Spring 2021 Unified Agenda of Regulatory and Deregulatory Actions, a list of regulatory actions federal agencies intend to issue in the



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near and long term. While various executive orders have directed agencies to review and rescind or revise numerous rules issued under the Trump administration, the agenda reflects the first comprehensive list of regulations under development by the Biden administration and their expected timelines. Among this list, the U.S. Environmental Protection Agency (EPA) continues to be one of the most active regulatory agencies across the federal government, with well over 100 active actions on its list. It is no surprise that EPA's Regulatory Agenda is packed with dozens of rules that reconsider actions taken under the Trump administration, including many that revised rules issued under the Obama administration. As the regulatory pendulum swings, here are the key takeaways and timelines from EPA's Regulatory Agenda. Companies should not only be aware of the agenda but should consider engaging the agency now, proactively, on topics of central interest to them." *JMA comment: List below was edited to show potential impacts to PCA members>*

***"Major Source Facilities***: EPA is reviewing a 2020 rule that allowed major sources under the Clean Air Act to reclassify as area sources once hazardous air emissions fell below a certain threshold for purposes of air permitting requirements, with a proposed rule expected December 2021 and final rule December 2022.

***Novel Risk Management Rules***: EPA is proceeding with the first-ever risk management rules for the statutorily required 10 chemicals with final risk evaluations finding unreasonable risk. While EPA is separately reviewing certain risk evaluations, the agency reported it plans to issue proposed risk management rules for each of the 10 chemicals between June 2021 and December 2021, followed by final rules between September 2022 and January 2023.

***WOTUS***: EPA has announced its review of the 2020 revised definition of "waters of the United States" but listed its forthcoming reconsideration rule in the long-term list without providing a date of a proposal.

***Review of RMP*:** EPA is reviewing the 2019 revisions to the Risk Management Program (RMP) rule for facilities that use, manufacture, or store hazardous chemicals. The agency opened a docket to inform its review with written comments due July 15, 2021. EPA reported a proposed rule is expected September 2022 with a final rule in September 2023.

***Refrigerant Phasedown*:** In implementing a newly enacted law, EPA issued a proposed rule in May 2021 to establish an allowance allocation and trading program to phase down HFC production and consumption over the next 15 years. The comment period closes on the proposal July 6, 2021. EPA reported a final rule is expected October 2021." Read the full article here. (Lexology, Sidley Austin LLP - Samuel B. Boxerman, et al., 6/23/2021.)

**EPA "Listening Session" on RMP Rule Foreshadows Regulatory Changes** – "On Wednesday, June 16, 2021, EPA held the first of two public "listening sessions" to inform its review of the Risk Management Program (RMP) regulations pursuant to Executive Order 13990. According to Carlton Waterhouse, EPA Deputy Assistant Administrator for the Office of Land & Emergency Management (OLEM), the listening sessions are "a first step in considering improvements to the RMP rule, so EPA can better address the impacts of climate change on facility safety and protect communities from chemical accidents, especially vulnerable and overburdened communities living near RMP facilities." In the June 16 session, EPA heard perspectives on potential revisions to the RMP program under the current administration, and invited the submission of written comments to the regulatory docket established for the RMP

review effort **by July 15, 2021**. Comments submitted by that date will inform any future regulatory proposal EPA issues revising the current RMP program. The current RMP regulations are themselves the product of review and revision undertaken by EPA at the direction of President Trump in the early days of his administration. The history of RMP program changes, including those proposed (and eventually finalized) by the previous administration, are described in a previous Nickel Report post available here. It is now widely speculated that EPA could well undertake another reversal of course, potentially re-instating a number of controversial requirements that were finalized in the final days of the Obama administration and subsequently repealed—such as requirements for compliance auditing (including third party compliance audits), incident investigation and root cause analysis, and Safer Technologies and Alternatives Analysis (STAA). The principal themes offered by public commenters during the June 16 listening session foreshadow issues that will likely be addressed in any future EPA proposal to revise the current RMP regulations, including:

- Environmental Justice
- Inherent Safety
- Planning for Climate-Related Impacts
- Prescriptive v. Performance-Based Regulations"

Read the full article here. (Lexology, Hunton Andrews Kurth LLP – M. Clare Ellis, et al., 6/22/2021.)

**EPA to Reexamine PM 2.5 Limit** – "EPA announced that it will reconsider the previous administration's decision to retain the particulate matter (PM) National Ambient Air Quality Standards (NAAQS), which were last strengthened in 2012. EPA is reconsidering the December 2020 decision because available scientific evidence and technical information indicate that the current standards may not be adequate to protect public health and welfare, as required by the Clean Air Act." Read the full article here. (EPA website, 6/10/2021.)

***Send your suggestions and comments to joel@pinechemicals.org.***

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