On December 20, 2012, EPA finalized changes to the National Emission Standards for Hazardous Air Pollutants (NESHAP) for industrial, commercial and institutional boilers and process heaters located at major and area sources of hazardous air pollutants (HAP). The adjusted standards, originally finalized in March 2011, have been marked by controversy, litigation and numerous delays that created long-running uncertainty for affected sources and potentially affected sources. The latest iteration of the rules is the product of EPA’s reconsideration of the March 2011 version.

The tumultuous history of these rules goes back to at least September 2004 when EPA first established the NESHAP rules for new and existing boilers and process heaters at major and area sources of HAP. The rules were challenged, and in June 2007 the U.S. Court of Appeals for the D.C. Circuit vacated the rules and remanded them to EPA. New versions of the major source rule (“Boiler MACT”) and the area source rules were issued in March 2011. At the same time EPA announced it would reconsider certain aspects of the rule and subsequently stayed the compliance dates of the Boiler MACT. In December 2011 EPA proposed reconsidered versions of the rules.

In January 2012 the U.S. Court of Appeals reinstated the Boiler MACT compliance dates. In response EPA issued memoranda stating it would exercise enforcement discretion for major source boilers and process heaters missing initial notification deadlines and for area source boilers and process heaters missing the initial tune-ups or compliance notification deadlines until the earlier of: (1) the effective date of a new final rule, or (2) December 31, 2012. The final rule was published in the Federal Register on January 31, 2013, and the amendments become effective on April 1, 2013. Presumably, EPA will extend its enforcement discretion until the effective date of the rule, but is has not yet announced its plans.

Some of the key adjustments to the Boiler MACT include:

- Creation of separate subcategories for light and heavy industrial liquid-fired units and addition of a new subcategory for fluidized bed units with an integrated fluidized bed heat exchanger designed to burn coal. There are now 19 subcategories. All but three subcategories are subject to numeric emission limits.
EPA Finalizes Latest Iteration of Boiler Rules

- Single particulate matter (PM) emission limit for all coal/solid fossil fuel subcategories and emission limits based on PM as a combustion-based pollutant for each biomass fuel and liquid fuel subcategory.

- Changes to the emission limits for carbon monoxide. For existing units, 11 subcategories are less stringent and three are more stringent. For new units 11 are less stringent, two are more stringent and one remains unchanged.

- Addition of stack testing requirements when alternative total selective metals emissions limits are used in lieu of PM as a surrogate.

- Replacing numeric dioxin emissions limits with work place standards in all subcategories.

- Revisions to the definitions of “startup” and “shutdown.” Startup ends when any of the steam or heat from the boiler or process heater is supplied for heating and/or generating electricity or for any other purpose. Shutdown begins when either no steam or heat is supplied for heating and/or generating electricity or for any other purpose or no fuel is being fired. Shutdown ends when there is no heat or steam being supplied and no fuel being fired.

- Changes to the definition of limited use subcategory from no more than 876 hours of operation to a unit with a federally enforceable operating limit of less than or equal to 10 percent of an average annual capacity factor.

- Clarification that the affirmative defense is only available where an event that causes a violation of the emissions standard meets the definition of a malfunction.

Existing major sources must be in compliance with the Boiler MACT by January 31, 2016. A one-year extension may be granted where necessary for the installation of controls. New sources (i.e., sources which commenced construction or reconstruction on or after June 4, 2010) must comply by January 31, 2013, the date the rule was published in the Federal Register, or upon startup, whichever is later. Petitions seeking judicial review of the rule may be filed by April 1, 2013. Only time will tell whether this rule will be subject to further litigation.

To view a complete PDF of the Fourth Quarter 2012 issue of the Air Quality Letter, click HERE.