



Recent Federal Developments December 15, 2007

Bergeson & Campbell, P.C. extends its best wishes to all our clients and many friends and we wish you and your family a happy, healthy, and peaceful New Year.

TSCA/FIFRA/NTP/DHS/EPCRA

DHS Publishes Final Chemical Facility Security Rule -- On November 20, 2007, the U.S. Department of Homeland Security (DHS) published a final rule revising the list of chemicals of interest (COI) in Appendix A to the April 9, 2007, Chemical Facility Anti-Terrorism Standards (CFATS) interim final rule. 72 Fed. Reg. 65396. Under the final rule, all COIs have screening threshold quantities (STQ). The final rule also defines specific security issues for each COI, and, in some cases, establishes different STQs based upon the security issue presented. The final rule also adds provisions intended to instruct facilities on how to calculate the quantities of COI that they have in their possession. Any facility that possesses or comes into possession of any listed chemical in quantities that meet or exceed the STQ for any applicable security issue must complete and submit a Top-Screen. While the final rule is effective immediately, Top-Screen submissions are not due until **January 22, 2008**.

Facilities must also complete and submit a Top-Screen if DHS notifies them to do so through a *Federal Register* notice. Facilities that later come into possession of listed chemicals at or above the STQ for any applicable security issue must submit a Top-Screen within 60 calendar days of coming into possession of such chemicals. In addition, covered facilities have an “ongoing obligation” to complete and update the Top-Screen as necessary. Under CFATS, covered facilities that make material modifications to their operations or site must complete and submit a revised Top-Screen within 60 days of the material modification. DHS will use the results of the Top-Screen to make a preliminary risk determination as to a facility’s placement in one of four risk-based tiers, ranging from high (Tier 1) to low (Tier 4) risk. DHS will notify facilities in writing within 30 days of completion of the Top-Screen regarding whether they need to complete a Security Vulnerability Assessment (SVA). Facilities will have 90 days from receipt of the DHS letter to complete the SVA. DHS will use the results of the SVA to make a final determination as to a facility’s placement in a risk-based tier. After companies complete the SVA, DHS has 30 days to provide their final tier ranking. Facilities will be required to prepare a preliminary Site Security Plan (SSP), based upon data they supplied for the SVA, within 120 days from receipt of the final tier level assignment letter. There are 19 performance standards that DHS considers in the SSP development, and facilities must address each of these elements.

EPA To Hold Pesticide Workshop -- On November 27, 2007, the U.S. Environmental Protection Agency (EPA) held a workshop on the Pesticide Registration Improvement Renewal Act of 2007 (PRIA 2). Topics included changes to PRIA, a decision tree for identifying PRIA categories, the payment and waiver processes, content/application completeness review, interpretations of new categories, and other implementation issues. Fee categories and other issues specific to each



type of pesticide were discussed during breakout sessions. Materials from the meeting are available at <http://www.epa.gov/pesticides/fees/pria2workshop1107/index.htm>.

States Sue EPA Over Changes To Toxics Release Inventory Rule -- On November 28, 2007, New York and 11 other states sued EPA, alleging EPA changes to Toxics Release Inventory (TRI) regulations violate the Emergency Planning and Community Right-to-Know Act (EPCRA). *New York v. Johnson*, S.D.N.Y., No. 07cv10632 (filed Nov. 28, 2007). The complaint alleges the regulations “unlawfully increase TRI reporting thresholds and as a result unlawfully weaken TRI data reporting requirements,” and asks EPA to invalidate the regulations. Other states joining the lawsuit filed in U.S. District Court for the Southern District of New York are: Arizona, California, Connecticut, Illinois, Maine, Massachusetts, Minnesota, New Hampshire, New Jersey, Pennsylvania, and Vermont. Plaintiffs’ claim the rulemaking process for the 2006 regulations was arbitrary and capricious because EPA declined to provide adequate explanation for changing its reporting thresholds.

EPA Issues Endocrine Disruptor Screening Program Draft Policies And Procedures For Initial Screening -- On December 13, 2007, EPA announced the availability of and solicited public comment on draft policies and procedures for initial screening under its Endocrine Disruptor Screening Program (EDSP). 72 Fed. Reg. 70842. The document provides specific details on the policies and the related procedures that EPA is considering adopting for initial screening under the EDSP. The document also discusses the statutory requirements associated with and format of the test orders, as well as EPA’s procedures for fair and equitable sharing of test costs and data confidentiality. EPA intends to hold a public meeting to discuss these policies and procedures. A separate *Federal Register* document announced the details of the public meeting. Comments must be received on or before **February 11, 2008**.

EPA Issues Final Rule On Pesticide Tolerance Crop Grouping Program -- On December 7, 2007, EPA issued a final rule revising the pesticide tolerance crop grouping regulations. Crop grouping allows tolerances to be established for multiple related crops based on data from a representative set of crops. 72 Fed. Reg. 69150. The revisions will create a new crop group for edible fungi (mushrooms), expand existing crop groups by adding new commodities, establish new crop subgroups, and revise the representative crops in some groups. Additionally, EPA revised the general crop group regulation to explain how EPA will implement revisions to crop groups. EPA expects these revisions to promote greater use of crop groupings for tolerance-setting purposes and, in particular, assist in retaining or making pesticides available for minor crop uses. This is the first in a series of planned crop group updates expected during the next several years. This final rule was effective on December 7, 2007.

GAO Issues Report On TRI Efforts -- On December 13, 2007, the Government Accountability Office (GAO) issued a report claiming that EPA did not follow key steps in Agency guidelines designed to ensure that it conducts appropriate scientific, economic, and policy analyses and



receives adequate input from relevant program offices before issuing a major rule in 2006, to expand Form A eligibility for certain facilities and chemicals.

This occurred, in part, because EPA expedited the rulemaking process in an effort to meet a commitment to the Office of Management & Budget (OMB) to provide burden reduction by the end of 2006. The schedule did not allow EPA to meet the guideline's provisions to complete economic analyses; evaluate the costs and benefits of the changes; or seek adequate input from EPA program offices that rely heavily on TRI data. For example, although EPA held a Final Agency Review for program offices to state their position on the proposed rule, the review package did not include the burden reduction option, and supporting analysis, that was proposed and adopted.

The report, *EPA Actions Could Reduce Environmental Information Available to Many Communities*, concluded that, while EPA estimated that its rule would affect reporting on less than 1 percent of the total release pounds nationwide, this aggregate national estimate masked the disproportionately large impact the rule would have on individual communities across the country. GAO's analysis indicated that EPA's rule would allow more than 3,500 facilities to no longer report detailed information about their toxic chemical releases and waste management practices. As a result, more than 22,000 of the nearly 90,000 TRI reports could no longer be available to hundreds of communities in states throughout the country. In addition, many commenters, including the Attorneys General of 12 states and EPA's Science Advisory Board, stated that the changes will significantly reduce the amount of useful TRI information. The report is available at <http://www.gao.gov/new.items/d08128.pdf>.

EPA Updates Registration Review Schedule -- EPA announced on November 21, 2007, the availability on its website of an updated schedule for the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) registration review program for fiscal years (FY) 2008-2011. Individual schedules are provided for conventional, antimicrobial, biochemical, and microbial pesticides. 72 Fed. Reg. 65574. The schedules and related information are available at http://www.epa.gov/oppsrrd1/registration_review/schedule.htm. These revised schedules update those published on October 11, 2006. EPA plans to meet the mandate in FIFRA Section 3(g), as amended by PRIA 2, to review all registered pesticides every 15 years to confirm that the products continue to meet the statutory standard for registration. PRIA 2 specifically requires EPA to complete registration review decisions by October 1, 2022, for all pesticides registered as of October 1, 2007. PRIA 2 also provides for the continuation of annual pesticide maintenance fees and authorizes their use for registration review. With the published schedules, EPA sets a timetable according to which it will open dockets for registration review of individual pesticides and cases (pesticides grouped because of similar chemical structure or for other reasons). Pesticides and cases are listed chronologically by baseline date. EPA states that in these first years of the registration review program, it will be building the capacity to make approximately 70 decisions each year. EPA states that it expects to review a total of 722 pesticide cases



comprising 1,135 pesticide active ingredients by 2022. To date, EPA has opened dockets for 25 pesticide cases. On August 9, 2006, EPA published the procedural regulations for the registration review program. These regulations became effective on October 10, 2006. Our August 4, 2006, memorandum on the final registration review regulations is available at <http://www.lawbc.com/updates/080406-fifra.pdf>.

EPA Disbands NPPTAC -- EPA announced on November 28, 2007, that it has decided to disband the National Pollution Prevention and Toxics Advisory Committee (NPPTAC). NPPTAC served as an independent advisory body to the Office of Pollution Prevention and Toxics (OPPT), advising EPA on the High Production Volume (HPV) Challenge Program, chemical risk assessments, nanotechnology, and many other issues. Assistant Administration Gulliford reportedly decided to close the NPPTAC largely due to several resignations from the committee. Gulliford also stated that OPPT will utilize a range of approaches to obtain stakeholder input instead of reconstituting the NPPTAC. These stakeholder input activities will include issue-specific individual stakeholder consultations, conferences, and meetings.

CAA/CWA/SDWA/ESA

EPA Issues ANPR On Lead NAAQS -- On December 5, 2007, EPA signed off on an advance notice of proposed rulemaking (ANPR) in connection with its ongoing review of national ambient air quality standards (NAAQS) for lead. EPA seeks public comment to assist EPA as it considers the adequacy of the current lead NAAQS and on any revisions of the lead NAAQS that may be appropriate. Comments will be due within 30 days of the notice's publication in the *Federal Register*.

EPA Issues Final Rule For VOCs In Aerosol Spray Paint -- On November 16, 2007, EPA issued final amendments to the standards of performance for equipment leaks of volatile organic compounds (VOC) in the synthetic organic chemicals manufacturing industry and to the standards of performance for equipment leaks of VOCs in petroleum refineries. 72 Fed. Reg. 64860. The amended standards for the synthetic organic chemicals manufacturing industry apply to affected facilities that are constructed, reconstructed, or modified after January 5, 1981, and on or before November 7, 2006. The amended standards for petroleum refineries apply to affected facilities that are constructed, reconstructed, or modified after January 4, 1983, and on or before November 7, 2006. EPA also issued new standards of performance for equipment leaks of VOCs in the synthetic organic chemicals manufacturing industry and for equipment leaks of VOCs in petroleum refineries which apply to affected facilities that are constructed, reconstructed, or modified after November 7, 2006. The final amendments and new standards are based on the results of EPA's review of the existing regulations as required by Clean Air Act (CAA) Section 111(b)(1)(B). Exempt from the final rule are manufacturers that make limited quantities of aerosol spray paints, or those spray paints that contain a total VOC content of no more than 7,500 kilograms annually. EPA made it clear that the exemption does not preclude



these manufacturers from complying with applicable local and state laws. Foreign manufacturers selling paint in the United States may qualify for the small quantity manufacturer exemption provided they agree to the annual reporting requirements for small businesses. Compliance with this final rule will require manufacturers and processors to use best available controls, whereas distributors will have to meet labeling requirements. The rule was immediately effective.

EPA Proposes Residual Risk Reviews For Eight Source Categories -- On December 12, 2007, EPA announced a proposed rule and requested comment on the residual risk and technology reviews for eight industrial source categories regulated by four national emission standards for hazardous air pollutants (NESHAP). 72 Fed. Reg. 70543. The eight industrial source categories and the four national emission standards are: polysulfide rubber production; ethylene propylene rubber production; butyl rubber production; neoprene production; epoxy resins production; non-nylon polyamides production; acetal resins production; and hydrogen fluoride production. EPA proposed that no revisions to the national emission standards regulating the eight source categories listed above are required at this time under CAA Sections 112(f)(2) or 112(d)(6). Comments must be received on or before **February 11, 2008**.

NANOTECHNOLOGY

EFSA Begins Review Of Nanotechnology -- The European Food Safety Authority (EFSA) met the week of November 19, 2007, to begin reviewing the regulation and risk assessment of nanotechnology. The European Commission (EC) issued a mandate for a complete evaluation by **March 31, 2008**, but EFSA responded that, because of the range of differing properties and safety profiles, it will not be able to complete its review by this deadline. EFSA instead proposed to issue an initial scientific opinion by **Summer 2008**. EFSA intends to create a working group of 10 to 15 scientific experts. The Scientific Committee held its first discussion on the EFSA working strategy on November 19-20, 2007.

Congressional Nanotechnology Caucus Holds Briefing -- On November 19, 2007, the Congressional Nanotechnology Caucus held a briefing on "Nanotechnology and Environment, Health & Safety Issues." The panel of speakers included Vicki Colvin, Ph.D., Professor of Chemistry and Chemical Engineering, Center for Biological and Environmental Nanotechnology, Rice University; Andrew Maynard, Ph.D., Chief Science Advisor, Project on Emerging Nanotechnologies (PEN), Woodrow Wilson International Center for Scholars; and Pat Casano, Counsel for Environmental, Legislative, and Regulatory Affairs, General Electric. The panel discussed the environmental, health, and safety implications of nanotechnology.

ED Suggests Potential Model For Restructuring NNI -- On November 19, 2007, Environmental Defense (ED) issued a press release that states that the National Nanotechnology Initiative (NNI) is not effectively addressing the potential risks of nanotechnology, and that a potential model for



resolving the conflict between NNI's dual charges both to promote and oversee the technology could be drawn from the Atomic Energy Commission (AEC). Like the NNI, the AEC, first established in 1946, was tasked with both encouraging the development and use of nuclear power and regulating its safety. Concerns about this dual charge led Congress to abolish the AEC in 1975, and to assign its risk research and oversight functions to a new entity, the Nuclear Regulatory Commission. In the press release, ED suggests that an entity within NNI, "either newly formed or significantly elevated in status," could be given independent budgetary and management authority, responsibility, accountability, and resources to develop and direct the overall federal nanomaterial risk research strategy. More information is available at <http://www.environmentaldefense.org/pressrelease.cfm?contentID=7346>.

Australia And New Zealand Food Standards Agency Begins Review Of Nanotechnology -- In a recent speech at the 9th Annual Food Regulation and Labeling Standards Conference, Steve McCutcheon, CEO of Food Standards Australia New Zealand (FSANZ), said that FSANZ has begun analyzing the potential implications of nanotechnology on the food supply chain. FSANZ hopes that, by the time it receives its first application to approve the use of the technology in food, it will already have sufficient scientific and medical information to make an informed decision. The text of the speech is available on the Internet at <http://www.foodstandards.gov.au/newsroom/speeches/speeches2007/chiefexecutiveoffice3777.cfm>.

OECD Announces Launch Of Nanomaterials Testing Program -- On December 4, 2007, the Organization for Economic Cooperation and Development (OECD) posted a notice entitled "Testing a Representative Set of Nanomaterials -- The Launch of a Sponsorship Programme." OECD states that its Working Party on Manufactured Nanomaterials has launched a sponsorship program in which countries will share the testing of specific nanomaterials. According to OECD, valuable information on the safety of manufactured nanomaterials can be derived by testing a representative set for human health and environmental safety. In launching the sponsorship program, the Working Party agreed to a priority list of manufactured nanomaterials for testing, based on materials which are in or close to commerce, as well as a list of endpoints for which they should be tested. OECD intends to make regular updates on this program. More information is available on the Internet at http://www.oecd.org/topic/0,2686,en_2649_34365_1_1_1_1_37465,00.html.

EC Hosts Debate On Governance And Nanotechnology -- On December 5, 2007, the EC held a workshop entitled "Debate on Governance Initiatives for the European Nanotechnology Community in the Public and Private Sectors." Participants considered two proposed Codes of Conduct: (1) the Responsible Nano Code, which was developed by a working group organized in late 2006 by The Royal Society, the United Kingdom's (UK) national academy of science, in conjunction with Insight Investment, the Nanotechnology Industries Association, and the UK government-sponsored Nanotechnology Knowledge Transfer Network; and (2) the EC's proposed Responsible Research in Nanosciences and Nanotechnologies. BASF discussed its



experience working with its own internal code. Other workshop presentations explored the legal aspects of codes of conduct and their application by small and medium-sized enterprises. Dr. Andrew Maynard, Woodrow Wilson International Center for Scholars PEN, reviewed the U.S. experience. More information is available on the Internet at ftp://ftp.cordis.europa.eu/pub/nanotechnology/docs/agenda_codeevent.pdf.

The EC intended the workshop to bring together businesses, academics, and non-governmental organizations involved with nanotechnologies, and to allow significant time for discussion and debate. More information on the Responsible Nano Code is available at <http://www.responsiblenanocode.org/>. The EC's consultation paper regarding Responsible Research in Nanosciences and Nanotechnologies is available at http://ec.europa.eu/research/consultations/pdf/nano-consultation_en.pdf.

Draft CIB On Medical Screening Of Workers Potentially Exposed To Nanoparticles Available For Comment -- On December 12, 2007, the National Institute for Occupational Safety and Health (NIOSH) announced the availability of the draft Current Intelligence Bulletin (CIB) entitled "Interim Guidance on Medical Screening of Workers Potentially Exposed to Engineered Nanoparticles." 72 Fed. Reg. 70598. NIOSH will hold a public meeting on the draft CIB on **January 30, 2008**. The meeting will include scientists and representatives from various government agencies, industry, labor, and other stakeholders, and is open to the public, limited only by the space available. Because the meeting room accommodates only 80 people, NIOSH must receive notification of intent to attend the meeting no later than **January 18, 2008**. Persons wanting to provide oral comments at the meeting are requested to notify NIOSH no later than **January 11, 2008**. NIOSH will give priority for attendance to those providing oral comments. NIOSH will then accommodate other requests to attend the meeting on a first-come basis. Comments on the draft CIB are due **February 15, 2008**.

According to the December 12, 2007, *Federal Register* notice, during the meeting, NIOSH will place special emphasis on discussion of the following:

- (1) Do the data support the conclusions of the document?
- (2) Are the conclusions appropriate in light of the current understanding of toxicological data?
- (3) Is medical surveillance appropriate at this time for workers with potential exposure to engineered nanoparticles; if so, what form(s) of medical surveillance are specific for such workers?



- (4) What are the potential benefits, adverse impacts, and limitations of medical screening of workers potentially exposed to engineered nanoparticles?
- (5) What are the potential benefits, adverse impacts, and limitations of establishing an exposure registry for workers exposed to engineered nanoparticles?

More information is available at <http://www.cdc.gov/niosh/review/public/115/>. The draft CIB is available at <http://www.cdc.gov/niosh/review/public/115/PDFs/DRAFTCIBExpEngNano.pdf>.

FDLI And PEN Will Cosponsor First Annual Conference On Nanotechnology Law, Regulation, And Policy -- The Food and Drug Law Institute (FDLI) and the Woodrow Wilson International Center for Scholars PEN will hold a conference on **February 28-29, 2008**, on “Nanotechnology Law, Regulation and Policy.” Questions addressed during the conference will include:

- How is the Food and Drug Administration (FDA) going to implement its Nanotechnology Task Force Report?
- How is the Occupational Safety and Health Administration going to deal with nanotech issues in the workplace?
- Is Congress ready to act on nanotechnology if federal regulators do not?
- What first and second generation nanotechnology products are already on the market, and what is to come?
- Do Europe and Asia approach nanotechnology safety and oversight differently than the United States?
- When it comes to nanotechnology, should size make a regulatory difference?

More information is available at <http://fdli.org/conf/431/>.

FDA

FDA Appoints David Acheson CFSAN Director -- FDA has appointed Dr David Acheson as a new Interim Director for its Center for Food Safety and Applied Nutrition (CFSAN), to keep up strong leadership at a time of heightened focus on food safety. Dr. Acheson is currently



Assistant FDA Commissioner for Food Protection, a post he will retain when he assumes the leadership role at CFSAN.

REACH

Member States Will Meet To Discuss The Draft Guidance For The Preparation Of The Chemical Safety Report -- On December 19-20, 2007, the EC and the competent authorities in the 27 European Union Member States will meet to discuss the latest version of the draft *Guidance for the Preparation of the Chemical Safety Report*. Under the Registration, Evaluation, Authorization and Restriction of Chemicals (REACH) regulation, a chemical safety assessment must be undertaken and a chemical safety report (CSR) submitted as part of a registrant's registration dossier for any chemical manufactured or imported at or above a level of 10 metric tons per year. Detailed guidance on CSRs is being developed through REACH Implementation Project 3.2-2. According to the European Chemicals Agency (ECHA), the final guidance on CSRs should be available on the ECHA website in early 2008.

LEGISLATIVE DEVELOPMENTS

Senate Approves Energy Bill; House To Vote Next -- On December 13, 2007, the Senate passed a revised energy bill (H.R. 6) that raises fuel mileage standards and boosts the use of renewable fuels for transportation. The approved bill is a version scaled back to garner the Bush Administration's approval, and now the House must vote on the bill.

Before the Senate vote, on December 6, 2007, the House of Representatives passed energy legislation that included the first congressional mandate for higher vehicle fuel economy standards since 1975. The House voted 235-181 to approve compromise legislation that House and Senate Democrat leaders drafted and which combines elements of House and Senate energy bills approved earlier in 2007. The Senate, however, lacked sufficient votes to overcome a Republican filibuster, leading to revised legislation. Senate Democrats dropped a \$22 billion, ten-year tax package that had prompted strong Bush Administration opposition and a Republican filibuster, which Senator Pete Domenici (R-NM) led. The House is expected to approve the new measure and to send it to the President.

A key component of the bill, in addition to the fuel economy standards provision, is a five-fold increase in the renewable fuels mandate for ethanol and advanced fuels blended in gasoline to 36 billion gallons by 2022. The bill also includes expanded energy efficiency requirements for the federal government and the commercial sector, in addition to higher appliance standards and a streamlined rulemaking process that have been long-sought goals of conservation and consumer advocates. Democrats were forced to drop provisions related to tax increases on the oil and gas industry and a national renewable electricity mandate on utilities.



Bill Would Increase Review Of Regulatory Burdens -- The House Small Business Committee on December 13, 2007 approved the Small Business Regulatory Improvement Act (H.R. 4458), a bill that would require federal agencies to conduct more extensive analyses of the impact of regulations on small businesses. The bill, which Representative Brad Ellsworth (D-IN) sponsored, would add new requirements for agencies under the Regulatory Flexibility Act (P. L. 96-354), legislation enacted in 1980 that mandates federal agencies consider the potential impact of regulations on small businesses. The bill would make three major changes to the Regulatory Flexibility Act. While existing law requires agencies to consider direct economic impacts of regulatory activity on small businesses, the bill would require that agencies also gauge indirect impacts. In addition, the measure would require federal agencies to conduct a periodic review of all their regulations to determine whether they should be continued, modified, or eliminated altogether. The bill would also codify Executive Order 13272, which President Bush issued in 2002, and which requires agencies to notify the Small Business Administration of draft rules that are expected to have a significant economic impact on a large number of small businesses.

House Approves Conference Report Of Bill Addressing Defense Department Impact On Climate -- On December 12, 2007, the House of Representatives approved a conference report on the FY 2008 defense authorization bill (H.R. 1585) that includes a provision requiring the Department of Defense to assess the effects of climate change on current and future military operations. The provision would require the Defense Department to include consideration of risks posed by climate change in its review of current and future missions of the U.S. Armed Forces. It also would direct the Department to work with U.S. allies on strategies for mitigating the effects of climate change and for conducting related research and development.

Senate Approves Bill Addressing Methamphetamine Lab Cleanups -- On December 11, 2007, the Senate approved a bill designed to help communities clean up buildings that have housed methamphetamine laboratories. The Methamphetamine Remediation Act of 2007 (H.R. 365) would require that EPA develop model, voluntary, health-based cleanup guidelines for use by states and local governments to make sure the sites of former labs are safe and livable. The House of Representatives approved the bill on February 7, 2007, and it now goes to President Bush for his signature to become law.

Bill Would Require EPA To Regulate Future Carbon Credit Markets -- Senator Dianne Feinstein (D-CA) introduced legislation on December 6, 2007, that would establish federal oversight of new markets for trading carbon emissions allowances. The measure is designed to prevent fraud and manipulation in greenhouse gas emissions markets that are expected to develop if Congress approves comprehensive climate change legislation that includes a cap-and-trade system for the trading of emissions allowances, also called credits. The bill would establish transparency and anti-manipulation provisions modeled after energy market protections that were created by the Energy Policy Act of 2005 (Pub. L. No. 109-58). Specifically, the bill would require EPA to create a regulatory structure to oversee the new carbon credit markets that



would be parallel to the system used by the Federal Energy Regulatory Commission for the electricity and natural gas markets. Under the bill, EPA would have to publish price data to increase market transparency, monitor trading for manipulation and fraud, and enforce position limits or position accountability levels to prevent excessive speculation.

Senate Environment Committee Approves Cap-And-Trade Legislation -- The Senate Environment and Public Works Committee approved legislation (S. 2191) on December 5, 2007, to cap U.S. greenhouse gas emissions at 70 percent of 2005 emissions by 2050. Despite the opposition of all but one of the Republicans, Senator John Warner (R-VA), co-sponsor of the bill, predicted that enough Republicans would support the bill to provide the 60 votes needed to break a filibuster. The bill would reduce greenhouse gas emissions through the use of tradable emissions allowances. The bill as amended by the chairman's substitute would auction 22.5 percent of the allowances in 2012, rising to 70.5 percent in 2031.

The Committee adopted an amendment to the bill that Senator Lamar Alexander (R-TN) offered. This Alexander amendment would lead to the development of a low-carbon fuels standard, creating an incentive for biofuels. The Committee rejected in a 7-12 vote an amendment Senator Bernie Sanders (I-VT) offered, which was intended to make the greenhouse gas reductions required under the bill more stringent. The "Sanders" amendment would have required an 80 percent reduction in greenhouse gas emissions from 1990 levels by 2050.

Farm Bill Extension Legislation -- Representative Jerry Moran (R-KS) introduced legislation on November 15, 2007, to extend the 2002 Farm Bill by one year. The extension was necessary because the Senate remained stalled on the 2007 agricultural policy legislation (H.R. 2419), which drives policy at the U.S. Department of Agriculture and sets funding levels for conservation and agriculture-related programs. In an effort to move the stalled legislation, a number of Senators have offered over 40 amendments to the legislation. Senator Pete Domenici (R-NM) introduced an amendment that includes language from the Senate energy bill (H.R. 6) that would require a five-fold increase in the 2005 renewable fuels standard to 36 billion gallons by 2022, starting at 8.5 billion gallons in 2008. If the Senate approves this language in its latest version of an energy bill, the farm bill provision could be removed in the eventual House-Senate conference on the farm bill. Senator Ken Salazar (D-CO) offered an amendment to amend the Internal Revenue Code of 1986 to provide incentives for the production of all cellulosic biofuels. The underlying bill includes a tax credit equivalent to \$1.28 a gallon to boost production of cellulosic ethanol. The amendment changes "cellulosic alcohols" to "cellulosic biofuels."

Bills Would Expand Federal Climate Research Efforts -- The Senate Commerce, Science, and Transportation Committee approved three bills on December 4, 2007, that would expand federal research on climate change and its potential impacts on humans and the environment. The Committee approved the Federal Ocean Acidification Research and Monitoring Act of 2007 (S.



1581), the Climate Change Adaptation Act (S. 2355), and the Global Change Research Improvement Act of 2007 (S. 2307).

S. 2307, sponsored by Senators John Kerry (D-MA) and Olympia Snowe (R-ME), would revamp the U.S. Global Change Research Program by tailoring more research to state and local issues and would establish a new National Climate Service within the National Oceanic and Atmospheric Administration (NOAA) to provide climate change forecasting on a regular basis and set up a permanent network for delivery of such information. The bill would require updated assessments every four years; under the current program, no such assessment has been published since October 2000. The Senate bill mirrors a House proposal (H.R. 906) that Representative Mark Udall (D-CO) introduced, which also calls for revising the U.S. climate change research program.

The Senate Committee also approved the Climate Change Adaptation Act (S. 2355). This bill, which Senator Maria Cantwell (D-WA) sponsored, would direct the President to provide Congress with a five-year national strategic plan to address the impacts of climate change within the United States. S. 2355 also would direct the Secretary of Commerce to conduct regional assessments of the vulnerability of coastal and ocean areas to hazards associated with climate change, and these assessments would be used to formulate a national coastal and ocean adaptation plan within three years of the bill's enactment.

The Federal Ocean Acidification Research and Monitoring Act of 2007 (S. 1581) would establish an interagency committee to develop a research and monitoring plan on ocean acidification and its effect on marine ecosystems. The NOAA ocean acidification program would seek to improve understanding of how atmospheric carbon dioxide affects ocean chemistry, according to the bill. A companion bill (H.R. 4174) is currently before the House Committee on Science and Technology.

Congress Passes U.S.-Peru Trade Bill -- On December 4, 2007, the Senate approved implementing legislation (H.R. 3688) for the U.S.-Peru Free Trade Agreement, which includes provisions on environmental protection and labor standards. Under the agreement, both the United States and Peru must enforce key multilateral environmental agreements. The House of Representatives approved the measure on November 8, 2007, so the measure is now ready for President Bush to sign into law.

Under the U.S.-Peru agreement, both countries would be barred from weakening their environmental laws to attract trade or investment in a race to the bottom. The agreement also contains provisions prohibiting trade in illegally logged wood and wood products.



MISCELLANEOUS

FTC Considers Revising Green Guides -- The Federal Trade Commission (FTC) announced on November 27, 2007, that it is considering revising its guidelines on environmental marketing claims in the sale of carbon offsets and renewable energy certificates (REC). 72 Fed. Reg. 66094. In the notice, FTC requests comments on whether it should update its “Green Guides” -- formally known as the Commission’s *Guides for the Use of Environmental Marketing Claims* -- which have not been revised since 1998 and do not cover the relatively new markets for carbon offsets and RECs. Carbon offsets are credits that consumers, businesses, and government agencies can buy to compensate for the global warming emissions. RECs allow entities to purchase electricity from wind power and other renewable sources, with the amount of power represented by certificates that can be purchased and traded in emissions trading markets as a commodity. Written comments relating to the Green Guides review must be received by **February 11, 2008**.

In a separate notice, FTC announced it has scheduled a workshop for **January 8, 2008**, to examine the emerging market for carbon offsets and RECs and their related advertising claims. 72 Fed. Reg. 66091. The workshop is to be held at FTC’s Satellite Building Conference Center in Washington, D.C. The workshop will be a component of the Commission’s regulatory review of the *Guides for the Use of Environmental Marketing Claims*. The Commission invites interested parties to comment on issues related to the workshop. Please refer to the *Federal Register* notice for a discussion on the various issues. Any written comments related to the workshop must be received by **January 25, 2008**.

EPA Launches Chinese Environmental Law Website -- EPA announced on November 30, 2007, a website intended to strengthen the legal framework for environmental protection in China. Launched by Roger Martella, EPA’s General Counsel, the EPA-China Environmental Law Initiative website will provide a forum for sharing information and fostering an ongoing dialogue with China. EPA noted that China suffers from severe environmental problems. The website, which is available at http://www.epa.gov/ogc/china/initiative_home.htm, features information on new developments in Chinese environmental law, links to legal resources such as reports, articles, the English text of many Chinese environmental laws, and an e-mail update service.

EPA Schedules Meeting On Compliance -- EPA has scheduled a meeting to discuss research on compliance with environmental regulations and voluntary efforts, including environmental management systems. The meeting will be held on **January 14-15, 2008**, in New York City, and is organized by EPA’s National Center for Environmental Research. Research presentations will include behavioral changes in response to environmental information disclosures, such as TRI, eco-labeling programs, and air quality warnings. EPA also stated that the meeting will consist of a series of presentations by researchers from the Center’s Science to Achieve Results



(STAR) grant program, other EPA offices, and universities. EPA said the meeting is open to all who are interested in this research area. More information is available at <http://es.epa.gov/ncer/events/#jan1408>.

IARC Outlines Plans For 100th Monograph -- The World Health Organization's International Agency for Research on Cancer (IARC) recently released plans for the preparation of its historic 100th monograph. IARC will examine pharmaceutical agents, biological agents, metals, radiation, lifestyle factors, and chemicals that have previously been classified as causing cancer, or likely to cause cancer, in humans. IARC also issued a call for experts who want to serve on panels that are reviewing agents for the monograph. Nominations are due **January 2, 2008**. IARC organizes meetings at which scientists review scientific information about types of exposures and determine whether the data suggest the exposure is "carcinogenic to humans," "probably carcinogenic to humans," "possibly carcinogenic to humans," "not classifiable," or "probably not carcinogenic to humans." The 100th monograph will review these classifications and provide an updated "key reference for scientific information about the agents that are known to cause cancer in humans." Due to the volume of exposures that will be reviewed, the 100th volume will contain fewer details on each agent. IARC announced the following agents would be reviewed at the following meetings in Lyon, France: pharmaceuticals (October 14-21, 2008); biological agents (February 24 – March 3, 2009); metals, particles, and fibers (March 17-24, 2009); radiation (June 2-9, 2009); lifestyle factors (September 29 – October 6, 2009); and chemical agents and manufacturing and other occupations where workers may be exposed to chemicals (October 20-27, 2009).

EPA Issues Its Regulatory Agenda -- On December 10, 2007, EPA published the Semiannual Regulatory Agenda. 72 Fed. Reg. 70118. The Regulatory Agenda updates the public about regulations and major policies currently under development; reviews of existing regulations and major policies; and rules and major policymakings completed or canceled since the last agenda. The Regulatory Agenda is available at <http://www.reginfo.gov> (and also at <http://www.regulations.gov>).

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