

# **REGULATORY REPORT**

Roger Stegeman

[roger.stegeman@sweci.com](mailto:roger.stegeman@sweci.com)

## **I. Federal Highway Administration**

### **National Standards for Traffic Control; the Manual on Uniform Traffic Control Devices for Streets and Highways; Final Rule**

On December 16, 2009, the Federal Highway Administration issued a final rule to revise standards, guidance, options and supporting information relating to the traffic control devices in all parts of the Manual on Uniform Traffic Control Devices. The effective date of the rule was January 15, 2010. In Section 6D.03 Worker Safety Considerations, the FHWA proposed to incorporate into the MUTCD the provisions of 23 CFR 634 regarding the use of high-visibility safety apparel by workers within the public right-of-way. The provision applies to emergency workers and that exposure of workers to “work vehicles” with temporary traffic control zone also requires the use of high-visibility safety apparel. The Federal Highway Administration establishes December 31, 2011 for worker apparel on non-Federal-aid-highways. Required compliance of apparel for workers, including law enforcement officers, on Federal-aid-highways has been in effect since November 24, 2008. Class 2 or 3 garments comply with Class 2 garments required and Class 3 garments recommended for night use.

## **II. Unified Carrier Registration**

A Notice of Proposed Rulemaking from the Federal Motor Carrier Safety Administration came out on September 3, 2009, establishing annual registration fees for the calendar year 2010. The final rule then came out on April 27, 2010.

## **III. Environmental Protection Agency**

There has been a lot of action at EPA in the past year. A few of the highlights by sector are:

### **Division of Air**

#### **Mandatory Reporting of Greenhouse Gases; Final Rule**

On October 30, 2009 EPA issued a final rule mandating the reporting of greenhouse gas emissions from all sectors of the economy. This includes electric generation. The rule requires annual reporting of carbon dioxide (CO<sub>2</sub>),

methane (CH<sub>4</sub>), nitrous oxide (N<sub>2</sub>O), sulfur hexafluoride (SF<sub>6</sub>), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), and other fluorinated gases. It includes provisions to ensure the accuracy of emissions data through monitoring, recordkeeping and verification requirements.

### **Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act; Final Rule**

On December 15, 2009, the Environmental Protection Agency issued a final rule stating that six greenhouse gases taken in combination endanger both the public health and the public welfare of current and future generations. The greenhouse gases are: carbon dioxide (CO<sub>2</sub>), methane (CH<sub>4</sub>), nitrous oxide (N<sub>2</sub>O) hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), and sulfur hexafluoride (SF<sub>6</sub>).

### **Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule; Final Rule**

In a press release on May 13, 2010, the Environmental Protection Agency announced a final rule that, they say, establishes a common sense approach to addressing greenhouse gas emissions from stationary sources under the Clean (CAA) permitting programs.

The Federal Register containing the rule was printed June 3, 2010, entitled Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule. The effective date of the rule is August 8, 2010. The rule will be “phased in” in three parts. Phase I will begin on January 2, 2011, PSD or title V requirements will apply to sources’ greenhouse gas emissions only if the sources are subject to PSD or title V anyway due to their non-GHG (greenhouse gas) emissions.

The second step of the rule will begin July 1, 2011, and will phase in additional large sources of GHG emissions not already subject to Title V. New sources as well as existing sources not already subject to Title V that emit, or have the potential to emit, at least 100,000 tpy carbon dioxide equivalent will become subject to PSD and Title V requirements.

In the third step EPA intends to issue a supplemental notice of proposed rulemaking in 2011, in which they will propose or solicit comment on a third step of the phase-in that would include more sources, beginning by July 1, 2013. They also say that in the same rulemaking they will solicit comment on permanent exclusion from permitting for some category of sources.

## **Division of Land**

### **Polychlorinated Biphenyls (PCBs); Reassessment of Use Authorizations**

On April 7, 2010, the Environmental Protection Agency issued an Advanced Notice of Proposed Rulemaking that discusses the plans to reduce the number of ways PCBs are used and to eventually phase out all PCBs by 2025. One of the concerns is that EPA is under the impression that companies know the location of PCB equipment. In EPAs' view, "In the public comments provided during the 1979 rulemaking, electrical equipment owners stated that they did not know where PCB-containing equipment was located. In the 30 years since, EPA believes that it would have been prudent for owners to implement a plan during that time to locate any regulated equipment."

## **Division of Water**

### **Oil Pollution Prevention; Spill Prevention, Control, and Countermeasure (SPCC) Rule-Amendments; Final Rule**

November 13, 2009, EPA codified the Oil Pollution Prevention: Spill Prevention, Control, and Countermeasure (SPCC) Rule-Final Rule. The owner/operator of a TIER I qualified facility has the option to complete a self-certified SPCC plan template (found in Appendix G to 40 CFR 112) in lieu of a full SPCC plan. "Once completed and certified by the owner or operator, the Plan template serves as the SPCC for the facility," according to the final rule. In a proposed rule that appeared in the Federal Register on Tuesday, August 3, 2010, the EPA propose to amend the date by which certain facilities must amend their SPCC plans.

## **IV. Occupational Safety and Health Administration**

### **Updating OSHA Standards Based on National Consensus Standards; Personal Protective Equipment**

On September 9, 2009, OSHA issued a final rule to revise the personal protective equipment sections of its general industry, shipyard equipment, longshoring, and marine terminals standards regarding requirements for eye and face protection devices, head protection, and foot protection.

OSHA revised the text of the final rules to allow employers to meet the design requirements of its PPE standards by using PPE constructed in accordance with any of three national consensus standards and the national consensus standard incorporated in the current OSHA standard. OSHA is also allowing employers to use PPE that is not manufactured in accordance with one

of the listed consensus standards if the employer can demonstrate that the PPE it selects is as protective as PPE constructed in accordance with one of the incorporated consensus standards.

The additions revised standard 1910.133 Eye and face protection to include reference to ANSI Z87.1-2003, standard 1910.135 Head protection to include ANSI Z-89.1-2003 and 1910.136 Foot protection to include ASTM F-2412-2005.

## **Occupational Injury and Illness Recording and Reporting Requirements**

On January 29, 2010, OSHA issued a proposed rule to revise its Occupational Injury and Illness Recording and Recordkeeping regulation to restore a column to the OSHA 300 Log that employers would use to record work related musculoskeletal disorders. The 2001 Recordkeeping final regulation included an MSD column, but the requirement was deleted before the regulation became effective.

OSHA believes the MSD column would provide valuable information for maintaining complete and accurate national occupational injury and illness statistics; assist OSHA in targeting its inspection, outreach, guidance, and enforcement effort to address MSDs; and to provide easily identifiable information at the establishment level that will be useful for both employers and employees.

## **Illness and Injury Prevention Program**

On Tuesday, May 4, 2010, OSHA issued a notice of stakeholder meetings to gather information in developing an Injury and Illness Prevention Program proposed rule.

OSHA says that based on their experience that I2P2 would include the following elements:

1. Management duties
2. Employee participation
3. Hazard identification and assessment
4. Hazardous prevention and control
5. Education and training
6. Program evaluation and improvement

## **Regulatory Flexibility Act Review of the Bloodborne Pathogens Standard**

OSHA is reviewing the need for the continued use of the Bloodborne Standard.

### **Cranes and Derricks in Construction; Final Rule**

November 8, 2010, is the effective date for the final rule for Cranes and Derricks in Construction which was printed in the Federal Register dated August 9, 2010. Among the obligations that will affect electric cooperative is to provide voltage information to employers using cranes within the vicinity of electric lines within two (working days) days of the request. When work is done in the vicinity of electric lines the coop may become involved up to the relocating of lines. In the preamble OSHA explains that they did not address the issue of fees. It goes on to say “the Agency determined that fees will generally be addressed as a contractual matter between the parties involved.”

Operators of digger derricks involved in general lifting will be covered by the rule so that they must become certified/qualified within four years from the effective date. Employers of the operators must train their employees in the interim period.

There will be periodic inspections that must be done on a daily, monthly and annual basis with retention periods for documentation.