After years of litigation, the United States Environmental Protection Agency (EPA) recently published revised national emission standards for hazardous air pollutants (NESHAP) for large boilers and process heaters. The new emissions limits will be lower for many categories of boilers, potentially giving rise to significant capital and long-term operating costs.

The rules, known as the NESHAP for Industrial, Commercial, and Institutional Boilers and Process Heaters, and commonly referred to as the “Boiler MACT,” were first published in 2013 and have since been the subject of three remands issued by the U.S. Court of Appeals for the D.C. Circuit, two in 2016 in *U.S. Sugar Corp. v. EPA*, and one in 2018 in *Sierra Club, et al. v. EPA*. The EPA is accepting comments on the new rules, published on July 8, 2020, for 60 days.

Significantly, to satisfy one remand, the EPA proposes 34 recalculated maximum achievable control technology (MACT) emission limits for certain subcategories of boilers. Under the new rules, 28 of those limits will become more stringent. The limits apply to boilers and process heaters in a variety of industries, including petroleum and natural gas extraction, petroleum refining, chemical manufacturing, pulp and paper mills, motor vehicle parts manufacturing, steel works, and electroplating.

While the 2013 rule was anticipated to impact approximately 1,800 boilers, the new rule is anticipated to impact approximately 450, with the difference in large measure attributable to the fact that boilers were switched to natural gas, and therefore are no longer subject to emissions limits for hazardous air pollutants (HAPs). Facilities will have up to three years after the rule becomes effective to comply with the new emissions limits.

The EPA estimates that the proposed rule will result in additional, annual nationwide reductions of 37.35 tons HAPs and 244 tons of particulate matter compared to the current rule. It estimates the total capital costs of the proposed amendments to be approximately US$83 million, and the total annualized costs to be approximately US$22 million. Those costs include costs for control devices, testing, and monitoring associated with the changes to the emission limits.

We will update this Alert after the final rule is published.
This memorandum is a summary for general information and discussion only and may be considered an advertisement for certain purposes. It is not a full analysis of the matters presented, may not be relied upon as legal advice, and does not purport to represent the views of our clients or the Firm. Eric B. Rothenberg, an O’Melveny partner licensed to practice law in Missouri and New York, and John Rousakis, an O’Melveny counsel licensed to practice law in New Jersey and New York, contributed to the content of this newsletter. The views expressed in this newsletter are the views of the authors except as otherwise noted.