

CLIENT ALERT

OSHA Introduces Voluntary Workplace Chemical Exposure Standards

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In late October, the Occupational Safety and Health Administration (OSHA) issued new voluntary standards for employee chemical exposures, stating that the current standards "are out-of-date and inadequately protective for the small number of chemicals that are regulated in the workplace." The new Annotated Permissible Exposure Limits, or annotated PEL tables, will provide an alternative set of limits in addition to the mandatory PELs that OSHA will continue to enforce.

The annotated PEL tables contain a side-by-side comparison of current OSHA limits, California OSHA limits (which are typically more stringent), and the new voluntary standards. The voluntary standards are based on recommended exposure limits set by the National Institute for Occupational Safety and Health (NIOSH) and threshold limit values (TLV) recommended by the American Conference of Governmental Industrial Hygienists (ACGIH).

Companies that make or use chemicals should review OSHA's new PELs and "toolkit"

In introducing the voluntary PELs, OSHA stated that "new scientific data, industrial experience and developments in technology clearly indicate that in many instances these mandatory limits are not sufficiently protective of workers' health." During a conference call announcing the program, OSHA admitted that one purpose of the annotated PEL tables is to encourage safer levels of exposure while avoiding the complex and time-consuming rulemaking process that would be required to update the mandatory standards.

OSHA has also introduced an online "toolkit" intended to assist companies in identifying safer chemicals that can be used in place of more hazardous ones. The toolkit is available [here](#), and joins the increasingly crowded field of alternatives assessment templates. The American Chemistry Council announced its support for both this toolkit and the annotated PELs, but raised concerns that the toolkit overly focuses on the substitution of chemicals at the expense of other methods of improving worker safety.²

How "voluntary" will these new standards really be?

OSHA's development of these voluntary standards could have major consequences for companies that manufacture and/or use chemicals regulated by OSHA:

First, OSHA's endorsement of voluntarily standards raises a host of issues that may soon be litigated in product liability cases involving worker exposure, including whether OSHA's voluntary standards are admissible into evidence and whether they can be used to demonstrate causation of worker injury in tort suits against product manufacturers.

Second, companies should consider revising their material safety data sheets (MSDS) or safety data sheets (SDS) to include all of the exposure levels in the annotated PEL tables. These documents typically contain any mandatory OSHA exposure levels and recommended ACGIH TLV. In order to avoid allegations that their SDS—and therefore the notice they provide to employers and

their workers—is inadequate, companies may now wish to include the California OSHA PELs and the NIOSH recommended exposure levels from the new OSHA tables. For employers with hundreds or thousands of chemicals, or many facilities with lots of SDS binders, this may create a substantial undertaking—especially for companies that recently revised their MSDS to comply with OSHA's switch to the Globally Harmonized System of Classification and Labeling of Chemicals (GHS).

OSHA's announcement is also an excellent opportunity for companies to review their OSHA-regulated chemical inventory, note where voluntary exposure limits are more stringent than mandatory limits, and consider whether safer alternative chemicals are available and feasible.

¹ See <http://www.americanchemistry.com/Media/PressReleasesTranscripts/ACC-news-releases/ACC-Offers-Recommendations-to-Improve-New-Worker-Safety-Tools-Released-By-OSHA.html>.

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