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CLIENT ALERT

OSHA Requests Stakeholder Input on Revamping Rules Governing Workplace Exposure to Chemicals

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On October 10, the Occupational Safety and Health Administration (OSHA) published a Request for Information (RFI) in the *Federal Register*, seeking input from the public on potential regulatory changes that, if adopted, would significantly impact how OSHA regulates exposure to chemicals in workplaces across the country. Indeed, the RFI anticipates no less than a wholesale revamping of OSHA's entire approach to regulating chemical exposures in the workplace, from alternative methods for developing new limits on worker exposure to chemicals, to new strategies for compelling employers to manage the safety and health impacts of those chemicals.

Employers who handle chemicals in the workplace should pay close attention to this RFI and consider commenting by the April 8, 2015 deadline.

By way of background, section 6(b) of the Occupational Safety and Health (OSH) Act, 29 U.S.C. § 655(b), authorizes OSHA to promulgate standards, called "permissible exposure limits" (PELs), that limit the levels of chemicals to which employees may be exposed. In 1971, shortly after the OSH Act was passed, OSHA established PELs for almost 500 chemicals thought to pose hazards to workers. Subsequent attempts to update the PELs, based on scientific data developed after 1971, have been largely unsuccessful. In 1989, OSHA proposed a comprehensive revision of the PELs, updating those already in place and adding new ones. Objections came from both industry and labor, and the proposed revisions were struck down in 1992 by the U.S. Court of Appeals for the Eleventh Circuit in *AFL-CIO v. OSHA*, 965 F.2d 962 (11th Cir. 1992).

The number of chemicals used daily in workplaces around the world far exceeds the current number of PELs. (Indeed, the American Chemistry Council estimates that about 8300 chemicals are in use in significant amounts.) OSHA states that it has revised or added only a handful of PELs since 1992 because it "has been given no new tools or increased resources to control workplace exposures, [yet] it has had to conduct increasingly complex analyses, which has effectively slowed the process."

OSHA's objective is ambitious: regulating workplace exposure to a far broader range of chemicals than it currently does while avoiding scientific deliberation on a chemical-by-chemical basis. One example of how it might accomplish this would be to group chemicals according to common characteristics (banding) and regulate exposures accordingly. To that end, the RFI reviews the methods OSHA currently uses to evaluate data pertaining to chemical risks and the feasibility of achieving lower exposure limits. It also discusses alternative methods to accomplish the same ends, including methods used by other federal agencies, such as NIOSH, and foreign entities like the European Union and the European Chemicals Agency. At bottom, the very notion of regulating exposure through PELs—either as they have historically been understood, or in new ways—is up for discussion.

The scope of the RFI, and the breadth of information on which OSHA solicits feedback, is so vast that it is impossible to predict what regulatory changes, if any, will ultimately be proposed as a result of this process. The RFI poses to the public more than 50 general questions, most containing many subparts, seeking information that will ostensibly inform the agency's approach to revamping its process for evaluating and regulating chemical exposure in the workplace. There is no question, however, that

employers who regularly handle chemicals in the workplace should pay careful attention to this RFI and consider submitting information by April 8, 2015, to be part of the record as the agency considers its next steps.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

Daniel W. Wolff
Partner – Washington, D.C.
Phone: +1.202.624.2621
Email: dwolff@crowell.com