



INSIGHTS JANUARY 2012 - REGULATORY AGENCIES

EXECUTIVE ORDER ON PELS SOUGHT

The Federal Advisory Committee on Occupational Safety and Health (FACOSH) wants to do an end run around the regulatory process to set more stringent occupational exposure limits (OELs) than required by law. At a meeting last month, the group, which advises OSHA on federal occupational safety and health matters, tabled a subcommittee proposal for the time being. The subgroup recommended that FACOSH ask the Administration to revise an executive order to require companies and their subcontractors to adopt the most protective OELs issued by a research or regulating body on federal projects. The OELs would have to be technologically and economically feasible and could be more stringent than what MSHA or OSHA now require.

Although FACOSH set aside the recommendations, OSHA chief Dr. David Michaels said OSHA would try and schedule a meeting to resolve wording differences. It is clear that Michaels, who called the effort “potentially a breakthrough,” enthusiastically backs the initiative.

The proposed action opens the door to consideration of NIOSH's recommended exposure limits (RELs), the American Conference of Governmental Industrial Hygienists' threshold limit values (ACGIH TLVs), the American Industrial Hygiene Association's workplace environmental exposure limits (WEELs), and others. None of these limits have gone through rulemaking.

Some stakeholders believe many existing regulatory exposure limits are obsolete. However, efforts by MSHA and OSHA to make wholesale changes ground to a halt after an OSHA initiative was struck down in court 20 years ago as non compliant with the OSHA statute. The OSHA proposal would have adopted many of ACGIH's TLVs. Patton Boggs participated in that litigation and later sued ACGIH, uncovering serious shortcomings in the TLV developmental process. TLVs are not consensus standards and are developed in private, closed meetings without transparent processes, making them susceptible to bias and conflicts of interest found during the litigation. Contact Henry for more information.

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