OSHA RULEMAKING AFTER SILICA

When President Barack Obama appointed David Michaels, author of "Doubt is Their Product: How Industry’s Assault on Science Threatens Your Health," to head the Occupational Safety and Health Administration four years ago, many expected an onslaught of new occupational health rules and enforcement initiatives. But the economy intervened—the last few years have hardly been a time for steps that might have, or might have been characterized as having, a negative impact on employment. There are now indications, however, that the sleeping giant is awakening.

The Reawakening of Occupational Health Pressure

BY DAVID B. WEINBERG AND ROGER MIKSAD

One signal of renewed OSHA regulatory activity is the recent publication of a revised “permissible exposure limit” (PEL) for silica. It may herald a rebirth of PEL rulemaking. The precedents and processes it ultimately adopts will set the stage for OSHA’s evaluation of other PELs in the coming years. Moreover, as explained below, OSHA officials have stated that they believe essentially that all current PELs are in need of revision. This means that industries not subject to the silica PEL nonetheless should be paying attention.

Also intriguing is last month’s publication of revised Annotated Z Tables of PELs. Significant pressure also is coming from California, as that state proceeds with rulemaking on its lead standard and to implementation of its new “Green Chemistry” regulations. The nature and implications of these initiatives are addressed in this article.

Most PELs Are More Than 20 Years Old

PELs are the standards that define the maximum allowable amount of a chemical or substance that may be in the air of a workplace. The Occupational Safety and Health Act (OSH Act) requires that they be set at levels that will “most adequately assure[,] to the extent feasible, on the basis of the best available evidence, that no employee will suffer material impairment of health or functional capacity even if such employee has regular exposure to the hazard dealt with by such standard for the period of his working life.” The statute further provides that, in addition to the attainment of the highest degree of health and safety protection for the employee, other considerations shall be the latest available scientific data in the field, the feasibility of the standards and experience gained under this and other health and safety laws.

The tests embodied in this mandate put considerable burden on OSHA to evaluate not only risk, but also economic and engineering feasibility. And OSHA’s track record in establishing PELs is at best mixed: The agency’s last attempt to update a large number of the PELs was struck down by the Eleventh Circuit in 1992. All but a handful of OSHA’s substance-specific standards thus are more than 20 years old. The newly proposed silica standard will thus be a landmark.

The age of the existing substance-specific PELs and OSHA’s difficulty in successfully promulgating others is why the new Annotated Z Tables may be prove to be so important. Another section of the OSH Act, Section 5(a) 29 U.S.C. § 654, sets forth the General Duty Clause. It provides that:

Each employer shall furnish to each of his employees employment and a place of employment which are
free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees.

This raises the question of what constitutes “recognized hazards.”

The newly annotated tables list not only federal PELs, but also standards established by the California Division of Occupational Safety and Health (Cal/OSHA), the National Institute for Occupational Safety and Health (NIOSH), and the American Conference of Governmental Industrial Hygienists (ACGIH), which often are (or may be adjusted to be) lower than the federal PEL. Does inclusion on the table mean that exceedance of these levels would present “recognized hazards” that are causing or are likely to cause death or serious physical harm to his employees?

That may well be the case. The OSHA Field Operations Manual states that a limit stricter than a PEL can be required where “it can be proven that an employer knows a particular safety or health standard is inadequate to protect his employees against the specific hazard it is intended to address.” Can such knowledge be imputed to employers when OSHA publishes information in its tables and publicly disclaims the protection offered by the current PELs? At the very least, the newly revised Z Tables signal the potential uncertainties for employers.

At the state level, California has its own OSH Act, the California Occupational Safety and Health Act of 1973. It generally parallels the federal statute. California’s PEL setting standard, for example, is essentially the same as the federal standard quoted above, with additional requirements that the state’s rules must be “at least as effective as the federal standards for all issues for which federal standards have been promulgated.”

And, as explained below, the California Department of Public Health (CDPH) recently recommended a reduction of the state’s current PEL for lead, now identical to the federal PEL of 50 μg/m³, to 2.1 μg/m³ or lower. Whatever action finally is taken is likely to be seen as precedent at the federal level, or at least creating further confusion about the implications of the federal General Duty Clause.

Finally, the California Department of Toxic Substances Control recently promulgated final Green Chemistry rules. Most attention to these controversial rules has focused on the potential they create for banning some consumer products. But the regulations also can be read to support action to address concerns about risks to employees manufacturing consumer products sold in the state, and perhaps also to identify “recognized hazards.”

We address each of these four areas of regulatory activity below.

**OSHA’s Silica PEL Proposal**

Because it represents one of the first OSHA efforts to revise a PEL in many years, the elements and analytical approach evidenced in OSHA’s recently released proposed revision of its silica standard, including revision to the Silica Permissible Exposure Limit, probably merits the closest analysis by those seeking to anticipate the course of future regulation. The proposal would restate and reduce the current PEL, which embodies a formula that establishes a de facto limit of approximately 100 μg/m³ respirable silica, to 50 μg/m³ of respirable silica. It also would impose a removal program for employees exposed to specified levels, and mandate medical screening of exposed employees.

The current silica PEL was established in 1971. NIOSH and public health advocates have been calling for OSHA to lower the PEL since at least 1978.

OSHA estimates that the new PEL will cover 30,610,466 workers nationwide at 1,843,640 establishments, at a compliance cost of $637.3 million annually. The agency also projects prevention of an estimated 1,585 cases of worker death or illness each year, to which OSHA assigns a value of $5.2 billion. Over a 45-year working lifetime, OSHA states that this equates to 71,307 avoided deaths or illnesses.

OSHA’s proposal would require monitoring of only smaller, respirable size particles, rather than the total dust required by the current PEL. OSHA says that it believes the new PEL will be simpler and easier to understand because it only measures the particles of health concern, i.e., respirable-size particles. This reflects increased understanding of the potential health risks of silica exposure in the 40 years since the existing rule was adopted, as well as a backing off of more extreme demands based on OSHA’s evaluations of economic and technical feasibility.

One element unchanged from prior standards is OSHA’s continued endorsement of a hierarchical approach to PEL regulations. Under this approach, the agency demands that engineering controls—that is, ventilation systems and the like—be implemented to the maximum extent possible before respiratory protection may be relied upon to protect workers to achieve compliance with the PEL. OSHA has relied on this “Hierarchy of Controls” since the promulgation of its earliest standards.

OSHA’s rationale is twofold. First, OSHA believes that “Engineering controls are reliable, provide consistent levels of protection to a large number of workers, can be monitored, allow for predictable performance levels, and can efficiently remove a toxic substance from the workplace.” Further, the “effectiveness of engineering controls does not generally depend on human behavior to the same extent” as personal protective equipment.

Second, while OSHA recognizes that respirators are an “important means of protecting workers,” the agency believes that because respirators require fit testing and regular maintenance, the “conditions for effective respirator use are difficult to achieve” and that “respirators are less reliable than engineering and work...
practice controls.”10 OSHA also believes that respirators may negatively impact other non-work-related medical conditions or place undue physiological burdens on the worker. OSHA admits, however, that “experience in industry shows that most healthy workers do not have physiological problems wearing properly chosen and fitted respirators.”11

From a compliance standpoint, this approach imposes the largest capital costs on employers. Moreover, as standards are tightened, engineering costs increase, often substantially. This, of course, is where the question of economic feasibility enters into the equation.

Before addressing that issue, it is valuable to note one important way in which the proposed rule reflects advances in science. As noted above, the proposed PEL applies only to “respirable silica,” as opposed to total airborne particulate. As the preamble to the proposed rule explains:

Respirable particulate mass refers to airborne particulate matter that is capable of entering the gas-exchange region of the lung, where crystalline silica particles cause pathological damage. Only very small particles (particles of about 10 µg or less) are able to penetrate into the gas-exchange region of the lung. As particle size decreases, the relative proportion of particles that is expected to reach the gas-exchange region of the lung increases.12

The current silica PEL accounts for these facts in only an indirect and rather cumbersome fashion. It requires measurement of total dust in a representative sample, and the employment of a formula to calculate the amount of respirable silica contained in the total dust.

But a significant portion of the new proposal’s preamble is spent describing the more recent data on the detrimental effects of respirable silica dust exposure in workers. It states that OSHA concluded that “inhalation exposure to respirable crystalline silica increases the risk of a variety of adverse health effects, including silicosis, chronic obstructive pulmonary disease (COPD), lung cancer, immunological effects, kidney disease, and infectious tuberculosis (TB).”13 OSHA determined that, “Each of these conditions is a material impairment of health. These diseases result in significant discomfort, permanent functional limitations including permanent disability or reduced ability to work, reduced quality of life, and decreased life expectancy.”14

This proposed change thus reflects improved measurement methodologies and health effects literature that clearly relates development of crystalline silica-related disease to respirable, rather than total, dust exposure. OSHA also states that it restricted the PEL to respirable particle sizes in part because “there is no evidence that dermal or oral exposure presents a hazard to workers.”15 OSHA’s view is consistent with the ACGIH, which no longer has a Threshold Limit Value for total crystalline silica dust. Nor have NIOSH, the National Toxicology Program, or the International Agency for Research on Cancer linked cancer to exposure to total crystalline silica dust.

To some extent, this approach suggests how OSHA would approach revision to other PELs. But conclusions shouldn’t be drawn too quickly. OSHA also notes that “most other chemicals regulated under OSHA substance-specific standards either have direct dermal effects or can contribute to overall exposures through dermal absorption.”16 This may indicate that OSHA would be less receptive to moving other chemicals, such as lead, to a respirable particulate size-based PEL where larger particle sizes arguably may be absorbed through non-inhalation exposure routes, such as through the gastrointestinal tract.

The proposed rule also includes medical surveillance standards. Under the existing silica PEL—in contrast, for example, to the existing lead standard—no medical surveillance is required. The new proposal would impose a program similar to other PELs. It would be triggered by an employee’s expected exposure above the PEL. Medical surveillance would be required for employees expected to be exposed above the PEL for 30 or more days a year; testing must be repeated at least once every three years thereafter. Out of the 30 million workers covered by the rule, OSHA estimates that 351,416 workers will have exposures that meet the threshold requirement for medical surveillance.

The degree of disability that OSHA finds to support a finding on the statutorily required material impairment to health or functional capacity is relatively low. For instance, while OSHA states that, “most workers with early stage silicosis (ILO categories 0/1 or 1/0) typically do not experience respiratory symptoms,” the agency “finds that silicosis of any form, and at any stage, is a material impairment of health.”17 “Early stage silicosis” is one of the listed material impairments. OSHA defines it as a stage which “reflects the formation of fibrotic lesions in the lung and increases the risk of progression to later stages.”18

Thus, at least in the case of a recognized disease with a recognized progression, OSHA defines as a “material impairment” a disease state which is detectable, even if it has no immediate negative effects on the worker. This is consistent with the agency’s prior reliance on “sub-clinical” effects as being a material impairment in prior rulemakings. An important question, however, will be how this principle applies to conditions with less specific etiologies.

Feasibility judgments also are critical to the proposal: OSHA acknowledges “that there is significant risk [of material impairment] remaining at the proposed PEL of 50 [µg/m³].”19 But OSHA didn’t propose a lower PEL because of the results of its feasibility analysis, a 1,400-page “Preliminary Economic Analysis and Initial Regulatory Flexibility Analysis,” currently is undergoing detailed review by potentially affected industries. It concluded that 50 [µg/m³] is the lowest technically and economically feasibility PEL. That analysis divided the general industry sector (including maritime) into 21 industry subsectors. OSHA then assessed whether employers in each of the 21 identified affected industry sectors, and various activities within them, would be

10 Id.
11 Id.
12 Id. at 56,445.
13 Id. at 56,323.
14 Id.
15 Id. at 56,296.
16 Id. at 56,451.
17 Id. at 56,324-325.
18 Id.
19 Id. at 56,408.
able to achieve the proposed PEL through engineering or work practice controls. That is, OSHA considered engineering and work practice controls—not respirators—as the only acceptable technological means to achieve the PEL. And OSHA found that the proposed PEL is “technologically feasible for all affected industries” in the general and maritime industries, but for construction the proposed PEL is technologically feasible for only “10 out of 12” affected activities. Nonetheless, OSHA concluded that this information was sufficient evidence that industry could implement engineering or work practice controls to achieve 50µg/m^3.

OSHA also looked at the technological feasibility of the required sampling methods. OSHA found that current sampling methods allowed for accurate measurements at the proposed 50µg/m^3 PEL and the 25µg/m^3 action level, but that at 25µg/m^3 and below the margin of error approached unacceptable limits. OSHA thus stated that because measurements below 25µg/m^3 are unreliable, and because therefore any lower action level couldn’t be accurately measured, a PEL of 25µg/m^3 isn’t technologically feasible. To assess the economic feasibility of the proposed PEL, OSHA first estimated the compliance costs of each of the measures expected to be required to meet the PEL. OSHA sought to look at the extent to which those costs could be passed on to an industry’s consumers and to what extent the industry’s profits would be impacted, and how (if at all) the competitive structure of the industry would be altered.

OSHA estimated that for the general and maritime industries and construction sectors, there are no industries in which the annualized costs of the proposed rule exceed 1 percent of annual revenues or 10 percent of annual profits. Further, OSHA estimated that the costs would need to be 150 percent higher for those costs to exceed 1 percent of annual revenues for any of the affected sectors. OSHA found that the only businesses likely to be significantly adversely affected would be some small businesses unable to afford engineering controls. OSHA estimated that, at most, these businesses account for 3 percent of their relevant industry sector. Thus, OSHA concluded that the closure of all of these small businesses would still represent an acceptable change in the structure of their industry.

The Annotated Z Tables
At the end of October, OSHA took another step that suggests it is building the foundation for new enforcement initiatives, perhaps even sidestepping the burdensome requirements it faces in adopting substance-specific standards. It also emphasizes the national importance of activities in California and other states.

OSHA’s activity was the publication of new Annotated PEL tables for all current OSHA Permissible Exposure Limit requirements. The new tables list exposure standards adopted by a variety of other authorities, including Cal/OSHA, NIOSH and ACGIH. They are available at http://www.osha.gov/dsg/annotated-pels/index.html.

This isn’t a formal amendment of any other OSHA standard. But, in the case of many regulated substances, the recommendations are substantially lower than the current OSHA PEL. For example, the Annotated Z Table entry for crystalline silica recommends that employers meet the ACGIH’s Threshold Limit Value of 25µg/m^3, which is lower than OSHA’s currently proposed silica PEL discussed above. The confusion this will cause should be self-evident.

OSHA says that it developed these new tables because its own mandatory standards are “out-of-date and inadequately protective.” It also strongly urges employers to “voluntarily adopt newer, more protective workplace exposure limits.” Assistant Labor Secretary Michaels released a supporting statement “advis[ing] employers, who want to ensure that their workplaces are safe, to utilize the occupational exposure limits on these annotated tables, since simply complying with OSHA’s antiquated PELs will not guarantee that workers will be safe.” In a press conference Oct. 24, he stressed that “[t]hese are tools we’re putting out, not new regulations.” His reported accompanying reassurances that the new lists will have no impact on enforcement may give employers little comfort, especially since it was accompanied by assurance that “[t]he criteria we use for whether to issue a citation has not changed” from the OSHA enforcement manual: While it states that the General Duty Clause shall “normally” not be used to impose a stricter requirement than a substance specific standard, it also states (as noted above) the policy that a limit stricter than a PEL can be required where “it can be proven that an employer knows a particular safety or health standard is inadequate to protect his employees against the specific hazard it is intended to address.”

Moreover, OSHA’s policy position is supported by important precedent. The seminal case dates back to 1987: Int. Union UAW v. General Dynamics Land Systems Division, 815 F.2d 1570 (D.C. Cir). There, writing for himself and two other judges, the indisputably conservative Judge James Buckley wrote:

In sum, if an employer knows that a specific standard will not protect his workers against a particular hazard, his duty under section 5(a)(1) will not be discharged no matter how faithfully he observes that standard. Scienter is the key . . . when an employer is aware of a hazard that is not in fact addressed by a specific standard, then of necessity that standard cannot be deemed to have preempted his obligation under the general duty clause.

It of course is too early to know the use to which the newly Annotated Z Tables will be put. But companies operating in industries in which the listed PELs are substantially below OSHA’s established limits should be watching these developments very closely.

California Lead PEL Activity
Federal OSHA’s recent movement to reconsider its silica standard is described above. But, as noted, there are a number of other standards that date back to the same era as the existing silica standard. One is the OSHA lead standard, adopted in 1978 and upheld on

Over the more than 30 years since, there has been considerable scientific research about the health effects of lead exposure. Most of the focus has been on impacts to children’s intellectual development. Resulting concerns in 2008 drove a reduction of the national ambient air quality standard from 1.5 to 0.15 µg/m³. More recently, in 2012, the U.S. Department of Health and Human Services’ National Toxicology Program published a report stating that there is “sufficient” scientific evidence to conclude that blood lead levels below 5 µg/dL threaten children.

But not all lead research has been focused solely on children. There is a smaller body of research into occupational exposures and the impacts of those exposures on adults. For example, the same National Toxicology Program report states that there is sufficient evidence of select health impacts in adults whose blood lead levels are below 10 µg/dL, 20 percent of the level at which the current OSHA standard requires removal from the workplace.

To date, federal OSHA hasn’t moved to amend its regulations in the face of this research. But the pressures to do so are increasing. NIOSH is reportedly initiating an evaluation of worker exposures, the first step in building a formal recommendation for new OSHA regulations.

In California, however, regulators aren’t waiting. The California Department of Public Health (CDPH) has pushed Cal/OSHA to revise that state’s parallel occupational lead exposure standard. These efforts began publicly in 2010, when CDPH sent a formal recommendation to Cal/OSHA that the medical removal elements of that standard be revised based on a 2007 report in the journal Environmental Health Perspectives.26

The current California standard, which mirrors the federal regulations, requires employees be removed from exposed work locations after three blood lead level tests with an average at or above 50 µg/dL, or a single test at or above 60 µg/dL. Removed workers are either sent home or offered alternative work locations, both with full pay. Workers may return to their position after their blood lead levels are reduced to 40 µg/dL. Under CDPH’s 2010 recommendation, workers would be removed after two tests at or above 20 µg/dL, or a single test above 30 µg/dL. Workers would be allowed to return with a blood lead level at or below 15 µg/dL.

Cal/OSHA held two public consultations on this recommendation, but set aside formal proposed rule changes in the face of CDPH’s indication that it also expected to produce a recommendation regarding reduction of the PEL. That recommendation was to be based on a risk analysis being undertaken by the California Environmental Protection Agency’s Office of Environmental Health Hazard Assessment (OEHHA). OEHHA’s final report was delayed for almost two years, after OEHHA’s chosen peer reviewers criticized the first draft of that effort.

The OEHHA report finally appeared in October.27 It revised the modeling that had been done in the 1970s to try to relate air lead exposures to employee blood lead levels. Based on adjustments to the newer “Leggett” model, OEHHA’s report stated that bringing 95 percent of workers to a blood lead level of 10 µg/dL without the use of respiratory protection would require a PEL of 2.1 µg/m³. OEHHA also calculated that to achieve a target blood lead level of 5 µg/dL would entail a PEL of 0.5 µg/m³. These are roughly 25 to 100 times lower than the existing federal and California standards.

CDPH also asked OEHHA to model how long it would take worker blood lead levels to return to an acceptable lower level after 10, 25 or 40 years of workplace exposure. OEHHA selected a 15 µg/dL reduction target (based on CDPH’s previous recommendations to Cal/OSHA). OEHHA found that, at the 95th percentile, a worker with a blood lead level of 40 µg/dL after 40 years’ exposure would need 919 days to return to a blood lead level of 15 µg/dL if removed from exposure. The analogous time period for a worker with a blood lead level of 30 µg/dL is 454 days; for a worker with a blood lead level of 20 µg/dL, 69 days. Similar patterns result from modeling other combinations of blood lead level and work history duration.

A few days after it received the OEHHA report, CDPH forwarded a six page letter to Cal/OSHA recommending the state’s lead PEL be reduced from 50 µg/m³ to a “health based” PEL of between 0.5 and 2.1 µg/m³. As of this writing, Cal/OSHA hasn’t publicly responded, but it is expected to revisit its rulemaking process early next year.

The OEHHA model has a number of interesting characteristics, some of which were explored at a public symposium held at UC Berkeley on Nov. 13.28 Among other things, it gives much greater emphasis than have previous models to lead absorption in the digestive tract, as distinguished to absorption through the lung. This has the effect of offsetting the effects of correcting the 1978 model’s widely criticized insensitivity to particle size, because it reduces the relative importance of particles absorbed through the lungs. It also makes a number of other assumptions and tweaks to prior models in a manner that many observers believe is likely to drive far lower results than otherwise would be the case.

Equally important, CDPH’s letter to Cal/OSHA recognizes that the standard Cal/OSHA is to apply in setting PELs isn’t purely health-based. Thus, CDPH wrote that it “recognizes that Cal/OSHA must consider technical and economic feasibility in addition to health information in establishing exposure standards.”

CDPH is, of course, correct. But just how Cal/OSHA addresses this fact remains to be seen, and will no doubt be the focus of considerable political and policy attention in 2014 and probably later. But it also emphasizes the potential importance of the initial rounds of implementation of California’s new Green Chemistry rule, as explained immediately below.

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California Green Chemistry Rules.

In 2008, after years of controversy, the California legislature enacted, and Gov. Arnold Schwarzenegger signed into law, two bills that made up the “Green Chemistry Initiative,” codified at Cal. Health and Safety Code § 25251 et seq. In their final form, the laws focused on discouraging the use in consumer products of chemicals believed to present multimedia risks to human health and the environment. Implementation responsibility was assigned to the Department of Toxic Substances Control (DTSC), which began a controversial effort to promulgate appropriate rules.

Those rules were published in final form in October. As required by statute, they establish a process to identify and prioritize particular chemicals in consumer products that are considered to be of concern, to establish a process for evaluating them and potential alternatives, to determine how best to limit exposure or to reduce the level of hazard. Significantly, however, they pick up on the statute’s inclusion of “worker safety” as a potential impact in the required “multimedia life cycle analyses.” They do this by defining “adverse public health impacts” that may trigger regulatory action as:

Any of the toxicological effects on public health specified in article 2 or article 3 of chapter 54 [which define hazardous “traits”], or exceedance of an enforceable California or federal regulatory standard relating to the protection of public health. Public health includes occupational health.29

Furthermore, the rules provide that the DTSC “may require a manufacturer to engineer safety measures that integrally contain or control access to, and/or implement administrative controls that limit exposure to” chemicals of control where there is “reliable information” indicating “an elevated level” of the chemical in “an indoor building or other enclosed environment” and/or where “improper product handling” increases the potential exposure to the chemical of concern.30

Just how significant these provisions prove to be in the occupational health context will begin to become clear in April 2014, when DTSC is to publish its first list of five priority products for consideration. That publication will follow up on an already-released list of 150 potential priority chemicals, which includes many metals and workplace chemicals that attract occupational health attention. Thus, the initial steps to using the Green Chemistry regulations to potentially circumvent OSHA feasibility requirements already have been taken.

And there is little doubt some regulators and health advocates are considering trying to do just that. For example, in his comments as a peer reviewer of the OEHHA lead risk assessment described above, John Froines—former director of Toxic Substances Standards at OSHA and head of UCLA’s Sustainable Technology and Policy program, which was a strong opponent of the Green Chemistry rules—urged that “CAL/OSHA needs to work on alternative assessment and seek the elimination of lead rather than simply rely on the 1970 law which is badly out of date. . . . [It] is apparent that there needs to be other approaches to lead.”31

Of course, it may prove that this speculation is unwarranted. Also, it is widely expected that one or more court challenges to the new DTSC rules will soon be filed. If so, the lawfulness of the use of the new program to circumvent regulation under occupational health-specific laws like the state’s OSH Act hopefully will be addressed. And there are solid grounds for a challenge. Among other things, the Green Chemistry Initiative requires that new DTSC priorities be set in consultation with the state Department of Industrial Relations and other state agencies responsible for impacts that could arise from product production32 and doesn’t include the imposition of occupational health protections among the specific regulatory responses DTSC is authorized to pursue. See Cal. Health and Safety Code § 25253(b).33

Further, DTSC is prohibited from “duplicate[ing] or adopt[ing] conflicting regulations for product categories already regulated” by similar federal or state regulations. Under its regulations, DTSC will exempt products that it determines are regulated by other federal or California state regulatory programs, or treaties or international trade agreements, for the same adverse public health and/or environmental impacts, exposure pathways, and adverse waste and end-of-life effects that would otherwise be the basis for listing the product as a Priority Product.34 But this exemption only applies if DTSC determines that these other program(s) “provide a level of public health and environmental protection equivalent to or greater than the protection” that would be provided by listing the substance as a Priority Product.35

The regulations also provide a process for petitioning DTSC to add or remove a chemical to or from the Candidate Chemicals list or a product/chemical combination to or from the Priority Products list.36 One basis for removal is if the product/chemical combination is already sufficiently regulated under state or federal law under § 69501(a)(3)(A). DTSC also repeatedly sought comment, during the development of the rules on the appropriateness of excluding specific already-well regulated materials from their scope. Therefore a record as to the lack of need for further regulation of many of the potential target products—occupational health or otherwise—has been created.

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32 Cal. Health and Safety Code §§ 25252.5(c), 25253(a)(1)
33 But the pertinent provision does include a catch-all authorization of “any other outcome the department determines accomplishes the requirements of this article,” and DTSC, if challenged, presumably will look to that authorization.
34 22 Cal. Code Regs. § 69501(a)(3)(A)
Agency and other federal and state agencies.
This article doesn't represent the opinions of Bloomberg BNA, which welcomes other points of view.