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HEALTH AND SAFETY LAW ALERT: OSHA PLANS TO DEVELOP REGULATION FOR COMBUSTIBLE DUST

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On October 21, the Occupational Safety and Health Administration (OSHA) issued an advance notice of proposed rulemaking (ANPR) requesting comments, including data and other information, "related to the hazards of combustible dust in the workplace." Combustible dust, for this purpose "includes all combustible particulate solids of any size, shape or chemical composition that could present a fire or deflagration hazard when suspended in air or other oxidizing medium." Comments on the ANPR are due by January 19, 2010.

In the ANPR, OSHA identifies a number of industries that "may have combustible dust hazards" including but not limited to agriculture, animal food manufacturing, grain handling, food manufacturing, wood product manufacturing, chemical manufacturing, textile manufacturing, furniture manufacturing, metal processing, fabricated metal products and machinery manufacturing, pesticide manufacturing, pharmaceutical manufacturing, tire manufacturing, production of rubber and plastics, plastics and rubber products manufacturing, recycling, wastewater treatment and coal handling and processing.

OSHA identifies materials that may form combustible dust including, but are not limited to, wood, coal, plastics, biosolids, candy, sugar, spice, starch, flour, feed, grain, fertilizer, tobacco, paper, soap, rubber, drugs, dried blood, dyes, certain textiles and metals (such as aluminum and magnesium).

The ANPR includes a chart of "Industries Having at Least One Recorded Combustible Dust Incident Reported Since 1980." Among the many industries in the chart are:

NAICS Group	Name of Industry	Incidents	Establishments	Employees
		(1980-2008)		
327000	Nonmetallic Mineral Prod. Mfg	4	17,350	482,459
331000	Primary Metal Manufacturing	32	5,285	449,914
325000	Chemical Mfg. (Except 325188 and 325410)	31	10,749	514,732

In addressing combustible dust in the metals industry, OSHA said: "Even finely divided metals can cause dust explosions. In 2003, one worker was killed and several injured in an aluminum dust explosion at a wheel manufacturing facility. At the point in the process in which scrap aluminum was reduced to small chips, aluminum particles were drawn into a dust collector. An initial explosion in the dust collector spread through the ventilation system, causing a secondary explosion involving the dust accumulated on overhead beams, ducts and other structures.

This client alert provides only general information and should not be relied upon as legal advice. For more information, contact your Patton Boggs LLP attorney or one of the lawyers listed below.

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OSHA asks that commenters address 69 questions spread among the following categories:

- A. Industry Background
- B. Definition of Combustible Dust
- C. Hazard Recognition
- D. Hazard Assessment
- E. Hazard Communication and Training
- F. Consensus, Industry, and Insurance Standards
- G. State and Local Codes
- H. Engineering Controls
- I. Administrative Controls
- J. Emergency Response
- K. Regulatory Approach
- L. Economic Impacts and Benefits
- M. Impacts on Small Entities
- N. Compliance Assistance

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