



NASF Public Policy Update

July 2021

The entire U.S. finishing industry is facing a new level of environmental scrutiny this month on Capitol Hill with respect to PFAS legislation, and a major national environmental group yesterday named surface finishing as the largest population of "suspected dischargers of PFAS" across the nation.

Summary of Developments...

LEGISLATIVE ALERT: Congress is now targeting the surface finishing industry for regulatory action on per- and polyfluoroalkyl substances (PFAS). Electroplating and Metal Finishing are named as a "priority industry" – along with several other sectors – in new provisions recently added to a new House-passed infrastructure bill that is moving to the Senate for consideration in late July.

RELATED DEVELOPMENT: The Environmental Working Group, an influential national environmental organization, publicly pressed Congress yesterday to pass new legislation mandating new controls and limits of PFAS for finishing and other industries.

The organization's new report argues there are 4700 [surface finishing, anodizing and other operations at the top of a long list](#) of "suspected PFAS dischargers" numbering 41,000 industrial facilities in total. EWG has also developed an [interactive, searchable map](#) to locate companies and view extensive permitting, compliance history, environmental justice and other detailed information by zip code, city, company name or census tract.

The tool is highly problematic for a number of reasons, including creating a highly inaccurate and misleading picture of the industry and the status of PFAS use in finishing and across other sectors.

NASF RESPONSE: NASF remains in discussions with key decision makers on emerging EPA regulatory decisions and the new PFAS legislation on Capitol Hill. We will continue to highlight the industry's long-standing commitments and stewardship accomplishments in:

1. working with EPA to ban PFOS-based mist suppressants in the industry nearly a decade ago; and
2. collaborating with federal and state regulators on voluntarily transitioning to new chemistries through innovation and adoption of new products over time.

The finishing industry is the first and only industry to date to have requested and accomplished a PFOS ban with EPA in a federal air or water rule.

The association is working closely with wastewater officials at EPA, as the agency began evaluating the need for new PFAS requirements for the finishing industry under the Trump administration.

NASF's POSITION is that EPA is already making progress on evaluating and prioritizing sectors for potential regulation, and new congressional mandates are not necessary at this time.

The association will be active through the summer in the legislative debate and will keep NASF members updated in the coming days and weeks.

More details on these and other issues are below...

NASF PUBLIC POLICY UPDATE: JULY 2021 TOPICS

LEGISLATIVE ALERT: House passes PFAS legislation to regulate surface finishing and several other sectors

- NASF – Department of Defense Workshop at SUR/FIN on impacts of California phase-out of hexavalent chromium on defense supply chain
- OSHA Webinar: Upcoming virtual briefing on OSHA regulatory agenda and the new emergency COVID workplace standard and guidance
- EPA proposes reporting rule for PFAS compounds
- Proposal to reinstate Superfund tax on chemicals
- EPA announces revised fees for electronic hazardous waste manifests
- California facilities begin to implement PFAS sampling order.

LEGISLATIVE ALERT: Surface Finishing Industry Could Get Nationwide Wastewater Discharge Limits for PFAS in Recently Passed House Infrastructure Bill

A new water and environment infrastructure bill, known as the INVEST in America Act (H.R. 3684), recently passed the House, and includes a provision that requires EPA to regulate PFAS under the Clean Water Act. Specifically, the proposed legislation requires EPA to issue human health water quality criteria within three years for “each measurable perfluoroalkyl substance, polyfluoroalkyl substance, and class of such substances.”

New Requirements

The agency would also be required to issue effluent limitation guidelines (ELGs) within four years for discharges to publicly owned treatment works (POTWs) of “each measurable perfluoroalkyl substance, polyfluoroalkyl substance, and class of such substances” from nine industry sectors, including electroplating (413) and metal finishing (433).

The requirement would apply to additional sectors as well, including organic chemicals; plastics and synthetic fibers; pulp, paper and paperboard; textile mills; leather tanning and finishing; paint formulating; electrical and electrical components; and plastics molding and forming.

Acceleration of EPA Regulatory Evaluation of Finishing

While EPA currently does not regulate PFAS discharges under the Clean Water Act, for the past three years it has been evaluating whether it should set PFAS limits for the surface finishing industry through national effluent limitation guidelines. NASF has continued to work closely with EPA on informing the agency’s decisions on this effort.

The proposed legislation would mandate the acceleration of this process and also require EPA to finalize a new rule for electroplating (413) and metal finishing (433) source categories within four years. The legislative action could also prompt further action from EPA even if it does not become law.

House and Senate Efforts

The effort to include PFAS water quality criteria and ELGs in the infrastructure bill were spearheaded by Representative Chris Pappas (D-NH) who proposed the legislative language in House Resolution 3622. This language was subsequently incorporated into the infrastructure bill by amendment. The infrastructure bill (H.R. 3884) was passed by the full House just prior to the July 4 weekend.

Senator Kirsten Gillibrand (D-NY) has introduced similar legislative language in the Senate, the *Clean Water Standards for PFAS Act*. No further has been taken on this measure to date in the Senate. It's not clear yet whether it will gain sufficient support to pass the Senate or if it will be incorporated into a Senate version of infrastructure legislation and possibly become law.

NASF Engagement

NASF remains fully engaged in the issue and is discussing this legislation with decision makers and will keep NASF members updated on its status. This latest legislative effort reflects the intense interest among policymakers to address the release of PFAS into the environment.

If you have any questions regarding the proposed legislation, please contact Christian Richter at crichter@thepolicygroup.com or Jeff Hannapel with NASF at jhannapel@thepolicygroup.com.

NASF Partners with the Department of Defense on Special Workshop at SUR/FIN on California's Phase-Out of Hexavalent Chromium Processes and the Implications for the U.S. Defense Supply Chain

The California Air Resources Board (CARB) continues to advance a new rulemaking to transition hexavalent chromium plating to trivalent chromium for decorative chromium plating, functional chromium plating and chromic acid anodizing.

While CARB continues to extend the proposed timeframe for the transition, NASF and its California leadership have argued that the state's regulatory deadlines remain unrealistic. If promulgated, this rule could have a significant adverse impact on platers in California and critical supply chains, particularly the U.S. defense supply chain.

In response to this rulemaking, NASF, in coordination with Department of Defense officials, has scheduled an NASF-DOD Workshop on November 3, 2021 from 1:00 – 4:00 PM at SUR/FIN in Detroit, Michigan.

The workshop will include surface finishing industry experts and DOD officials and contractors who will focus on implications for the defense supply chain and identify approaches to address these implications from a technology and policy perspective. For more information on the workshop visit the NASF website at <https://www.nasfsurfin.com> or contact Christian Richter (crichter@thepolicygroup.com) or Jeff Hannapel (jhannapel@thepolicygroup.com).

In the meantime, NASF and its California Chapters continue outreach efforts to customers, CARB staff and Board members, California state legislators and regulatory officials regarding the potential negative impacts of this rule.

NASF and its California Chapters will also continue working with state officials and industry partners to develop a rule that is protective of human health and the environment and is technologically feasible and economically sustainable.

For more information on this rulemaking, please contact Jeff Hannapel with NASF at jhannapel@thepolicygroup.com or Christian Richter at crichter@thepolicygroup.com.

NASF Webinar on OSHA Regulatory Outlook and Legal Guidance – Monday, July 26, at 1:00 - 2:30 pm ET

OSHA recently announced its regulatory priorities as part of the federal *Unified Agenda of Regulatory and Deregulatory Actions*. The unified agenda is issued twice per year and is a compilation of short and long-term rulemaking actions planned across all agencies.

The agency also recently issued its COVID-19 Emergency Temporary Standard (ETS) for the nation's workplaces. The standard was narrowed to apply solely to the health-care sector, as OSHA determined that health-care workers treating COVID patients remain at risk.

However, OSHA did issue revised guidance for general industry – including surface finishing – on work practices to protect both vaccinated and non-vaccinated workers consistent with CDC's framework for COVID, which has continued to evolve.

To help the surface finishing industry navigate the OSHA regulatory agenda and also the newly revised COVID guidelines, NASF has scheduled a webinar on July 26, 2021 at 1:00 - 2:30 pm ET for members. Speakers will include Eric Conn and Kate McMahon of Washington-based law firm Conn Maciel.

TO REGISTER FOR THE WEBINAR, CLICK [HERE](#).

More information on the OSHA regulatory agenda is available [here](#), and the revised emergency COVID standard is available on the OSHA website at: <https://www.osha.gov/coronavirus/ets>. If you have questions regarding the revised COVID guidelines or would like additional information, please contact Christian Richter (crichter@thepolicygroup.com) or Jeff Hannapel (jhannapel@thepolicygroup.com) with NASF.

Bipartisan PFAS Legislation Introduced in the House

Comprehensive PFAS legislation was introduced in the House (H.R. 2467) by Representatives Debbie Dingell (D-MI) and Fred Upton (R-MI). This bipartisan bill would require EPA to:

- list PFOS and PFOA as a hazardous substance under CERCLA,
- establish a drinking water stand for PFOS and PFOA and evaluate for other PFAS,
- conduct comprehensive toxicity testing of all PFAS,
- list PFOS and PFOA as hazardous air pollutants (HAPs) and evaluate other PFAS,
- establish water quality criteria for perfluoroalkyl substances, and
- promulgate effluent limitation guideline plans for organic chemicals, pulp and paper, and textile mills source categories (but not surface finishing).

This proposed legislation is significant because it has bipartisan support in the House and would require EPA to take a comprehensive approach to addressing PFAS. In addition, it is another example of the growing demand from the public to regulate PFA in the environment.

The bill has been approved by the House Energy and Commerce Committee but has not yet been voted on by the full House. In addition, this legislation approach does not appear to have the same support in the Senate.

NASF will continue to engage on the multiple legislative efforts and provide updates on the potential impacts on the surface finishing industry. If you have any questions or would like additional information on PFAS legislation, please contact Christian Richter (crichter@thepolicygroup.com) or Jeff Hannapel (jhannapel@thepolicygroup.com) with NASF.

EPA Proposes Reporting Rule for PFAS Compounds

On June 28, 2021, EPA proposed a [new reporting and recordkeeping rule](#) for per- and polyfluoroalkyl substances (PFAS) pursuant to Section 8(a)(7) of the Toxic Substances Control Act (TSCA), as amended by the National Defense Authorization Act. The proposed rule applies to manufacturers and importers of PFAS chemicals, including small manufactures and

manufacturers who produce PFAS as a byproduct. In addition, the proposal would subject articles containing PFAS to reporting requirements.

If finalized, the rule would require certain persons that manufactured or imported PFAS in any year since January 1, 2011, to report information for each substance and mixture related to chemical identity and molecular structure; categories of use; volumes manufactured and processed; byproducts resulting from the manufacture, processing, use and disposal; environmental and health effects, worker exposure, and method of disposal.

Affected entities will have one year from the effective date of the final rule to submit their required disclosures to EPA. In addition to reporting, the proposed rule would require records documenting any information reported to EPA to be retained for a period of five years.

The proposed rule includes several issues of concern that will need to be addressed in comments, including: the fact that ALL PFAS are included, there is no minimum reporting threshold, the scope of the definition of manufacturers and importers, further clarification on which articles containing PFAS would trigger reporting, duplicative reporting requirements, and the reporting period includes a retrospective review of ten years (which is highly unusual and very burdensome).

EPA will accept comments on the proposed rule until August 27, 2021. NASF is working with several industry trade groups in Washington to develop comments and will also submit comments on behalf of NASF to address issues of specific concern to the surface finishing industry. If you have any questions or would like additional information, please contact Jeff Hannapel with NASF at jhannapel@thepolicygroup.com.

Bipartisan Infrastructure Bill Would Reinstate Superfund Tax to Pay for Proposal

The Biden Administration, along with a bipartisan group of U.S. Senators, unveiled a new infrastructure agreement called the *Bipartisan Infrastructure Framework*. The proposal contains \$579 billion in spending on physical infrastructure improvements.

To help pay for this proposal, one provision in the agreement would reinstate the Superfund Tax, which would target all chemical manufacturers regardless of whether there is a connection to a Superfund site. U.S. chemical manufacturers subject to the tax would most likely pass on the costs on to their customers, including suppliers and applicators in the surface finishing industry.

The proposal would place an excise tax on the manufacture, production or import of 42 chemicals (including organics and metals such as cadmium, chromium, cobalt, lead, nickel and zinc), and set the value of the tax at double the amount of the chemicals used in 1995. **The full**

list of 42 chemicals from 1995 can be found [here](#), and exemptions (also from 1995) can be found [here](#).

Senate and White House staff are currently drafting the text for the bipartisan infrastructure plan and hope to have draft text soon. It is possible that chemicals could be added to the list, e.g., certain PFAS compounds. The fate of this proposal will depend on how Congress and the White House ultimately decide to approach an infrastructure deal.

NASF will be working with industry trade groups, including the American Chemistry Council (ACC) the U.S. Chamber of Commerce and others, to oppose the reinstatement of these taxes. If you have any questions or would like additional information on this proposal, please contact Jeff Hannapel with NASF at jhannapel@thepolicygroup.com.

EPA Announces New Electronic Manifest User Fees

On June 30, EPA announced the upcoming User Fees for fiscal years 2022 and 2023 (October 1, 2021 through September 30, 2023) for the e-Manifest system. EPA encourages the hazardous waste industry to adopt fully electronic manifesting as soon as possible so that industry members can take maximum advantage of the benefits and cost savings of electronic manifesting. However, EPA acknowledges that it will take time for industry to fully transition to electronic manifests.

The user fees are set based on the manifest usage and processing costs for each manifest type. As of June 30, 2021, EPA no longer accepts mailed paper manifest. Instead receiving facilities must submit paper manifests as either a scanned image upload or data plus image upload.

EPA charges user fees to receiving facilities for each manifest submitted. The amount of the user fee is based on how the receiving facilities submit the manifest to EPA (e.g., electronic or paper). EPA does not charge generators, transporters, or brokers for user fees, but receiving facilities do charge customers for user fees.

For example, 75 percent of all e-Manifest program costs are borne by processing paper manifests. The best way to reduce user fees in the future will be to accelerate use of electronic manifests. EPA is undertaking several efforts to do this, such as reducing the burden for user registration and electronic signatures for generators and transporters.

More information on the E-manifest system is available on the EPA website at <https://www.epa.gov/e-manifest>. If you have any questions or would like additional information, please contact Jeff Hannapel with NASF at jhannapel@thepolicygroup.com.

California Platers Begin Sampling of PFAS Pursuant to Water Board Orders

The California State Water Control Board recently issued an order to chromium platers in California to sample for PFAS compounds. NASF and its California Chapters negotiated a model Work Plan for facilities to use in conducting sampling. The Work Plan that was reviewed and approved by the State and Regional Water Boards included a phased approach to sampling.

Under this approach, facilities would first sample wastewater and stormwater to determine if PFAS were present. These sampling results would determine if it was necessary to conduct the more expensive soil and groundwater sampling. The approach was designed to minimize the burden on small businesses and avoid more expensive and invasive drilling sampling if the preliminary results indicated that PFAS were not detected above levels of concern.

While many Work Plans were submitted last year, progress on this effort was delayed due to the pandemic. More recently, facilities had received revised Work Plans from regional water boards that included extensive soil and groundwater sampling. Despite having approved the phased approach to sampling, the regional water boards are now requiring facilities to conduct all sampling at the same time, regardless of results.

In addition, there has been inconsistent implementation of responses from regional water boards, including no response to claims to be excluded, no response to Work Plans that have been submitted, and the return of revised Work Plans. In response to industry concerns, a meeting has been scheduled with one of the regional water boards that has issued revised Work Plans requiring drilling into soil and groundwater.

NASF and its California Chapters will work toward a reasonable resolution to minimize the burdens on surface finishing facilities while meeting the requirements of the order. If you have any questions or would like additional information on this matter, please contact Jeff Hannapel with NASF at jhannapel@thepolicygroup.com.

If you have questions, please reach NASF by contacting Jeff Hannapel at jhannapel@thepolicygroup.com or Christian Richter at crichter@thepolicygroup.com.

To join NASF or find out more about membership, please contact Matt Martz at mmartz@thepolicygroup.com.