



NASF POLICY UPDATE

March 2023

The finishing policy agenda is full for this month, as federal and state regulatory actions proceed with potentially momentous changes for the industry. To assist the industry in keeping informed, the NASF Government & Industry Affairs team recently briefed attendees at the NASF Leadership Conference and is now preparing for the NASF Spring Policy Webinar scheduled for early April. We'll also welcome EPA to the NASF SUR/FIN Expo and Conference in Cleveland this June, where we will review the latest on EPA's upcoming industry PFAS survey for metal finishing.

A summary of some of this month's pertinent current topics is below:

- **NASF Spring Regulatory Update (Webinar): Wednesday, April 5, 2023 @ 2:00 – 3:00 pm ET** – Join Christian Richter and Jeff Hannapel for a virtual public policy update on April 5, 2023, at 2:00 – 3:00 pm ET. [Click here to register for this MEMBERS ONLY session.](#)
- **EPA to Present at NASF SUR/FIN Expo and Conference on Metal Finishing Rule – June 6-8 in Cleveland** – NASF has invited EPA officials to speak at the upcoming [NASF SUR/FIN](#) Expo and conference in June to discuss the agency's latest progress on PFAS and the Metal Finishing Effluent Guidelines.
- **Nationwide PFAS Survey for Metal Finishing Likely Delayed Until May or June** – Due to several factors, the survey will likely not be sent out until May or June. NASF plans to discuss the topic at NASF SUR/FIN and will be holding a special webinar and briefing on the topic in May or June, once the PFAS survey is sent out.
- **EPA Proposes Historic Drinking Water Standards for Key PFAS Chemicals** – EPA this month proposed its first ever drinking water standards for six PFAS chemicals. The agency's action includes new limits on perfluorooctane sulfonic acid (PFOS) and perfluorooctanoic acid (PFOA) at a level of 4 parts per trillion (ppt), which essentially matches the level that laboratories can reliably detect.
- **EPA's Science Advisory Panel to Hold Second Meeting to Review the Agency's New Health Assessment for Hexavalent Chromium** – A panel of appointed scientific experts will meet again on March 29 – 31 to discuss EPA's draft Human Health Assessment of Hexavalent Chromium, the next step toward determining whether EPA's recommended "safe" concentration of Cr6 comports with the best available science.
- **EPA Budget Increase Requested to Support Agenda for Environmental Protections** – The Biden Administration has requested a 19 percent budget increase to address its

environmental priorities and restore the agency to support its expansive agenda on a wide range of environmental and climate-related issues.

- **New Superfund Excise Tax Rule Is Ready for Proposal** – The Internal Revenue Service (IRS) is proposing a new rule to implement the new Superfund tax reinstated by Congress last year. The package just recently cleared formal review by the White House Office and is expected to be issued by end of March.

For more details on each of these topics, see the expanded discussion below:

NASF Spring Regulatory Update (Webinar): Wednesday, April 5, 2023 @ 2:00 – 3:00 pm ET

Major regulatory decisions are underway in Washington and the states in 2023 that have an impact on the surface finishing industry. What will they mean for your company? Included in the range of topics NASF Government & Industry Affairs will discuss are EPA's newly proposed PFAS drinking water standards, pending wastewater discharge standards for metal finishing, California's hexavalent chromium phase-out rule and new health assessments for cobalt and chromium, among others.

The Government & Industry Affairs team recently briefed attendees at the NASF Leadership Conference on new developments and the outlook ahead, and led a detailed discussion on the upcoming metal finishing PFAS survey EPA will send out to the industry.

Be sure to join Christian Richter and Jeff Hannapel for a virtual update on April 5, 2023, at 2:00 – 3:00 pm ET. [Click here to register for this MEMBERS ONLY session.](#)

EPA to Present at NASF SUR/FIN Expo and Conference on Metal Finishing Rule – June 6-8 in Cleveland

NASF has invited EPA officials to speak at the upcoming [NASF SUR/FIN](#) Expo and conference in June to discuss the agency's latest progress on PFAS and the Metal Finishing Effluent Guidelines. Dr. Phillip Flanders, project lead for EPA's Office of Water, and members of his team will attend the event and present not only on the agency's analytical work thus far, but also on the pending metal finishing industry-wide survey and upcoming site visits and sampling that EPA intends to do. The proposed rule is anticipated in December 2024.

Nationwide PFAS Survey for Metal Finishing Likely Delayed Until May or June

Among the most significant federal actions for metal finishing this year is EPA's planned industrywide PFAS survey for metal finishing. The survey, which includes more than 80 questions pertaining to wastewater discharge performance, control technologies and company financial profile, was scheduled to be sent to over 1500 finishing companies by April.

Due to several factors, the survey will likely not be sent out until May or June. NASF plans to discuss the topic at [NASF SUR/FIN](#) and will be holding a special webinar and briefing on the topic in May or June, once the PFAS survey is sent out.

EPA Proposes Historic Drinking Water Standards for Key PFAS Chemicals

EPA this month proposed its first ever drinking water standards for six PFAS chemicals. The agency's action includes new limits on perfluorooctane sulfonic acid (PFOS) and perfluorooctanoic acid (PFOA) at a level of 4 parts per trillion (ppt), which essentially matches the level that laboratories can reliably detect.

Cost Impacts of the Rule and Precedent for the Future

Among the impacts of the rule are not only new controls on the nation's utilities – expected to reach \$4 billion or more – but a potentially costly new wave of controls and compliance on upstream industries.

The proposal, expected to be challenged in federal court, will likely set precedent for major future regulatory decisions, including:

- **Superfund** - EPA's pending decision to designate PFOS, PFOA and other chemicals as hazardous substances under the federal Superfund cleanup law, and
- **Metal Finishing** - New wastewater discharge standards tailored for the metal finishing industry now under development, which NASF is closely working on with the agency.

New Federal Standards are Lower Levels than Any State

NASF is currently reviewing the details of the new drinking water package. Importantly, the proposal sets Maximum Contaminant Levels (MCLs) under the federal Safe Drinking Water Act (SDWA) for both PFOS and PFOA at a point lower than that of any state.

It also sets standards for four other PFAS substances as a mixture under an unusual "hazard index" approach typically used for determining clean up or other regulatory actions, according to the [proposal](#).

NASF and Wider Industry Concerns on Science

EPA Administrator Michael Regan, in announcing the rule, said the new proposal "marks a major step toward safeguarding all our communities from these dangerous contaminants."

NASF and other industry associations have noted that the proposal has important implications for broader drinking water policy priorities and resources, and therefore it will be critical that EPA gets the science right.

Among NASF science concerns is the fact that EPA's approach is contrary to the position of the World Health Organization (WHO) on the health threshold for PFOS and PFOA. Last year, the WHO concluded that a health-based guidance value (HBGV) for the two chemicals was warranted but that "the uncertainties in identifying the key endpoint applicable to human health following exposure to PFOS and/or PFOA are too significant to derive a HBGV with confidence."

WHO decided to propose provisional values of 100 parts per trillion (ppt), for both PFOS and PFOA individually. Additionally, WHO proposed a 500 ppt value for all PFAS that currently available methods can measure, levels much higher than EPA's earlier interim health advisory values – which have informed the new drinking water proposal – set last year for PFOA and PFOS at 0.004 ppt and 0.02 ppt, respectively.

EPA's Science Advisory Panel to Hold Second Meeting to Review the Agency's New Health Assessment for Hexavalent Chromium

A panel of appointed scientific experts will meet again on March 29 – 31 to discuss EPA's draft Human Health Assessment of Hexavalent Chromium. The panel, comprising representatives from academic and professional toxicology and related medical fields, has been selected to determine whether EPA's recommended "safe" concentration of Cr6 comports with the best available science. A final determination from the group will go to EPA's full Science Advisory Board sometime this fall after further review and discussion, along with input from industry and other interested parties. Ultimately, the "safe" concentration or toxicity value – in this case for human exposure by ingestion – will be used to set future regulatory standards for hexavalent chromium.

NASF Arguments Focus on Flaws and Consequences

NASF argued during the panel's February meeting – along with the American Chemistry Council, the drinking water utility community, the US Chamber of Commerce and the stainless-steel industry – that the assessment is overly conservative and does not use the best available peer-reviewed science, noting:

"NASF is concerned that the agency has produced a faulty draft human health assessment, with potentially far-reaching consequences for future risk management decisions, including federal drinking water and other EPA standards and regulations. NASF urges both EPA and the recently formed Science Advisory Board Hexavalent Chromium Review Panel to consider the comments below to appropriately address pertinent science concerns, consider the conclusions of other

authoritative bodies worldwide and minimize the likely onerous yet unnecessary impacts the draft IRIS assessment could have on surface finishing industry and other industry sectors in the future.”

Based on the draft assessment, EPA’s new safe concentration of hexavalent chromium would equate to 35 parts per trillion (ppt). This is nearly 3,000 times lower than EPA’s current drinking water standard.

EPA currently has in place a maximum contaminant level (MCL) of 100 parts per billion (ppb) total chromium based on the assumption of 100 percent hexavalent chromium in the water. Results from a series of state of the art, peer-reviewed studies provide support that the current EPA drinking water standard is human health protective.

EPA Budget Increase Requested to Support Agenda for Environmental Protections

The Biden Administration has requested a 19 percent budget increase to address its environmental priorities and restore the agency to support its expansive agenda on a wide range of environmental and climate-related issues. The request reflects White House priorities and is expected to prompt a varied response in Congress.

Citing staffing reductions under the Trump Administration that limit EPA’s program efforts, the Biden Administration is requesting 2,400 new personnel to address the agency’s capacity issues and its ambitious agenda. The increase would expand the EPA workforce to 17,000, but the Administration claims that a workforce of 20,000 is needed to reach critical capacity.

Staff Workload, Chemicals Law Implementation Concerns

As further support for this effort, the EPA career staff labor union report that the “staff are being worked to death and are under the greatest pressure they’ve ever encountered as agency employees.” For example, EPA seeks to “build core capacity” for its program to implement the overhauled Toxic Substances Control Act (TSCA) that is tasked with conducting comprehensive risk evaluations and identifying management options for priority existing chemicals and new chemicals.

Proponents of restoring critical capacity at EPA argue that the staff and funding increases are needed now, to enable the Administration to finalize the many environmental, climate-related, and EJ initiatives and rulemakings over the next two years. Regardless of staff and funding increases, the surface finishing industry can expect a full complement of new regulatory requirements to impact its operations over the next two years.

Budget Boost for Environmental Justice Activities

Following last fall's elevation of both Environmental Justice and civil rights to a new national program office, the Office of Environmental Justice and External Civil Rights (OEJECR), EPA has requested \$369 million for EJ and \$31 million for civil rights. These levels are \$267 million more for EJ and \$18 million more for civil rights compared to last year's approved budget.

The increase would provide additional funding and staff to support implementation of the Biden Administration's new "Justice40" initiative, which is aimed at delivering at least 40 percent of the benefits of the federal infrastructure investments to underserved and overburdened communities impacted by pollution and climate change. As part of this effort, the new OEJECR will work to develop an EJ and civil rights "cumulative impacts" analysis framework to assess the potential harm environmental permitting and other regulatory activities could have on disadvantaged communities.

Although it may be difficult to get the budget request approved in Congress by the Republican-controlled House, the effort reflects the administration's focus on EJ and civil rights to reduce the environmental impacts on communities where manufacturing operations are located.

New Superfund Excise Tax Rule Is Ready for Proposal

After more than 25 years, the Superfund excise tax on the manufacture and distribution of chemicals, imported hazardous substances, crude oil and petroleum products was reinstated last year as part of the Infrastructure Investment and Jobs Act and the Inflation Reduction Act. The taxes are expected to generate \$1.2 billion annually over the next ten years to help fund Superfund cleanups. Certain chemical manufacturers and distributors are expected to see modest cost increases, with increased prices passed down to key industrial users and consumers.

IRS Proposing Implementing Rule

As a result of the legislation, the Internal Revenue Service (IRS) has proposed a new rule to implement the new Superfund tax, which just recently cleared formal review by the White House Office and is expected to be issued by end of March. With the rulemaking imminent, the chemical industry continues to raise concerns about the lack of guidance for the tax and has called for a complete list of tax rates for substances, procedures for petitioning to add substances to the taxable list, and methods for calculating a company's own rates for substances. The IRS has not yet provided any guidance on these and other topics.

Without the guidance, chemical manufacturers and distributors face uncertainty over specific compliance requirements, and risk potential enforcement actions and penalties for "honest mistakes" in implementing the new tax requirements. Extending the compliance deadline beyond March 24, 2023, could provide some relief for taxpayers until appropriate guidance can be issued.

If you have any questions or would like more information regarding this process, please contact Christian Richter or Jeff Hannapel with NASF at crichter@thepolicygroup.com or jhannapel@thepolicygroup.com.