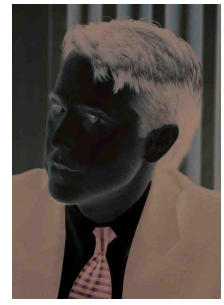
Government Relations Update for Finishers



Christian Richter & Jeff Hannapel, The Policy Group, LLC, Washington, DC

Finishers Get Victory on "Flexible" Chrome Plating Amendments

The finishing industry's lengthy air toxics discussions with EPA recently came to fruition when EPA Administrator Mike Leavitt signed a final rule to give more flexibility to chromium plating operations under federal rules governing chrome air emissions, known as the Chrome MACT standard. The final rule, scheduled for formal publication shortly in the *Federal Register*, will reduce costs for firms and minimize compliance and enforcement headaches. Once published, the new federal rules will cover five key topics:

(1) allowing fume suppressants for controlling chromium emissions from hard chromium electroplating tanks in lieu of mechanical control equipment;
(2) a revised surface tension limit for decorative chromium tanks when measuring surface tension with a tensiometer;
(3) an alternate emission limit for hard chromium tanks equipped with enclosing hoods;
(4) preventing firms that make certain changes to plating and anodizing tanks from getting kicked into more stringent "new source" standards; and
(5) using a more flexible pressure drop monitoring requirement for composite mesh pad (CMP) control systems.

The industry's appreciation goes out to the AESF Environmental Committee's **Rick Hall** of KCH Services, consultant **Glenn Zinkus** and Scientific Control Labs' **Joelie Zak, CEF-4** for providing technical input, engagement with regulators and developing rulemaking comments with Government Relations. Government Relations has obtained a pre-publication copy of the final rule in Word format (to request a copy, please contact The Policy Group at crichter@thepolicygroup.com).

Finishing Industry Joins Top Washington Manufacturing Policy Forum

The finishing industry recently became a trade association member of the National Council for Advanced Manufacturing (NACFAM), a top Washington DC-based manufacturing organization whose mission is to do research, develop policy recommendations and press for national solutions to U.S. manufacturing challenges. In June, representatives of the finishing industry's Government Advisory Committee attended a key NACFAM Washington event to exchange views on the practical implementation of major recommendations highlighted in the NACFAM Report —"Manufacturers Answer: Focused Industry Views Toward a Comprehensive Manufacturing Strategy."

David Marsh, Marsh Plating (Ypsilanti MI) and **BJ Mason**, Mid-Atlantic Finishing (Capitol Heights MD), shared concerns at the day-long event, which featured discussions with top U.S. trade officials from Congress and the Administration. Special panels, which included manufacturing leaders and members of Congress, exchanged views on a range of issues, including: Tax policy, lowering manufacturing costs, technology and innovation, workforce education and training, trade policy, and the defense industrial base. In the future, finishers will be working with NACFAM on these and other issues, including potential collaborative research efforts with the federal lab system and educating policy makers on increased R&D investment in manufacturing science and technology. For more information visit www.nacfam.org.

Government Relations Meets With Pentagon on Corrosion Control Strategy

Government Relations met with senior Pentagon officials to discuss the Defense Department's long-term corrosion control strategy now underway. One of the major focus areas of the corrosion strategy is reforming materials selection practices in the acquisition of weapon systems, equipment and infrastructure. Pressure to develop both new materials and surface technologies is being driven by a combination of regulatory and market factors, including recently emerging European Union materials and product directives. Because the corrosion "problem" costs the Pentagon and U.S. taxpayers tens of billions of dollars annually, it's vital that the Department of Defense selects coatings in the future that can meet environmental and health protection goals, as well as cost and functionality objectives. The Pentagon thus far has held close technical discussions with the National Association of Corrosion Engineers (see www.nace.org). The technical expertise and resources of the finishing industry will be brought to bear in the coming months on the challenges linked to the corrosion strategy and coatings technologies. Government Relations discussed options for technically engaging Defense officials during the Chicago SUR/FIN® conference in June.

EPA Shares Concerns On Air Emissions Beyond Chromium

Government Relations is talking with federal air officials on whether or how EPA should pursue a new round of air emission controls for a wide range of plating operations. Since regulating chromium electroplating in the mid-1990s, the Agency is now reviewing possible air emission controls for additional sources. The primary list of possible candidates includes: antimony, arsenic, beryllium, cadmium, cobalt, cyanide, lead, manganese, mercury, nickel and selenium. Any new standards would likely be based on generally available control technology (GACT)—which are traditionally not as onerous at the "envelope-pushing" MACT standards—but could be more or less stringent based on human health and environmental concerns.

EPA is focusing particularly on nickel finishing operations as a small emissions source. Based on recent exchanges with air officials, the Agency is interested in considering the best data available and wants to work with industry on potential new standards. Government Relations has raised several key concerns in response, including the fact that EPA data for nickel emissions is severely flawed. GR recently helped secure $75,000 in EPA funding for a definitive study on electrolytic and electroless nickel to replace the data currently available for agency decision makers. The study is now underway by **Frank Altymayer, MSF,** and **Joelie Zak, CEF-4** of Scientific Control Labs, and could be critical for any upcoming EPA rulemaking decisions. In the meantime, some officials have raised several suggestions to Government Relations, including engaging the industry in discussions on voluntary initiatives to reduce air emissions from small metal finishing shops in lieu of traditional "command and control" standards. An initiative could include source reduction, pollution prevention, housekeeping and best management practices that result in reduced air emissions.

Regulatory Alert

OSHA Proposes to Lower Occupational Exposure to Hex Chrome

The U.S. Department of Labor,s Occupational Safety and Health Administration (OSHA) recently published in the *Federal Register* a proposed new standard for occupational exposure to hexavalent chromium. After several years of litigation and discussion with industry and union organizations, OSHA is seeking to lower the permissible exposure limit (PEL) for hexavalent chromium and for all hexavalent chromium compounds from 52 $\mu g/m^3$ to 1 $\mu g/m^3$ as an eight-hour time weighted average (TWA). See 69 *Fed. Reg*. 5930 on the web at www.osha.gov/FedReg_osha_pdf/FED20041004.pdf.

OSHA had been considering a range of possible exposure limits. However, the agency has proposed 1 as the appropriate standard based on reduction of lung cancers in employees. The proposed standard also includes a so-called action level% of 0.5 $\mu g/m^3$ which means that at this level, facilities would face a range of new requirements for controlling exposure, including:

- respiratory protection,
- protective clothing and equipment,
- hygiene areas and practices,
- medical monitoring,
- hazard communication and
- record keeping.

The proposal will likely have a significant impact on the metal finishing industry, posing substantial technical and economic feasibility challenges for companies attempting to comply with such extremely low exposure limits.

Based on initial industry estimates, finishing operations may have to spend up to $300,000 per year to meet the new standard. This could force many companies to either (1) install expensive control measures above and beyond those that are currently in place to protect worker health or (2) abandon hexavalent chromium finishing operations. Government Relations will continue its advocacy efforts and will be leading a group of industry representatives to challenge the proposed rule through coments, testimony and meetings with key government officials.

Comments on the proposed rulemaking must be submitted to OSHA by January 3, 2005. OSHA also plans to hold an informal public hearing on the proposed standard in Washington, D.C. on February 1, 2005. Any parties interested in presenting testimony at the public hearing must notify OSHA of their intentions to do so by December 3, 2004. For more information, contact Christian Richter (crichter@thepolicygroup.com) or Jeff Hannapel (jhannapel@thepolicygroup.com) at The Policy Group or call (202) 457-0630.

Capitol Hill Recap

Finishers Testify Before Congress on Critical Manufacturing Issues

The Finishing Industry was invited twice last quarter by House Small Business Committee Chairman Don Manzullo (R-IL) to provide congressional testimony on the challenges facing manufacturing in the global context. This activity is part of a broader Government Relations strategy to educate lawmakers on the competitive future of the metal finishing industry and to identify specific solutions to lower U.S. manufacturing costs. In testimony before the House Small Business Committee on March 25, 2004, **John Lindstedt, CEF-2** (Artistic Plating, Milwaukee WI) identified recent trends in metals prices, along with rising energy prices, health care costs and regulatory overhead as major pressures on U.S. competitiveness. Examples that Lindstedt raised included accelerating EPA's rulemaking to "delist" F006 wastewater treatment sludge from the RCRA hazardous waste regulatory framework. As a result of his testimony, finishers are soliciting bipartisan support for a congressional letter urging EPA Administrator Michael Leavitt to take action in providing more regulatory flexibility for the industry.

On May 19, 2004, **BJ Mason** (Mid-Atlantic Finishing, Capitol Heights MD) testified before the House Small Business Committee regarding options for the federal government to strengthen federal oversight of the regulatory process on the science and cost/benefit fronts. Specifically, Mason underscored the importance of the regulatory reform process undertaken by the White House Office of Management and Budget (OMB) to identify reforms to regulations that will spur small business growth. Mason identified several specific regulatory reforms that would promote good environmental stewardship and benefit the metal finishing industry from a competitiveness perspective.

Mark Your Calendars – New Finishing Industry "Washington Forum" Slated for May 2005

Understanding *and* staying ahead of industry change is now more challenging than ever. To help firms and individuals in the finishing industry do both, Government Relations is working with association leadership to create a new event packed with relevant topics that will headline as the ***"Washington Forum: Surface Technology Policy & Regulatory Conference."*** The 2-day session will be held May 11-12, 2005 in Washington, DC, and will merge the best programmatic efforts of Orlando-based "AESF Week," which stresses technology, regulatory and compliance topics, and the SFIC Washington "Fly In," which covers policy and legislative issues. Discussions among industry, government and academic experts will highlight global pressures on the manufacturing supply chain, European Union and U.S. regulatory actions, and impacts of the ELV, RoHS, REACH and other metals/chemicals initiatives. Also featured will be top federal officials on trade and competitiveness, federal R&D efforts on nanotechnology and the potential impacts on the metals industry of the Pentagon's corrosion control strategy. Tune in for more information on the ***Washington Forum*** as further details are finalized.

Pentagon to Hold Surface Finishing Symposium—Likely Summer 2005

The Department of Defense Strategic Environmental Research & Development Program (SERDP) has agreed to hold a surface technology symposium in 2005. Pressure to develop new materials and superior alternative surface coatings is now driven by a combination of regulatory and market factors, including likely changes to OSHA's chromium exposure standards, emerging European Union materials and product directives, and OEM demands in the automotive, electronics, aerospace and other industries. It's vital that the Department of Defense selects coatings in the future that can meet environmental and health protection goals as well as cost and functionality objectives. Planning for the session is in the preliminary stages, and more information will be available shortly.

Industry Alliance Gets EPA Delay on Nickel Risk— European Action Ominous

Joint finishing industry efforts with global nickel producers have succeeded in delaying EPA's pending human health assessment for nickel until spring 2005. Government Relations and scientists at the Nickel Producers Environmental Research Association (NiPERA) held discussions with senior EPA officials over the summer to discuss progress associated with the Nickel industry's $1.2 million animal study underway. The extensive toxicological study will contribute new data and fill existing gaps in the literature on potential health effects to humans from oral ingestion of soluble nickel compounds. Results will be available in spring 2005, and EPA requested that the study undergo further peer review prior to submittal to the Agency. EPA scientists have spent several years weighing the potential health impacts of both inhalation and ingestion of nickel, and the 2002 reclassification of soluble nickel compounds as a "known" human carcinogen by the U.S. Dept. of Health & Human Services' National Toxicology Program (NTP) spurred increased domestic scrutiny of the metal. Meanwhile, the European Union is finalizing its own risk assessment for nickel compounds this fall. EU action will likely drive new regulatory scrutiny for industry, and there is little argument that companies with operations located in Europe, supplying an OEM producing or selling in Europe, or selling products directly in the EU may be subject to new requirements, including obtaining authorization to market nickel-containing products if the expansive EU chemicals policy (known as the REACH initiative) is finalized. See www.nickelforum-eura.org/multimedia/nickel_risk_assessment/European_Nickel_Risk_Assessment_Update/August_2004.pdf.

Industry Marshalling Congressional Support for Plating Recycling Exemption Based on Environment, Competitiveness Demands

The industry has solicited EPA to develop a new rule that would ***exempt*** F006 wastewater treatment sludge from being listed as a hazardous waste if it is recycled. Besides working closely with EPA officials on this rulemaking, Government Relations worked over the summer to educate key members of Congress on the benefits of an exemption for both the environment and the metal finishing industry. Earlier this year, John Lindstedt of Artistic Plating in Milwaukee and B.J. Mason of Mid-Atlantic Finishing in Capitol Heights, Maryland, testified before the U.S. House Small Business Committee, noting that U.S. finishers' competitiveness in the global market demands a streamlined waste regulatory framework, particularly where changes do not adversely impact the environment. Government Relations has requested that Illinois Republican Committee Chairman Don Manzullo draft a letter directing EPA to complete the rulemaking package as soon as possible. Government Relations efforts are garnering bipartisan support for the letter in the House. If EPA keeps its schedule, the proposed F006 exemption would be published in early 2005. The industry will continue to push EPA to finalize the regulation, which could save some metal finishing facilities up to $50,000 a year.

Finishing Industry Submits Comments to FAA on Proposed Drug/Alcohol Testing for Aviation Maintenance & Repair Contractors

The industry recently submitted comments to the Federal Aviation Administration (FAA) opposing its sweeping proposal subjecting firms that perform safety-sensitive functions—directly or by contract—to comprehensive FAA drug and alcohol testing programs (see 69 *Fed. Reg.* 27980). The new regulations would apply to hundreds of metal finishing job shops plating parts that are used for aviation maintenance or repair work, regardless of how remote the ***contractual relationship*** to the maintenance or repair may be. In comments to FAA, Government Relations urged the agency to reconsider its overly broad application of drug and alcohol testing requirements. Industry is arguing the proposed rule is unnecessarily redundant and burdensome and that existing rules already ensure safety in the aviation maintenance and repair supply chain. What is needed is continued diligence with quality assurance programs, not additional drug and alcohol testing requirements. Imposing the new requirements on all metal finishing operations in the aviation maintenance and repair supply chain would: (1) increase operational costs for metal finishing shops with no benefits; (2) render finishers less competitive; and (3) force facilities to abandon further aviation maintenance and repair work; and (4) adversely impact the aviation maintenance supply chain. While the FAA reviews comments on the rule, Government Relations will continue to pursue this matter and provide periodic updates to industry.

EPA Says Enforcement Not Intended on Chrome MACT Compliance Glitch

While the industry's regulatory reform objectives were realized when EPA pushed to finalize more flexible changes to the Chrome MACT standard in July (69 *Fed. Reg.* 42885), the rule's immediate effective date (July 19, 2004) for a lower surface

tension standard in certain circumstances (35 dynes when measured with a tensiometer) was an unintended surprise. Some firms using tensiometers found themselves technically out of compliance with the new standard and contacted Government Relations. In response, Government Relations raised the issue recently to EPA officials. Agency air officials have acknowledged the temporary compliance "glitch" was unintended, and emphasized EPA will apply enforcement discretion and allow facilities a limited grace period for those situations in which the immediate effective date poses a problem.

Analysis Concludes that U.S. Manufacturers Abet China Trade Imbalance

Recent analysis reported in IndustryWeek show that China is a major contributor to the trade imbalance. Official data indicate in 2003, $148.6 billion in manufactured goods were imported from China and $21.8 billion of U.S. manufactured goods were exported to China, yielding a manufactured goods trade imbalance of $126.8 billion. As most in the industry know, the imbalance is not just in consumer goods but also in components and materials, as U.S. manufacturers outsource to China. The analysis found that 45% of manufacturing plants surveyed now source components and materials from China. Furthermore, 74% of the plants that source from China indicated that the dollar volume of components and raw materials sourced from China has increased over the last 3 years (18% say the volume has increased by more than 20%). Among the highlights of the IW analysis, among industries with at least 20 facilities responding to the survey, computer and electronic product manufacturers source the most from China (61% of plants), followed by furniture and related products manufacturers (56%), miscellaneous manufacturers (54%), and machinery makers (52%). Also, 35% of surveyed plants said that competitors in China had a negative effect on their profitability versus 14% who increased profits. See analysis at www.industryweek.com.

Al Frink Confirmed as New "Manufacturing Czar"

Al Frink, a California carpet manufacturing CEO, was confirmed September 10, 2004 as the first Assistant Secretary of Commerce for Manufacturing and Services, the so-called "Manufacturing Czar." One of his first acts was a September 16 meeting with the heads of about 12 leading manufacturing organizations, including the National Council for Advanced Manufacturing (NACFAM), of which the Surface Finishing Industry Council is a member. Frink made a favorable impression at the meeting, and participants noted his strong personal commitment to serving as a vigorous advocate for manufacturing in Washington. Government Relations will be discussing finishing industry concerns with Frink in the coming weeks.

Analysis: Foreign Governments Finance a Growing Share of U.S. Trade Deficit

The Economic Policy Institute, a Washington, DC-based think tank, analyzed the implications of September's U.S. Bureau of Economic Analysis estimate that the current account—the broadest measure of the U.S. deficit in trade of goods, services, and payments to the rest of the world—reached an all-time quarterly high of $166.2 billion in the 2nd quarter of 2004, an increase of 13% over the 1st quarter. This trade deficit was 5.7% of U.S. gross domestic product (GDP). EPI concluded that a major factor contributing to the rising trade deficit is the effort by foreign governments (especially those in Asia) to boost the value of the U.S. dollar by purchasing large amounts of U.S. assets such as treasury bills and other government securities. Foreign governments now provide the majority of the financing required to support the U.S. trade deficit. Highlights of the EPI analysis, prepared by economist Robert E. Scott, show:

- The trade deficit must be financed by borrowing from the rest of the world – the U.S. was effectively spending about 5.7% more than it was producing in the first quarter, about $1.8 billion every day;
- The U.S. cannot continue to borrow at such a high rate indefinitely. Even worse, EPI warned that the trade deficit is growing each year as a share of GDP;
- The drop in the value of the dollar since February 2002 – primarily the 40% decline against the Euro – has failed to stem the increase in the current account deficit, which was 4.3% of GDP at the dollar's peak;
- If the dollar were being supported by demand from investors who find the U.S. market attractive, then steady growth in capital inflows from private investors to finance rising deficits would likely occur. However, private inflows have fallen in the last 3 years;
- Instead, foreign governments have been intervening in foreign exchange markets by purchasing a rapidly growing volume of U.S. government assets. These inflows reached an annual rate of $403 billion in the first half of 2004, or 64% of the funds necessary to finance the U.S. deficit. Official government inflows were 47% of the total in 2003;
- Asian governments made 80.7% of all government purchases of U.S. assets in the first half of 2004;
- EPI noted that "Asian governments, especially Japan and China, are willing to absorb the risks of financial losses from an ultimate decline in the dollar in order to support their exports competing with U.S. production, in the U.S. and around the world;"
- If these governments had not been intervening in foreign exchange markets, then the dollar would have fallen much more than it has since 2002. In fact, the real value of the dollar increased 2.8% in the first half of 2004; and
- According to news reports, Japanese authorities reduced official purchases of foreign exchange in the second quarter, as the Yen weakened during the quarter. EPI noted that "available evidence suggests that Japanese officials would intervene again in the future were the Yen to strengthen. Chinese authorities have stated that they will also act to maintain the stability of their currency, and China continued to acquire foreign exchange during the quarter."

EPI concluded that if U.S. and foreign governments would arrange for a substantial, orderly decline in the value of the dollar, then financial markets could be stabilized and the U.S. trade deficit would begin to decline. See www.epinet.org/content.cfm/webfeatures_snapshots_09142004

For more information, contact Christian Richter (crichter@thepolicygroup.com) or Jeff Hannapel (jhannapel@thepolicygroup.com) or call (202) 457-0630.