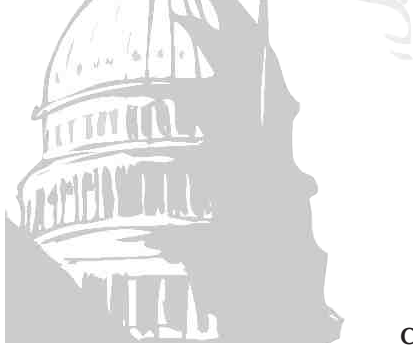


Washington Report

Industry Action Prompts Congressional Hearing On OSHA's Proposed Chrome PEL



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The surface finishing industry's efforts to secure a more reasonable workplace exposure limit for hexavalent chromium intensified in recent weeks. During the industry's new "Washington Forum" event in May, over 100 attendees engaged with scientists, policy experts and national decision makers on emerging issues, ranging from nanotechnology, EU regulatory and compliance issues and competitiveness challenges (for direct access to speaker presentations, see www.sfiwashingtonforum.com).

Part of the Washington Forum focused on expanding education efforts on Capitol Hill with respect to the broad negative impacts on manufacturing from OSHA's proposed workplace exposure limit for hexavalent chromium. Visits from some industry participants to Congress prompted Rep. Candice Miller of Michigan to hold a July hearing of the panel she currently chairs – the House Subcommittee on Regulatory Affairs (see <http://reform.house.gov/RA/Hearings/EventSingle.aspx?EventID=31270>).

The hearing featured testimony from Public Citizen, the activist group that forced OSHA to rewrite the rule, as well as from the manufacturing community. Stuart Sessions, an independent economist whose analysis has demonstrated the rule will cost surface finishers just under \$1 billion annually, provided the sole industry testimony, touching on the adverse impacts of the rule for the metal finishing, steel and aerospace sectors. As a result of the hearing, Ms. Miller expressed strong concerns with respect to the appropriateness of the proposed limit in a formal letter to U.S. Department of Labor Secretary Elaine

Chao. We have included Chairwoman Miller's letter below, as well as a summary of industry's testimony before the House Regulatory Affairs Subcommittee.

Meanwhile, the finishing industry continues to lead a broad group of manufacturers in Washington to ensure OSHA's final decision includes the appropriate use of existing health risk studies, the feasibility of engineering controls and accurately estimated economic impacts. OSHA is still on track to finalize a new standard by a court-ordered deadline of January 18, 2006. Government Relations will continue to coordinate efforts with wide range of affected industry sectors to get a final standard that is protective, reasonable and based on sound science.

Highlights of Industry Testimony before the House Subcommittee on Regulatory Affairs

In addition to the range of serious technical and analytical shortfalls associated with the rule, which industry has catalogued extensively in its formal comments and testimony during this past year, there are troubling economic impacts estimated for several key industries, in particular the aerospace, steel and surface finishing sectors:

- Metal finishing industry impacts – are estimated to be approximately \$800 million per year. In a study of six representative metal finishing facilities facing new compliance costs for the proposed limit, it was estimated that more than half of the affected firms

would be unable to afford the compliance costs for the rule, apart from the technological feasibility challenges of achieving consistent compliance below the Action Level of 0.05 ug/m³ associated with an exposure limit of 1.0 ug/m³. Facilities could not pass on extensive compliance costs – averaging well over \$100,000 annually – to the firm's customers.

- Aerospace manufacturing industry impacts – are estimated at about \$1.1 billion per year, meaning that the cost of the rule for this one industry alone would equal the cost of the most expensive Federal regulation issued during Fiscal Year 2004. This figure does not include the additional costs of the rule on aircraft maintenance operations as opposed to aircraft manufacturing, including Department of Defense, commercial airline and private plane maintenance activities. The Aerospace Industries Association has estimated that compliance with the proposed rule will cost about \$15,000 - \$18,000 per affected employee per year.
- Steel industry and its customer base – for those operations processing stainless and alloy steel, impacts are estimated to be approximately \$600 million per year for steel makers and their customers. Most of the costs for the steel processing industries will involve changing welding processes for stainless and alloy steels. These changes can involve a reduction in worker productivity of 25 – 40%, plus other costs.

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July 20, 2005

The Honorable Elaine L. Chao
Secretary
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210

Dear Secretary Chao:

I would like to take this opportunity to thank your agency for participating in the Subcommittee's hearing entitled "The Impact of Regulations on U.S. Manufacturing: Spotlight on Department of Labor & Department of Transportation." I was encouraged by the frank and instructive dialogue on the regulatory burden that is impacting America's manufacturers.

One regulation discussed during the hearing that aroused my concern was the Occupational Exposure to Hexavalent Chromium proposed by the Occupational Safety and Health Administration. As you know, the current permissible exposure level of hexavalent chromium is $52 \mu\text{g}/\text{m}^3$. OSHA has proposed a permissible exposure limit of $1.0 \mu\text{g}/\text{m}^3$. I strongly feel this drastic decrease will harm the manufacturing industry and hinder our nation's ability to remain internationally competitive.

The proposed rule has a deeper impact on the U.S. manufacturing sector than OSHA considered. First, OSHA did not consider a wide range of manufacturing operations and their suppliers in its analysis. Many operations impacted by the rule have not traditionally been viewed as chromium-based processes and involve a small amount of hexavalent chromium. Secondly, OSHA has underestimated compliance costs. OSHA believes the new limit merely requires facilities to "tweak" existing control systems. They estimate the new limit will cost all impacted sectors roughly \$200 million annually. However, industry estimates show that the new limit will cost all impacted sectors over \$3 billion annually. Finally, no major industrialized nation has as stringent a rule as OSHA's proposed standard. Most major U.S. trading partners have set an exposure limit of $50 \mu\text{g}/\text{m}^3$, including most of the European Union. Such a low limit will cost us American jobs and ultimately hurt the U.S. economy.

More importantly, OSHA failed to seriously consider the concerns of the defense industry. Hexavalent chromium manifests itself in the defense industry when painters apply anti-corrosive coating materials. Corrosion control appears to be one of the greatest factors in military equipment lifecycle costs. Should the proposed rule remain, the Department of Defense would have to require resources to be reallocated from other programs that could include body armor, chemical weapons detection, and other national security tasks. As a member of the House Armed Services Committee and the wife of a former U.S. Air Force fighter pilot, this specific impact deeply troubles me.

On a more personal level, my home state of Michigan is dominated by the manufacturing industry. It is the livelihood of a number of my constituents. In fact, manufacturing's share of jobs in Michigan in 2001, at 20.2%, was significantly higher than the sector's share of jobs nationwide, at 13.4%. Should OSHA's proposed rule become final, I have no doubt that many of the manufacturing businesses in Michigan will either close their doors or move overseas. I am fully aware that OSHA has lowered the proposed limit to $1.0 \mu\text{g}/\text{m}^3$ in order to protect worker safety and health. While I am a supporter of worker safety and health, I believe this level was based on outdated science; for even the SBREF A Panel arrived at the conclusion that a limit at or near $20 \mu\text{g}/\text{m}^3$ would both protect workers and the business community. Sound and current science proves likewise.

It should be noted that the genesis of the hearing was the March 2005 Office of Management and Budget's report, Regulatory Reform of the U.S. Manufacturing Sector. As a result, the purpose of the hearing was to review the President's 76 nominations as part of the Office of Information and Regulatory Affairs regulatory review process. I believe that action consistent with the President's goal of assisting manufacturers is required in this instance and needs to be taken into consideration as part of the review of this rule. I appreciate your time and attention in this matter. I look forward to continued discussions with you on this and other issues.

Sincerely,

Candice S. Miller
Chairman
Subcommittee on Regulatory Affairs