# Washington Update



FAA Drug & Alcohol Testing Requirements Will Impact Finishers



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

The Federal Aviation Administration (FAA) issued a final rulemaking on January 10, 2006 to clarify that all persons who perform safety-sensitive functions directly or by contract (including by subcontract at any tier) must be subject to drug and alcohol testing programs in accordance with FAA regulations—71 Fed. Reg. 1666. The new requirements will become effective on April 10, 2006.

# Impact on Plating and Surface Finishing Operations

Under this wide-sweeping rule, metal finishing job shops plating parts that are used for aviation maintenance, preventive maintenance or repair work would be required to implement comprehensive FAA drug and alcohol testing programs, regardless of how remote the contractual relationship to the maintenance or repair may be. The regulations do have some exemptions from the testing requirements if your facility is performing finishing services for defense contractors or certain types of charter aviation operations.

In August 2004, the finishing industry submitted comments on the rule that recognized the critical nature of aviation safety, but indicated that the FAA's rule appears to be unnecessarily redundant and burdensome, especially for small businesses with indirect contractual relationships with repair work. Furthermore, the comments stated that the existing regulatory requirements and certification process insure aviation safety by requiring detailed product specifications for plated aircraft parts and rigorous inspection and testing requirements for aircraft parts prior to installation. Despite these efforts and those of other aviation industry trade groups, the FAA decided to promulgate the final rule as it was proposed.

## FAA's Position on Applicability of Requirements

The FAA noted that it was not creating new requirements, but rather clarifying that the drug and alcohol testing program requirements apply to contractors and subcontractors at any tier who are engaged in safetysensitive functions such as maintenance, preventive maintenance and repair work. In the Federal Register notice, the FAA stated that "[d]etermining whether a particular task fits under the definitions of 'maintenance' or 'preventive maintenance' is the responsibility of the regulated employer, working in conjunction with the regulated employer's assigned FAA principal inspector. Once the principal inspector determines a task is maintenance or preventive maintenance, the individual performing the task for the regulated employer must be subject to drug and alcohol testing." 71 Fed. Reg. at 1673.

The impacts of the new requirements on the finishing industry can be significant. In response to a comment submitted on the proposed rule, the FAA specifically stated that even "interior plating decoration to nonessential components is 'preventive maintenance' under [the federal regulations]" and, therefore, "drug and alcohol testing is required for individuals who perform this type of plating." *71 Fed. Reg.* at 1673.

#### **Compliance Options**

Implementing drug and alcohol testing programs under the federal regulations, 14 CFR Part 121, Appendices I & J, requires a full complement of testing, including pre-employment screening, annual random testing, reasonable suspicion testing, return to duty verification and follow-up testing. These programs also include costs for employee education and training, program development and maintenance, and annual documentation and record retention procedures. As a preliminary estimate for the average metal finishing job shop with 20 employees, implementation of these testing programs would cost approximately \$10,000 annually. The costs could be significantly more for larger facilities.

If your facility performs any surface finishing activities for aviation industry customers or end uses that could be considered safety-sensitive functions under this regulation, you may now need to implement a drug and alcohol testing program for individuals engaged in those activities. If you are unable or do not want to implement an FAA drug and alcohol testing program at your facility, you may be able to use your customer's program to have your employees tested.

For more information on the applicability of these requirements to your activities, contact the FAA's Drug Abatement Division at 202-267-8442 or visit the Web site at http://www.faa.gov/about/office\_ org/headquarters\_offices/avs/offices/aam/ drug\_alcohol/.

# More News from Washington

## Industry, Congress Press In Late Innings for Reasonable OSHA Chrome Rule

Finishing firm owners and technical experts returned to Washington in early February to press for a reasonable hexavalent chromium rule from OSHA. The Agency recently received a six-week extension from its original court deadline of January 18 to finish work on the regulation, and Government Relations has continued to aggressively advocate for a more realistic limit. Capitol Hill is rejoining the effort, with top lawmakers communicating their concerns to the White House and Secretary of Labor Elaine Chao.

Industry is the Bush urging Administration to align its domestic regulatory priorities with the President's recent State of the Union focus on competitiveness. Costly and technically infeasible workplace regulations such as the pending chromium rule will add to the already mammoth weight of the structural costs of doing business in the U.S. As this report went to press in mid-February, the regulation was still under review at the White House. Full coverage of the final rule package will be available to the industry when the rule is finalized on February 28, and a special panel discussion featuring possible industry litigation strategy, compliance and the political outlook for the rule will be held on May 23 at the finishing industry's Washington Forum. See www.sficwashingt onforum.com.

#### Business Roundtable Study Indicates Need to Keep U.S. Edge

Recent Business Roundtable research indicated widespread public concern over keeping the U.S. competitive edge and the need to strengthen U.S. math and science capabilities. Both opinion leaders and U.S. voters believe China will be the world's strongest economic power in 20-30 years. Of U.S. voters surveyed, 62% think public high schools are not adequately preparing graduates to meet work challenges. Also, 86% of U.S. voters surveyed agreed that the country must increase the number of workers with a background in science and math, or America's ability to compete in the world economy will be severely diminished. See http://www.businessroun dtable.org.

#### European Union/U.S. Innovation Gap Persists; China/India Innovation Surges

The fifth edition of the European Innovation Scoreboard reveals that Sweden, Finland, Switzerland, Germany, and Denmark are the European innovation leaders. Most of the "old" member states are in a larger group of average performing countries. The innovation gap between the EU25 and Japan is increasing and the one between EU and U.S. is close to stable. The EU invests about a third less in research than the U.S., and the EU/U.S. innovation gap has not narrowed in recent years. Meanwhile, emerging countries like China and India are fast becoming worldclass centers of research and innovation. See http://cordis.europa.eu.int.

## Senators Introduce Science & Technology Competitiveness Legislation

On January 25, 2006, Senators Pete Domenici (R-NM), Jeff Bingaman (D-NM), Lamar Alexander (R-TN), and Barbara Mikulski (D-MD), along with retired Lockheed Martin CEO Norm Augustine, introduced a package of three bills designed to help the U.S. maintain its leading edge in science and technology. The bills are collectively titled the Protecting America's Competitive Edge (PACE) Act. The PACE Act implements 20 recommendations contained in the recent National Academy of Science report "Rising Above the Gathering Storm." See http://energy.senate.gov.

# Five Warning Signs for U.S Manufacturing

On February 1, 2006, the Council of Manufacturing Associations and the National Association of Manufacturers released a report warning of downward trends in output, underutilized capacity, lower U.S. share of manufacturing trade, skilled workforce shortages, and challenges to U.S. R&D leadership. These threaten to reduce the critical mass of U.S. manufacturing needed for innovation. The report recommended policies to accelerate production in the U.S., encourage productivity-enhancing investments, increase federal R&D spending, and improve the U.S. transportation and communications. See http://www.nam.org.

# State of the Union: The American Competitiveness Initiative

In his State Of The Union Address, the President announced the American Competitiveness Initiative, which commits \$5.9 billion in FY 2007, and more than \$136 billion over 10 years, to increase investments in R&D; to strengthen education; and to encourage entrepreneurship and innovation. The Presidents of the National Academies of Science, the President of the Semiconductor Industry Association, House Science Committee Chair Sherwood Boehlert (R-NY), and NAM President John Engler voiced strong support for the Initiative. See http: //www.whitehouse.gov. *P&SF* 

