



## **NASF Public Policy Report**

### **April 2022**

As the Biden Administration’s legislative agenda faces continued headwinds in Congress, several regulatory initiatives are advancing. This month’s update highlights several new developments in April, including a highly ambitious new climate disclosure and reporting rule from the Securities and Exchange Commission (SEC) for publicly traded companies that would impact upstream suppliers and customers. Other major announcements include EPA’s pending release of a new federal health assessment for hexavalent chromium, next steps for surface coatings under the agency’s PFAS water rules, and state action on issues of concern for the surface finishing industry.

- **SEC Proposes Corporate Climate-Related Reporting that Impacts Upstream Suppliers** – A major proposal from the Securities and Exchange Commission would require publicly-traded companies to include certain climate-related disclosures that could have consequential upstream impacts on their suppliers.
- **EPA Outlines Process for Developing PFAS Wastewater Discharge Limits for Surface Finishing Operations** – EPA is now developing proposed PFAS wastewater discharge limits for surface finishing industry with a proposed rule anticipated by Summer 2024. NASF continues to work closely with EPA officials in providing data, analysis and other input on the rulemaking.
- **New Science Panel Will Review EPA’s Human Health Assessment for Hexavalent Chromium** – EPA in April announced a new federal Science Advisory Board panel is being formed to conduct a review of the EPA’s draft health assessment for hexavalent chromium to determine whether the agency’s scientific work is scientifically credible. The draft document will be released for public comment soon.
- **Review Panel Backs EPA PFAS Drinking Water Standard Findings But Seeks More Information** – SAB generally support EPA findings on PFAS, but identifies deficiencies and inconsistencies in the scientific studies used to support the agency’s conclusions.

- **State Environmental Agency Heads Release Updated Document on State Efforts and Regulatory Activities on PFAS** – A white paper developed by state environmental agency chiefs which outlines state efforts and regulatory activities on per- and polyfluoroalkyl substances (PFAS) has been updated and is available.
- **Water Agencies, Consumers, and Industry Groups Claim California Hexavalent Chromium Drinking Water Standard Would Be Too Costly** – New proposed hexavalent chromium drinking water standard may be too costly to implement and provide few, if any, environmental benefits.
- **EPA Equity Action Plan Could Face Implementation Barriers** – Equity Plan identifies priorities to address equity in underserved communities and acknowledges programmatic barriers that could hinder implementation of key actions needed.

A more detailed summary of these issues is provided below.

### **SEC Proposes Corporate Climate-Related Disclosures that Impact the Supply Chain**

The Securities and Exchange Commission SEC proposed rule changes that would require publicly traded companies to include certain climate-related disclosures in their statements and periodic reports.

The reporting format would include information about climate-related risks that are reasonably likely to have a material impact on their business, results of operations, or financial condition, and certain climate-related financial statement metrics in a note to their audited financial statements. The required information about climate-related risks also would include disclosure of a company’s greenhouse gas emissions as a metric to assess its exposure to such risks.

The SEC notes that the climate-related disclosures are aimed at providing reliable information about climate risks help investors make informed investment decisions regarding climate issues that can pose significant financial risks to companies, and help companies more efficiently and effectively disclose these risks and meet investor demands.

The proposed rule changes would require a company to disclose information about:

- (1) *Governance* – the company’s governance of climate-related risks and relevant risk management processes
- (2) *Material Impacts* – how any climate-related risks have had or are likely to have a material impact on its business and consolidated financial statements

(3) *Company Strategy and Outlook* – how any identified climate-related risks have affected or are likely to affect the company’s strategy, business model, and outlook

(4) *Financials* – the impact of climate-related events (severe weather events and other natural conditions) and transition activities on the line items of a company’s consolidated financial statements, as well as on the financial estimates and assumptions used in the financial statements.

The proposed rules also would require a company to disclose information about its direct greenhouse gas (GHG) emissions (Scope 1) and indirect emissions from purchased electricity or other forms of energy (Scope 2).

***In addition, a company would be required to disclose GHG emissions from upstream and downstream activities in its value chain (Scope 3).*** The proposed rules would include a phase-in period for all companies, with the compliance date dependent on the company’s filer status, and an additional phase-in period for Scope 3 emissions disclosure.

While the proposed rule directly impacts only those publicly-traded companies, their customers and suppliers (including surface finishers) could be impacted by the rule as the regulated companies will likely request GHG emissions data and other climate related information from them to meet their Scope 3 requirements. The extent of the impact on customers and suppliers will be determined as the rule is clarified and finalized.

The proposed rule was published in the Federal Register on April 11, 2022 and is available at the following link: <https://www.federalregister.gov/documents/2022/04/11/2022-06342/the-enhancement-and-standardization-of-climate-related-disclosures-for-investors>.

Comments on the proposed rule are due on May 20, 2022. If you have any questions or would like additional information regarding this proposed rulemaking, please contact Jeff Hannapel with NASF at [jhannapel@thepolicygroup.com](mailto:jhannapel@thepolicygroup.com).

### **EPA Outlines Process for Developing PFAS Wastewater Discharge Limits for Surface Finishing Operations**

At this month’s NASF Washington Forum, EPA’s project lead staffer provided a presentation on the process for developing PFAS wastewater discharge limits for surface finishing operations. EPA has announced that it plans to issue a proposed rule by summer 2024 and a final rule by Summer 2025. Each of the key components of the rulemaking process is discussed in more detail below.

*Industry profile* – Based on a review of several EPA and state multi-media databases, EPA believes that there are approximately 1,200 to 1,300 chrome plating facilities in the U.S. EPA will be taking steps to determine if the focus on this rulemaking should be only chromium plating facilities or all facilities subject to the existing categorical wastewater discharge limits for metal finishing (40 CFR part 433) and electroplating (40 CFR Part 413).

*Data Collection* -- EPA sends out an information collection request survey or questionnaire to either all chromium plating facilities or all facilities subject to 433 and 413. The questionnaire will seek to

- confirm identity of facilities subject to any new limits,
- understand industrial processes present at facilities,
- obtain engineering data like wastewater flow rate, and
- obtain economic data related to economic achievability.

In addition, EPA plans to collect wastewater samples to:

- quantify pollutants currently present in an industry's discharges,
- evaluate performance of wastewater treatment and control technologies, and
- obtain data necessary to calculate any new effluent limits.

EPA will work with NASF on the development of this data collection effort and has targeted the end of 2022 to finalize the information collection request. The data collection request would be sent out to the surface finishing industry in early 2023.

*Analysis of Data* – Based on the data collected from the information request and other sources of data, EPA will then conduct an analysis of the data to:

- determine if subcategorization is necessary,
- select regulated pollutants, and
- develop technology-based options, such as wastewater treatment technologies, product substitution, and other pollutant prevention techniques (e.g., water reuse).

EPA has indicated that the current technology basis for the existing ELGs is chemical precipitation, but it does not effectively remove PFAS. Granular activated carbon (GAC) has been demonstrated as an effective treatment option for PFOS. Other treatment options such as ion exchange, membranes, and combinations of treatment technologies may be effective, but more treatment performance data is needed.

For each of the technology-based options that are identified, EPA will calculate:

- compliance costs,
- discharge limits,
- loading reductions (pollutant removals),

- economic impacts and achievability, and
- environmental benefits.

Under the Clean Water Act the standard for setting effluent limits is Best Available Technology Economically Achievable (BAT). In general, BAT represents the performance of the best facilities in an industrial category, while accounting for economic impact. EPA must consider the following factors when assessing BAT:

- the cost of achieving BAT effluent reductions,
- the age of equipment and facilities involved,
- the processes employed by the industry and potential process changes that may be needed,
- non-water quality environmental impacts, including energy requirements, and
- other factors as EPA deems appropriate

The wastewater limits must also account for pass-through, interference, or incompatibility with POTWs' operations. Once the new technology-based limits are established, facilities are not required to install specific control technology, but rather are required to meet the limits.

*Proposed Rule* – Following these rule development efforts, EPA would draft preamble language and regulatory text and publish a notice of proposed rulemaking in the Federal Register. EPA would provide an opportunity for public comment, respond to those comments and prepare a final rule for publication in the Federal Register. Throughout this rule development process, stakeholders will have opportunities to provide information, analysis and other input to EPA on the new regulation.

NASF has been working closely with EPA and state officials to identify relevant and appropriate information and will continue to do so throughout the entire rulemaking process. If you have any questions or would like additional information regarding this rulemaking development process, please contact Christian Richter or Jeff Hannapel with NASF at [crichter@thepolicygroup.com](mailto:crichter@thepolicygroup.com) or [jhannapel@thepolicygroup.com](mailto:jhannapel@thepolicygroup.com).

### **New Science Panel Will Review EPA's Human Health Assessment for Hexavalent Chromium**

EPA in April announced a new federal Science Advisory Board panel is being formed to conduct a review of the EPA's draft health assessment for hexavalent chromium to determine whether the agency's scientific work is scientifically credible.

EPA's draft assessment, which will be released shortly for public comment, identifies the hazards associated with hexavalent chromium, summarizes its chemical properties and the human health effects associated with exposure and, among other things, the quantitative relationship between chemical exposure and various credible health hazards.

These quantitative relationships are then used to derive cancer and non-cancer toxicity values that can be used for new risk assessments to inform future regulatory decisions, including federal bans or phase-outs of the substance.

The SAB Hexavalent Chromium Review Panel will consider whether the conclusions found in the EPA's draft assessment are clearly presented and scientifically supported. The Panel will also be asked to provide recommendations on how the assessment may be strengthened.

NASF will continue to keep members updated on the progress of the assessment and the results of the SAB's review.

### **Science Panel Backs EPA's PFAS Findings for Drinking Water Standard, But Seeks Further Clarifications on Scientific Evidence**

EPA has begun the process to develop a drinking water standard for perfluorooctanoic acid (PFOA) or perfluorooctanesulfonic acid (PFOS). EPA has committed to proposing enforceable national primary drinking water regulations for PFOA and PFOS by the fall of 2022, with final action on the standards to follow by fall 2023 -- a schedule that is faster than what the Safe Drinking Water Act (SDWA) generally requires.

As part of that process, the Science Advisory Board (SAB) has been asked to review a suite of draft documents that the agency plans to use to derive a maximum contaminant level goal (MCLG) for PFOA and PFOS. EPA uses health-based MCLGs to set enforceable drinking water standards after considering cost and technology concerns.

The draft documents include risk values that found adverse health effects at levels much lower than previously believed, a draft framework for estimating noncancer health risks associated with mixtures of PFAS, and an analysis of cardiovascular disease (CVD) risk reduction as a result of reduced PFOA and PFOS exposure in drinking water. EPA will use the CVD document in its cost-benefit analysis for the enforceable drinking water standard.

*Panel Response* -- The SAB panel is supporting many of the agency's conclusions in draft documents to be used to set enforceable drinking water limits, including its scientific basis for conservative risk values, a finding that one of the substances is a likely carcinogen and its method for assessing PFAS mixtures.

The panel has, however, cited deficiencies in the agency's documents and stressing the need for clarifications and a strong and transparent rationale on health outcomes and other aspects of the agency's assessment.

In addition, they found multiple inconsistencies and deficiencies in both the description and execution of the review process used in evaluating both PFOA and PFOS, stressing that a strong and transparent rationale for the conclusions about strength of evidence for health outcomes, as well as other components of the assessment, should be provided.

The panel advises EPA to focus on revisions to the human, animal, and mechanistic evidence sections and evidence integration sections for those endpoints that have the strongest evidence, rather than for all endpoints.

It also suggests that EPA evaluate additional health outcomes over a longer time period, if necessary, as conclusions about weight of evidence and points of departure (PODs) for additional endpoints could be important in informing assessments of PFAS mixtures.

*Outlook* -- Based on this input, EPA has more work to do to address the concerns raised by the SAB. The full SAB must still review the draft report. Following its transmittal to EPA, the agency's draft drinking water regulations will have to go through a federal interagency review led by the White House Office of Management & Budget (OMB), which typically takes about 90 days.

The proposed drinking water standard would then be subject to public notice and comment before it could be finalized. If you have any questions or would like additional information regarding this rulemaking, please contact Jeff Hannapel with NASF at [jhannapel@thepolicygroup.com](mailto:jhannapel@thepolicygroup.com).

### **State Agency Chiefs Release Updated Document on State Efforts and Regulatory Activities on PFAS**

The Environmental Council of States (ECOS), which represents state environmental agency executives, has developed a white paper that outlines state efforts and regulatory activities on per- and polyfluoroalkyl substances (PFAS).

In recent years, federal, state, and international authorities have established various health-based regulatory values and evaluation criteria for a number of specific PFAS in response to growing concerns with contamination.

Some states have established legally enforceable values for certain PFAS in drinking water, groundwater, surface water, soil, or other environmental media. Other states and regulatory

agencies have opted for non-enforceable values such as guidance levels, screening numbers, or advisories that may apply to PFAS for which promulgated standards do not exist.

In 2019 ECOS compiled information on state PFAS standards, advisories, and guidance values. This document was initially published in February 2020 and updated in March/April 2021. This recent March 2022 update reflects the addition of three states and new regulatory and scientific activities that have occurred over the past year.

ECOS will continue to update it annually as appropriate, and is available at <https://www.ecos.org/pfas/>. If you have any questions or would like additional information regarding this document, please contact Christian Richter or Jeff Hannapel with NASF at [crichter@thepolicygroup.com](mailto:crichter@thepolicygroup.com) or [jhannapel@thepolicygroup.com](mailto:jhannapel@thepolicygroup.com).

### **Water Agencies, Consumers, and Industry Groups Claim California Hexavalent Chromium Drinking Water Standard Would Be Too Costly**

The State of California proposed new maximum contaminant level (MCL) for hexavalent chromium of 10 parts per billion (ppb) in drinking water. MCLs, enforceable standards which serve as cleanup limits for drinking water utilities and at hazardous waste sites, must be based on public health goals that are set by the state's Office of Environmental Health Hazard Assessment (OEHHA).

*Background* -- This new proposal is in response to a 2017 state superior court ruling that state officials failed to determine whether the previous MCL, also 10 ppb, was economically feasible as required by the state Safe Drinking Water Act.

The court ruling required the board to consider the economic feasibility of complying with the hexavalent chromium MCL and assess the regulation's economic impact on California businesses and individuals.

*Proposal* -- The proposal sets different compliance schedules for water systems based on their size, with systems that have more than 10,000 service connections required to comply with the MCL within two years of rule adoption; systems with 1,000 to 10,000 service connections would be required to comply within three years of rule adoption; and systems with fewer than 1,000 service connections would be required to comply within four years of rule adoption.

According to the State, water treatment systems can achieve the 10-ppb limit by employing "reduction/coagulation/filtration, ion exchange, and reverse osmosis," which represent the best available technologies.



*Industry and Local Water Utility Response* -- Numerous water supply agencies and industry groups have criticized the proposal citing massive projected costs to comply that they say will overburden their customers with soaring rates. Specifically, water agency and industry organization representatives argued during the April 7, 2022 workshop that the MCL is too stringent, the system upgrades and processes needed are far too costly, and the compliance schedule is too aggressive.

To have an adequate analysis of a new MCL, the State needs to look at a broader range of potential MCLs that would allow a better evaluation of the potential differences in cost and health benefits. Water agency and industry arguments that the proposed MCL is too stringent contrast sharply with the views of environmental advocates that the standard is too lax and should be tightened to be much closer to the current public health goal level of 0.02 ppb.

Water agencies and consumer groups are concerned that the proposed MCL does not accurately reflect the most up-to-date science and does not properly consider the full economic impact of a 10-ppb MCL.

In addition, they claim that the public health goal underlying this proposed MCL is based on information that is at least 15 years outdated, leading to a lower MCL that increases costs to water providers, water users and consumers -- without commensurate public health benefits. There needs to be a connection between cost of compliance and public benefit as the cost of water is a public health issue.

The California Water Resources Control Board requested written comments on the draft plan by April 29, 2022. A formal regulatory proposal is expected sometime this summer, with the new MCL scheduled to take effect in late 2023, if adopted by the board earlier in 2023.

If you have any questions or would like additional information regarding this proposed rulemaking, please contact Jeff Hannapel with NASF at [jhannapel@thepolicygroup.com](mailto:jhannapel@thepolicygroup.com).

### **EPA Equity Action Plan Could Face Implementation Barriers**

The Environmental Protection Agency (EPA) has released its Equity Action Plan to comply with President Biden's Executive Order (EO) 13985 directing EPA and other agencies to assess whether underserved communities and their members face systemic barriers in accessing benefits and opportunities through the federal government.

The plan reflects concerns raised by environmental justice (EJ) advisers while also acknowledging the barriers that could thwart implementation. The Equity Action Plan aligns

with EPA's Strategic Plan that was announced on March 28, 2022, and outlines six priority actions:

1. Develop a comprehensive framework for considering cumulative impacts in relevant EPA decisions and operationalize that framework in EPA's programs and activities.
2. Build the capacity of underserved communities to provide their experience to EPA and implement community-led projects.
3. Develop EPA's internal capacity to engage underserved communities and implement clear and accountable processes to act based on communities' input.
4. Strengthen EPA's external civil rights compliance program and ensure that civil rights compliance is an agency-wide responsibility.
5. Integrate participatory (community) science into EPA's research and program implementation.
6. Make EPA's procurement and contracting more equitable.

EPA plans to increase capacity-building grants for under-served communities, develop submission flexibilities, such as applying for grants by mail rather than online, establish capacity-building centers aimed at community-based organizations, and enhance its engagement with these communities, such as through ensuring information in public materials is presented in non-technical terms, the plan says.

The agency also says its "budget, internal processes, and culture can slow or impede meaningful engagement with underserved communities. Environmental justice advocates have consistently raised these concerns about inadequate staffing and a lack of cultural competency to EPA."

With increased attention on environmental justice and equity issues, EPA will continue to address these concerns and seek support from the Biden Administration and possibly Congress. NASF will continue to monitor EPA's effort to promote environmental justice and equity and provide input as needed.

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Based on this input, EPA has more work to do to address the concerns raised by the SAB. The full SAB must still review the draft report. Following its transmittal to EPA, the agency's draft drinking water regulations will have to go through a federal interagency review led by the White House Office of Management & Budget (OMB), which typically takes about 90 days. The proposed drinking water standard would then be subject to public notice and comment before it could be finalized. If you have any questions or would like additional information regarding this rulemaking, please contact Jeff Hannapel with NASF at [jhannapel@thepolicygroup.com](mailto:jhannapel@thepolicygroup.com).

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### **EPA Equity Action Plan Could Face Implementation Barriers**

The Environmental Protection Agency (EPA) released its Equity Action Plan consistent with President Biden's [Executive Order \(EO\) 13985](#) directing EPA and other federal agencies, to assess whether underserved communities and their members face systemic barriers in accessing benefits and opportunities through the federal government. The plan reflects concerns raised by environmental justice (EJ) advisers while also acknowledging the barriers that could thwart implementation. The Equity Action Plan aligns with EPA's Strategic Plan that was announced on March 28, 2022, and outlines six priority actions:

1. Develop a comprehensive framework for considering cumulative impacts in relevant EPA decisions and operationalize that framework in EPA's programs and activities.
2. Build the capacity of underserved communities to provide their experience to EPA and implement community-led projects.
3. Develop EPA's internal capacity to engage underserved communities and implement clear and accountable processes to act based on communities' input.
4. Strengthen EPA's external civil rights compliance program and ensure that civil rights compliance is an agency-wide responsibility.
5. Integrate participatory (community) science into EPA's research and program implementation.
6. Make EPA's procurement and contracting more equitable.

EPA's Equity Action Plan carries forward our work to break through barriers and advance equity and justice across our efforts to ensure clean water, air, and land for all communities.

EPA has released its equity action plan in response to a Biden administration executive order, outlining six "priority actions" that align with the agency's strategic plan for fiscal years 2022-2026 and

EPA plans to increase capacity-building grants for under-served communities, develop submission flexibilities, such as applying for grants by mail rather than online, establish capacity-building centers aimed at community-based organizations, and enhance its engagement with these communities, such as through ensuring information in public materials is presented in non-technical terms, the plan says. The agency also says its “budget, internal processes, and culture can slow or impede meaningful engagement with underserved communities. Environmental justice advocates have consistently raised these concerns about inadequate staffing and a lack of cultural competency to EPA.

To address these barriers, EPA says it must increase its internal capacity in terms of numbers of staff, training, resources and expertise. EPA’s plan notes that the agency cannot stop at engagement, but must build the processes and internal infrastructure to be able to translate the learnings from community engagement into actions to address stakeholder concerns. EPA must change the way it conducts its core work to be more responsive to community input will require a multi-year effort and a sustained commitment from EPA leadership. In the short-term, the agency can hire new staff and create new internal processes and accountability mechanisms.

With increased attention on environmental justice and equity issues, EPA will continue to address these concerns and seek support from the Biden Administration and possibly Congress. NASF will continue to monitor EPA’s effort to promote environmental justice and equity and provide input as needed.