



NASF Public Policy Update May 2021

This month, the Biden administration's climate change initiative is rolling out at the agencies, finishers and manufacturers broadly are sounding the alarm on worker availability, and Capitol Hill leaders are jockeying with the White House on how to pass a workable infrastructure bill this year.

Some of the latest developments are below:

- EPA is ramping up regulatory efforts on PFAS
- OSHA's emergency covid workplace standard is at the White House for approval
- California air officials advance phase-out of hexavalent chromium
- NASF leaders brief EPA on N-Propyl Bromide rule and Europe on Nickel Coatings
- Form R Toxics Release Reporting to include Environmental Justice considerations

We've summarized below some of the more pertinent legislative and regulatory developments and new announcements from recent days.

NASF Virtual Public Policy Updates for Chapters

The NASF Government Affairs team is continuing its outreach to NASF Chapters and members with virtual public policy briefings. If you would like to schedule an NASF public policy briefing for your chapter or your region, please contact Matt Martz at mmartz@nasf.org or Jeff Hannapel at jhannapel@thepolicygroup.com. To join NASF or find out more about membership, please contact Matt Martz at mmartz@nasf.org.

EPA Announces Formation of PFAS Council

On April 27, 2021, EPA Administrator Michael Regan announced that EPA will form a council devoted to addressing per- and polyfluoroalkyl substances (PFAS) in an effort to escalate the Agency's work on the issue. The EPA Council on PFAS will be tasked with developing a strategy for addressing PFAS in water, air and land. The council will be led by Office of Water Principal

Deputy Assistant Administrator, Radhika Fox, and Region 1 acting Administrator, Deb Szaro. The council will include senior EPA officials from a broad range of program offices and regions. The council will engage with states, tribes, communities and stakeholders and report back to Administrator Regan within 100 days about a multi-year plan to address critical human health and environmental protections. The Council is not meant to supplant the current EPA PFAS Action Plan, but will compliment and attempt to focus the agency's PFAS activities.

Environmental and health groups repeatedly criticized the Trump Administration for its slow movement around PFAS. The Biden Administration has moved forward with several regulatory initiatives such as regulating PFOA and PFOS in drinking water under the Safe Drinking Water Act, and whether to designate PFOS and PFOA as hazardous substances under federal Superfund law.

The president also proposed \$10 billion to monitor and remediate PFAS in drinking water and other water systems as part of his infrastructure plan. PFAS were also singled out in Biden's budget proposal for EPA, with \$75 million to accelerate toxicity studies and research on PFAS chemicals.

States, environmental groups, and industry trade groups have been generally supportive of the EPA Council on PFAS. Industry representatives noted that PFAS are a large and diverse family of chemistry found in many useful products, ranging from cellphones to medical applications, and they should be assessed as individual chemicals, not as a class.

Stakeholders have encouraged EPA to take a sound science-based approach to these chemicals and to include other federal agencies such as the Department of Defense and the Food and Drug Administration in the process. For more information on this issue, please contact Jeff Hannapel with NASF at jhannapel@thepolicygroup.com.

OSHA Sends COVID Emergency Temporary Workplace Standard (ETS) to White House for Final Review

OSHA's much-anticipated COVID-19 Emergency Temporary Standard (ETS) for the nation's workplaces has been submitted to the White House's Office of Management and Budget (OMB) for review and approval. The Department of Labor press statement indicated that "OSHA sent draft standards to the Office of Management and Budget's Office of Information and Regulatory Affairs for review. OSHA has been working diligently on its proposal and has taken the appropriate time to work with its science-agency partners, economic agencies, and others in the U.S. government to get this proposed emergency standard right."

Of particular note in the statement is the Department of Labor's use of the plural "standards." An OSHA representative recently noted the possibility that there may be one standard for higher risk industries (e.g., healthcare workplaces) and another standard for all other industries.

The ETS was initially scheduled to be issued by March 15, 2021 pursuant to President Biden's Day-1 OSHA Executive Order. Congressional leaders have been critical of the delay and have called OSHA to testify on the status of the rulemaking this week. The delay is in part due to the fact that the Biden Administration is weighing the need for the ETS and potentially regulatory burdens imposed on businesses by the ETS against the significant industry progress on minimizing COVID-19 hazards and the success thus far of rapidly expanding vaccinations.

With the submission of the ETS to OMB, affected stakeholders will have an opportunity for input. NASF is part of an industry coalition that recently met with OMB on the ETS. Issues raised in the meeting included:

- employers should be allowed to comply with ETS by following CDC guidance,
- the federal ETS should preempt state requirements,
- COVID cases and adverse vaccine reactions should be exempt from OSHA 300 Log recordkeeping,
- The ETS should provide extreme flexibility with respect to ventilation requirements,
- Implementation should allow for a grace period or staggered compliance deadlines,
- Should not mandate use of N95 masks, but should incentivize their use, and
- Permit employers to mandate vaccines, incentivize employers to encourage or mandate vaccine, and/or incentivize employees to get vaccinated.

These issues were well received and generated several questions from OMB officials. OMB is expected to complete its review by mid-May.

As NASF discusses the rule with industry allies and federal officials, we will keep members updated on new developments. If you have questions, please reach NASF by contacting Christian Richter at crichter@thepolicygroup.com or Jeff Hannapel at jhannapel@thepolicygroup.com.

OSHA National Emphasis Program for the Enforcement of COVID Protections in the Workplace

In conjunction with the Executive Order on the ETS for COVID in the workplace, President Biden also directed OSHA to launch a National Emphasis Program (NEP) to ensure that employees in high-hazard industries are protected from the hazard of contracting COVID in the workplace. The NEP augments OSHA's efforts addressing unprogrammed, COVID-19-related activities, e.g., complaints, referrals, and severe incident reports, by adding a component targeting specific high-hazard industries or activities where this hazard is prevalent.

The NEP targets establishments that have workers with increased potential exposure to this hazard. In addition, this NEP includes an added focus to ensure that workers are protected from retaliation and are accomplishing this by preventing retaliation where possible, distributing anti-retaliation information during inspections, and outreach opportunities, as well as promptly referring allegations of retaliation to the Whistleblower Protection Program. The future implementation of this NEP will likely be dependent on what OSHA decides to include in its ETS for COVID in the workplace. More information on the NEP for COVID in the workplace can be found at:

https://www.osha.gov/sites/default/files/enforcement/directives/DIR_2021-01_CPL-03.pdf.

California Rule to Transition Hexavalent Chromium Processes to Trivalent Chromium

The California Air Resources Board (CARB) held its Technical Working Group Meeting #4 in late April regarding the rulemaking to transition hexavalent chromium plating to trivalent chromium. They indicated that they are now looking at the following deadlines for transitioning to trivalent chromium:

- January 1, 2023 for decorative chromium plating,
- January 1, 2027 for functional chromium plating, and
- January 3, 2032 for chromic acid anodizing

These regulatory deadlines are very aggressive and unrealistic given the current state of trivalent chromium process technologies and market acceptance of trivalent chromium for many applications.

At this time CARB is not looking at any other requirements for any other type of hexavalent chromium processes, but may look at these processes at a later date. NASF did ask CARB officials to clarify that other hexavalent chromium processes such as plating on plastic,

chromate seals and passivation are not covered by this rule and would not be subject to the trivalent chromium transition deadlines.

CARB expects to complete its draft proposed regulatory language for the rulemaking by mid-May. Following the release of the draft rule language, stakeholders will have an opportunity to submit informal comments to CARB officials on the draft rule. CARB also expects to have three or four more Technical Working Group Meetings before the rule is formally proposed in mid-October 2021.

The CARB officials acknowledged that the schedule is aggressive and may not be achievable due to the lack of feasible trivalent chromium processes for some applications. They did request written comments from the industry on possibly developing a procedure to identify criteria whereby facilities could demonstrate the infeasibility of meeting these deadlines. Information such as availability of trivalent chromium processes for many applications, potential economic impact (such as facilities closing or customers sourcing hexavalent chromium plating out of state), costs for transitioning to trivalent chromium, market acceptance of trivalent chromium processes, and alternative control measures to achieve similar hexavalent chromium emissions reductions.

NASF and its California Chapters will continue the ongoing dialogue with CARB officials and will have an opportunity to provide informal comments to CARB over the next several months. As referenced above, the formal written comments will be due in October/November of this year. The industry also will continue its letter-writing campaign to CARB members, state legislators, and customers regarding the significant negative impact this rule will have on surface finishing in California and the California economy. In addition, NASF is reaching out to customers in several key supply chains, including defense, aerospace and automotive.

NASF and its California Chapters will continue to work with state officials and industry partners to develop a rule that is protective of human health and the environment and is technologically feasible and economically sustainable. For more information on this rulemaking, please contact Jeff Hannapel with NASF at jhannapel@thepolicygroup.com.

NASF Provides Technical Input to Danish EPA on Nickel Coatings

The Danish EPA is working on a project for nickel-free coatings, particularly with respect to jewelry, piercings, watches, eyeglasses, buttons, buckles, zippers, electronics and tools. NASF provided information on nickel-free coatings and the use of nickel in coatings. For many critical applications such as for aerospace and defense, nickel-free coatings are not yet an option, but these applications were beyond the scope of the Danish EPA project.

For most applications on articles with direct dermal contact, nickel-free layers of coatings have been used successfully, including bronze alloys, palladium, and palladium-nickel (low nickel). All of these coatings would comply with the nickel release restrictions of 0.5 $\mu\text{g}/\text{cm}^2/\text{week}$. Nickel can also be used as a lower layer of coatings, but would not have dermal contact and would not leach through the other top layers.

Organic top coats or cathoretic lacquers can be used to minimize dermal contact for other nickel components, but these vary in durability and would not be used in jewelry, body piercings, or other articles with direct dermal contact. Typically, these organic top coats would be used in handbags, decorative emblems, hooks and other similar type products. It is often difficult to determine the precise durability of these coatings (particular in comparison to metal top coats), but additional information on the durability tests used were provided.

The next steps in the Danish project included a preliminary report and testing of products to determine if they contain nickel or have nickel in coatings. The Danish EPA would be developing additional reports as they continue to gather data over the next few months. Special thanks to Brad Durkin of Coventya and Mark Schario of Columbia Chemical for providing the technical assistance on this effort. NASF will continue its dialogue with the Danish representatives and provide additional technical information as needed.

EPA to Move Forward on Proposed Rule for N-Propyl Bromide

EPA is holding a meeting of the Small Business Advocacy Review (SBAR) Panel on May 11, 2021 to discuss EPA's potential proposed rulemaking for n-propyl bromide (1-Bromopropane) under TSCA §6(a). NASF and two of its members have been designated as small entity representatives (SREs) and were invited to participate in this meeting.

SREs as part of the SBAR Panel, which is composed of federal government employees from the Environmental Protection Agency, the Small Business Administration Office of Advocacy, and the Office of Management and Budget's Office of Information and Regulatory Affairs are asked for input to better understand and evaluate considerations such as the types and number of small entities to which the proposed rule may apply; the impact of compliance requirements of the proposed rule; identification, to the extent practicable, of all relevant Federal rules which may duplicate, overlap, or conflict with the proposed rule; and a description of any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the proposed rule on small entities.

The SBAR Panel will consider the verbal and written comments from EPA's pre-panel outreach meeting in early November 2020, in addition to your verbal and written comments on or following this May 11 meeting, and will prepare a report for the EPA Administrator on potential ways to reduce impacts to small entities that may arise from this rulemaking. Following this input, EPA will draft a proposed rule to identify management options for n-propyl bromide that protect human health and the environment and will minimize impacts on small businesses. For more information of this process, please contact Jeff Hannapel with NASF at jhannapel@thepolicygroup.com.

EPA Announces Plan to Update Toxics Release Inventory to Advance Environmental Justice

EPA announced that it will be taking important steps under the Toxics release Inventory (TRI) to advance Environmental Justice, improve transparency, and increase access to environmental information. The comprehensive plan includes expanding the scope of TRI reporting requirements to include additional chemicals and facilities, including ethylene oxide (EtO) releases and PFAS.

EPA Administrator Michael Regan stated that "By requiring new and more data on chemical releases from facilities, EPA and its partners will be better equipped to protect the health of every individual, including people of color and low-income communities that are often located near these facilities but have been left out of the conversation for too long."

Specifically, by including certain contract sterilizers using EtO, EPA recognizes the potential concerns about the effects of EtO on human health, including cancer and the environment. Many of these contract sterilization facilities are located near areas with Environmental Justice concerns. In addition, workers in facilities that use EtO and communities – including historically underserved communities – living adjacent to these facilities are at the highest risks from exposure to EtO. Making more information available about releases of EtO will assist the agency in identifying and responding to any human health and environmental threats they cause.

This effort will also expand TRI reporting to advance environmental justice for:

- natural gas processing facilities,
- new PFAS compounds consistent with the 2020 National Defense Authorization Act (NDAA), and
- chemicals included in the TSCA workplan and other substances designated as high-priority substances under TSCA.

More information on EPA's expansion of TRI reporting to advance environmental justice is available at: <https://www.epa.gov/newsreleases/epa-announces-plan-update-toxics-release-inventory-advance-environmental-justice>. If you have any questions or would like more information on this topic, please contact Jeff Hannapel at jhannapel@thepolicygroup.com.