



NASF POLICY UPDATE

April 2023

In recent weeks, a broad segment of U.S. industry and the water utility community has responded with deep concern over a spate of newly proposed regulations, including a new federal drinking water standard for PFAS of 4 parts per trillion and more expansive liability under Superfund for PFAS around the corner.

For surface finishing, the latest developments on the regulatory front include today's anticipated action by EPA in sending the metal finishing PFAS survey to the White House for formal review over the next few months. While expected, this stage of the review process will delay the release of EPA's survey by a two to three months.

A summary of the latest news is below:

Nationwide Metal Finishing PFAS Survey is Revised by EPA, Sent Today for Review at White House

EPA today formally sent its revised PFAS survey for the finishing industry to the White House for review. The draft questionnaire – which NASF had requested be streamlined, re-focused on chromium facilities only and made less burdensome for companies to complete – will undergo further assessment prior to approval for distribution. **The agency has now expanded the list of facilities scheduled to receive the survey to more than 2000 operations.**

EPA Considering Adding Seven Additional PFAS as CERCLA Hazardous Substances

After recently proposing to list perfluorooctanoic acid (PFOA) and perfluorooctane sulfonic acid (PFOS) as hazardous substances under the federal Superfund cleanup law, EPA last week requested comments for a potential future rulemaking to list seven additional PFAS compounds to the Superfund list. EPA expects to finalize its rule to list PFOA and PFOS as hazardous substances by August 2023.

IRS Issues Guidance on Superfund Tax

The Internal Revenue Service (IRS) in late March proposed a rule implementing the newly-reinstated Superfund tax by Congress on chemicals and substances that provides long-awaited guidance for liable industries.

EPA Announces Stringent New Vehicle Emissions Standards

EPA last week also announced stringent new proposed federal vehicle emissions standards to accelerate the transition to electric vehicles future and address climate concerns. EPA is proposing greenhouse gas (GHG) and criteria pollutant standards that would increase in stringency each year over a six-year period (from model years 2027-2032), representing reductions ranging from 44 to 76 percent.

Department of Energy Phases Out Incandescent Lightbulbs

As part of the White House's efforts to address climate change, the Department of Energy (DOE) finalized a rule to phase out incandescent lightbulbs by August 2023. Accordingly, industrial, commercial and residential owners will no longer be able to purchase incandescent light bulbs after that date and will have to replace them with LED bulbs or similar energy efficient technology.

For more details on these topics, see below:

Nationwide Metal Finishing PFAS Survey is Revised by EPA, Sent Today for Review at White House

EPA today formally sent its revised PFAS survey for the finishing industry to the White House for review. The draft questionnaire – which NASF had requested be streamlined, re-focused on chromium facilities only and made less burdensome for companies to complete – will undergo further assessment prior to approval for distribution.

We are reviewing the new draft in the meantime and will have a more complete report for members in an upcoming public policy webinar dedicated to this issue.

NASF Government Affairs recently noted to members in a webinar that the package would likely be delayed further and plans to both comment on the survey again as well as meet with White House staff to review outstanding industry concerns for member companies. After the comment period closes in 30 days, the White House Office of Management and Budget will have up to 60 days to review and return the survey to the agency. EPA will likely send out the survey by July or August 2023.

In the meantime, EPA officials will join NASF Government Affairs to speak at NASF SUR/FIN in Cleveland in June to provide an update and outlook on the rulemaking process.

Updated Questionnaire is Shortened, but Will Now be Sent to Larger Universe of Finishing Facilities

The newly revised draft survey has been reduced from 83 to 74 questions and can be found [here](#).

Among the features of EPA's request for White House review is the agency's new "burden estimate" for companies to complete the survey. EPA has estimated that the new survey will now take only 7 hours to complete. However, this does not reflect the likely commitment necessary for completion at the company level, and NASF Government Affairs will be reviewing the issue further.

EPA has also now expanded the list of companies that will receive the survey, which will include more than 2000 operations nationwide.

Once the questionnaire is finalized and sent to the industry later this summer, NASF will hold a special webinar to assist companies in completing the package. Please reach us further with questions, by emailing Jeff Hannapel at jhannapel@thepolicygroup.com, or Christian Richter at crichter@thepolicygroup.com.

EPA Considering Adding Seven Additional PFAS as CERCLA Hazardous Substances

After recently proposing to list perfluorooctanoic acid (PFOA) and perfluorooctane sulfonic acid (PFOS) as hazardous substances under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA or Superfund), EPA on April 13, 2023 issued an advanced notice of proposed rulemaking (ANPRM) requesting public comments and data for a potential future rulemaking to list seven additional PFAS compounds as CERCLA hazardous substances. EPA expects to finalize its rule to list PFOA and PFOS as CERCLA hazardous substances by August 2023.

Listing PFAS compounds as CERCLA hazardous substances would facilitate faster cleanups at contaminated sites and subject land owners and generators of PFAS-containing wastes to potential liability for cleanups. The seven new PFAS compounds that EPA is considering as CERCLA hazardous substances are:

- perfluorobutanesulfonic acid (PFBS),
- perfluorohexanesulfonic acid (PFHxS),
- perfluorononanoic acid (PFNA)
- hexafluoropropylene oxide dimer acid (HFPO-DA or GenX),
- perfluorobutanoic acid (PFBA),

- perfluorohexanoic acid (PFHxA), and
- perfluorodecanoic acid (PFDA).

EPA is specifically requesting information and data on whether these PFAS compounds and their precursors present a substantial danger to public health and welfare and to the environment.

Comments on the ANPRM are due June 12, 2023. After reviewing the public input, comments, and data, EPA will determine if it will propose a new rule to list some or all of these PFAS as CERCLA hazardous substances. If you have any questions or would like additional information on this action, please contact Jeff Hannapel or Christian Richter with NASF at jhannapel@thepolicygroup.com or crichter@thepolicygroup.com.

IRS Issues Guidance on Superfund Tax

On March 29, 2023 the Internal Revenue Service (IRS) proposed a rule implementing the reinstated Superfund tax on chemicals and substances that provides long-awaited guidance for liable industries. Federal Register :: Superfund Chemical Taxes. The proposed regulations affect manufacturers, producers, and importers that sell or use taxable chemicals and importers that sell or use taxable substances and establishes methods for calculating rates for taxable substances, defining what it means to be a manufacturer of a chemical or substance, as well as what constitutes a “use.”

Last year, Congress reinstated the Superfund tax that imposes taxes on the sale or use of the same 42 “chemicals” (see, <https://www.govinfo.gov/content/pkg/USCODE-2002-title26/html/USCODE-2002-title26-chap38-dup1-subchapB.htm>) taxed previously under the Superfund law, and lowers the threshold for “taxable substances.” The estimated \$1.2 billion in annual revenue the 10-year tax is expected to bolster EPA’s Superfund program to address a cleanup backlog of so-called orphan sites.

Following repeated calls from industry groups seeking more guidance on the reinstated tax (e.g., the lack of a comprehensive list of tax rates for substances subject to the tax, as well as its lack of guidance on ways for industry to calculate their own rates), the IRS proposal addresses some of the issues industry raised, but many issues remain unclear. For example, the manufacture of a chemical itself is not a use, and the term “use” does not include loss through spillage, fire, degradation or other casualty loss. The proposed regulation also provides a range of exceptions from the taxes and potential refunds for specific uses.

Citing concerns that the lack of guidance and clarity could subject companies to penalties, despite good-faith efforts to pay the tax accurately, industry groups had urged the IRS to extend the deadline for penalty relief beyond March 24, 2023. The IRS responded and extended temporary relief from penalties through the end of 2023.

Comments on the proposed rule and requests for a public hearing are due May 30, 2023. If you have any questions or would like additional information on this proposed rule, please contact Jeff Hannapel or Christian Richter with NASF at jhannapel@thepolicygroup.com or crichter@thepolicygroup.com.

DOE Phases Out Incandescent Lightbulbs

As part of the White House's efforts to address climate change, the Department of Energy (DOE) finalized a rule to phase out incandescent lightbulbs by August 2023. Accordingly, industrial, commercial and residential owners will no longer be able to purchase incandescent light bulbs after that date, and will have to replace them with LED bulbs or similar energy efficient technology.

DOE claims that LED bulbs last 25 to 50 times longer than incandescent bulbs, even though LED bulbs may be 2.5 times more expensive. Nonetheless, the change is projected to save Americans nearly three billion dollars annually and cut carbon emissions by 222 million metric tons over the next 30 years. The Administration notes that this a prime example how a small change can result in significant progress in addressing climate change.

EPA Announces Stringent New Vehicle Emissions Standards

On April 12, 2023, EPA announced stringent new proposed federal vehicle emissions standards to accelerate the transition to electric vehicles future and address climate concerns. EPA is proposing greenhouse gas (GHG) and criteria pollutant standards that would increase in stringency each year over a six-year period (from model years 2027-2032), representing reductions ranging from 44 to 76 percent.

The proposed standards are performance-based, so each automaker can choose the emissions control technologies to meet the standards. EPA projects that the following set of options would enable industry to meet the proposed standards.

- Nearly 70 percent battery electric vehicles by 2032 for light-duty passenger car, crossover/SUV, and pickup truck categories
- About 40 percent battery electric vehicles by 2032 for medium-duty van and pickup truck categories
- Wide-spread use of gasoline particulate filters to reduce PM emissions
- Improvements in technology to reduce CO₂ from conventional gasoline vehicles

Vehicle manufacturers may also choose to employ hybrid or plug-in hybrid technologies and other control technologies to meet the proposed standards.

Together, these proposed standards would avoid nearly 10 billion tons of CO₂ emissions, equivalent to more than twice the total U.S. CO₂ emissions in 2022, while saving thousands of dollars over the lives of the vehicles meeting these new standards and reduce America's reliance on approximately 20 billion barrels of oil imports.

EPA plans to hold a virtual public hearing for this proposed rule on May 9-11, 2023. Stakeholders will have 60 days from the date of publication in the Federal Register to submit comments. More information on this proposal is available on EPA's website at: <https://www.epa.gov/regulations-emissions-vehicles-and-engines/proposed-rule-multi-pollutant-emissions-standards-model>.