



NASF Public Policy Update February 2021

With the Biden Administration’s ambitious agenda now taking shape, NASF is actively engaged in a wide range of regulatory, legislative and policy developments that impact the finishing industry. This month’s NASF Public Policy Update identifies a few of the emerging issues at the federal level as well as the association’s actions across key states. If you have any questions or would like additional information, please contact Christian Richter or Jeff Hannapel with NASF at crichter@thepolicygroup.com or jhannapel@thepolicygroup.com.

NASF Virtual Public Policy Updates for Chapter Scheduled

During COVID, the NASF Government Affairs team is continuing its outreach to NASF Chapters and members with virtual public policy briefings. Several chapter updates are on the docket through February and March, including the Chicago Midwest, Minnesota and Ohio Chapters. If you would like to schedule an NASF public policy briefing for your chapter, please contact Matt Martz at mmartz@nasf.org or Jeff Hannapel at jhannapel@thepolicygroup.com.

Executive Orders Lay Groundwork for Broader Agenda

The Biden White House in the first few weeks has issued over three dozen executive orders, memorandums, proclamations, and other measures, starting with a “10-day Blitz” focusing on [four priority areas](#):

- Addressing Covid-19
- Economic Stimulus
- Climate Change Policy
- Racial Equity.

These and other major announcements – including immigration, infrastructure, “Buy American” policy, chemicals and health care, can be partly advanced by the White House without input from Congress and will have immediate impacts. Other measures require either Congressional action or formal agency rulemakings to implement fully. Nonetheless, these actions provide a blueprint for the Biden Administration’s expansive agenda over the next few years and NASF will continue to be closely engaged on matters that directly affect the finishing industry. An regularly updated list of [all Presidential Documents](#) can be found in the Federal Register [here](#).

Regulatory Freeze Memorandum

On January 20, 2021, the Biden Administration issued a [“regulatory freeze” memorandum](#) for all federal agencies to allow new political appointees time for review any new or pending rules from the Trump administration. A “regulatory freeze” memorandum is a typical practice for a new, incoming Administration, particularly when a change in political party is involved. The memorandum was published in the Federal Register on January 28.

NASF Webinar on COVID Workplace Practices – February 11, 2021

Many manufacturing operations have made adjustments to operating procedures based on Center for Disease Control guidelines and OSHA recommendations to address issues related to managing COVID in the workplace. NASF recently held a webinar with a panel of NASF member companies to share various measures they’ve taken to mitigate the spread of Covid-19. **A recording of the webinar is available to all NASF members.** For information about or to receive a recording of the webinar, please contact Robin Morrison at rmorrison@nasf.org.

COVID-19 Relief Legislation

Congress passed \$900 billion coronavirus relief legislation in December that extended and modified several provisions of the CARES Act enacted last March. The package extended relief through mid-March of 2021, providing support to help people and businesses get through the next several months of the pandemic.

The president’s new 1.9 trillion-dollar stimulus package includes: (1) a third stimulus check of \$1,400; (2) \$400 in weekly unemployment benefits through September 2021; (3) \$160 billion for a nationwide COVID vaccine program; (4) expanding the child tax credit; (5) providing funds to reopen schools; and (6) extending the moratorium on evictions and foreclosures through September 2021. Congressional leaders are wrangling over whether the package is excessive or too soon after the December legislation, as well as whether to accept provisions for a \$15 per hour federal minimum wage or student loan forgiveness.

If you have any questions regarding COVID relief legislation, please contact Christian Richter at crichter@thepolicygroup.com or Jeff Hannapel at jhannapel@thepolicygroup.com.

Federal OSHA COVID Workplace Standards – NASF’s Recent OSHA Alert

The Occupational Safety and Health Administration (OSHA) recently issued an updated and strengthened its Guidance on Mitigating and Preventing the Spread of COVID-19 in the Workplace. A Copy of the guidance is available at: <https://www.osha.gov/coronavirus/safework>. NASF participated in a U.S. Department of Labor briefing and discussion on the new guidance in late January.

OSHA officials noted the measure – intended to be a “change in tone” – is in response to President Biden’s January 21st executive order directing the agency to issue revised guidance to employers on

workplace safety during the COVID-19 pandemic. This early milestone appears to be the first step in broader deliberations to update current federal CDC voluntary guidelines.

The new guidance is one element of more significant discussions within the agency to decide whether a *federal emergency temporary standard (ETS)* on COVID-19 is necessary. The President's executive order set a March 15, 2021 deadline for OSHA to issue an emergency temporary standard.

The new guidance, among other things, is not a major departure from its current version, and indicates that employers should implement COVID-19 Prevention Programs in the workplace that include:

- conducting a hazard assessment;
- identifying a combination of measures that limit the spread of COVID-19 in the workplace;
- adopting measures to ensure that workers who are infected or potentially infected are separated and sent home from the workplace; and
- implementing protections from retaliation for workers who raise COVID-19 related concerns.

The guidance provides additional detail on key measures for limiting the spread of COVID-19, starting with separating and sending home infected or potentially infected people from the workplace, implementing physical distancing, installing barriers where physical distancing cannot be maintained, and suppressing the spread by using face coverings. It also provides guidance on use of personal protective equipment (PPE), when necessary, improving ventilation, providing supplies for good hygiene, and routine cleaning and disinfection.

OSHA noted it would continue to update the current guidance to reflect developments in science, best practices, and standards. In addition, OSHA expects to continue to update guidance relevant to particular industries or workplace situations over time.

While this guidance is not a standard or regulation, and it creates no new legal obligations, NASF and the finishing industry will be monitoring OSHA developments closely and prepare for a decision to be issued by March 15 that could include new requirements for workplaces nationwide. OSHA's recent press release can be accessed at: <https://www.osha.gov/news/newsreleases/national/01292021-0>. If you have questions, please reach NASF by contacting Jeff Hannapel at jhannapel@thepolicygroup.com or Christian Richter at crichter@thepolicygroup.com

EPA Releases Effluent Guidelines Program Plan

In January 2021 EPA released the [*Effluent Guidelines Program Plan 14*](#) under Clean Water Act section 304(m). EPA is required to biennially publish a final plan for new and revised effluent limitations guidelines for the control of wastewater discharges from industrial categories, after public review and comment.

Plan 14 provides an update on the PFAS Multi-Industry study and includes organic chemical manufacturers, airports, rug and textile manufactures, pulp and paper manufacturers, and the metal finishing point source category. NASF has been coordinating with EPA on its effort and will continue to work closely with agency officials. In addition, EPA identified the metal finishing industry as a potential source of nutrients (i.e., nitrogen and phosphorus), but did not indicate any specific actions or possible restrictions on effluent discharges from metal finishing sources were under consideration at this time.

If you have any questions or would like additional information, please contact Jeff Hannapel at jhannapel@thepolicygroup.com. More information on this topic is available on the EPA website at: <https://www.epa.gov/eg/effluent-guidelines-plan>.

Advance Notice of Proposed Rulemaking for Superfund Clean Up Listing of PFOS and PFOA

On January 14, 2021 EPA issued an Advance Notice of Proposed Rulemaking (ANPRM) on the potential listing of PFAS compounds as hazardous substances under CERCLA, better known as the federal Superfund law. EPA is requesting public comment and data on whether it should use authority under CERCLA or RCRA to list PFOS and PFOA as hazardous substances under CERCLA. This information would also help EPA determine if additional regulatory steps to address PFAS contamination in the environment are necessary.

The agency is also seeking comment about whether it should take any additional regulatory steps to address PFAS contamination in the environment, including designating PFOA and PFOS and other PFAS chemicals as CERCLA hazardous substances. The agency is also seeking comment on whether PFOA and PFOS and other PFAS chemicals should be subject to regulation under RCRA, the federal hazardous waste management law.

The ANPRM has not yet been published in the Federal Register. A prepublication copy of this action is available at: https://www.epa.gov/sites/production/files/2021-01/documents/fri-10019-13-olem_addressing_pfoa_pfosa_anprm_20210113_admin-508.pdf. More information on this topic is available on the EPA website at: <https://www.epa.gov/pfas/epa-actions-address-pfas>. If you have any questions or would like additional information on this ANPRM, please contact Jeff Hannapel at jhannapel@thepolicygroup.com.

EPA Final Regulatory Determination for PFOS and PFOA Drinking Water Standard

The Safe Drinking Water Act (SDWA) requires EPA to make regulatory determinations every five years on at least five unregulated contaminants. On March 10, 2020 EPA proposed a regulatory determination to regulate PFOS and PFOA in drinking water. In comments on the proposed regulatory determination, NASF has encouraged EPA to consider a treatment-focused regulatory approach to a drinking water standard for PFOS and PFOA, and that the treatment technologies considered must be technologically and economically feasible, consistent with the SDWA.

After evaluating more than 11,000 public comments, EPA has taken the next step to regulate PFOS and PFOA under the processes laid out in the Safe Drinking Water Act by issuing final regulatory determinations. EPA will now initiate the process to develop a national primary drinking water regulation for PFOS and PFOA, which will include further analyses, scientific review, and opportunity for public comment. Additionally, EPA intends to fast track evaluation of additional PFAS for future drinking water regulatory determinations if necessary information and data become available. More information on this action is available on the EPA website at: www.epa.gov/safewater. If you have any questions or would like additional information on this proposal, please contact Jeff Hannapel at jhannapel@thepolicygroup.com.

Alert: Multi-Sector General Permit for Industrial Stormwater Discharges

On January 15, 2021 EPA signed the 2021 National Pollutant Discharge Elimination System (NPDES) Multi-Sector General Permit (MSGP) that authorizes stormwater discharges associated with industrial activity in areas where EPA is the NPDES permitting authority. The rule is not subject to the Biden Administration's "regulatory freeze" memorandum and will become effective on March 1, 2021. A pre-publication copy of the rule is available at: https://www.epa.gov/sites/production/files/2021-01/documents/2021_msgp_-_pre-publication_fr_notice.pdf.

NASF submitted comments on the proposed MSGP: (1) to reduce burdens associated with universal benchmarks and monitoring requirements for pH, TSS and COD; (2) eliminate mandatory compliance with the stormwater control measures (SCM) listed in Appendix Q; and (3) establish an inspection-only option to demonstrate the effectiveness of a facility's SCM in lieu of benchmark monitoring. NASF also participated in an industry coalition to minimize the burdens associated with the final MSGP.

Some of the key revisions to the final 2021 MSPG are summarized below.

- *Universal Benchmark Monitoring* -- The universal benchmark monitoring requirement for all sectors was discarded and non-monitoring sectors will only be required to report pH, TSS and COD for the full five years. Those facilities with current monitoring requirements will not be subject to this new requirement. This will result in a substantial decrease in monitoring costs and related SWPPP improvement costs for all sectors.
- *Low-Risk Option* -- EPA acknowledged the validity of the NRC Study recommendation to provide an alternative compliance option for low-risk facilities, but deferred this option to the next revision of the MSGP because it did not currently have sufficient information or a fully-vetted approach to identify which facilities should be considered low-risk.
- *Appendix Q Control Measures* -- EPA deleted from the final 2021 MSGP the comprehensive stormwater control measures listed in Appendix Q that were mandatory. Instead, EPA recommended that the sector-specific control measures from the 2015 permit would be retained, and EPA will continue to work with external stakeholders to thoroughly review and revise, as needed, the checklists for future use.
- *Coal-Tar Sealants* -- Rather than excluding coal-tar sealant applications entirely from the 2021 MSGP, EPA chose to require coal-tar sealant applicators to submit report-only monitoring for four periods.
- *Quarterly Benchmark Monitoring* -- In a surprise development, EPA has doubled the amount of monitoring for historical benchmark monitoring for those that pass the monitoring benchmarks for each parameter in year one, by requiring a second set of four quarterly monitoring periods in year four. Therefore, all required parameters are monitored for four quarters in year four, irrespective of whether the benchmark was met or exceeded. This doubles the monitoring costs for each parameter met in year one, potentially doubling the monitoring costs for the permit. It

is not clear from the rulemaking record that EPA had suggested that this was under consideration, and this could be subject to legal challenge because of the lack of adequate opportunity to comment on this major change.

- *Wet-Weather Criteria* -- EPA stated that it received comments related to developing wet-weather criteria and does not plan to develop wet-weather criteria because it believes that aquatic life water quality criteria are appropriate protective values for ambient waters and MSGP’s benchmark thresholds. EPA may, however, consider the validity of exploring a wet-weather criteria approach in the future.

EPA will host an [informational webinar](#) on February 18, 2021. Additional information on the final 2021 MSGP is available on the EPA website at: <https://www.epa.gov/npdes/stormwater-discharges-industrial-activities-epas-2021-msgp>. If you have any questions or would like additional information on the 2021 MSGP, please contact Jeff Hannapel at jhannapel@thepolicygroup.com.

Federal Environmental Civil Penalties Increased for 2021

U.S. EPA recently increased its maximum civil penalties for violations of air, water, chemical, and hazardous waste to keep pace with inflation. The new maximum penalty amounts will apply to environmental violations that occurred after November 2, 2015 and for which penalties are assessed on or after December 23, 2020.

Even though environmental violations do not typically result in maximum penalties, new amounts will guide EPA's enforcement decisions in 2021. EPA considers a range of factors before assessing a civil penalty, including: 1) severity of the violation; 2) the facility's good faith efforts to ensure compliance; 3) economic benefit gained from non-compliance; and 4) ability to pay.

A summary of the revised maximum federal civil penalties per day, per violation are summarized in the table below for each of the primary environmental statutes.

Statute	Maximum/Day/Violation
Clean Air Act	\$103,000
Resource Conservation and Recovery Act (RCRA)	\$77,000
CERCLA (Superfund)	\$59,000

Emergency Planning and Right-to-Know Act (EPCRA)	\$59,000
Safe Drinking Water Act	\$59,000
Clean Water Act	\$57,000
Toxic Substances Control Act (TSCA)	\$41,000
Federal Insecticide, Fungicide and Insecticide Act (FIFRA)	\$21,000

Michigan EGLE Issues Screening Levels for Air Emissions of 6:2 FTS

On September 24, 2020 the Michigan Department of Environment, Great Lakes, and Energy (EGLE), Air Quality Division issued an [initial threshold screening level](#) (ITSL) for air emissions of 6:2 fluorotelomer sulfonate (or 6:2 FTS) of 1 µg/m³, with annual averaging time. 6:2 FTS is used in the current formulations of fume suppressants for chrome plating applications. A copy of the document is available at http://www.deq.state.mi.us/aps/downloads/ATSL/27619-97-2/27619-97-2_annual_ITSL.pdf.

NASF submitted comments on November 17, 2020 on the screening level that identified data flaws, scientific policies that are inconsistent with risk evaluation best practices, and other significant technical concerns with how the screening level was developed. In addition to NASF, the American Chemistry Council and the Michigan Chemistry Council met with state officials on December 16, 2020 to discuss the industry’s concerns. In response to December 16th teleconference with EGLE staff, NASF submitted supplemental comments to EGLE on January 12, 2021 requesting that the state consider alternative options with more accurate and appropriate scientific justifications to develop the ITSL for 6:2 FTS.

On January 14, 2021, the EGLE Air Quality Division issued its response to comments and justification for the ITSL for 6:2 FTS and determined that no changes will be made to the screening level for 6:2 FTS. Chemical screening levels are health-based and are reviewed for various reasons. The primary reasons are to develop a screening level if there is not one or evaluate a screening level to see if new data indicates a change may be needed. EGLE concluded that the current screening level of 1 µg/m³ was determined to be appropriate and defensible.

A copy of the EGLE response to comments and justification for the screening level is available at: http://www.deq.state.mi.us/aps/downloads/ATSL/27619-97-2/27619-97-2_RTC.pdf. if you have any

questions or would like additional information regarding the ITSL for air missions of 6:2 FTS, please contact Jeff Hannapel at jhannapel@thepolicygroup.com.

California CUPA Training Conference

The California Certified Unified Program Agency (CUPA) is a consolidation of six environmental programs at the local level that is tasked with addressing the hazardous waste generator and onsite waste treatment surveillance and enforcement programs. The 23rd Annual CUPA Training Conference is being held virtually during the period of February 2 – March 18, 2021. On behalf of NASF and the Metal Finishing Associations of California, Jeff Hannapel and Dr. Janet Anderson will be making a presentation entitled, *PFAS Developments and Challenges for the Regulated Community*, on February 18, 2021. The full CUPA training program is available at: <https://calcupa.org/CMS15/dropbox/CUPA-2021/2021agenda.pdf>. For those who may be interested, registration for the event is available at: <https://calcupa.org/fees/index/CUPA-2021.html>.