



NASF Public Policy Update March 2021

As key announcements roll out of the Biden Administration and state regulatory agencies take up new issues and concerns, NASF has been actively engaged on the policy front on a number of measures impacting the finishing industry. We have summarized just some of the pertinent regulatory developments and new announcements from recent days below.

NASF Virtual Public Policy Updates for Chapters Scheduled

The NASF Government Affairs team is continuing its outreach to NASF Chapters and members with virtual public policy briefings. Several chapter updates are planned through the end of March, including the Pacific Northwest 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. To join NASF or find out more about membership, please contact Matt Martz at mmartz@nasf.org.

NASF Leads Chromium Surface Finishing Symposium for California State Officials Considering New Restrictions

NASF and its California chapters this week arranged a chromium plating symposium for the California Air Resources Board (CARB). As part of CARB's consideration on possible regulatory options to address hexavalent chromium, state officials agreed to NASF's suggestion to convene a slate of industry experts to discuss the status of trivalent chromium plating technology and the current barriers and timelines for a broad application of trivalent chromium processes.

The symposium highlighted the surface finishing industry's proactive approach to promoting innovative technologies and implementing risk management options for hexavalent chromium and included subject matter expert panels in four areas: (1) decorative chromium plating; (2) functional or hard chromium plating; (3) implications for aerospace and defense applications; and (4) perspectives from job shops in California.

The full-day session allowed ample opportunities for open discussion and questions with CARB officials, including other uses of hexavalent chromium such as chromium etch, anodizing, conversion coatings, chromate seals, and paints.

The discussions also addressed broader global developments in the form of European Union REACH restrictions, developments in fume suppressants, military and commercial specifications, and ongoing research on chromium processes.

The symposium provided a comprehensive exchange of information and insights between the surface finishing industry and regulators. NASF intends to continue this valuable dialogue between its leadership and CARB officials, as well as the U.S. Environmental Protection Agency and other interested parties.

A topical report on the issues covered and the discussion from the NASF Symposium is under preparation, but a full list of specific presentations can be accessed in the meantime [here](#).

White House Executive Order Issued on Review of Critical Supply Chains

NASF and other manufacturing associations were anticipating the recent White House announcement on critical supply chains. Last week, President Biden signed an [Executive Order](#) (EO) directing a series of reviews of global supply chains to create more resilient and secure supply chains for critical materials and goods.

The reviews will involve multiple departments within the Executive Branch and will implicate a broad range of policy-related concerns, including defense, intelligence, health, climate, the economy, geopolitics and human rights.

Recent supply chain disruptions and other developments have heightened concerns about vulnerabilities and their implications for U.S. economic and national security.

The recent global shortage in semiconductors has driven several major American auto manufacturers to reduce production and manpower with resulting *impacts in some segments of the surface finishing industry*.

100-Day Review of Supply Chain Security

The EO calls for several new Executive Branch reports on supply chain security – likely to inform future rulemaking and legislation – including a 100-day review across federal agencies to assess the vulnerabilities of global supply chains for core industries deemed crucial for American competitiveness.

For each sector, the EO directs the responsible agency head to provide policy recommendations to address the articulated supply chain risks. In particular, the EO directs:

- the **Secretary of Commerce** to submit a report on the risks in the supply chains for *semiconductor manufacturing and advanced packaging*;
- the **Secretary of Energy** to submit a report identifying risks in the supply chain for *high-capacity batteries*, including those used for electric vehicles;
- the **Secretary of Defense** to submit a report identifying risks in the supply chain for *critical minerals* and other identified strategic materials, including rare earth elements (critical minerals and rare earth elements in this context include commodities vital to economic prosperity and national security like cobalt, graphite, uranium and [dozens of others](#)); and
- the **Secretary of Health and Human Services** to submit a report identifying the risks in the supply chain for *pharmaceuticals and their active ingredients*.

One-Year Reviews for Industrial Sector Assessments

Executive Branch agencies must undertake a series of one-year reviews, called “Sectoral Supply Chain Assessments,” of a broad set of US supply chains. In particular, the EO requires:

- the Secretary of Defense to submit a report on supply chains for ***the defense industrial base***, including identifying where civilian supply chains are dependent upon “competitor nations”;
- the Secretary of Health and Human Services to submit a report on supply chains for ***the public health and biological preparedness industrial base***, complementing ongoing work to ensure pandemic supply chain resilience;
- the Secretary of Commerce and the Secretary of Homeland Security to submit a report on supply chains for critical sectors and subsectors of ***the information communications technology (ICT) industrial base***, including the industrial base for the development of ICT software, data and associated services;
- the Secretary of Energy to submit a report on supply chains for ***the energy sector industrial base***;
- the Secretary of Transportation to submit a report on supply chains for ***the transportation industrial base***; and
- the Secretary of Agriculture to submit a report on supply chains for ***the production of agricultural commodities and food products***.

Each Sectoral Supply Chain Assessment must address a broad set of risks, including “the defense, intelligence, cyber, homeland security, health, climate, environmental, natural,

market, economic, geopolitical, human-rights or forced-labor risks or other contingencies” that may weaken supply chains.

The agencies must review, among other things, critical goods and materials within each supply chain; what manufacturing capabilities are required to produce them; the locations of key manufacturing and production assets; the availability of substitutes; the state of the US workforce; the role of transportation systems in supporting supply chains and industrial bases; and actions taken by allies and partners and avenues for possible international engagement, in consultation with the State Department.

Recommendations may include re-shoring supply chains “sustainably” and developing domestic supplies, identifying alternative supply chains with the cooperation of allies and partners, establishing redundancy in domestic supply chains, stockpiling materials, developing the requisite workforce capabilities, enhancing access to financing, supporting expanded research and development to broaden supply chains, addressing cybersecurity risks, addressing risks posed by climate change, and others.

Reports on Strengthening Supply Chain Resilience

Following the submission of the Sectoral Supply Chain Assessments, agencies must submit reports making recommendations that will include strengthening the resilience of America’s supply chains; reforms needed to make these actions more effective, the possible establishment of a quadrennial supply chain review; diplomatic, trade and other actions to “engage allies and partners to strengthen supply chains jointly”; reforms to domestic and international trade rules; and education and workforce policy reforms to strengthen the domestic industrial base.

Consultation with Industry and Other Stakeholders

The EO directs agency heads to consult as appropriate with external stakeholders, including those in industry, academia, NGOs, labor unions, local governments and others. In addition, the White House intends to solicit input from Congress.

The EO also suggests that supply chains can be secured not only through domestic US production but also by using foreign sources of supply in friendly countries.

EPA Issues Interim Guidance on Destruction and Disposal of PFAS

EPA has published the draft Interim Guidance on Destroying and Disposing of Certain PFAS and PFAS-Containing Materials That Are Not Consumer Products with a 60-day public comment period under docket EPA-HQ-OLEM-2020-0527.

A copy of the guidance is available at: <https://www.epa.gov/pfas/interim-guidance-destroying-and-disposing-certain-pfas-and-pfas-containing-materials-are-not>. Specifically, the new interim guidance outlines the current state of the science on techniques and treatments that may be used to destroy or dispose of PFAS and PFAS-containing materials from non-consumer products.

NASF Joint Engagement with American Chemistry Council

NASF joined the American Chemistry Council in submitting February 22, 2021 comments on the interim guidance. The comments urged EPA to consider the wide variety of properties represented by this class of substances, avoid making overly broad statements about the uses and properties of PFAS, and accelerate studies and analysis that can be used to evaluate and develop sustainable practices for disposal and/or destruction of PFAS.

While EPA suggested that interim storage of PFAS should be considered until the uncertainties associated with the disposal and destruction of PFAS are addressed, it is neither correct nor a clarification to suggest that storage of PFAS waste for 2 to 5 years is an appropriate method for handling PFAS waste when effective methods currently exist. Properly designed and operated incinerators, landfills, and underground injection wells can be safe and effective means for the disposal of waste containing PFAS.

The comments urged EPA to reassess the ranking of interim storage as the least uncertain form of disposal for PFAS waste which could potentially counter the intent of some solid and hazardous waste regulatory structures and may encourage stockpiling of material and lead to more environmentally detrimental effects than the other options.

Regulatory Options

The interim guidance provides helpful background on the effectiveness of the three disposal options (i.e., landfills, incinerators, and deep well injection), and the capacity of each of the options. It does not, however, establish what concentrations of PFAS in wastes, spent products, or other materials or media would necessitate destruction or disposal.

PFAS include a broad range of chemicals with differing toxicity, fate and transport profiles. Recommendations as to the appropriate approach to addressing the destruction and disposal will require consideration of individual PFAS, or groups of chemically similar PFAS, to determine their specific toxicity, fate and transport.

EPA has indicated that it will update the guidance with information that it collects as part of its research on destruction and disposal technologies. Such updating will be essential to the

implementation of a national PFAS strategy, and EPA should update the guidance as new information becomes available.

If you have any questions or would like more information on EPA's interim guidance on the disposal and destruction of PFAS, please contact Jeff Hannapel [here](#).

Small Business Administration Makes Changes to PPP Assistance

The U.S. Small Business Administration (SBA) is taking steps that will further promote equitable relief for small businesses through the Paycheck Protection Program (PPP). These steps are informed by the Biden administration's commitment to racial and gender equity, reaching low and moderate-income, rural, urban, and other underserved areas.

The SBA has established a 14-day, exclusive PPP loan application period for businesses and nonprofits with fewer than 20 employees that ends on March 9, 2021. NASF is working with other industry trade associations to extend the PPP application deadline for small businesses.

The Small Business Administration will:

- allow sole proprietors, independent contractors, and self-employed individuals to receive more financial support by revising the PPP's funding formula for certain categories of applicants;
- eliminate an exclusionary restriction on PPP access for small business owners with prior non-financial fraud felony convictions, consistent with a bipartisan congressional proposal;
- eliminate PPP access restrictions on small business owners who have struggled to make federal student loan payments by eliminating federal student loan debt delinquency and default as disqualifiers to participating in the PPP; and
- confirm access for non-citizen small business owners who are lawfully residing in the U.S. by clarifying that they may use an Individual Taxpayer Identification Number (ITIN) to apply for the PPP.

Borrowers can apply for the Paycheck Protection Program by downloading the [First Draw PPP loan application](#) or [Second Draw PPP loan application](#) and working with a participating PPP lender through the [SBA Lender Match tool](#).

EPA Releases Updated Environmental Justice Mapping Tool for Vulnerable Communities (EJSCREEN)

EPA has recently released an update of [EJSCREEN](#), the Agency's publicly available environmental justice screening and mapping tool. EJSCREEN uses high resolution maps and a methodology for combining datasets to identify environmental burdens on vulnerable populations.

NASF members recall agency actions in previous administrations to connect potential industrial facility impacts on the environment with local community health concerns through data and mapping tools.

This update is a refresh of the environmental and demographic data currently contained in EJSCREEN and enhances the tool by adding new and improved functionality. The update includes the addition of climate change indicators.

Users can now add flood and sea level rise data for the first time. EPA has indicated that it will continue to expand the climate change indicators in upcoming updates. EPA's Risk-Screening Environmental Indicators (RSEI) data is also now available in a map format.

To support states and other technical users of EJSCREEN data, EPA has built a new data dictionary and created downloadable data at the census tract level. Additional enhancements include improved source data on locations (ex: Superfund sites) and the ability to bring in shape files.

Along with the update, EPA is using a variety of methods to support community use of EJSCREEN. Funding has been made available to support states that have questions about using EJSCREEN data or are interested in building out a localized version of the EJSCREEN tool.

EPA will hold multiple trainings on EJSCREEN throughout 2021 to demonstrate its uses and to gain feedback on potential new applications for the tool. More information on EJSCREEN is available on EPA's website at: <https://www.epa.gov/ejscreen>.

Advance Notice of Proposed Rulemaking for Superfund 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 was 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 was 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, and whether PFOA and PFOS and other PFAS chemicals should be subject to regulation under RCRA, the federal hazardous waste management law.

The Biden EPA, however, quickly pulled the ANPRM from being published in the *Federal Register*, instead freezing it and placing it under review as part of a White House review of recent Trump policies. EPA is likely to resubmit the ANPRM or issue a proposed rulemaking that may include a revised approach or modified language.

NASF will continue to monitor EPA's effort to list PFOS and PFOA as CERCLA hazardous substances. If you have any questions or would like additional information, please contact Jeff Hannapel at jhannapel@thepolicygroup.com.

EPA Issues Final Regulatory Determination for PFOS and PFOA Drinking Water Standard

As NASF members have heard in recent virtual chapter briefings, federal action on fluorinated chemistries is accelerating. 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 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, the Trump Administration issued a final regulatory determination to regulate PFOS and PFOA under the Safe Drinking Water Act.

Regulation of PFOS and PFOA

After "freezing" this regulatory action before it was published in the Federal Register, the Biden EPA announced on February 22, 2021 that it is finalizing a regulatory determination under the SDWA to regulate PFOS and PFOA.

EPA also announced that it will propose drinking water system monitoring requirements for a total of 29 PFAS and lithium, to gather data to determine if drinking water rules for these

contaminants are warranted under the fifth unregulated contaminant monitoring rule (UCMR 5).

To develop a drinking water standard, SDWA requires EPA to find the contaminant may have an adverse effect on the health of persons; the contaminant is known to occur or there is a substantial likelihood that the contaminant will occur in public water systems with a frequency and at levels of public health concern; and that, in the sole judgment of the administrator, regulation of such contaminant presents a meaningful opportunity for health risk reduction for persons served by public water systems.

Further Evaluation of PFAS Chemicals

The PFOS and PFOA determination reiterates EPA's previous plan to rely on its 2016 non-enforceable drinking water health advisory level of 70 parts per trillion. EPA will, however, move forward to implement the national primary drinking water regulation development process for these two PFAS.

The regulatory determination also outlines EPA's approach to further evaluate additional PFAS chemicals and provide flexibility for the agency to consider groups of PFAS as supported by the best available science.

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.

NASF Discusses Update to OSHA Hazard Communication Standard

In an earlier NASF Regulatory Alert, we noted that the Occupational Safety and Health Administration (OSHA) recently issued a [notice of proposed rulemaking](#) (NPRM) to amend and update the agency's [Hazard Communication Standard](#). NASF reached OSHA officials and discussed the changes the day the new rulemaking package was [announced](#).

The formal proposed rule was published in the Federal Register on February 16, 2021 and can be found [here](#). A [redline version](#) showing proposed revisions to the current standard, as well as a general overview [presentation](#) by OSHA and other materials and updates, can be found [here](#).

The move would update the current US regulation to align with the most recent version (revision 7) of the [UN Globally Harmonized System of Classification and Labeling of Chemicals \(GHS\)](#). It also seeks to harmonize provisions of the HCS with Canada and other U.S. agencies, and respond to issues that have emerged from industry and other stakeholders since OSHA's last change to the standard in 2012.

The current OSHA standard was first issued in 1983 and provides a standardized approach to workplace hazard communications associated with exposure to hazardous chemicals. The most recent 2012 update was a significant change, aligning the Hazard Communication Standard with GHS revision 3, which created a more formalized and systematic approach to classifying chemicals and communicating hazard information through a new approach for Safety Data Sheet (SDS).

OSHA's Objectives for the Proposed Rule

OSHA notes that it expects the updated changes will improve worker protections and reduce chemical-related workplace illnesses and injuries by revising the information on labels and safety data sheets (SDS) for hazardous chemicals.

The agency has also determined that the proposed changes would make the standard more effective by improving communication of hazard information so that employees are better apprised of the chemical hazards to which they may be exposed.

Some of the most significant modifications included in the new proposed rule are summarized below.

- *Bulk Shipments* - Additional flexibility for labeling bulk shipments of hazardous chemicals, including allowing labels to be placed on the immediate container or transmitted with shipping papers, bills of lading, or by other technological or electronic means that are immediately available to workers in printed form on the receiving end of the shipment;
- *Labeling Options* - More alternative labeling options where a manufacturer or importer can demonstrate that it is not feasible to use traditional pull-out labels, fold-back labels, or tags containing the full label information normally required under the standard, including specific alternative requirements for containers less than or equal to 100ml capacity and for containers less than or equal to 3ml capacity.
- *Updates on Hazards* - New requirements to update the labels on individual containers that have been released for shipment but are awaiting future distribution where the manufacturer, importer or distributor becomes aware of new significant information regarding the hazards of the chemical.

NASF is now reviewing the proposed rule changes and plans to submit comments on significant finishing industry concerns, in concert with other manufacturing organizations. The deadline for comments on the rule is April 19, 2021.

If you have questions, please reach NASF by contacting Jeff Hannapel at jhannapel@thepolicygroup.com or Christian Richter at crichter@thepolicygroup.com.