

## **NASF Public Policy Update September 15, 2021**

The Biden Administration announced several major initiatives in recent weeks, including a new nationwide vaccine mandate that OSHA will be implementing for the workplace in the coming weeks, as well as an ambitious, first-of-its-kind federal wastewater rule for the surface finishing industry.

This month's update highlights these and other state and local actions.

### **President Biden Announces New COVID-19 Vaccine Requirements, OSHA to Initiate New Standard and Enforcement**

President Biden announced on September 9th broad COVID-19 vaccine requirements that will impact approximately 100 million Americans. The President noted that 174 million Americans have been vaccinated and that measures are required to curb the spread of the virus. Provided below is a summary of the actions announced by the White House:

- 1) Federal Employees and Contractors – President Biden signed an Executive Order requiring all government employees and federal contractors be vaccinated, with no option of opting out with regular testing. Additional guidance on the scope of this requirement is expected before September 24, 2021.
- 2) Businesses with 100 or More Employees – OSHA to require all businesses with 100 or more employees to ensure their workers are either vaccinated or tested once a week, and to provide paid time off to allow employees to get vaccinated and recover from any adverse reactions. These requirements will be imposed through a new OSHA emergency temporary standard to be issued “in the coming weeks.” OSHA could also use this an opportunity to expand the Emergency Temporary Standard (ETS) to apply to industries beyond healthcare.
- 3) Health Care Workers – The 17 million healthcare workers at facilities receiving funds from Medicare and Medicaid will have to be fully vaccinated, expanding an existing vaccine mandate for nursing care facilities to hospitals, homecare facilities and dialysis centers around the country.
- 4) Entertainment Venues – Entertainment venues like sports arenas, concert halls, and other sites where large groups of people gather are asked to require patrons to be vaccinated or show a negative test for entry.

5) Federal Programs and Schools – The 300,000 educators in federal Head Start programs must be vaccinated and the President called on governors to require vaccinations for schoolteachers and staff in their states.

Exemptions to these requirements will be limited to those that are required by existing law; i.e., medical and religious reasons. President Biden made it clear that the way out of the pandemic is through vaccination and said that vaccinated America was growing "frustrated" with the 80 million people who have not received shots.

The announcement was met with mixed reviews from various industries and public officials, with some strongly supporting the initiative and others opposing new mandates and announcing legal action would be forthcoming. It's expected that the administration will take an aggressive stance in enforcing these requirements. OSHA would have the ability to fine non-complying businesses in the same manner it does for any other regulatory violation – up to approx. \$14,000 per Serious or Other-than-Serious violation.

NASF will continue to monitor developments on this issue and provide members with updates as further decisions are made.

### **EPA to Set New Federal Wastewater Discharge Standards for PFAS in Surface Finishing Operations**

The U.S. Environmental Protection Agency (EPA) on September 8th released its Preliminary Effluent Guidelines Program Plan 15 (Preliminary Plan 15), announcing that it will commence a rulemaking process to set first-time ever wastewater discharges for PFAS from key industries.

The agency's announcement was not unexpected, and its effort will focus on chromium plating and related processes in the surface finishing industry as well as certain chemical manufacturers and formulators of PFAS.

The announcement follows extensive discussions between NASF and senior EPA officials since the Trump administration released its PFAS Action Plan in 2019. The plan prioritized surface finishing and other industries for potential water regulation under the Clean Water Act's effluent guidelines program.

#### **Industries Impacted Under New PFAS Rulemaking Process**

After concluding several studies that EPA launched in 2018, the agency has determined that revised effluent limitations guidelines (ELGs) and pretreatment standards are warranted for:

Organic Chemicals, Plastics and Synthetic Fibers (OCPSF) -- EPA listed this category to address per- and polyfluoroalkyl substances (PFAS) discharges from facilities

manufacturing PFAS (which includes chemical formulators in this source category). EPA identified six OCPSF facilities that currently manufacture PFAS in the US.

EPA also identified eight additional OCPSF facilities that use PFAS feedstocks to formulate other products. EPA has not developed a comprehensive list of all PFAS manufacturers and formulators in the U.S. and considers it probable that there are many more OCPSF facilities using PFAS that EPA has not yet identified.

**Metal Finishing** -- The agency plans to revise the existing Metal Finishing Effluent Guidelines (40 CFR Part 433) to address PFAS discharges primarily from chromium electroplating facilities, based on the information collected through earlier studies.

NASF has been working closely with EPA officials on various aspects of PFAS use in the industry and will continue to do so through the next stages in the rulemaking development process. To inform the discussion with EPA and various state agencies, NASF has created a web-based PFAS Resource Center, which can be accessed [here](#). Watch for new updates to the site soon.

The EPA Preliminary Effluent Guidelines Program Plan 15 is available [here](#).

#### Launching the Rulemaking Process, Collecting Industry Data

EPA will initiate a multi-year rulemaking process of collecting data on existing PFAS discharges levels, identifying available treatment technologies for PFAS discharges, and conduct a formal assessment of technical and economic feasibility for available treatment technologies to determine what pretreatment standards may be appropriate.

EPA's action to advance a rulemaking for the metal finishing category could allow the agency to proceed without an accelerated legislative mandated schedule prescribed by Congress. The House has passed language in the recent infrastructure bill targeting metal finishing and several other sectors for urgent action on PFAS, but the Senate's measure did not include these provisions.

EPA has not yet announced a timetable for the rulemaking process and has invited NASF to provide information and further input on the rulemaking development process.

#### Further Review of Other Industries

As part of Preliminary Plan 15, EPA also announced that it would be conducting further research and studies regarding discharges of PFAS to determine if a rulemaking is warranted for the other industry categories, including:

- landfills,
- pulp, paper, and paperboard facilities,

- textile and carpet manufacturers, and
- commercial airports.

#### NASF Meetings Ahead with EPA

NASF will be meeting again shortly with EPA officials and will provide NASF members with updates on the rulemaking process.

#### **EPA Moves to Repeal More Flexible Trump-Era "Waters of the U.S." Rule after Court Decision**

In a new development, an Arizona federal district judge on August 30 tossed out the Trump administration's April 2020 Navigable Waters Protection Rule (NWPR). The decision creates major uncertainty for a wide array of industries and landowners. The impact of the ruling is significant and continues the decades-long legal and regulatory battle over the scope of federal regulatory authority under the Clean Water Act, including what wetlands and other waters are subject to permitting under the definition of "waters of the United States."

In the 11-page decision vacating and remanding the NWPR, Judge Rosemary Marquez noted that EPA and the Army Corps of Engineers made serious errors in enacting the Trump-era rule, highlighted the likelihood that the agencies will revise the rule, and agreed with tribal plaintiffs on the possibility of serious environmental harm if the NWPR remains in place.

In a milestone response to the decision by Judge Marquez, EPA and the Army Corps of Engineers just after the Labor Day holiday announced that federal implementation of the Trump-era rule would be halted, and EPA would revert to pre-2015 policies governing federal jurisdiction over waters of the U.S.

While further litigation is likely, EPA and the Corps will continue to advance the rulemaking process to formulate yet another WOTUS definition that the agencies note will be "informed by diverse perspectives and based on an inclusive foundation." The agencies have committed to releasing a new rule by early 2022 to redefine which waters of the U.S. are subject to federal regulatory authority.

#### **Michigan PFAS Action: Detroit POTW Considering Pretreatment Limits for PFAS**

The Great Lakes Water Authority (GLWA), which operates the Publicly Owned Treatment Works (POTW) for the Detroit metropolitan area, recently recommended adoption of new local pollutant discharge limitations for PFOS (64 parts per trillion (ppt)) and total PFAS compounds (7,000 ppt). Currently, Michigan has a surface water quality level of 11 ppt, which for many POTWs in Michigan has become the de facto pretreatment limit. There is

a federal drinking water advisory level of 70 ppt, but that is not enforceable and applies only to drinking water.

The 64 ppt limit for PFOS was based on available data on legacy discharges of PFOS because surface finishing facilities no longer use PFOS-based fume suppressants. The 7,000 ppt pretreatment level for total PFAS was established based on best professional judgement because GLWA did not have enough data for individual PFAS compounds. The total PFAS limit would include 6:2 FTS, the PFAS substance that is in the current formulation of fume suppressants used by chromium plating operations.

To finalize these new limits GLWA would propose these new limits and take comments. If these local limits are enacted, chromium plating operations may have to install treatment technology such as granular activated carbon (GAC) units to treat wastewater prior to discharge to the POTW. NASF is working with surface finishing facilities in Michigan regarding GLWA's recommendation to determine the potential impact and potential options to pursue.

### **California Efforts Continue to Ban Hexavalent Chromium Plating**

The California Air Resources Board (CARB) continues to advance a new rulemaking to transition hexavalent chromium plating to trivalent chromium for decorative chromium plating, functional chromium plating and chromic acid anodizing. If promulgated, this rule could have a significant adverse impact on platers in California and critical supply chains, particularly aerospace, automotive, and U.S. defense operations.

While CARB continues to extend the proposed timeframe for the transition, NASF and its California leadership have argued that the state's regulatory deadlines remain unrealistic. NASF and its California Chapters continue outreach efforts to customers, CARB staff and Board members, California state legislators and regulatory officials regarding the potential negative impacts of this rule.

In recent weeks, the industry has hosted CARB Board members and senior CARB staff on plant tours to highlight critical hexavalent chromium plating processes and emphasize the potential impacts the rule could have on the industry and vital supply chains.

These efforts appear to be productive as CARB is considering extending the dates for phasing out hexavalent chromium to ten years and beyond and contemplating other possible options to address their concerns about hexavalent chromium emissions from surface finishing operations in California.

NASF and its California Chapters will also continue working 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.

## **Invest in the Industry's Future, Contribute to the NASF 1000**

The NASF 1000 program was established to ensure that the surface finishing industry would have resources to effectively address regulatory, legislative and legal actions impacting the industry, NASF members and their workplaces.

All funds from the NASF 1000 program are used exclusively to support specific projects and initiatives that fall outside the association's day-to-day public policy activities. The commitment to this program is one of the most vital contributions made in support of surface finishing and directly shapes the future of the industry.

The sustained commitment from industry leaders has helped the NASF remain effective and credible in informing regulatory decisions across the nation. Specific projects funded through the NASF 1000 make a measurable difference in how the industry navigates emerging challenges, communicates with policy makers, and advocates for a strong science base for rules and standards that affect surface finishing.

Please consider supporting the NASF 1000 program. If you have any questions or would like additional information regarding the NASF 1000 program or the broad array of NASF public policy activities, please contact Jeff Hannapel with NASF at [jhannapel@thepolicygroup.com](mailto:jhannapel@thepolicygroup.com).

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