

February 27, 2006

REGULATORY ALERT

OSHA Hexavalent Chromium PEL

OSHA Announces Final PEL of 5 ug/m³ –

OSHA has published its new workplace exposure limit for hexavalent chromium of 5 ug/m³. The revised rule, which raises OSHA's originally proposed limit of 1 ug/m³, will require that facilities consistently operate below a so-called "Action Level" of 2.5 ug/m³. The final rule will require that most companies begin complying with a range of new requirements within 270 days, including:

- initial exposure assessments;
- obtaining appropriate work clothing and equipment, and
- compliance with hazard communication, training and other provisions of the standard.

The industry will note that while the PEL has been revised upward and companies doing certain coatings processes may be able to comply, the finishing industry will face substantial new compliance costs and significant job losses in the tens of thousands.

OSHA's pre-publication summary of the rule is included in an attachment below.

A full policy update and compliance briefing on the OSHA hexavalent chromium rule will be out shortly after publication.

For questions, reach Jeff Hannapel (jhannapel@thepolicygroup.com) or Christian Richter (crichter@thepolicygroup.com), or call the Government Relations office in Washington at 202-457-0630.

The Final Standard on Hexavalent Chromium Effective and Practical Protection for Workers

Summary

On February 28, 2006, pursuant to a 2003 court order, the Department of Labor issued a final standard addressing occupational exposure to hexavalent chromium, also known as Cr(VI), a natural metal used in a wide variety of industrial activities, including the manufacture of stainless steel, welding, painting and pigment application, electroplating, and other surface OSHA determined that

the new standard is necessary to reduce significant health risks posed by occupational exposure to Cr(VI).

The new standard is based on a careful, extensive analysis of all facts and evidence gathered during the Occupational Safety and Health Administration's (OSHA) rulemaking process, which included two weeks of public hearings and comment periods totaling more than five months. OSHA relied upon the best available, peer-reviewed science.

The new standard covers the general industry, construction, and shipyards sectors and will protect workers against exposure to hexavalent chromium, while providing employers with adequate time to transition to the new requirements.

Approximately 558,000 workers are covered by the provisions of the new standard.

What Does the Standard Do?

Reduces Worker Exposure to Cr(VI). The new standard provides greater protection against significant health effects, such as lung cancer, nasal septum ulcerations and perforations, and dermatitis by lowering the permissible exposure limit (PEL) from 52 micrograms of Cr(VI) per cubic meter of air (52 $\mu\text{g}/\text{m}^3$) to 5 $\mu\text{g}/\text{m}^3$ for all sectors.

Practical and Effective Requirements. The new standard requires covered industries to achieve the PEL through engineering and work practice controls to the extent that is technologically feasible. Additional provisions cover exposure determinations, respiratory protection, protective work clothing and equipment, medical surveillance and communication of hazards.

Supplemental Provision for Aerospace Painting. The new standard recognizes that, given available technology, the lowest level employers involved in aerospace painting operations of whole aircraft or large aircraft parts can reach through feasible engineering and work practice controls is 25 $\mu\text{g}/\text{m}^3$. For these types of aerospace painting, OSHA requires the use of engineering and work practice controls to reduce exposures to 25 $\mu\text{g}/\text{m}^3$, and allows the supplemental use of respirators to be used to achieve the PEL.

Protecting Workers Most at Risk. The new standard will focus protections on workers facing heightened health risks from airborne exposures. An exemption is provided for employers who can demonstrate that Cr(VI) exposures under any anticipated working conditions will not exceed 0.5 $\mu\text{g}/\text{m}^3$.

Reasonable Transition Time. Given the significant PEL reduction required by the new standard, OSHA is providing a reasonable transition period for employers to implement the technologies and practices needed for compliance.

- **Effective date of the standard: 90 days from publication.**
 - This period is intended to allow affected employers the opportunity to familiarize themselves with the standard.
- **Start-up date for all provisions, except engineering controls: 180 days from the effective date (one year for employers with fewer than 20 employees).**
 - This period is designed to allow employers sufficient time to complete initial exposure assessments, obtain appropriate work clothing and equipment, and comply with other provisions of the standard.
- **Start-up date for engineering controls: four years from the effective date for all employers.**
 - This period allows affected employers sufficient time to design, obtain, and install the necessary control equipment.

What Are the Major Differences Between the Proposed and Final Standards?

- **Permissible Exposure Limit**

Proposed: A PEL of 1 µg/m³ was proposed.

Final: Based on the rulemaking record, OSHA determined that a PEL of 5 µg/m³ is the lowest level that is technologically and economically feasible for industries impacted by this standard.

- **Portland Cement Exclusion**

Proposed: OSHA proposed to exclude exposures to portland cement in the construction industry because of data indicating that airborne exposures to Cr(VI) in construction activities involving portland cement were very low and posed little lung cancer risk. Risks from dermal exposure could be addressed through existing OSHA standards.

Final: OSHA expanded the exclusion for portland cement to general industry and shipyards, as well, because new data submitted during the public comment period indicated that airborne exposures to Cr(IV) from portland cement in these industries are comparable to exposures in construction.

- **Scope Exemption**

Proposed: No proposed exemption.

Final: OSHA determined that there are certain work operations that may have low airborne Cr(VI) exposure levels comparable to those generated by portland cement and added an exemption for employers who can demonstrate that under no expected conditions will concentrations be above 0.5 µg/m³.

- **Special Provision for Aerospace Painting**

Proposed: OSHA proposed that all industries covered by the standard achieve the PEL through the use of engineering and work practice controls to the extent feasible.

Final: OSHA determined that it would not be technologically feasible to reduce exposures to the PEL through engineering and work practice controls when whole aircraft or large aircraft parts are being painted. Therefore, employers are only required to use engineering and work practice controls to reduce exposures to 25 µg/m³ and must then use respiratory protection to meet the PEL.

- **Exposure Determination**

Proposed: In the proposal, OSHA did not include exposure determination provisions for construction or shipyards because of the practical difficulties in characterizing exposures in these work settings.

Final: The final standard covering general industry, construction, and shipyards all have identical provisions for exposure determination. The standard also adds a performance-oriented option in all industry sectors to increase employers' flexibility in making exposure determinations.

- **Medical Surveillance**

Proposed: OSHA proposed that medical surveillance be offered to employees with signs and symptoms of Cr(VI)-related health effects, exposures in emergencies, or exposures for 30 or more days above the PEL.

Final: The standard takes into account the new PEL and changed the exposure-based trigger to 30 or more days above the action level (one-half the PEL). In addition, the standard adds this trigger to the construction and shipyard standards.

For OSHA's press release and web summary, please go to

http://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=NEWS_RELEASES&p_id=12038

Feb. 27, 2006

Since we sent out the latest Washington Report last night indicating that Public Citizen (www.citizen.org) had launched a major media campaign to discredit industry efforts to achieve a reasonable chromium exposure rule, the news of an alleged industry "conspiracy" on hexavalent chromium is, predictably, spreading widely throughout the national print and electronic media, including publications like Forbes magazine and into the blogosphere. This is the type of campaign we had expected to see before now, but this is considerably well-timed by Public Citizen, partly as an effort to undercut continued political support for a higher PEL and prepare for an aggressive litigation effort with the Bush Administration in an election year.

We have been aware of the study Public Citizen accuses the chromium industry of manipulating. It was actually co-authored by Dr. Rose Luippold, who happens to be the primary author of one of the 2 key worker cohort "feature" studies (along with the "Gibb" study) used by OSHA to justify its rather dramatic revision of the existing Cr PEL. We encouraged OSHA in the industry's formal comments last year to review the results of the data connected with the study in question. Public Citizen's claim generally is that industry sponsors of the study - primarily Elementis and a few other organizations - deliberately kept study data from several facilities split up vs. allowing the data to be integrated in order to generate a more favorable conclusion for industry. There are several issues on which we will provide some clarity in the coming days, in order to ensure the industry's leadership has a full understanding of the facts. As far as we can tell, there is no such conspiracy. We will be discussing this tonight with DC attorney Kate McMahon, who has been quoted in the original AP and Washington Post stories.

In the meantime, we have taken several actions on behalf of the industry in Washington. We are working with our friends on Capitol Hill to educate them on the facts, and we are discussing today and over the weekend with numerous other parties the issue of whether any industry study was "withheld" by any industry group, including those referenced in the media and by Public Citizen. We held a meeting in our office today with the US Chamber of Commerce, the National Association of Manufacturers, aerospace representatives, and others, to address issues related to the rule, the emerging media treatment of the issue, and Public Citizen's primary goal - to litigate and use political and media-driven intimidation in order to move the PEL from OSHA's pending final limit of 5.0 ug/m³ to Public Citizen's preferred level, which is 0.25 ug/m³. The industry at this point may have to litigate just to maintain a PEL of 5.

Additional Funding Needed to Support Industry's Efforts – The industry has incurred technical, economic and legal consulting fees of approximately \$350,000 in its efforts to challenge the proposed regulation on the basis of health risks to workers, technological feasibility and economic impact. Additional expenses for litigation once the rule is issued are estimated at approximately \$300,000. Contributions to the Chrome Defense Fund total approximately \$180,000, so the industry has targeted an additional fund-raising goal of \$500,000. PLEASE PLEDGE TO THE FUND ASAP.