

## OSHA Issues New Standard for Occupational Exposure to Hexavalent Chromium

On February 28, 2006, the Occupational Health and Safety Administration (OSHA) issued its new standard for occupational exposure to hexavalent chromium. This new rule lowers the current permissible exposure limit (PEL) for airborne exposure to hexavalent chromium from 52 micrograms per cubic meter of air ( $\mu\text{g}/\text{m}^3$ ) to  $5 \mu\text{g}/\text{m}^3$ —a tenfold reduction. The new standard will apply to some 558,000 workers in general industry, construction, and shipyards and will result in a projected 40-145 avoided lung cancer cases annually among exposed workers. OSHA estimates the rule will cost businesses \$282 million per year.

Hexavalent chromium is a form of chromium metal that is used in many industrial applications, primarily for its anti-corrosive properties. Among its many uses

are electroplating, wood preservatives, catalysts, pigments and dyes, and glass and plastic colorants. Inhalation of hexavalent chromium is suspected to cause lung cancer, nasal septum ulcerations and perforations, and other illnesses. The new rule will require new exposure controls from a variety of industries, including electroplating; welding; aerospace and auto body painting and repair; chromate pigment and chemical production; glass manufacturing; and plastic colorant production.

OSHA's new rule is highly controversial and is the result of prolonged litigation and a truncated rulemaking process. In 1993, the OCA Workers International and Public Citizen's Health Research Group petitioned OSHA for a rulemaking to lower the PEL

*Continued on page 2*



OSHA's hexavalent chromium rule will require new exposure controls from a variety of industries, including electroplating (shown here); welding; aerospace and auto body painting and repair; chromate pigment and chemical production; glass manufacturing; and plastic colorant production.

### In This Issue

#### Regulatory News

OSHA Issues Hexavalent Chromium Rule . . . . . 1

#### Message from the Chief Counsel

Sarbanes-Oxley Act Relief . . . 3

#### Economic News

Small Business Job Creation and Linkages to Innovation . . . . . 5

New Report: *Innovation and Small Business Performance* . . 6

#### Regional Roundup

Christine Serran Glassner Named Region II Advocate . . . 7

#### Tax News

Filing for an Extension Is Easier This Year . . . . . 7

#### SBA News

Small Business Week 2006 . . . 4

Awards Honor Small Business Champions . . . . . 4

## Hexavalent Chromium Rule, from page 1

for hexavalent chromium. While OSHA agreed to consider a new standard, several years passed and no action was taken. As a result, the organizations sued OSHA to compel the agency to act. The U.S. Court of Appeals for the Third Circuit eventually agreed that OSHA's delay was unreasonable and ordered the agency to propose a new rule by October 2004 and issue a final rule by January 2006.

The Office of Advocacy was heavily involved in the rulemaking process. OSHA was required by the Small Business Regulatory Enforcement Fairness Act

(SBREFA) to convene a panel to consider the impact of the rule on small businesses. That process allowed small entity representatives to review and comment on a draft version of the rule before it was published. The panel's report is available on Advocacy's website at [www.sba.gov/advo/laws/is\\_oshanel.html](http://www.sba.gov/advo/laws/is_oshanel.html). Advocacy also filed detailed comments with OSHA recommending, among other things, that OSHA establish an interim PEL of 23  $\mu\text{g}/\text{m}^3$  while continuing to assess the risk data.

The SBREFA panel narrowed the cost and scope of the rule in some respects (see box); but few are pleased with the outcome. Both

### SBREFA Panel Process Ameliorates Impact

The Small Business Regulatory Enforcement Fairness Act (SBREFA) required OSHA to convene a panel to consider the impact of its hexavalent chromium proposal on small businesses. This process allowed small entity representatives to review and comment on a draft version of the rule before it was published. The final rule differs from OSHA's original proposal in some significant respects. Many of these changes are the result of the SBREFA panel. For example:

- The panel recommended that OSHA re-assess its risk data, as well as the technical and economic feasibility of various permissible exposure limits (PEL). The panel asked the agency to consider a PEL higher than its proposed level of 1 microgram per cubic meter of air ( $\mu\text{g}/\text{m}^3$ ). OSHA considered various PELs (from 0.25 to 20  $\mu\text{g}/\text{m}^3$ ) and selected 5  $\mu\text{g}/\text{m}^3$  based on its statutory mandate to establish a level that protects workers and is economically and technically feasible.

- The panel recommended that OSHA consider excluding industry sectors with little or no exposures to hexavalent chromium; consequently OSHA allowed industries that can demonstrate very low exposures (i.e., less than 0.5  $\mu\text{g}/\text{m}^3$ ) to be exempt from the rule. OSHA also excluded Portland cement (since dermal exposures are covered by other OSHA rules) and chromium copper arsenate (a wood preservative) because it is already regulated under an Environmental Protection Agency program.

- Also, based on the panel's recommendation, OSHA determined that businesses with employees who are exposed above the PEL for fewer than 30 days per year can comply by the use of respirators rather than having to install expensive engineering controls. Further, OSHA provided an engineering control limit of 25  $\mu\text{g}/\text{m}^3$  for certain aerospace painting operations (supplemented by respirators), and increased the time for all employers to comply with various provisions of the final standards.

The panel's report is available on Advocacy's website at [www.sba.gov/advo/laws/is\\_oshanel.html](http://www.sba.gov/advo/laws/is_oshanel.html).

### The Small Business Advocate

**Editor** Rebecca Krafft

**Managing Editor** Rob Kleinsteuber

**Contributing Editors** Candace Ewell, Bruce Lundegren, John McDowell, Chad Moutray, Michael See, Kathryn Tobias, Sarah Wickham

**Production Assistant** Dawn Crockett

*The Small Business Advocate* (ISSN 1045-7658) is published monthly by the U.S. Small Business Administration's Office of Advocacy and is distributed to SBA field staff and members of the U.S. Congress. *The Small Business Advocate* is available without charge from the Office of Advocacy, U.S. Small Business Administration, MC 3114, Washington, DC 20416; [advocacy@sba.gov](mailto:advocacy@sba.gov); (202) 205-6533. For delivery changes, send your current address label with your request to the above address. For back issues, contact National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161; [www.ntis.gov](http://www.ntis.gov).

*The Small Business Advocate* online: [www.sba.gov/advo/newsletter.html](http://www.sba.gov/advo/newsletter.html).

Electronic delivery of *The Small Business Advocate* is available by visiting [www.sba.gov/advo/newsletter.html](http://www.sba.gov/advo/newsletter.html). Subscriber information is kept confidential and not used for any purpose except newsletter delivery.



Federal Recycling Program  
Printed on recycled paper.

Public Citizen and industry groups have already filed competing lawsuits against OSHA claiming that the final rule is unjustified. Small business groups, most notably in the electroplating and welding industries, have claimed that OSHA's cost projections are too low and that the new rule could put them out of business or force them to move overseas (where exposure limits tend to be between 20 and 50  $\mu\text{g}/\text{m}^3$ ). While industry grapples to comply with the new limits, final resolution of these legal issues will likely be decided in federal courts over the next few years. For further information or to discuss this rule, please contact Assistant Chief Counsel for Advocacy Bruce Lundegren at (202) 205-6144 or [bruce.lundegren@sba.gov](mailto:bruce.lundegren@sba.gov).

---

## Message from the Chief Counsel

---

### Sarbanes-Oxley Act Relief

by Thomas M. Sullivan, Chief Counsel for Advocacy

The existence of readily available capital markets could be off limits to the next generation of small, innovative firms if regulators implement reforms without considering their impact on private firms' decisions to go public.

This is the situation that the U.S. Securities and Exchange Commission (SEC) is confronted with as it considers how to implement section 404 of the Sarbanes-Oxley Act of 2002. Section 404 would require public companies to obtain expensive outside audits for reports on internal controls. The Office of Advocacy strongly recommends that the SEC provide some flexibility for small companies to comply with the Sarbanes-Oxley Act without incurring costs that could inadvertently shut the door to capital markets.

Advocacy has worked on this issue since 2002. Small entrepreneurial companies have consistently warned that these new requirements will effectively close the capital markets to them. Industry surveys on actual compliance costs bear out their concern, with one survey recently finding that for small companies, the first-year compliance costs totaled more than \$1 million.

Thus, if section 404 is applied to small companies, small firms could find themselves with such

expensive regulatory requirements that raising capital no longer makes financial sense. In addition to the cost burden, there is a competitive one: small private firms may face competition from innovative companies from other countries or companies listed on foreign exchanges

---

**“The committee advised the SEC to defer the implementation of the internal control audit requirement for small companies until there is an adequate framework in place to account for differences in size between smaller and larger companies.”**

---

to which the new section 404 requirements wouldn't apply.

So far, the SEC has taken an active role in ensuring that its rules under the Sarbanes-Oxley Act do not unduly harm small businesses. The SEC created the Advisory Committee on Smaller Public Companies, and charged it with reviewing the statute's requirements and making recommendations to minimize the law's harmful impact on small business. The committee consisted of more than a dozen diverse members. It met publicly

across the country over the course of the last eleven months, soliciting testimony from members of the public, investors, and a wide range of industry participants.

The committee has completed its assigned task, and it issued a recommendation on February 21. The committee advised the SEC to defer the implementation of the new section 404 internal control audit requirement for small companies until there is an adequate framework in place to account for differences in size between smaller and larger companies.

The Office of Advocacy supports the recommendation to provide small business flexibility, and urges the SEC to defer to the expertise of its Advisory Committee on Smaller Public Companies. I hope that the SEC acts to keep our capital markets competitive and open to small companies.

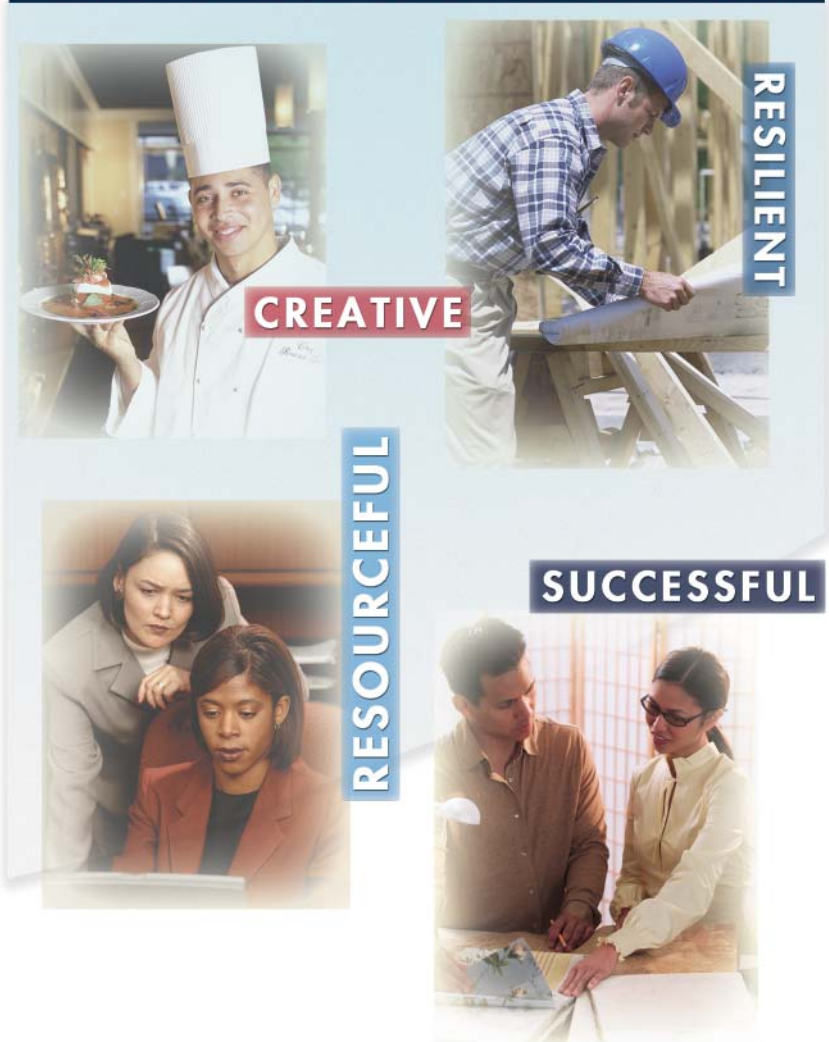
## Small Business Week 2006, April 12-13

In celebration of America's entrepreneurial spirit, the Small Business Administration will host Small Business Week 2006 in Washington, D.C., April 12-13. The conference will focus on small business accomplishments and showcase those businesses recover-

ing from disasters. During Small Business Week 2006, more than 100 outstanding small business owners from around the country will be honored in our nation's capital. Small business honorees reflect the full range of business products, services, and innovations offered by

America's entrepreneurs. To learn more, visit [www.sba.gov/sbw](http://www.sba.gov/sbw).

# SMALL BUSINESS WORKS



SBA — YOUR SMALL BUSINESS RESOURCE  
HELPING SMALL BUSINESSES START, GROW AND SUCCEED

[www.sba.gov](http://www.sba.gov)



All SBA programs and services are provided on a nondiscriminatory basis.

## Small Business Champions for 2006

*The Office of Advocacy salutes all the winners, including the champions listed below.*

### Journalist Champion

Jerry Chautin  
Cherokee Scout  
Murphy, North Carolina

### Home-Based Champion

Rosemin A. Mohammed  
Owner, ABC 123 Academy  
Dale City, Virginia

### Women in Business Champion

Janet Bullard  
Program Manager, Vermont  
Commission on Women  
Montpelier, Vermont

### Family Owned Champion

Pedro A. "Tony" Fernandez  
President, Albuquerque  
Printing Company  
Albuquerque, New Mexico

### Minority Champion

Elaine K. Bland  
General Manager, Lickity Split  
Chocolate Studio  
Blanding, Utah

### Financial Services Champion

Rita Mitchell  
Vice President, Wachovia  
Small Business Lending  
Thousand Oaks, California

### Young Entrepreneur

Genevieve Thiers  
CEO & Founder, Sittercity.com  
Chicago, Illinois

### Exporter Champion

John Miller  
President, Oxbow Pet Products  
Murdock, Nebraska

### Veteran Champion

Andrew Douglas Davis  
Chairman & Co-Founder  
Comfort for Courage  
Minneapolis, Minnesota

### Small Business Job Creation and the Linkages to Innovation

by Chad Moutray, Chief Economist, Office of Advocacy

Martek Biosciences was founded in 1985. From its early roots in the University of Maryland's Technology Advancement Program, it has evolved into one of the nation's fastest growing technology companies (according to *Forbes* magazine's February 2006 poll). The primary reason for its success is its development and production of two essential nutrients for infant brain and eye development. Although these two nutrients occur naturally in human breast milk, Martek's compounds are derived from naturally occurring algal and fungal sources. Martek has patented processes for producing these compounds, which are now a staple in infant formulas.

Martek's success story is similar to that of many other firms that have capitalized on innovation and technology to grow to new heights. In the process, it has moved from being a small business to a much larger one, with several locations and over 600 employees. And like many others, Martek benefited from an incubator program for early-stage technology companies—the University of Maryland's Technology Advancement Program. This program has been successful in nurturing inventions and companies since its inception in 1986. (See [www.tap.umd.edu](http://www.tap.umd.edu).)

**The Importance of Small Business Innovation.** Small business innovation, as illustrated by this example, can lead to greater profits for the firm and more employment for the local community. Many high-growth, innovative new firms, like Martek, get their start as commercialized ventures resulting from research that was conducted at a university. In fact, Advocacy research has shown

a positive relationship between research and development spending at universities and firm births in the surrounding areas.

Economist William Baumol writes about this phenomenon in the most recent edition of the *Small Business Economy*. Large firms tend to be more risk-averse with



(Census Bureau photo.)

Martek Bioscience's success is rooted in innovation—the development and production of two essential nutrients for infant brain and eye development. These compounds are derived from naturally occurring algal and fungal sources.

their research and development spending. Their research and development is geared toward staying ahead of the competition, often by making small, incremental changes to existing products and processes. Small firms, on the other hand, can afford to “go for broke” with a new innovation that might be a breakthrough. If successful, these entrepreneurs will be able to grow their companies, the market, and the overall economy.

Once again, Advocacy research backs up this thinking. In 2003, a research study commissioned by Advocacy found that small patenting firms produce 13 to 14 times more patents per employee than their larger counterparts. In addition, their patents are more likely to be cited in other patent applications, which suggests that these innovations are more technologically and scientifically important.

**Innovation and Net Job Creation.** Small businesses that produce and patent valuable innovations rarely stay small for long. Martek is a prime example.

*Continued on page 6*

#### For More Information

- BJK Associates, *The Influence of R&D Expenditures on New Firm Formation and Economic Growth*, U.S. Small Business Administration, Office of Advocacy, 2002, [www.sba.gov/advol/research/rs222tot.pdf](http://www.sba.gov/advol/research/rs222tot.pdf).
- *The Small Business Economy: A Report to the President, 2005*, U.S. Small Business Administration, Office of Advocacy, 2005, [www.sba.gov/advol/stats/sb\\_econ2005.pdf](http://www.sba.gov/advol/stats/sb_econ2005.pdf).
- CHI Research, *Small Serial Innovators: The Small Firm Contribution to Technical Change*, U.S. Small Business Administration, Office of Advocacy, 2003, [www.sba.gov/advol/research/rs225tot.pdf](http://www.sba.gov/advol/research/rs225tot.pdf).
- U.S. Department of Labor, Bureau of Labor Statistics, Business Employment Dynamics, [www.bls.gov/bdm](http://www.bls.gov/bdm).

## Net Job Creation, from page 5

Bringing a useful and innovative product to market generates spiraling demand that forces firms to grow quickly to keep up with it. This means investing resources in new plant and capital, as well as hiring many new employees.

The Bureau of Labor Statistics analyzed employment dynamics between September 2002 and March 2005 and found that 65 percent of the net new jobs created in that window stemmed from firms with fewer than 500 employees. This is consistent with data from the U.S. Census Bureau which has shown 60 to 80 percent of the net new jobs coming from small firms annually over the past decade. Clearly, small businesses are the engines of growth for the economy.

Moreover, research shows that job growth occurs in firms with fewer than 20 employees in the first two years of operation. These startups can have a large impact on employment. For this reason, entrepreneurship is seen by many communities as the catalyst that will “jump-start” their economic base. Many new firms, though, will never grow beyond a certain size. Thus, there are attempts to identify the ones that will, and to nurture them through business incubator

programs and other means. (Such fast-growth firms are often referred to as “gazelles.”)

For America to retain its technological and competitive edge, it must embrace the entrepreneur. Thanks to small business ingenuity, more Americans will be employed and the overall economy will be stronger.

### Why “Net” New Jobs?

Job creation is a moving target. As employment grows at some firms, it decreases at others. Economists use the measure of “net” new jobs to show actual increases in the number of jobs, after you subtract the number of jobs lost from the number of new jobs created. The result shows the overall increase, with the losses taken into account.

## Small Fast-Growing Private Firms Cluster in Industries Employing Scientists and Engineers

Small fast-growing private firms cluster in industries employing a high percentage of scientists and engineers, according to a report published by the Office of Advocacy in March. Conversely, as industries mature, large fast-growing public firms that have more sales, distribution, and production employees predominate.

“Entrepreneurs play an important role in our economy, and that role clearly differs by industry,” said Chad Moutray, chief economist for the Office of Advocacy. “It has always been a tenet of economic theory that industry conditions can help to determine the role of entrepreneurs. Now, using a unique

data set, the theory has been tested and found to be correct.”

The report, *Innovation and Small Business Performance: Examining the Relationship Between Technological Innovation and the Within-Industry Distributions of Fast-Growth Firms*, written by Peregrine Analytics with funding from the Office of Advocacy, used *Inc.* magazine’s “Inc. 500” as an important source of data for its findings.

Among the report’s findings:

- Distribution of large high-growth established firms and small high-growth private firms is not even across industries.

- Industries that are more

technically oriented (as evidenced by increased employment of scientists and engineers) are more accommodating to new fast-growing private firms.

- Production-oriented industries are more accommodating to large fast-growing public firms.

The complete report is available online at [www.sba.gov/advocacy/research/rs272tot.pdf](http://www.sba.gov/advocacy/research/rs272tot.pdf).

---

## Regional Roundup

---

### Economic Development Expert Christine Serrano Glassner Is Regional Advocate for Small Business in Federal Region II

Economic development expert Christine Serrano Glassner has joined the Office of Advocacy as regional advocate for the federal government's Region II, covering New Jersey, New York, Puerto Rico, and the Virgin Islands. She will be the direct link between small business owners, state and local government agencies, state legislators, small business associations, and the Office of Advocacy.

"Christine Serrano Glassner is a great addition to President Bush's small business team," said Thomas M. Sullivan, chief counsel for advocacy. "Her experiences with the Empire State Development Corporation and as a small business owner uniquely qualify her to help small businesses combat overly burdensome government regulations."

Serrano Glassner has extensive experience in economic development with the Empire State Development Corporation. She served in a variety of capacities, most recently as senior vice president of new market development. She also has experience in small

business, as the former owner of a catering firm.

"I am excited to be able to use my economic development experience and small business background to promote policies that strengthen entrepreneurs," said Serrano Glassner. "I look forward to being a part of the Office of Advocacy and to the opportunity to bring the concerns of small business owners in Region II to Washington, D.C."

Regional advocates help identify new issues and concerns of small business owners. They also monitor the impact of federal and state policies on small business at the local level. They work closely with local government officials, state officials, legislators, and the chief counsel for advocacy to develop programs and policies that reduce regulation and promote small business growth.



Region II Advocate Christine Serrano Glassner.

#### Region II Advocate

Christine Serrano Glassner  
Regional Advocate  
U.S. Small Business  
Administration  
26 Federal Plaza, Room 3108  
New York, NY 10278  
Phone: (212) 264-7752  
Fax: (202) 292-3718  
[christine.glassner@sba.gov](mailto:christine.glassner@sba.gov)

---

### Need An Extension to File Your Federal Return? It's A Little Easier This Year!

The deadline for filing your federal tax return this year is Monday, April 17, 2006. If you need an extension to file your 2005 individual tax return you must file Form 4868 by April 17, 2006. (The form and instructions can be found at [www.irs.gov](http://www.irs.gov).) No explanation is required. Filing Form 4868 gives you an extra six months to file your individual tax return. However, the tax liability remains due on April 17, 2006.

Form 4868 can be filed electronically or in hard copy. It replaces a two-step process that had included Form 2688.

# Small Business: Your issues are our issues at the SBA Office of Advocacy.

Access Advocacy Listservs for the latest regulatory alerts and small business statistics. Email notices will provide a hotlink to the new material, so your in-box won't fill up with large documents. At <http://web.sba.gov/list>, check:

- Advocacy Newsletter
- Advocacy Press
- Advocacy Regulatory News
- Advocacy Research



---

*Advocacy: the voice of small business in government*

U.S. Small Business Administration  
Office of Advocacy  
Mail Code 3114  
409 Third Street, S.W.  
Washington, DC 20416

Official Use  
Penalty for Private Use, \$300

Return Service Requested

