

**§ 1004.5 Procedures for announcing meetings.**

(a) In the case of each meeting, the IAF shall make public, at least one week before the meeting, of the time, place and subject matter of the meeting, whether it is to be open or closed to the public, and the name and phone number of the official designated by the IAF to respond to requests for information about the meeting. Such announcement shall be made unless a majority of the Board of Directors of the IAF determines by a recorded vote that the IAF requires that such a meeting be called at an earlier date, in which case the IAF shall make public announcement of the time, place and subject matter of such meeting and whether open or closed to the public, at the earliest practical time.

(b) Immediately following the public announcement, the IAF will submit notice for publication in the **Federal Register**.

(c) The IAF shall also make public the announcement by other reasonable means, accessible to the public.

**§ 1004.6 Procedures for closing meetings.**

(a) The closing of a meeting or a portion of a meeting shall occur only when:

(1) A majority of the membership of the IAF Board votes to take such action. That vote shall determine whether or not any portion or portions of a meeting or portions of a series of meetings may be closed to public observation for any of the reasons provided in § 1004.4 and whether or not the public interest nevertheless requires that portion of the meeting or meetings remain open. A single vote may be taken with respect to a series of meetings, a portion or portions of which are proposed to be closed to the public, or with respect to any information concerning such series of meetings, so long as each meeting in such series involves the same particular matters and is scheduled to be held no more than thirty days after the initial meeting in such series. The vote of each Board member participating in such vote shall be recorded and no proxies shall be allowed.

(2) Whenever any person whose interests may be directly affected by a portion of a meeting requests that the IAF close such portion to the public for any of the reasons referred to in § 1004.4 the IAF, upon request of any one of its Board members, shall take a recorded vote, whether to close such portion of the meeting.

(b) Within one day of any vote taken pursuant to this Section, the IAF shall make publicly available a written copy of such vote reflecting the vote of each

member on the question and full written explanation of its action closing the entire or portion of the meeting together with a list of persons expecting to attend the meeting and their affiliation.

(c) The IAF shall, subject to change, announce the time, place and subject matter of the meeting at least 7 days before the meeting.

(d) For every closed meeting pursuant to § 1004.4, the General Counsel of the IAF shall publicly certify prior to a Board of Directors' vote on closing the meeting, that, in his or her opinion, the meeting may be closed to the public and shall state each relevant exemptive provision. A copy of such certification, together with a statement from the presiding officer of the meeting setting forth the time and place of the meeting, and the persons present, shall be retained by the IAF.

**§ 1004.7 Reconsideration of opening or closing of meeting.**

The time or place of a Board meeting may be changed, without vote, following public announcement. The IAF will announce any such change at the earliest practicable time. The subject matter of a meeting, or the determination of the agency to open or close a meeting, or portion of a meeting, to the public, may be changed only if a majority of the Board of Directors determines by a recorded vote that IAF business so requires and that no earlier announcement of the change was possible, and the IAF publicly announces such change and the vote of each member upon such change at the earliest practicable time.

**§ 1004.8 Transcripts, recording of closed meetings.**

(a) The IAF shall maintain a complete transcript or electronic recording adequate to record fully the proceedings of each meeting, or portion of a meeting, closed to the public, except that in the case of a meeting, or portion of a meeting, closed to the public pursuant to paragraph (d), (h), or (j) of § 1004.4, the IAF shall maintain either such a transcript or recording, or a set of minutes. Such records shall fully and clearly describe all matters discussed and shall provide a full and accurate summary of any actions taken, and the reasons therefore, including a description of each of the views expressed on any item and the record of any roll call vote (reflecting the vote of each member on the question). All documents considered in connection with any action shall be identified in such records.

(b) The IAF, after review by the General Counsel shall make promptly

available to the public, in a place easily accessible to the public, the transcript or electronic recording or minutes of the discussion of any time on the agenda, or any item of the testimony of any witness received at the Board meeting, except for such item or items of such discussion or testimony as the IAF determines to contain information which may be withheld under § 1004.4. Copies of such transcript, or a transcription of such recording disclosing the identity of each speaker, shall be furnished to any person at the actual cost of duplication or transcription. The IAF shall maintain a complete verbatim copy of the transcript, a complete copy of the minutes or a complete electronic recording of each meeting, or portion of a meeting, closed to the public, for a period of at least two years after such meeting, or until one year after the conclusion or any IAF proceedings with respect to which the meeting or portion was held, whichever occurs later.

Dated: October 13, 2006.

**Jennifer R. Hodges,**  
*General Counsel.*

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**DEPARTMENT OF LABOR****Occupational Safety and Health Administration****29 CFR Part 1910**

[Docket No. H054A]

RIN 1218-AB45

**Occupational Exposure to Hexavalent Chromium**

**AGENCY:** Occupational Safety and Health Administration (OSHA), Department of Labor.

**ACTION:** Final rule.

**SUMMARY:** The Occupational Safety and Health Administration (OSHA) is making a minor amendment to its final rule governing occupational exposure to hexavalent chromium in general industry, which was promulgated on February 28, 2006. This amendment implements a settlement agreement (Agreement) entered into among OSHA, the Surface Finishing Industry Council (SFIC), Public Citizen Health Research Group (HRG), and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (Steelworkers) on October 25, 2006, to resolve SFIC's legal challenge to the standard.

**DATES:** The amendment in this document will be effective November 29, 2006. Declarations of Party Status must be received by OSHA or postmarked on or before November 30, 2006.

**ADDRESSES:** In accordance with the instructions in Section IV of this notice, Declarations of Party Status must be submitted to Richard Fairfax, Director of Enforcement Programs, Occupational Safety and Health Administration, 200 Constitution Ave., NW., Room N3119, Washington, DC 20210; Fax: (202) 693-1681.

**FOR FURTHER INFORMATION CONTACT:** Richard Fairfax, Director of Enforcement Programs, Occupational Safety and Health Administration, 200 Constitution Ave., NW., Room N3119, Washington, DC 20210; telephone (202) 693-2190.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

OSHA promulgated its final rule governing occupational exposure to hexavalent chromium (also written as chromium (VI) or Cr(VI)) in general industry (the standard) on February 28, 2006. *See* 71 FR 10100-385. The standard requires employers to use feasible engineering and work practice controls to reduce and maintain employee exposures to Cr(VI) at or below the permissible exposure limit (PEL) of 5 micrograms per cubic meter of air ( $5 \mu\text{g}/\text{m}^3$ ), calculated as an 8-hour time-weighted average (TWA). If an employer can demonstrate that feasible engineering and work practice controls are not sufficient to reduce exposures to or below the PEL, it must use those controls to attain the lowest levels achievable and then provide affected employees with supplemental respiratory protection. 29 CFR 1910.1026(f). The standard also requires employers to provide respiratory protection for employees during periods when feasible engineering and work practice controls are being installed, during emergencies, and in certain other situations. 29 CFR 1910.1026(g)(1). Although employers have until May 31, 2010, to implement feasible engineering controls, they must begin to comply with respirator requirements by November 27, 2006 (for employers with 20 or more employees) and May 30, 2007 (for employers with 19 or fewer employees). 29 CFR 1910.1026(n).

SFIC, a trade association whose members are primarily surface- and metal-finishing (electroplating) job shops, filed a timely petition for review of the standard in the United States Court of Appeals for the Eleventh Circuit. SFIC's petition was

consolidated with other petitions for review of the standard, including one filed jointly by HRG and the Steelworkers on behalf of workers affected by the standard, in the United States Court of Appeals for the Third Circuit.

SFIC, OSHA, HRG and the Steelworkers engaged in settlement negotiations to resolve SFIC's challenge to the standard. The negotiations resulted in OSHA, SFIC, HRG, and the Steelworkers agreeing to the settlement being attached to the standard as Appendix A. Eligible SFIC members and other metal- and surface-finishing job shop facilities may become parties to this Agreement by following the instructions in Section IV of this notice.

The Agreement creates an optional, alternative compliance timetable for metal- and surface-finishing operations at eligible worksites. Facilities that elect to participate must implement engineering controls on an expedited schedule (by December 31, 2008), but will have relief from certain respirator requirements in the interim. (See Section II below for a detailed summary of the Agreement.) This is not a material change to the substantive requirements of the standard, and therefore the amendment does not require a new finding of significant risk. *See Industrial Union Department, AFL-CIO v. American Petroleum Institute*, 448 U.S. 607 (1980). *See also* 71 FR at 10221-25. Moreover, this Agreement is conceptually consistent with findings OSHA made during the original rulemaking—namely that engineering controls are preferable to respiratory protection and that electroplating job shops will face unique economic feasibility issues in complying with the PEL of  $5 \mu\text{g}/\text{m}^3$  using either respirators or engineering controls.

In the preamble to the final standard, OSHA explained its longstanding preference for engineering and work practice controls over respiratory protection. The agency concluded that respirators do not “provide the same degree of protection” as other types of controls. 71 FR at 10335. OSHA stated that the “use of respirators in the workplace presents a number of independent safety and health concerns.” *Id.* Those concerns include the impairment of vision and communication, the physiological burdens associated with the weight of the respirator, and the increased breathing resistance experienced during respirator use. *Id.* OSHA also concluded that “respirators are inherently less reliable than engineering and work practice controls” insofar as the effectiveness of respirators depends on

appropriate selection and fit, proper use, and proper maintenance—all conditions that “can be difficult to attain, and are subject to human error.” *Id.* In contrast, OSHA found that “[e]ngineering controls are reliable, provide consistent levels of protection to a large number of workers, can be monitored, allow for predictable performance levels, and can efficiently remove a toxic substance from the workplace.” 71 FR at 10345.

In its economic feasibility analysis, OSHA concluded that the record did not support a finding that the proposed PEL of  $1 \mu\text{g}/\text{m}^3$  was economically feasible for electroplating job shops. Based upon the evidence in the record, OSHA found that the cost of compliance with the proposed PEL of  $1 \mu\text{g}/\text{m}^3$  could jeopardize the competitive structure of the industry. Although OSHA ultimately concluded that the final PEL of  $5 \mu\text{g}/\text{m}^3$  is economically feasible for electroplating job shops, the agency also found that the cost of compliance will have a very significant adverse economic impact on this industry. 71 FR at 10301. OSHA considered whether permitting the use of respirators in lieu of engineering controls would alleviate any of the economic burden on this industry, but concluded that for these facilities “respirator use would be almost as expensive as using engineering controls.” 71 FR at 10310. *See also* 71 FR at 10301.

In light of the aforementioned findings, OSHA considers it reasonable to provide eligible facilities with the option of devoting their resources to implementing engineering controls on an expedited basis instead of to interim respirator requirements. OSHA believes that the Agreement and corresponding amendment to the standard will have the positive result of expediting the installation of engineering controls for a narrow group of employers with unique economic feasibility concerns. Although the Agreement will provide participating electroplating facilities with temporary, limited relief from short-term respirator requirements, provisions in the Agreement (discussed more fully in Section II of this notice) ensure that those facilities will still provide respirators in certain situations, *e.g.*, for certain metal-finishing tasks when exposures exceed the PEL and for any other employees who request respiratory protection.

In entering into the Agreement and adopting this amendment, OSHA did not make and is not presently making any representations regarding its enforcement of the hexavalent chromium standard in facilities that are *not* parties to the Agreement. Moreover,

neither the Agreement nor the corresponding amendment to the standard have any relationship to OSHA's enforcement of any other occupational safety or health standards.

## II. Explanation of the Agreement

### *Amendment to the Compliance Date Provisions*

OSHA is amending the hexavalent chromium standard for general industry (29 CFR 1910.1026) as follows:

(1) Existing paragraph 1910.1026(n)(3) is being amended to clarify that facilities that are parties to the Agreement are covered by the compliance deadline in new paragraph (n)(4) instead of the otherwise applicable May 31, 2010, compliance deadline for engineering controls;

(2) A new paragraph, 1910.1026(n)(4), is being added to the standard to provide that facilities that are parties to the Agreement must implement feasible engineering controls by December 31, 2008; and

(3) The Agreement between OSHA, SFIC, HRG, and the Steelworkers is being attached to the standard as Appendix A.

Facilities that become parties to the Agreement must comply with all provisions of the standard in accordance with the compliance dates set forth in 29 CFR 1910.1026(n), as amended, except that in certain circumstances (described below) OSHA will not enforce respirator requirements in those facilities prior to December 31, 2008.

### *Accelerated Implementation of Engineering Controls*

Facilities that become parties to the Agreement must implement those feasible engineering controls necessary to reduce hexavalent chromium levels at their facilities to or below the 5 µg/m<sup>3</sup> PEL, in accordance with 29 CFR 1910.1026(f)(1), by December 31, 2008. In fulfilling this obligation, the facilities may select from the engineering and work practice controls listed in Exhibit A to this Agreement or adopt any other controls.

### *Respirator Enforcement*

With the exception of the six classes of employees described below, OSHA has agreed not to enforce the respirator protection provisions at 29 CFR 1910.1026(f) and (g) prior to December 31, 2008, for metal- and surface-finishing operations in facilities that are parties to, and are complying with, the Agreement. The six classes of employees for which OSHA will enforce all of the standard's respiratory protection provisions are as follows:

(1) Employees who are exposed to Cr(VI) in excess of the PEL while performing tasks described in Exhibit B to the Agreement. These tasks, as described more completely in Exhibit B, include Cr(VI) chemical additions, Cr(VI) preparation and mixing, Cr(VI) tank cleaning, and Cr(VI) painting operations.

(2) Through November 30, 2007, employees whose exposures to Cr(VI) exceed an interim "respirator threshold" of 20 µg/m<sup>3</sup> (measured as an 8-hour time-weighted average).

(3) Beginning December 1, 2007, employees whose exposures to Cr(VI) exceed an interim "respirator threshold" of 12.5 µg/m<sup>3</sup> (measured as an 8-hour time-weighted average).

(4) Employees who are exposed to Cr(VI) and request a respirator.

(5) Any other employees who are required by their employers to wear a respirator.

(6) Employees with exposures for which respirators were required under the previous Cr(VI) standard at 29 CFR 1910.1000, and any other employees covered by respirator programs in effect on May 30, 2006.

### *Compliance Plan and Monitoring*

The standard requires all employers, including facilities that are parties to the Agreement, to make an initial exposure determination for each employee exposed to Cr(VI). Facilities that are parties to the Agreement may do this using either the monitoring option described at 29 CFR 1910.1026(d)(2)(i) (which involves taking a sufficient number of personal breathing zone air samples to accurately characterize full shift exposure on each shift, for each job classification, in each work area) or the performance-oriented option described at 29 CFR 1910.1026(d)(3) (which involves using any combination of air monitoring data, historical monitoring data, or objective data sufficient to accurately characterize employee exposures).

Thereafter, each facility that is a party to the Agreement must conduct periodic monitoring in accordance with the Scheduled Monitoring Option provision at 29 CFR 1910.1026(d)(2). Under this provision, if monitoring reveals employee exposures to be above the PEL, the employer shall perform periodic monitoring at least every three months. If monitoring reveals employee exposures to be at or above the action level of 2.5 µg/m<sup>3</sup> (as an 8-hour TWA), the employer shall perform periodic monitoring at least every six months. If monitoring indicates that employee exposures are below the action level, the employer may discontinue monitoring

for those employees whose exposures are represented by such monitoring.

The standard requires employers to notify employees whenever an exposure determination indicates exposures above the PEL. This notification must be in writing and must describe the corrective actions being taken to reduce employee exposures to or below the PEL. 29 CFR 1910.1026(d)(4). In accordance with this requirement, facilities that are parties to the Agreement must prepare a written compliance plan that sets forth the specific control steps being taken to reduce exposures to or below the PEL and must update that plan each time monitoring reveals exposures above the PEL.

Upon request, compliance plans and monitoring results must be provided to OSHA, affected employees and employee representatives.

### *Training*

In addition to training employees as required by Section 1026(l)(2) of the standard, facilities that are parties to the Agreement must train their employees in the provisions of the Agreement within sixty (60) days of the Opt-in Date (see Section IV). This training must be provided in a manner and language the employees can understand.

### *Facilities That Are Not Parties to the Agreement*

The terms of the Agreement and the amendment being made to Section (n) of the standard have no impact on the compliance requirements applicable to facilities that are not eligible to or do not elect to become parties to the Agreement. Facilities that are not parties to the Agreement must comply with all respirator requirements beginning on the applicable compliance date (November 27, 2006 for employers with 20 or more employees and May 30, 2007 for employers with 19 or fewer employees) and will have until May 31, 2010 to implement feasible engineering controls.

## III. Eligibility Criteria

An employer's facility is eligible to become a party to the Agreement if (1) The employer is a member of SFIC or the facility is a surface-finishing or metal-finishing job shop that sells plating or anodizing services to other companies; and (2) the facility is within the jurisdiction of Federal OSHA. The terms of the Agreement apply only to surface- and metal-finishing operations in those facilities.

#### IV. Instructions for Eligible Facilities

Employers can make their eligible facilities parties to the Agreement by completing a Declaration of Party Status. Declarations are available on OSHA's Web site at [http://www.osha.gov/SLTC/hexavalentchromium/hexchrom\\_settlement.html](http://www.osha.gov/SLTC/hexavalentchromium/hexchrom_settlement.html). A separate declaration must be completed for each facility. Questions about eligibility and other inquiries about becoming a party to the Agreement can be directed to OSHA's Office of Health Enforcement at (202) 693-2190.

Completed declarations must be mailed or sent by facsimile to: Richard Fairfax, Director of Enforcement Programs, Occupational Safety and Health Administration, 200 Constitution Ave., NW., Room N3119, Washington, DC 20210; Fax: (202) 693-1681.

Declarations of Party Status must be received by OSHA or postmarked on or before November 30, 2006. For purposes of the Settlement Agreement, this deadline is known as the "Opt-in Date."

#### V. Instructions for Facilities in State Plan Jurisdictions

SFIC members and other electroplating job shop facilities within the jurisdiction of OSHA-approved State occupational safety and health plans may contact their State plan agencies to determine if their State programs will honor and implement the terms of this Federal Agreement, including the amendment to the standard, or take an alternative position, which may include entering into separate arrangements with surface- and metal-finishing job shop facilities or their representatives. The 22 State plans covering the private sector are in Alaska, Arizona, California, Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, Nevada, New Mexico, North Carolina, Oregon, Puerto Rico, South Carolina, Tennessee, Utah, Vermont, Virginia, Washington, and Wyoming. Contact information for these State plans is available on OSHA's Web site at <http://www.osha.gov/fso/osp/index.html>.

#### VI. Pertinent Legal Authority

This amendment is published under authority of the Occupational Safety and Health Act and the Administrative Procedure Act (APA). See 29 U.S.C. 651(b), 655, and 5 U.S.C. 553. OSHA promulgated the Cr(VI) standard in February 2006, after extensive notice-and-comment rulemaking proceedings. For the reasons set forth below, additional public notice and comment for the amendment described in this notice is not required.

The amendment described in this notice applies only to surface-finishing and metal-finishing (electroplating) operations in eligible facilities that voluntarily elect to participate in the alternative timetable for compliance. It follows that the only entities and persons affected by this amendment are (1) Employers who operate those facilities and (2) employees who work in those facilities. To a significant extent, employers and employees had actual notice of, and ample opportunity to comment on, this amendment by virtue of the participation of representatives (SFIC for employers, and HRG and the Steelworkers for employees) in the settlement negotiations preceding publication of this notice.

Under the APA, the agency may make a "good cause" finding that notice and comment would be impracticable, unnecessary, or contrary to the public interest. 5 U.S.C. 553(b)(B). In this instance, OSHA finds that public notice and comment for this minor amendment is both unnecessary and impracticable. OSHA's determination that good cause exists for proceeding without additional notice and comment is based on the following factors:

(1) This amendment is a minor, non-substantive, and industry-specific change to the compliance date provisions of the standard. The vast majority of industries and facilities covered by the standard will be unaffected by the amendment, and even at affected worksites, the substantive requirements of the standard remain unchanged.

(2) The amendment simply adds an additional compliance option to the standard. Given the voluntary nature of the new compliance date provision, no affected employer can be prejudiced by the amendment. The terms of the Agreement and the new compliance date provision apply only to facilities that voluntarily file a Declaration of Party Status with OSHA. Any facility wishing to adhere to the standard as originally promulgated may do so.

(3) No employees are adversely affected as a result of the Agreement or the amendment to the standard. Even at facilities that are parties to the Agreement, where OSHA will not be enforcing all interim respirator requirements, each employee who wishes to wear a respirator has a right to request and receive one under the terms of the Agreement, and any employee who makes such a request and is exposed above the PEL will be protected by the full respirator program provided under the standard. In addition, employees currently covered

by existing respirator programs will continue to receive respiratory protection. Moreover, OSHA has concluded that employees at participating facilities—including those who request respirators in the interim—will benefit from the expedited implementation of engineering controls.

(4) As described more fully in Section I of this notice, this amendment is consistent with, and an outgrowth of, findings OSHA made based on the record that was developed, with extensive public input, during the chromium rulemaking. No new or additional findings are required to support the amendment.

(5) This amendment arises out of the unique context of settlement negotiations conducted during litigation over the validity of the chromium standard. The new compliance date provision is the result of extensive negotiations between OSHA, SFIC, HRG, and the Steelworkers, and it resolves SFIC's challenge to the rule.

(6) Time-consuming notice and comment on this technical amendment to the standard is impracticable given that the benefits the parties expect to realize from the Agreement depend on immediate or virtually immediate implementation of the terms of the settlement. Any lengthy delay associated with additional rulemaking could undermine the essential (and time sensitive) premise of the Agreement, namely that participating facilities will implement engineering controls earlier than otherwise required in exchange for some interim relief from short-term respirator requirements. In addition, OSHA's enforcement personnel need to know promptly which facilities are parties to the Agreement. Only facilities that become parties to the Agreement are eligible for any relief from the respiratory protection requirements of the standard.

#### VII. Economic Analysis and Regulatory Flexibility Act Certification

In promulgating the final hexavalent chromium standard in February 2006, OSHA found that the rule was economically and technologically feasible for all affected industries. See 71 FR at 10256-302. The amendment described in this notice is a minor change to the compliance date provision of the standard and applies, on a voluntary basis, to a very small percentage of all facilities covered by the rule. OSHA has concluded that this amendment does not affect its economic or technological feasibility findings. Furthermore, in accordance with the Regulatory Flexibility Act, OSHA certifies that this amendment will not

have a significant economic impact on a substantial number of small entities. In fact, this action will increase compliance flexibility for affected small businesses by offering them an additional compliance schedule option. The addition of such an option may decrease costs for some affected employers, and will increase costs for none.

#### VIII. Environmental Impacts, Unfunded Mandates, Federalism, and Environmental Health and Safety Risks for Children

In the final hexavalent chromium standard, OSHA also reviewed environmental impacts, unfunded mandates, and federalism issues, and considered the impact of the rule on the environmental health and safety of children. See 71 FR at 10326 (federalism and unfunded mandates); 71 FR at 10326–27 (protecting children from environmental health and safety risks); 71 FR at 10327 (environmental impact). For the reasons noted in section VII above, OSHA finds that the amendment does not alter the findings or determinations rendered in these analyses.

#### IX. Paperwork Reduction Act

On February 27, 2006, OSHA submitted the information collection request for the final hexavalent chromium standard to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1995. On March 28, 2006, OMB approved the collections of information contained in the final chromium standard and assigned them OMB Control Number 1218–0252. The amendment described in this notice does not change the burden associated with the preparation, maintenance or disclosure of information as calculated and described by OSHA at the time the final standard was originally promulgated. See 71 FR at 10325–26.

#### X. State Plans

In accordance with Section 18(c)(2) of the Occupational Safety and Health Act (29 U.S.C. 667(c)(2)), when Federal OSHA promulgates a new standard or a more stringent amendment to an existing standard, the 26 States or U.S. territories with OSHA-approved occupational safety and health plans must revise their standards to reflect the new standard or amendment. The State standard must be at least as effective as the final Federal rule, must be applicable to both the private and public (State and local government employees) sectors, and must be

completed within six months of the publication date of the final Federal rule. When OSHA promulgates a new standard, or an amendment to a standard, which does *not* impose additional or more stringent requirements than an existing standard, States are encouraged but not required to take parallel action. In addition, State plans operate under authority of State law, and agreements reached by Federal OSHA are not binding on the States unless they become parties to the agreements or otherwise specifically agree to their terms.

The State plans were required to adopt OSHA's hexavalent chromium standard within six months of the Federal promulgation, *i.e.*, by August 28, 2006. The Federal settlement and the corresponding amendment to OSHA's hexavalent chromium standard provide SFIC members and other surface- and metal-finishing job shops under Federal OSHA's jurisdiction with an optional alternative to the compliance timetable described in Section (n) of the standard as originally promulgated. This action does not impose additional or more stringent requirements. Further, the 22 States with OSHA-approved State plans covering private sector employment were not parties to the negotiations that resulted in this amendment. Accordingly, State plans are not bound by the Agreement or obligated to adopt OSHA's amendment to its standard. Nevertheless, OSHA encourages the 22 State plans that cover both the private and public (State and local government) sectors (see list in Section V of this notice) to honor and implement the terms of the Agreement, including adopting a corresponding amendment to their State standard, or to take an alternative position, which could include entering into separate arrangements with surface- and metal-finishing job shops (or their representatives) in their jurisdiction.

#### List of Subjects in 29 CFR Part 1910

Cancer, Chemicals, Hazardous substances, Health, Occupational safety and health.

#### XI. Authority and Signature

This document was prepared under the direction of Edwin G. Foulke, Jr., Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Ave., NW., Washington, DC 20210. The Agency issues the final sections under the following authorities: Sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 5–

2002 (67 FR 65008); and 29 CFR Part 1911.

Signed at Washington, DC on October 25, 2006.

**Edwin G. Foulke, Jr.,**  
Assistant Secretary of Labor.

#### Amendment to the Final Standard

■ Chapter XVII of Title 29 of the Code of Federal Regulations is to be amended as follows:

#### PART 1910—[AMENDED]

##### Subpart Z—[Amended]

■ 1. The authority citation for Subpart Z of Part 1910 continues to read as follows:

**Authority:** Sections 4, 6, 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657; Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), 1–90 (55 FR 9033), 6–96 (62 FR 111), 3–2000 (65 FR 50017), or 5–2002 (67 FR 65008), as applicable; and 29 CFR part 1911.

All of subpart Z issued under section 6(b) of the Occupational Safety and Health Act, except those substances that have exposure limits listed in Tables Z–1, Z–2, and Z–3 of 29 CFR 1910.1000. The latter were issued under section 6(a) (29 U.S.C. 655(a)).

Section 1910.1000, Tables Z–1, Z–2, and Z–3 also issued under 5 U.S.C. 553, Section 1910.1000 Tables Z–1, Z–2, and Z–3 but not under 29 CFR part 1911 except for the arsenic (organic compounds), benzene, cotton dust, and chromium (VI) listings.

Section 1910.1001 also issued under section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704) and 5 U.S.C. 553.

Section 1910.1002 also issued under 5 U.S.C. 553 but not under 29 U.S.C. 655 or 29 CFR part 1911.

Sections 1910.1018, 1910.1029 and 1910.1200 also issued under 29 U.S.C. 653.

Section 1910.1030 also issued under Pub. L. 106–430, 114 Stat. 1901.

- 2. In § 1910.1026:
  - a. Paragraph (n)(3) is revised.
  - b. Paragraph (n)(4) is added.
  - c. Appendix A to § 1910.1026 is added.

The revisions and additions read as follows:

#### § 1910.1026 Chromium (VI).

\* \* \* \* \*

(n) *Dates* \* \* \*

(3) Except as provided in (n)(4), for all employers, engineering controls required by paragraph (f) of this section shall be implemented no later than May 31, 2010.

(4) In facilities that become parties to the settlement agreement included in Appendix A, engineering controls required by paragraph (f) of this section shall be implemented no later than December 31, 2008.

**Appendix A to § 1910.1026****In the United States Court of Appeals for the Third Circuit**

*Surface Finishing Industry Council et al., Petitioners, v. U.S. Occupational Safety and Health Administration, Respondent.*

[Docket No. 06–2272 and consolidated cases]

*Public Citizen Health Research Group et al., Petitioners, v. Occupational Safety and Health Administration, United States Department of Labor, Respondent.*

[Docket No. 06–1818]

**Settlement Agreement**

The parties to this Settlement Agreement (“Agreement”) are the Occupational Safety and Health Administration, United States Department of Labor (“OSHA”), the Surface Finishing Industry Council or its successors (“SFIC”), surface-finishing and metal-finishing facilities which have opted into this Agreement pursuant to paragraph 7 (“Company” or “Companies”), Public Citizen Health Research Group (“HRG”), and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (“Steelworkers”).

Whereas, On February 28, 2006, OSHA promulgated a revised hexavalent chromium standard for general industry (“the Standard”) that includes a permissible exposure limit (“PEL”) for hexavalent chromium of 5 micrograms per cubic meter (“ $\mu\text{g}/\text{m}^3$ ”) measured as an 8-hour time-weighted average (“TWA”), and a deadline of May 31, 2010, for employers to come into compliance with this PEL through the implementation of engineering controls. The deadline for compliance with the remaining provisions of the Standard, including those requiring the use of respiratory protection to comply with the PEL, is November 27, 2006, for employers with twenty (20) or more employees, and May 30, 2007, for employers with nineteen (19) or fewer employees. 29 CFR 1910.1026, 71 FR 10100 (Feb. 28, 2006);

Whereas, SFIC filed a Petition for Review of the Standard in the Eleventh Circuit that was consolidated with other Petitions in the Third Circuit (Case No. 06–2272);

Whereas, SFIC filed a Motion for Leave to Intervene in the matter of HRG’s Petition for Review in the Third Circuit (Case No. 06–1818), which has been granted;

Now, therefore, the parties to this Agreement do hereby agree to the following terms:

1. *Term of this Agreement.* This Agreement will be effective upon execution and will expire on May 31, 2010.

2. *Accelerated implementation of engineering controls.* The Companies agree that in accordance with 29 CFR 1910.1026(f)(1) they will implement those feasible engineering controls necessary to reduce hexavalent chromium levels at their facilities by December 31, 2008, to or below the  $5 \mu\text{g}/\text{m}^3$  PEL. In fulfilling this obligation, the Companies may select from the engineering and work practice controls listed in Exhibit A to this Agreement or adopt any other controls.

3. *Compliance plan and monitoring.* In accordance with 29 CFR 1910.1026(d)(4)(ii),

each Company will prepare, and update as required, a written plan setting forth the specific control steps being taken to reduce employee exposure to or below the PEL by December 31, 2008. In addition, Companies will make an initial exposure determination as required by 29 CFR 1910.1026(d)(1) using either the procedures for personal breathing zone air samples described in 29 CFR 1910.1026(d)(2) or the performance-oriented option described at 29 CFR 1910.1026(d)(3). Thereafter, Companies will conduct periodic monitoring in accordance with the “Scheduled Monitoring Option” provisions at 29 CFR 1910.1026(d)(2) and related provisions at 29 CFR 1910.1026(d)(4)–(6). The Companies agree that upon request compliance plans prepared in accordance with this paragraph, as well as all monitoring results obtained in compliance with this paragraph, will be provided to OSHA, affected employees and employee representatives.

4. *Respirator use.* The respiratory protection provisions at 29 CFR 1910.1026(f) and (g) will apply to the Companies in accordance with the terms and dates set forth in the Standard, except that prior to December 31, 2008, for Companies that are in compliance with this Agreement, OSHA will enforce those respiratory protection provisions only with respect to employees who fall into one of the following six (6) categories: (1) Employees who are exposed to hexavalent chromium in excess of the PEL while performing tasks described in Exhibit B to this Agreement; (2) through November 30, 2007, employees whose exposures to hexavalent chromium exceed a “respirator threshold” of  $20 \mu\text{g}/\text{m}^3$  (measured as an 8-hour TWA); (3) beginning December 1, 2007, employees whose exposures to hexavalent chromium exceed a “respirator threshold” of  $12.5 \mu\text{g}/\text{m}^3$  (measured as an 8-hour TWA); (4) employees who are exposed to hexavalent chromium and request a respirator; (5) any other employees who are required by the Companies to wear a respirator; and (6) employees with exposures for which respirators were required under the previous hexavalent chromium standard (1910.1000) and any other employees covered by respirator programs in effect on May 30, 2006.

5. *Employee information and training.* Company employees will be trained pursuant to the provisions of 29 CFR 1910.1026(l)(2). In addition, the Companies agree to train employees in the provisions of this Agreement within sixty (60) days of the Opt-In Date (defined in paragraph 7 of this Agreement). The training regarding this Agreement shall be provided in language the employees can understand.

6. *Enforcement.* Within thirty (30) days of the execution of this Agreement, OSHA will publish a notice in the **Federal Register** amending 29 CFR 1910.1026 as follows: (1) A copy of this Agreement will be attached to the Standard as Appendix A; (2) a new paragraph, 1910.1026(n)(4), will be added to the Standard, and will read: “In facilities that become parties to the settlement agreement included in Appendix A, engineering controls required by paragraph (f) of this section shall be implemented no later than

December 31, 2008”; and (3) existing paragraph 1910.1026(n)(3) will be amended to read: “Except as provided in (n)(4), for all employers, engineering controls required by paragraph (f) of this section shall be implemented no later than May 31, 2010.”

7. *Opt-In Date for Companies to become parties to this Agreement.* The **Federal Register** notice described in paragraph 6 of this Agreement will provide notice of the provisions of this Agreement, and of the revisions to the Standard described in paragraph 6, and will provide until November 30, 2006, for eligible facilities to become parties to this Agreement, and be subject to all of the duties, obligations, and rights herein. The last date for signing by facilities shall be referred to as the Opt-In Date. The opt in option will be available on a facility by facility basis and only to SFIC members and other surface-finishing and metal-finishing job shop facilities within the jurisdiction of Federal OSHA. (For purposes of this Agreement, a “job shop” is defined as a facility that sells plating or anodizing services to other companies.) Moreover, the terms of this Agreement apply only with respect to the performance of surface-finishing and metal-finishing operations in those facilities. Although this Agreement applies only to facilities within the jurisdiction of Federal OSHA, OSHA will encourage States with OSHA-approved State occupational safety and health plans to either honor and implement the terms of this Agreement, including the amendments to the standard described in paragraph 6, or to take an alternative position, which may include entering into separate arrangements with surface- and metal-finishing job shop facilities (or their representatives) in their jurisdiction.

8. *Effect on third parties.* Nothing in this Agreement constitutes an admission by SFIC or the Companies that a significant risk of material health impairment exists for hexavalent chromium justifying a reduction of the PEL to  $5 \mu\text{g}/\text{m}^3$ . Nor does anything in this Agreement constitute any other admission by SFIC or the Companies for purposes of this litigation or future litigation or standards-setting. This Agreement is not intended to give any rights to any third party except as expressly provided herein.

9. *OSHA inspections.* OSHA may do monitoring inspections to assess compliance with and progress under this Agreement and the Standard, and nothing in this Agreement limits OSHA’s right to conduct inspections at Companies’ facilities in accordance with the Occupational Safety and Health Act.

10. *Scope of Agreement.* The terms of this Agreement apply only in the circumstances and to the Companies specified herein. In entering into this Agreement, OSHA is not making any representations regarding its enforcement policy with respect to either (1) The hexavalent chromium standard as applied to employers who are not parties to this Agreement or (2) any other occupational safety or health standards.

11. *Effect of invalidation of the Standard.* If the Standard is invalidated, nothing in this Agreement shall prevent the application to SFIC or the Companies of any PEL that is promulgated by OSHA on remand. This

Agreement would not foreclose SFIC or the Companies from participating in rulemaking proceedings or otherwise challenging any new PEL promulgated by OSHA on remand.

12. *Withdrawal of Petitions and Interventions.* SFIC agrees to move to withdraw its Petition for Review in the above-captioned case, Case No. 06-2272, within five (5) working days of the execution of this Agreement. SFIC further will move to dismiss its motion to intervene in Case No. 06-1818 and all other challenges simultaneously with its motion to withdraw in Case No. 06-2272 as Petitioner.

13. *Attorneys' fees.* Each party agrees to bear its own attorneys' fees, costs, and other expenses that have been incurred in connection with SFIC's Petition for Review, SFIC's intervention in HRG's Petition for Review, and the negotiation of this Agreement up to and including filing of the motions to dismiss.

14. *Support of Agreement.* In the event that all or any portion of this Agreement is challenged in any forum, the signatories below agree to move to intervene in support of this Agreement.

Agreed to this 25th day of October, 2006.

Baruch A. Fellner,

Counsel for SFIC, Gibson, Dunn & Crutcher LLP, 1050 Connecticut Avenue, NW., Washington, DC 20036, (202) 955-8500.

Lauren S. Goodman,

Counsel for OSHA, United States Department of Labor, Office of the Solicitor, 200 Constitution Avenue, NW., Washington, DC 20210, (202) 693-5445.

Scott L. Nelson,

Counsel for HRG and the Steelworkers, Public Citizen Litigation Group, 1600 20th Street, NW., Washington, DC 20009, (202) 588-7724.

## Exhibit A

### Available Engineering and Work Practice Controls

The Companies agree that work towards the implementation of these available engineering and work practice controls should not be delayed to accommodate their completion by December 31, 2008. The Companies are encouraged to implement from among these controls as soon as practicable.

#### 1. Parts Transfer Practices

- *Minimize droplet formation.* Instruments akin to garden hoses are used to rinse off parts coming out of chemical baths. This causes many small droplets to form, which are easily atomized or vaporized and contribute to airborne chromium concentration. The industry is currently developing ways to minimize the formation of small droplets, dripping, or splashing, possibly by reducing hose pressure.

- *Minimize air current flow.* Strong air currents across these droplets may contribute to their vaporization, and therefore minimizing air current flow across the droplets may reduce airborne hexavalent chromium levels.

- *Slow part speeds as feasible.* The speed at which parts are pulled out of a chemical tank causes splashing, which adds to

chromium vaporization. By slowing the speed at which parts are taken out of tanks, splashing and vaporization can be minimized. The feasibility of this control must be evaluated in light of the negative effect on productivity.

#### 2. Plating Bath Surface Tension Management and Fume Suppression

- *Lower surface tension.* Lower surface tension in chemical baths leads to fewer drops forming. Chromium baths currently have a surface tension of 35 dynes per centimeter. As a comparison, water has a surface tension of 72 dynes per centimeter. Lowering surface tension further would lead to reduced airborne hexavalent chromium levels.

- *Fume suppressants.* Fume suppressants create a physical barrier between the chemical bath and the air, which prevents vaporization. Some suppressants, however, may cause pitting or other metal damage, and therefore their use is not always possible.

#### 3. Facility Air Disturbance Monitoring

- *Improvement of local exhaust ventilation (LEV) capture efficiency.* The majority of electroplating facilities are not air-conditioned. As a result, doors are kept open to let in cool air, but this causes air currents that prevent the LEVs from performing efficiently. The use of fans has a similar effect. Industry is researching how to minimize these air currents so that LEVs can perform as designed. Such methods may include the use of partitions to degrade air current flow, or checklists that may include location and positioning of cross drafts, fans, doors, windows, partitions and process equipment that Companies can use to audit their workplaces in order to improve their capture efficiency.

#### 4. Technology Enhancements In Lieu of LEV Retrofitting

- *Eductors.* Many chemical baths are currently mixed via air agitation: Air pipes bubble air into the tank to keep the chemicals mixed and to prevent them from settling. An adverse effect of this agitation is that air bubbles escape at the surface of the tank, resulting in some chromium vaporization. By using eductors (horn-shaped nozzles) in tanks, the chemicals flow from a pump to create solution movement below the surface without the use of air bubbles, and the amount of chromium vaporization can be significantly reduced.

#### 5. Different Means of Chromium Additions

- *Liquid Chromium.* Dry hexavalent chromium flakes are occasionally added to tanks, which can generate airborne particulates of hexavalent chromium. Adding liquid chromium at or near the surface of a tank would lower airborne chromium levels and reduce splashing from tanks.

- *Hydration of flakes before addition.* To add liquid chromium to tanks, the dry flakes must be hydrated. Whether this process is performed by chemical suppliers that provide plating solutions to metal finishing companies or by metal finishing companies that have the necessary experience and equipment, appropriate work practices such as mixing techniques must be implemented

to minimize the potential airborne levels of hexavalent chromium.

#### 6. Dust Control

- *Better housekeeping.* Chrome dust that comes off products that are polished or grinded is actually elemental chromium, not hexavalent chromium, so polishing and grinding contribute little to airborne hexavalent chromium levels. However, Companies should use good housekeeping practices, including wet mopping, and wet wipedowns, to reduce the amount of dust present.

#### 7. Improvement and Maintenance of Existing LEVs

- *Improvement and maintenance of existing LEVs.* Companies may repair and maintain their current LEVs. Because the final rule indicates that at least 75 percent of the industry is in compliance with the PEL with LEVs working at 40% of capacity, increasing LEV function can materially affect compliance.

#### 8. Other Controls

- *Other methods.* Companies are constantly determining best work practices and technological controls through laboratory research and practical experience. Companies will implement other engineering and work practice controls as necessary and as practicable to reduce potential hexavalent chromium workplace exposures.

## Exhibit B

### Workplace Tasks Requiring Respirators Where PEL Is Exceeded

Some well-known and relatively few, discrete tasks related to metal finishing activities result in potentially higher workplace exposures of hexavalent chromium. Where the applicable PEL for hexavalent chromium is exceeded, respirators shall be worn to conduct the following activities:

(1) Hexavalent chromium chemical additions. In order to have the metal deposited onto the part, hexavalent chromium must be added to the plating tank periodically. This is a discrete activity that involves the addition of either a dry flake of hexavalent chromium chemicals or a liquid solution of hexavalent chromium into the plating tank. Respirators shall be worn during the period it takes to add the hexavalent chromium chemical to the tank.

(2) Hexavalent chromium preparation and mixing. Different mixtures of hexavalent chromium chemicals are needed for different types of chromium plating processes. For example, hard chromium plating can require higher concentrations of hexavalent chromium because a thicker coating and longer plating process may be needed for the critical product quality and performance. Similarly, different types of decorative chromium plating processes may need different levels of hexavalent chromium and other chemicals such as catalysts. These mixtures can be in the form of dry flakes or liquid solutions. All of these different hexavalent chromium chemical mixtures are generally prepared by metal finishing suppliers and distributors. Some metal



finishing companies may also prepare hexavalent chromium solutions from the dry flakes prior to addition to the plating tanks. Respirators shall be worn during the period it takes to prepare these hexavalent chromium mixtures and solutions whether the activity is conducted at a chemical supplier or a metal finishing company.

(3) Hexavalent chromium tank cleaning. Occasionally, the tanks used for chromium plating may need to be emptied and cleaned. This process would involve the draining of the solution and then the removal of any residues in the tank. Workers cleaning out these tanks may have to enter the tank or reach into it to remove the residues. Respirators (as well as other appropriate PPE) shall be worn during the period it takes to clean the tanks and prepare them for use again.

(4) Hexavalent chromium painting operations. Some metal finishing operations apply paints with higher concentrations of hexavalent chromium to a line of parts, particularly for aerospace applications when a high degree of corrosion protection is needed for critical product performance. Paints are generally applied in such operations with some type of spray mechanism or similar dispersion practice. In some instances, it may be difficult to keep workplace exposures below the PEL for such paint spraying activities. Respirators shall be worn during such spray painting operations.

[FR Doc. 06-8971 Filed 10-27-06; 8:45 am]

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## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 110

[CGD08-05-016]

RIN 1625-AA01

#### Anchorage Regulations; Mississippi River Below Baton Rouge, LA, Including South and Southwest Passes

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

**SUMMARY:** The Coast Guard has amended anchorage regulations for the Mississippi River below Baton Rouge, LA, including South and Southwest Passes, in order to improve safety at the Lower Kenner Bend Anchorage. This rule is needed to protect aircraft passengers and crew, mariners and the public from the potential safety hazards associated with the ascent and descent of aircraft over vessels anchored in the vicinity of the Louis Armstrong New Orleans International Airport, New Orleans, LA.

**DATES:** This rule is effective November 29, 2006.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket, are part of docket [CGD08-05-016] and are available for inspection or copying at U.S. Coast Guard D8, 500 Poydras Street, New Orleans, Louisiana 70130-3396 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

#### FOR FURTHER INFORMATION CONTACT:

Douglas Blakemore, Waterways Management Branch, Eighth Coast Guard District, 500 Poydras Street, New Orleans, LA 70130-3396. Telephone (504) 671-2109; facsimile (504) 671-2137. Please cite CGD08-05-016.

#### SUPPLEMENTARY INFORMATION:

##### Regulatory Information

On April 27, 2005, we published a notice of proposed rulemaking (NPRM) entitled "Anchorage Regulations; Mississippi River Below Baton Rouge, LA, Including South and Southwest Passes" in the **Federal Register** (70 FR 21698). We received 4 letters commenting on this rule. A public meeting was held at the Hale Boggs Federal Building, 500 Poydras Street, New Orleans, LA on January 4, 2006 (70 FR 76320, December 23, 2005). The three comments from this public meeting are included in this rulemaking.

##### Background and Purpose

Runway 1-19 at the Louis Armstrong New Orleans International Airport is positioned in a north-south line running parallel to the Airport Access Road. Aircraft approaching the runway from the south or departing the runway from the north pass over the Lower Kenner Bend Anchorage. Officials from Louis Armstrong New Orleans International Airport have stated that due to the close proximity of Runway 1-19 to Kenner Bend, aircraft occasionally descend and ascend directly over vessels anchored in the Lower Kenner Bend Anchorage, creating a potentially dangerous situation that is of particular concern during periods of reduced visibility. Aircraft approaching the runway from the south follow a descending glide slope path with a minimum height of 311 feet above mean sea level over the Kenner Bend Anchorage. Certain vessels with cargo handling equipment such as cranes and booms are capable of extending this equipment to a height upwards of 300 feet above the waterline. This amendment to the anchorage regulations for the Mississippi River below Baton Rouge, LA, including South and Southwest Passes prohibits vessels from using ship's hold cargo cranes. Vessels in this anchorage must

keep their cargo gear in their cradles as rigged for sea transits. This restriction does not apply to the use of deck-mounted store cranes, deck booms, or stiff legs, nor is it intended to restrict ships or ocean-going barges from moving manifold hoses.

##### Discussion of Comments and Changes

Four commenters stated that the Lower Kenner Bend Anchorage was important to the maritime industry and were concerned that the Coast Guard would completely remove Lower Kenner Bend as an anchorage. We agree with this assessment and have no intentions to remove this anchorage.

Three commenters objected that this rule does not address vessel size. Small vessels would not be able to use their cargo cranes even though the vessels maximum air draft with a completely extended cargo crane would be significantly lower than the minimum height of 311 feet above mean sea level needed for an aircrafts descending glide slope path over Kenner Bend Anchorage. We recognize this possibility; however, we feel that to maintain the consistent safety of descending airplanes over runway 1-19, we need to restrict the use of cargo cranes for all vessels.

Three commenters objected that this rule does not allow a vessel to take on ships stores, spare parts, supplies and fuel. We modified the rule to specifically address this issue. Vessels at anchor in the Lower Kenner Bend Anchorage are allowed to use deck-mounted cranes, deck booms and stiff legs to take on stores, spare parts and to move manifold hoses. However, cargo hold booms may not be used. In implementing changes from the proposed rule based on comments, we added a new paragraph to 33 CFR 110.195 instead of revising paragraph (c)(6).

##### Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not significant under the regulatory policies and procedures of the Department of Homeland Security (DHS). We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary.