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To: OIRA_BC_RPT@omb.eop.gov

cc: "Counts, Andy" <acounts@afma4u.org>, "Perdue, Bill" <bperdue@afma4u.org>
Subject: Comments on Regulatory Reform

Dear Sir or Madam,

Please find attached our comments concerning regulatory reforms and the manufacturing sector, pursuant to OMB's Federal Register notice of February 20, 2004 (p. 7987, Vol. 69, No. 34). We would appreciate your including these in the formal record. If you have any questions, please don't hesitate to contact me.

Thank you in advance for your assistance.

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May 20, 2004

John D. Graham, Ph.D.
Administrator
Office of Information and Regulatory Affairs
Office of Management and Budget
Washington, D.C. 20503

Dear Dr. Graham:

On behalf of the American Furniture Manufacturers Association (AFMA), I would like to commend you for seeking public comment on manufacturing-related regulations in need of modernizing to reduce costs, increase effectiveness, and enhance the overall competitiveness of U.S. manufacturers. AFMA wholeheartedly supports the efforts of the Office of Information and Regulatory Affairs (OIRA) to reduce the regulatory burden on the U.S. economy, and respectfully submits these comments for the record in response to the agency's February 20, 2004 *Federal Register* notice (Vol. 69, No. 34, pp. 7987-88).

AFMA is the nation's largest trade organization for residential furniture manufacturers in the United States, representing more than 200 leading manufacturers and 250 suppliers. Most AFMA member companies are small and medium-sized businesses, often with 100 or fewer employees. Residential furniture is a mature industry, and AFMA members participate in a highly competitive market affected by ever-changing style preferences, margin pressures, and shifting patterns in consumer spending. According to UBS Investment Research, manufacturers' sales of residential furniture in 2002 totaled nearly $24 billion, an increase of 3.4 percent from 2001. AFMA serves as the principal voice of the domestic furniture industry, and is dedicated to fostering its long-term growth and development, and to improving the efficiency of furniture manufacturing in the U.S. AFMA's structure, programs, and member services are designed to encourage participation and continuing education at all levels of furniture manufacturing management, from the company president to the plant supervisor. The Association is headquartered in High Point, NC, the furniture capital of the world, and maintains a full-time government affairs office in the nation's capital to monitor federal legislative and regulatory actions that impact the furniture manufacturing industry.

The need to reduce the costs and burdens associated with federal regulation was underscored recently by a study prepared for the National Association of Manufacturers (NAM) entitled, *How Structural Costs Imposed on U.S. Manufacturers Harm Workers and Threaten Competitiveness*. The increasing costs of regulatory compliance was cited as one of the principal underlying structural costs that are slowly, but steadily, eroding the ability of U.S. manufacturers to compete effectively in the global marketplace. According to the study, "a reasonable estimate of

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the total compliance burden of environmental, workplace, and tax compliance on the economy is in the order of $850 billion – with $160 billion on manufacturing alone, equivalent to a 12 percent excise tax on manufacturing production," reflecting an increase of roughly 15 percent over the last five years.[1] Interestingly, the same study noted that the U.S. regulatory burden for pollution abatement, expressed as a percentage of GDP, is higher than its nine largest trading competitors, with the exception of South Korea.[2] Canada, Mexico, and the United Kingdom all enjoy a considerable lower cost burden. Surprisingly, so-called "green" European countries, such as France and Germany, spend a smaller share of GDP on pollution abatement than does the U.S.[3]

AFMA was pleased to participate last year in a series of roundtable discussions and meetings with senior officials of the U.S. Department of Commerce that provided insights into the competitive challenges facing many domestic manufacturers. In almost every instance, whether during a plant tour or formal meeting, furniture industry representatives made clear that to enhance manufacturing competitiveness, the U.S. government must reduce the costs it imposes on domestic producers. We were further pleased to see the Department respond to these concerns by including in its blueprint for strengthening American manufacturing, *Manufacturing in America*, a recommendation that OMB apply its regulatory impact analysis process to any proposed rules that would affect costs imposed on the manufacturing sector, particularly as they affect small and medium-sized businesses.[4] AFMA also supports the recommendation calling for creation of a new assistant secretary-level position at the Department dedicated to manufacturing, and a new Office of Industry Analysis to assess the impact of proposed rules and regulations on manufacturing growth before they take effect.[5]

Regulatory reform, as a key to enhancing the competitiveness of U.S. manufacturers, is especially important and timely in the furniture industry, which is currently going through a profound transformation. Since 2000, the furniture industry has lost some 15 percent of its domestic wood manufacturing capacity and nearly 30 percent of its work force. The stunning growth in the U.S. market of furniture imports, particularly from the Pacific Rim, is the dominant factor challenging the domestic furniture industry today. In 1994, imports represented roughly 26.4% of all wood household furniture and approximately 6.1% of upholstered household furniture sold in the U.S. Nearly a decade later, by 2003, imports captured a 51.8% share of wood household furniture and a 16.4% share of upholstered household furniture. While China remains the principal source of lower-cost furniture imports, Brazil and Vietnam also have emerged as potentially significant new sources of furniture exports to the U.S. market.

Not surprisingly, consolidation, plant closings, and lay-offs have followed as import competition has caused domestic production to fall off. Since 2000, more than 47,000 residential furniture production workers have lost their jobs. Case goods workers – those who build wood furniture products – have been particularly hard hit, with a loss of more than 32,000 jobs in just three years, or a 28.5 percent decline. Unfortunately, such job losses do not occur in isolation. The ripple effects of these manufacturing job losses have had a corresponding adverse impact on companies that supply lumber, textiles, hardware, stains, adhesives, and other essential services to the furniture industry. Equally vulnerable are the rural communities where many furniture plants are located, and where economic development opportunities are already limited.

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[1] Leonard, Jeremy. (2003). *How Structural Costs Imposed on U.S. Manufacturers Harm Workers and Threaten Competitiveness*. Washington, D.C.: National Assn. of Manufacturers, p. 19.

[2] Ibid., p. 20.

[3] Ibid.

[4] U.S. Department of Commerce. (2004). *Manufacturing in America: A Comprehensive Strategy to Address the Challenges to U.S. Manufacturers*. Washington, D.C.: U.S. GPO, p. 65.

[5] Ibid., p. 60

In March, AFMA began soliciting suggestions from environmental, safety, human resources, and operations executives among our member companies on burdensome or costly federal regulations that hamper manufacturing efficiency and competitiveness, without necessarily delivering a commensurate environmental, health, or safety benefit. A summary of the leading comments received is provided below. We encourage OIRA to consider these recommendations as it prepares a final report to Congress later this year on the costs and benefits of regulation. We would be pleased to provide further information on any of these recommendations.

Compliance Certifications

Several commenters expressed concern about the inefficiency of having to submit multiple semi-annual certifications concerning a manufacturer's compliance with Title V air permits, limits on emissions of certain volatile organic compounds (VOCs), and with requirements under the wood furniture MACT. Because some of these compliance certifications have overlapping requirements, it was recommended that they be consolidated and required on an annual basis. Some commenters also suggested, with regard to semi-annual reporting under Title V of the Clean Air Act Amendments, that rather than specifically listing whether all conditions included in a Title V permit are being met, it would be less burdensome to allow a single statement that all conditions contained within Title V are being met by the manufacturer. One commenter also recommended modifying the method of calculating total estimated VOC emissions to allow for inherent business cycles. This would take into consideration the cyclical nature of the domestic furniture manufacturing process, which has been greatly impacted by increased offshore sourcing.

Training Requirements

Both U.S. EPA and OSHA require annual employee training for specific standards related to lockout-tagout procedures, hazard communications, blood borne pathogens, hazardous waste management, spray operator activities, and other manufacturing-related activities. A number of commenters stated that the cost of annual training is a major annual expense and not always productive, especially if there have been no changes in personnel or programs. These commenters suggested that a reasonable alternative would be to conduct training at the time of employment or when new equipment and/or processes are implemented, with periodic refresher training sessions every three years or as needed. Other commenters suggested developing a single integrated training program, with an annual maintenance review of the training program with full training required every three years.

Early Action Compact (EAC)

The furniture-producing "Triad" region of North Carolina has entered into an agreement – known as an Early Action Compact (EAC) – with U.S. EPA to develop strategies aimed at reducing emissions of substances that contribute to the formation of ozone, such as NOx and volatile organic compounds (VOCs), which are released during the finishing process of wood furniture manufacturing. Ozone, commonly known as smog, is produced through the interaction of VOCs and NOx when exposed to sunlight. Many Triad business leaders believe that additional gains in regional air quality improvement hinge on better control of NOx emissions from the transportation sector, and the EAC embraces that approach. One commenter urged U.S. EPA to respect the terms of the compact and wait until 2007 to designate counties that are in non-attainment, thereby allowing time for the transportation strategy to be implemented. A decision by EPA to make non-attainment designations this year could impose stringent permit limitations on manufacturing facilities and adversely impact domestic production. AFMA recently provided

written testimony to the Senate Environment and Public Works Committee in support of adhering to the compacts as a formula for balancing air quality and economic growth in that region.

Electronic Filing

Several commenters suggested that U.S. EPA, in conjunction with state regulators who administer federal air quality regulations, should develop and implement user-friendly, multi-media electronic filing systems as a means of reducing the paperwork burden imposed on manufacturers. AFMA likewise supports efforts by federal agencies to allow manufacturers and other regulated entities to submit required information, including certifications, using electronic means, as much as practicable. Encouraging commonality of forms and electronic filing procedures, as well as promoting the use of compatible software programs between federal and state regulators, is equally essential.

Material Safety Data Sheets

OSHA's Hazard Communication Standard requires employers with hazardous chemicals in their workplaces to prepare labels and material safety data sheets (MSDSs) to convey the hazard and train employees to handle the chemicals appropriately. Several commenters suggested the need to standardize the contents of all MSDSs required in the manufacturing workplace and identify critical elements that should appear on an accurate MSDS.

Spill Prevention, Control and Countermeasure Rule

U.S. EPA's Spill Prevention, Control and Countermeasure (SPCC) rule requires regular integrity testing for aboveground bulk storage tanks containing oil and oil products with a capacity greater than 1,320 gallons. The rule also requires that secondary containment (essentially 110 percent of the capacity of the primary container) be provided on the same foundation for such containers. Several commenters noted that such inspection costs can be as much as $1,500 per storage vessel, and represent a burdensome cost to manufacturers. Because the rule already requires storage vessels to be located in secondary containment areas, commenters suggested that the rule be modified to allow tank owners and operators the flexibility to periodically inspect and repair tanks on their own rather than having to incur the expense of outside inspections (see 40 CFR 112.8). One commenter also noted the need to extend the period of time that a company can properly store spent solvent on-site in order to encourage greater on-site recycling by manufacturers.

Emergency Planning and Community Right-to-Know Act

The Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) establishes requirements for federal, state, and local governments and industry regarding emergency planning and "community right-to-know" reporting on hazardous and toxic chemicals. Facilities that need to report under EPCRA section 311 (concerning submitting material safety data sheets for chemicals held above a certain quantity) also must submit an annual inventory report – known as a Tier II report – for the same chemicals to state and local emergency response and planning authorities. Tier II forms require basic facility identification information, employee contact information for both emergencies and non-emergencies, and information about chemicals stored or used at the facility. Several commenters suggested the need to simplify the Tier II reporting requirements and harmonize differing federal and state requirements into a single set of reporting rules. One commenter pointed out that while facilities may submit

chemical inventory reports electronically, there also needs to be consolidation and harmonization of the various electronic reporting tools into a single user-friendly product.

Reducing Paperwork Burdens Associated with Federal Regulations

Nearly all commenters expressed strong support for reducing the overall paperwork burdens imposed on employers by the Consolidated Omnibus Budget Reconciliation Act (COBRA), the Family and Medical Leave Act (FMLA), the Health Insurance Portability and Accountability Act (HIPAA), the Americans with Disabilities Act (ADA), and with regulations promulgated by U.S. EPA. Some commenters noted in particular that the ADA and HIPAA's privacy protection provisions conflict with one another, making it difficult for supervisors to determine whether an employee is eligible for accommodation under the ADA. The solution they suggest is for greater interagency cooperation and coordination in implementing such regulations to enable employers to carry-out the regulations more effectively. Greater harmonization of the ADA, FMLA, and HIPAA would help eliminate contradictory provisions, reduce barriers between employers and employees in making medical decisions, and provide more flexibility in making hiring decisions.

Family and Medical Leave Act

Under the Family and Medical Leave Act (FMLA), eligible employees may take up to 12 workweeks of unpaid leave during any 12-month period when the employee is unable to work because of a serious health condition, or to care for an immediate family member, such as a spouse, child, or parent, who has a serious health condition. While an employee is not required to provide medical records to the employer when requesting leave time, the employer may request the employee to provide a medical certification confirming that a serious health condition exists, which is affecting the employee or an immediate family member. Several commenters expressed concern that the potential for abuse of the FMLA's provisions by employees seeking certification for non-serious health conditions not only costs employers in terms of manufacturing quality and productivity, but also negatively impacts the morale of the workforce. They noted that the Act's requirement that an employer generally cannot require medical re-certification of serious health conditions more than once every 30 days is an impediment to ensuring that leave is granted only for genuinely serious health conditions (see 29 CFR 825.308).

Currently, the Act applies to private sector employers with 50 or more employees. Some commenters expressed concern that proposals to expand coverage of the FMLA to cover small businesses with 25-49 workers, and eventually to all small business employers, would lead to higher employer labor costs, increased employer health benefits expenses, and additional management costs associated with understanding changes to the current law. Commenters were similarly concerned about proposals to expand the FMLA to include paid leave.

Non-Governmental Standard-Setting Bodies

AFMA is very concerned about the *de facto* regulatory role being assumed by some non-governmental standard-setting bodies, and the potential threat this poses to federal regulatory process. The Administrative Procedure Act (APA), the Federal Advisory Committee Act (FACA), and the authorizing statutes for individual regulatory agencies provide for an open, transparent process for informed governmental decision-making, and give affected stakeholders opportunity to provide input and analysis. OIRA's regulatory review greatly enhances this process. AFMA has participated in a number of rulemakings, both under the traditional notice-and-comment model, and within the framework of negotiated rulemaking, and we believe the system is a fair one designed to yield sound results.

We are concerned, however, about the much less transparent procedures followed by some non-governmental organizations (NGO's) and the tendency of their findings to shape the regulatory landscape faced by U.S. manufacturers. For example, both the International Agency for the Research of Cancer (IARC) and the American Conference of Governmental Industrial Hygienists (ACGIH) publish risk characterizations of chemical substances, and in the latter case, establish "recommended" occupational limits. The decision-making criteria used by these organizations understandably differ from those followed by U.S. government agencies, notably in the lack of attention paid to practicality or regulatory burden.

Procedurally, deliberations are often closed, and there are few if any requirements that a balance of interests be represented on panels studying a given issue. One pattern has been the participation of current or former federal employees, such as OSHA officials who might later be asked to evaluate the findings of these organizations. In practice, the determinations made by these entities tend to be embraced by state and federal regulators, who may welcome the opportunity to shortcut their own risk assessment and standard-setting responsibilities. In addition, under OSHA's Hazard Communication Standard (29 CFR 1910), findings by both IARC and ACGIH must be listed on safety materials provided to employees and posted in manufacturing plants.

AFMA recommends that OIRA maintain an appropriate scrutiny of the influence of non-governmental standards bodies on U.S. regulatory agencies, and ensure that the high standards for procedural fairness and risk-based decision-making we demand from these agencies are not compromised.

Thank you in advance for your consideration of our recommendations. Please do not hesitate to contact me if we can provide you with further information.

Sincerely,

Christopher Pearce
Director of Congressional & Regulatory Affairs