



HOUSEHOLD FURNITURE INDUSTRY GUIDES

16 CFR PART 250

COMMENTS OF THE

**AMERICAN FURNITURE MANUFACTURERS
ASSOCIATION**

JULY 10, 2000

Introduction to AFMA

The American Furniture Manufacturers Association (AFMA) is the largest furniture industry trade association in the United States. AFMA member companies account for most of the nation's \$22 billion in residential furniture shipments and \$1.3 billion in residential furniture exports. AFMA companies have home offices or facilities in almost every state and employ approximately 500,000 workers. Almost 86 percent of U.S. furniture facilities employ less than 50 workers, and 40 percent of firms employ less than four.

Industry Profile

AFMA companies participate in a highly fragmented, cost-conscious market characterized by aggressive import competition, margin pressure from consumers and retailers, unpredictable availability of wood species, ever-changing style preferences and society's demand for reduced emissions and toxics use. The continued success of the domestic furniture industry in this climate is due in great part to advanced manufacturing technologies, the utilization of varied wood species, engineered wood and advanced composite materials, and the use of veneers, laminates and other finishing techniques.

The decades since the publication of the *Guides for the Household Furniture Industry* have witnessed a revolution in materials science. Consumers benefit from the specialized performance characteristics of composite materials used in today's casegoods. Commercially important composite materials now include plywood, known for its tensile strength and light weight; oriented strand board (OSB), which provides rigidity suitable for shelving; particleboard, in which wood chips are glued and compressed into panels; medium density fiberboard (MDF), which is more finely grained than particleboard; and high density fiberboard, a thin product sometimes called "hardboard."

The emergence of engineered wood has corresponded with equally impressive advances in veneering, laminates and other finishing technologies. Veneering utilizes thin cross-sections of natural wood selected for desirable graining. Laminates allow for woodgrain effects, as well as less traditional colors and textures. Significant laminate processes include vinyl films, low basis weight papers, decorative foils and saturated papers.

Industry Commitment to Voluntary Guidelines

AFMA has been an active participant in voluntary standard setting activity. A multi-year negotiated rulemaking under the Clean Air Act resulted in substantial reductions in air emissions from the wood finishing process. According to the Environmental Protection Agency's (EPA) most recent data, the furniture industry had the largest percentage reduction in chemical emissions of any industry in the United States during the years 1995-1998. EPA Administrator Browner has called the industry's clean air accomplishments "a credit to industry-environmental-government cooperation."

AFMA has also worked with ASTM and other national standards organizations to develop and refine product safety specifications, including standards to reduce cigarette ignition of upholstered furniture, and to avert child entrapment in bunk beds and reclining chairs. High levels of voluntary compliance with these standards have been documented by the U.S. Consumer Product Safety Commission, and the industry's commitment to effective voluntary safety standards was recognized in 1996 by the CPSC's *Chairman's Commendation for Product Safety*.

FTC Guides for the Household Furniture Industry

The Federal Trade Commission promulgated *Guides for the Household Furniture Industry*, 16 CFR Part 250, on December 21, 1973, under the authority of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. 41-58. The Guides became effective on March 21, 1974.

The Guides were not intended as proscriptive law or to establish performance requirements for furniture products. Instead, they were designed to provide industry members "meaningful guidance in the conduct of their affairs" based on agency interpretation of Section 5 of the FTC Act.¹

The Guides encourage the use of affirmative disclosures for the benefit of consumers with the goal that the "prospective purchaser is not misled into thinking that the product is different from that which is actually offered, because of the appearance, description, depictions or representations made about the product in advertising, labeling or other promotional materials."²

The Guides also advise that advertisers making representations concerning (a) tests made on products, or (b) the performance characteristics of upholstery fabrics do in fact have a "reasonable basis" for such representations. Further, the Guides inform advertisers that the Commission may require documentation from them to substantiate their representations concerning the product. The Guides also provide several definitions for the industry, including definitions regarding certain types of wood.

Request for Comment on the Guides

In April 2000, the Commission requested comment on the continuing usefulness of the Guides to consumers in light of technological, economic, and other changes in the marketplace since the Guides were first promulgated in 1973, whether the Guides present significant burdens to participants in the industry, and what revisions might advance the present-day utility of the Guides, if the FTC decides to retain them.³

¹ See 38 Fed Reg 34992 (1973).

² 38 Fed Reg 34992 (1973).

³ 65 Fed Reg 18933 (2000).

AFMA believes that, with proper revision, the Guides may continue to provide useful information to consumers. However, the existing Guides are almost thirty years old, and fail to reflect current manufacturing processes, materials usage, terminology and the expectations of today's consumers. As currently drafted, the Guides may indeed frustrate good faith efforts to inform the consumer and therefore produce unintended anti-competitive and anti-consumer consequences.

If the Guides are to be retained, it is the consensus of industry members that substantial modifications are necessary. With this in mind, rather than respond to the proffered questions about the continuing utility of the existing Guides, these comments will propose specific modifications and additions that may assist the Commission in substantially revising and updating the Guides.

The revisions AFMA proposes focus on: (1) ensuring that Guides are not inadvertently anti-competitive or anti-consumer by restricting the provision of accurate information to the consumer, or by inappropriately discrediting certain materials and constructions (2) clarifying or otherwise revising provisions to allow necessary flexibility; (3) clarifying or otherwise revising provisions to preclude over-broad and unreasonable interpretations and (4) eliminating provisions that are covered by other laws or are otherwise unnecessary.

General Recommendations

First, a careful review of the Guides gave rise to concerns that the overall tone of the Guides may create an unintended bias toward solid wood constructions or imply that products which incorporate man-made components are generally less desirable or durable. In fact, today's consumer benefits from an array of solid wood, engineered wood and non-wood components which can add strength, decrease weight, reduce warpage, enhance wood grain and otherwise support aesthetic and performance characteristics.

AFMA therefore recommends that the Guides contain an appropriate disclaimer statement, perhaps in a prefatory section, to the effect that, "These Guides are not intended to create any impression or belief among consumers or industry members that one type or category of product, material, or composition is preferable to any other on the basis of performance, price, or any other factor."

Secondly, we respectfully recommend that the word "Household" in the title and corresponding usage in the Guides be changed to "Residential." The term "household" when used to refer to residential furniture is outdated and no longer widely used by industry or consumers. Current terminology distinguishes between 'residential' and "business/institutional" or "contract" furniture.

Specific Revisions

§ 250.0(c): *Exposed surfaces.* Those parts and surfaces exposed to view when furniture is placed in the generally accepted position for use. Included

in this definition are visible backs of such items of furniture as open bookcases, hutches, etc.

The “exposed surfaces” definition runs counter to consumer expectations and to industry custom and usage. This definition should be amended to specify that surfaces placed against a wall and intended to be used to hold books, televisions , etc., should not be considered “exposed surfaces.”

While the back panels of furniture may be partially “visible” in a purely technical sense, they do not figure into the aesthetics of the product. It is understood by manufacturers and consumers alike that the facing of the back panel will be obscured by televisions, books, shelves and the shadows created by these elements; that a solid or engineered wood back would be the single heaviest panel of the product; and that this panel would require machine tools to add ports for cords and cable. Recognizing this, manufacturers ranging up to the very high end rely on plywood or hardboard for these purposes. Value and functions are maximized by using a lighter, easily detachable back; and there is no reasonable likelihood that consumers would be materially misled by the nondisclosure of the composition of back panels.

§ 250.1(b)(1) *Where disclosures should be made.* Unless otherwise provided, any affirmative disclosure which should be made under this part, should be on the industry product, or on a tag or label prominently attached thereto, and should be of such permanency as to remain on or attached to the product until consummation of sale to the consumer. Also, affirmative disclosures should appear in all advertising relating to industry products, irrespective of the media used, whenever statements, representations or depictions are used which could create an impression that the furniture is of a certain construction or composition and which, in the absence of such disclosures, could have the capacity to mislead purchasers or prospective purchasers.

Common industry practice is to describe product construction and materials broadly on the hangtag, and to reserve specialized information unlikely to represent a material element of the purchasing decision for inclusion in the written materials delivered to the consumer. This practice recognizes that individual furniture items on the showroom floor or elsewhere in the stream of commerce may differ from that being produced in current manufacturing runs. Product design and construction frequently changes in response to fashion trends, recommendations of key retailers and the availability and price of particular wood species. Such design or material substitutions are likely to be highlighted in current promotional materials, potentially creating discrepancies with point-of-sale materials accompanying older product if the latter materials are required to be quite specific.

If the label/hangtag disclosure provision is kept, the Commission should allow disclosure to be sufficiently broad and generic so that manufacturers do not have the burden of generating different labels/hangtags for specific pieces of furniture. Manufacturers should have the flexibility to make disclosures through *any* pre-purchase of point-of-sale materials reasonably available to the consumer (e.g., labels, hangtags, product catalogs or brochures

available at the retailers, etc.), rather than on a point-of-purchase document physically attached to the product itself. Of course, manufacturers that choose to use a label or hangtag (perhaps manufacturers with narrow product lines where a differentiation among the composition of their products is not significant) should be free to do so.

§ 250.1(b)(4)(ii)

Trade designations or other representations which cannot be qualified without the qualification amounting to a contradiction should not be used. A trade designation consisting in whole or in part of a word which denotes a kind or type of material of which the product is not in fact composed should not be used. For example, the words "hide", "skin" and "leather" should not be used in trade names denoting nonleather products, although homophones of those words such as "hyde" may be used if qualified as provided above. Similarly, the word "wood" should not be used in a trade name of a product which does not contain wood.

This section is unduly restrictive and susceptible to misinterpretation. A note should be added at the end of the subsection to make clear that the use of any company name, trade name, or trademark which contains reference to a type of wood or other product and which also designates a place of manufacture (e.g., "Hickory's Finest"), shall not in itself be considered deceptive, regardless of whether product or products sold by such company contain the type of wood or other product used in the name. Also, the last sentence should be deleted as potentially subject to misinterpretation, and replaced with a statement that advertising or marketing of nonwood product by company with the word "wood" in its name should not in itself be considered deceptive. A company called "Wood Concepts" may make a range of products of various materials, and these can be labeled individually with a minimal risk of consumer confusion.

§ 250.2(a) *Solid wood construction.* Industry members should not use unqualified wood names to describe furniture unless all of the exposed surfaces are constructed of solid wood of the type named. If more than one type of solid wood is used and one of the woods is named, then all of the principal woods should be disclosed, or the extent of the use of the wood named should be indicated. In lieu of naming the specific woods, a general designation of the type of wood, such as "hardwood" or "softwood" may be used. For example, the following representations, if factually correct, will be acceptable: "solid maple", "solid African mahogany", "walnut and pecan", "solid oak fronts", "walnut", "maple and other selected hardwoods", "fine hardwoods" and "selected hardwoods."

This section would be acceptable as is, if the definition of "exposed surfaces" is modified as proposed above.

§ 250.2(b)(2) When solid parts of furniture are of woods other than those used in veneered surfaces, either the use of such other woods should be disclosed or the location of the of the veneers stated. Examples: "walnut veneers and pecan solids", "mahogany veneers and African mahogany solids", "walnut veneered tops, fronts and

end panels, "table tops of mahogany veneers" or "cherry veneers and selected solid hardwoods".

The term "solid parts" in line 1 should be revised to read "exposed solid parts." This will make the provision consistent with the focus of the Guides on "exposed surfaces" as specified in § 250.0(c).

§ 250.2(c) *Wood products.* Wood names or names suggesting wood should not be used to refer to materials which, while produced from wood particles or fibers, do not possess a natural wood growth structure. Such materials, however, may be referred to by their generally accepted names, if otherwise nondeceptive, such as "hardboard", "particleboard", "chipcore" or "fiberboard", or may be referred to as "wood products".

We request that the term "engineered wood" be added to the terms at the end of this paragraph. "Engineered wood" has emerged as the common industry term to describe the wide variety of man-made panels used in furniture construction. These composite boards may be substituted -- even within the same furniture collection -- to achieve desired qualities. For example, a relatively high-density panel used for stackable shelving units might be replaced by a lighter-weight substrate such as hardwood plywood in the back panel of an armoire. Thus the use of the phrase "engineered wood" in promotional materials for a particular collection would be helpful in encompassing the array of man-made panels used in that collection, and once again, avoiding product-specific labeling. Phrases such as the following should be deemed acceptable by the FTC: "The Horizons Living Room Collection utilizes cherry solids, veneers and other engineered wood products".

§ 250.2(e) *Materials simulating wood.* No wood names should be used to describe any materials simulating wood without disclosures making it clear that the wood names used are merely descriptive of the color and/or grain design or other simulated finish; nor should any trade names or coined names be employed which may suggest that such materials are some kind of wood. [Guide 2]

The last clause raises same issue as § 250.1(b)(4)(ii), discussed above, and should be deleted or qualified as proposed above.

§ 250.7(a)(4) Furniture should not be represented by trade name or otherwise as being manufactured in the Grand Rapids (Michigan) area, or in any other furniture producing area, when such is not the fact.

This appears unnecessary as it simply states what is an otherwise obvious requirement.

§ 250.7(b) In connection with the sale of furniture of foreign manufacture, members of the industry should clearly and conspicuously disclose the foreign country of origin, when the failure to make such disclosure has the capacity and tendency or effect of deceiving purchasers of such products. The disclosure of foreign origin, when required, should be in the form of a legible marking, stamping, or labeling on the outside of the

furniture, and shall be of such size, conspicuousness and degree or permanency, as to be and remain noticeable and legible upon casual inspection until consumer purchase. [Guide 7]

This provision is unnecessary as the issue is covered by other country-of-origin requirements.

§§ 250.8-13 The following sections should be deleted because these are generic provisions with no specific applicability to the furniture industry.

§ 250.8 Deception as to being "new".

(a) Industry members should not make any direct or indirect representation that an industry product is new unless such product has not been used and is composed entirely of unused materials and parts.

(b) In connection with the sale of furniture which has the appearance of being new but which contains used materials or parts, such as springs, latex foam rubber stuffing, or hardware, members of the industry should conspicuously disclose, in a manner provided for in § 250.1 of this part, such fact (e.g., "cushions made from reused shredded latex foam rubber").

§ 250.9 Misuse of the terms "floor sample", "discontinued model", etc.

(a) Representations that furniture is a "floor sample", "demonstration piece", etc., should not be used to describe "trade-in", repossessed, rented, or any furniture except that displayed for inspection by prospective purchasers at the place of sale for the purpose of determining their preference and its suitability for their use.

(b) Furniture should not be described as "discontinued" or "discontinued model" unless the manufacturer has in fact discontinued its manufacture or the industry member offering it for sale will discontinue offering it entirely after clearance of his existing inventories of furniture so described. [Guide 9]

§ 250.10 Passing off through imitation or simulation of trademarks, trade names, etc.

Members of the industry should not mislead or deceive purchasers by passing off the products of one industry member as and for those of another through the imitation or simulation of trademarks, trade names, brands, or labels. [Guide 10]

§ 250.11 Misrepresentation as to character of business.

Members of the industry should not represent, directly or by implication, in advertising or otherwise, that they produce or manufacture products of the industry, or that they own or control a factory making such products, when such is not the fact, or that they are a manufacturer, wholesale distributor or a wholesaler when such is not the fact, or in any other manner misrepresent the character, extent, or type of their business. [Guide 11]

§ 250.12 Commercial bribery.

Members of the industry should not give, or offer to give, or permit or cause to be given, directly or indirectly, money or anything of value to agents, employees, or representatives of customers or prospective customers, or to agents, employees, or representatives of competitors' customers or prospective customers, without the knowledge of their employers or principals, as an inducement to influence their employers or principals to purchase or contract to purchase products manufactured or sold by such industry member or the maker of such gift or offer, or to influence such employers or principals to refrain from dealing in the products of competitors or from dealing or contracting to deal with competitors. [Guide 12]

§ 250.13 Other parts in this title 16 applicable to this industry.

The Commission has adopted Guides Against Deceptive Pricing, part 233, Guides Against Deceptive Advertising of Guarantees, part 239, and Guides Against Bait Advertising, part 238, all of which have general application and furnish additional guidance for members of the Household Furniture Industry. Members of this industry should comply with those parts.

AFMA would like to thank the Commission and its staff for their shared interest in better informing consumers about home furnishings products. We would be pleased to meet with you to further refine our recommendations as the Commission moves forward with this process.