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To: OIRA\_BC\_RPT@omb.eop.gov

cc:

Subject: Comments on Draft 2004 Report to Congress

Please accept the attached comments on behalf of the Specialty Graphic Imaging Association (SGIA) on the OMB Draft Report to Congress on the Costs and Benefits of Federal Regulations, 69 Fed. Reg. 7987 (February 20, 2004).

If you have any difficulties with the attachment, please contact me to arrange an alternative method for submission.

Thank you.

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## **The Costs and Benefits of Federal Regulations**

SGIA recognizes that OMB faces significant obstacles in preparing the annual reports to Congress required by the “Regulatory Right-to-Know Act.”<sup>1</sup> OMB’s efforts are limited by its dependence on agency estimates of costs and benefits. The *Draft Report* includes a regulatory accounting statement that reflects major gaps in cost and benefit information provided by the regulating agencies. This lack of information from the agencies inhibits OMB’s ability to prepare a comprehensive report of Federal regulatory activity as contemplated by the *Regulatory Right to Know Act*.

To improve the quality of OMB’s reports under the *Regulatory Right-to-Know Act*, OMB must receive better data from agencies, which in turn requires agencies to improve their data collection and analysis. SGIA believes that focusing on improving the quality of agencies’ analyses will enable OMB to produce a better, more complete regulatory accounting report to Congress, and improve agency rulemaking.

## **The Impact of Regulatory Costs on the Printing Industry**

The *Draft Report* does not quantify the costs and benefits of Federal regulations on small businesses. Within the printing industry, one of the largest manufacturing sectors in the United States, the vast majority of establishments are considered small businesses, with over 80 percent employing less than 20 workers. The *Draft Report* costs and benefits analysis does not go beyond the mere reference of a 2001 study by Drs. Crain and Hopkins (Crain-Hopkins).<sup>2</sup> This study estimates that per employee regulatory burdens on the smallest firms, those with fewer than 20 employees, are 60 percent greater than burdens on firms with more than 500 employees.<sup>3</sup> Based on this data, the printing industry is deeply concerned about the growing regulatory burdens and costs it is facing.

SGIA supports the idea of a small business regulatory accounting statement in the *Draft Report*, based on small business regulatory impact analyses provided to OMB by the agencies. The Crain-Hopkins report provides a measure of the cumulative total of Federal regulations, not detail on the flow of new regulations as does the *Draft Report*. The production of such estimates would require

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<sup>1</sup> See § 624 of the FY 2001 Treasury and General Government Appropriations Act, enacted as part of Public Law 106-554 (December 21, 2000), 114 Stat. 2763A-161.

<sup>2</sup> 2004 *Draft Report to Congress on the Costs and Benefits of Federal Regulations and Unfunded Mandates on State, Local, and Tribal Entities*, p. 26. 69 Fed. Reg. 7987 (February 20, 2004).

<sup>3</sup> See *The Impact of Regulatory Costs on Small Firms*, an Advocacy-funded study by W. Mark Crain and Thomas D. Hopkins (October 2001), available at <http://www.sba.gov/advo/research/rs207tot.pdf>.

agencies to undertake full and proper analyses of small business impacts, both costs and benefits, as agencies are currently required to do by the Regulatory Flexibility Act (RFA)<sup>4</sup> and E.O. 13272, and as directed by OMB's recent Circular A-4.<sup>5</sup>

### **Guidelines for Regulatory Analysis**

SGIA commends OMB for the release of Circular A-4, OMB's newest guidance for performing proper regulatory analysis. We believe that the new Guidelines in Circular A-4 will improve regulatory analyses under E. O. 12866. The new Guidelines should also lead to improved small business impacts analyses as well, because proper analyses of small business impacts under the RFA can only follow from a thorough and proper regulatory analysis. By following the Guidelines laid out in Circular A-4, agencies should be able to greatly improve the accuracy and usefulness of their regulatory analyses. The new Guidelines in Circular A-4 also call on agencies to properly address the effects of regulatory actions on small businesses. In addition, the accompanying Regulatory Accounting Worksheet asks agencies to enter estimates for impacts on small business, wages, and economic growth.

To enforce agency compliance with E.O.12866 and Circular A-4, SGIA strongly recommends that OMB issue return letters on a rule-by-rule basis. Return letters are clearly appropriate for agencies that do not follow OMB's Circular and complete proper regulatory Accounting Statements, including estimates for impacts on small entities, wages, and economic growth.

### **Nominations for Regulatory Reform**

OMB requested public nominations for regulatory reforms relevant to the manufacturing sector of the U.S. economy and suggestions to simplify IRS paperwork requirements, which OMB recognizes "are particularly burdensome for small businesses."<sup>6</sup> Attached is a list of regulatory reform nominations that, if addressed, SGIA believes will reduce regulatory burdens on the printing industry as well as the general manufacturing sector.

### **Conclusion**

The Specialty Graphic Imaging Association appreciates the opportunity to provide comments on the Draft 2004 Report to Congress on the Costs and Benefits of Federal Regulations issued by OMB, and to submit nominations for reform to reduce regulatory burdens on small business within the printing industry. SGIA fully recognizes the challenges confronting OMB in its efforts to

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<sup>4</sup> 5 U.S.C. § 601 *et seq.*

<sup>5</sup> OMB Circular A-4, Regulatory Analysis (Sept. 17, 2003); the Circular can be viewed at <http://www.whitehouse.gov/omb/circulars/a004/a-4.pdf>.

<sup>6</sup> 69 Fed. Reg. 7987 (February 20, 2004).

fulfill the requirements of the *Regulatory Right-to-Know Act*. Through OMB's efforts to improve Federal agencies' compliance with E.O. 12866, OMB will improve the accuracy of agency data. This in turn, will make the annual reports to Congress more accurate and useful, while also improving the quality of agency rulemakings and sensitizing agencies to their responsibilities under the *Regulatory Flexibility Act*.

For additional information or assistance related to these comments, please contact Marcia Y. Kinter at (703) 359-1313 or Danielle F. Waterfield at (703) 359-1304.

Sincerely,

A handwritten signature in cursive script that reads "Danielle F. Waterfield". The signature is written in black ink and is positioned below the word "Sincerely,".

Danielle F. Waterfield, Esq.  
SGIA Government Affairs Associate

**Nominations for Regulatory Reform  
May 2004**

**Submitted by the  
Specialty Graphic Imaging Association (SGIA)**

**Name of rule, policy or guidance:** Hazard Communication Standard (HazCom)

**Regulating agency:** Occupational Safety and Health Administration (OSHA)

**Authority for rule, policy or guidance:** 29 CFR 1910.1200

**Description of what existing rule, policy or guidance does:** This rule requires manufacturers of chemicals to assess the hazards of exposure those chemicals and to communicate those hazards to employers and employees through labels, material safety data sheets, and training. The rule requires employers who use these chemicals to communicate the hazards to their employees through a hazard communication program of information and training. Employers are required to keep their hazard communication program, including the Material Safety Data Sheets (MSDSs), up-to-date following any change in the information provided by the chemical manufacturers.

**Affected small businesses:** Any small business using a chemical for which there is an MSDS.

**Regulatory burden(s) imposed:** The primary burdens associated with this rule include providing the training, documenting the training, keeping the training and documentation up-to-date, and making sure the appropriate MSDS is available to the employees. The rule also references information provided by standard-setting groups such as the American Conference of Governmental Industrial Hygienists (ACGIH) and requires changes to MSDSs and training documentation when these groups update their information on chemicals.

OSHA currently has two Draft Guidance documents out for public comment related to the Hazard Communication Standard, one on Hazard Determination and the other being a Model Training Program for Hazard Communication. The Hazard Determination guidance document represents a significant shift in OSHA policy regarding hazard determination, requiring all small and large chemical manufacturers alike to revisit and reevaluate the MSDS information presented. This shift in policy, proposed without notice and comment, and would have a dramatic impact and enormous cost burden on the small chemical manufacturer in our industry. The draft Model Training Program is extremely complex and includes elements in direct contradiction to current OSHA guidance, as well as elements that may indeed require regulatory changes to the Standard itself.

**Proposed burden reduction:** Requiring full notice and comment for proposed changes in any hazard communication guidance documents released by OSHA would ensure that the Agency does not implement proposed dramatic changes to the Standard without public notice and comment or use the guidance materials in enforcement efforts.

Removing the link between the OSHA standard and the actions of ACGIH would resolve the problem of small businesses having to keep up with changes that can occur at any time with little or no notice to the employer. Businesses large enough to employ a

certified industrial hygienist might be in a position to monitor the actions of ACGIH, but most small businesses cannot. However, they are out of compliance with the HazCom regulation when they fail to notice that the MSDS in their workplace is out of date. The rule should require that OSHA publish each change in an MSDS for notice and comment.

**Anticipated benefit(s) for small entities:** Assurance that a shift in policy of this magnitude is carefully evaluated and the impact on small firms is researched before OSHA moves forward with any proposed changes. Small businesses are also ensured of continued performance-based expectations for hazard communication training programs. Small employers would have some notice of what changes might be required in their HazCom programs, and would not have to spend resources monitoring the actions of ACGIH.

**Name of rule, policy or guidance:** Toxics Release Inventory (TRI) Reporting

**Regulating agency:** U.S. Environmental Protection Agency

**Authority for rule, policy or guidance:** Section 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA), 42 U.S.C. §11023.

**Description of what existing rule, policy or guidance does:** This rule requires the reporting of information on the releases and other waste management of EPCRA section 313 chemicals to the public from facilities in their communities.

**Affected small businesses:** Approximately 25,000 small businesses that process, manufacture or use more than a threshold amount of section 313 chemicals.

**Regulatory burden(s) imposed:** The rule requires the annual reporting of chemical release and waste management information at a cost in excess of several hundred million dollars per year.

**Proposed burden reduction:** EPA can reduce the cost of reporting in a variety of ways:

- (1) Expanding the number of filers eligible to use a “short-form” annual form (Form A),
- (2) Enhancing Form A to include reporting of a range of amounts of section 313 chemicals, rather than a specific number,
- (3) Introducing a new Form NS, for facilities with no significant changes from previous baseline years, and
- (4) Allowing reporting of a range of amounts of Section 313 on the long-form (Form R) report.

**Anticipated benefit(s) for small entities:** More than 20,000 small businesses will have substantially reduced reporting costs under these options.

**Name of rule, policy or guidance:** Integrated Urban Air Toxics Strategy

**Regulating agency:** U.S. Environmental Protection Agency

**Authority for rule, policy or guidance:** Section 112(d) of the Clean Air Act, 42 U.S.C. § 7412(d).

**Description of what existing rule, policy or guidance does:** Under the Urban Air Toxics Strategy, EPA plans to develop standards to control toxic air pollutants from area sources. *See* 64 Fed. Reg. 38706 (July 19, 1999). Area sources are those sources that emit less than 10 tons per year of a single hazardous air pollutant (HAP) or less than 25 tons of a combination of HAPs. EPA has identified 55 area source categories that may be regulated in the near term. EPA may require these area sources to install hazardous air pollutant controls that EPA deems to be Maximum Achievable Control Technology (MACT) or Generally Available Control Technology (GACT).

**Affected small businesses:** Printing facilities, dry cleaners, wood treating facilities, automobile painting shops, and paint stripping operations, among other industries in 55 area source categories.

**Regulatory burden(s) imposed:** Area sources subject to control may be required to install and operate MACT/GACT control technology, with associated monitoring and recordkeeping requirements. Depending upon whether MACT or GACT requirements are imposed, the cost to each business may range from several thousand dollars per year to hundreds of thousands of dollars per year.

**Proposed burden reduction:** Because a significant number of area sources are small businesses (e.g., dry cleaners), EPA should commit to conducting small business review Panels with Advocacy and OMB prior to developing any MACT/GACT standards for area sources. The Small Business Regulatory Enforcement Fairness Act (SBREFA) provides for the convening of a small business review panel whenever a planned EPA rule is expected to have a significant economic impact upon a substantial number of small entities.<sup>1</sup>

**Anticipated benefit(s) for small entities:** Developing MACT/GACT standards through the SBREFA Panel process will lead to standards that achieve the emission reduction objectives of the Urban Air Toxics Strategy without unduly burdening small businesses.

<sup>1</sup> The Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act, Pub. L. 104-121, section 609(b).

**Name of rule, policy or guidance:** Definition of “Solid Waste”

**Regulating agency:** U.S. Environmental Protection Agency

**Authority for rule, policy or guidance:** Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6901 *et seq.*, 40 C.F.R. §§ 260-261.

**Description of what existing rule, policy or guidance does:** EPA currently includes spent materials, sludges, by-products and scrap metal as hazardous wastes under RCRA, which are subject to costly hazardous waste management requirements. The RCRA “solid waste” definition includes recycled materials that are not immediately returned to an industrial process as substitutes for raw material feedstock.

**Affected small businesses:** The rule affects tens of thousands of small businesses who recycle chemicals and metals.

**Regulatory burden(s) imposed:** The rule subjects legitimate recycling, which poses little environmental risk, to complex and costly RCRA regulations, at a cost of hundreds of millions of dollars annually.

**Proposed burden reduction:** EPA can exclude legitimate reuse, recovery and recycling from RCRA.

**Anticipated benefit(s) for small entities:** Facilities will not be required to meet the costly and complicated RCRA hazardous waste management requirements. This action would yield significant cost savings, with very little commensurate risk to the environment.