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Subject: Metal Finishing Industry Comments

Attached please comments of the metal finishing industry on OMB's 2004 Draft Report to Congress on the Costs and Benefits of Federal Regulations. If you have any questions or need additional information, please contact me.
Thanks.

Jeff

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May 20, 2004

Ms. Lorraine Hunt
Office of Information and Regulatory Affairs
Office of Management and Budget
New Executive Office Building, Room 10202
725 Seventeenth Street, N.W.
Washington, D.C. 20503

Re: OMB Draft 2004 Report to Congress on the Costs and Benefits
of Federal Regulations, 69 Fed. Reg. 7987 (2004)

Dear Ms. Hunt:

On behalf of the National Association of Metal Finishers (NAMF), the American Electroplaters and Surface Finishers Society, Inc. (AESF) and the Metal Finishing Suppliers' Association (MFSA), we are pleased to submit the following comments on the Draft 2004 Report to Congress on the Costs and Benefits of Federal Regulations issued by the Office of Management and Budget (OMB). Comprised almost exclusively of small businesses, these three trade associations represent the business, management, technical and educational programs as well as the regulatory and advocacy interests of the metal finishing industry.

The metal finishing industry supports the efforts to improve the quality of federal agencies' analyses on cost and benefits of regulations, particularly in quantifying the impacts on small businesses. In response to OMB's request for comments on the need for reform of regulations that are particularly burdensome to small businesses, the nominations for regulatory reform that are most critical for the metal finishing industry are provided below.

F006 Sludge Recycling Exemption from Hazardous Waste Requirements

EPA has initiated rulemaking efforts under the Resource Conservation and Recovery Act (RCRA) to conditionally exempt sludge generated by electroplating processes. The sludge is the listed hazardous waste, F006. Under the new rule, the sludge would be conditionally exempt from regulation as a hazardous waste if it is recycled for metals recovery. Removal of the hazardous waste listing would open new recycling markets for the metal-laden sludge and provide the appropriate regulatory incentive to ensure the recovery and beneficial reuse of the metals in the sludge. This regulatory reform could save facilities that generate F006 nearly \$50,000 annually.

As part of the rule, EPA is considering what minimum metal content would be an appropriate threshold for the conditional exemption. The industry has argued that the RCRA regulations should not be a barrier to recycling and that a low minimum metal content (e.g., one percent) would provide the proper “regulatory incentive” to recover more metals for beneficial reuse. Regardless of the minimum metal content threshold, the sludge would have to satisfy “market” conditions for recycling (to in fact be recycled) to qualify for the conditional exemption.

Under the current “regulatory disincentives” to recycle F006 sludge, the average metal finishing facility “throws away” approximately \$50,000 of metals annually. If the minimum metal content is set too high, then more metals will continue to be thrown away. With the current situation of scrap metal shortages and high metal prices, almost all F006 sludge would be an attractive source for the recovery of metals. The rule should, therefore, have a low minimum metal content threshold to maximize the beneficial reuse of valuable metal resources. Increasing the supply and decreasing the cost of metals will help both metal finishing facilities and their manufacturing customers.

Wastewater Pretreatment Streamlining Regulation

EPA continues its efforts to finalize the pretreatment streamlining rule that it proposed in November 1999. The rule would reduce unnecessary administrative burdens that POTWs, industry and regulatory agencies face under the current pretreatment regulations without any negative impact on the environment. Limited available resources of POTWs and industry can then be directed to other critical water quality projects, thereby creating a win-win situation for EPA, the regulated community and the environment.

The provisions that would streamline the pretreatment program and save considerable expenses include: 1) greater flexibility for POTWs to set either mass-based or concentration-based limits to promote water conservation and to avoid unnecessary noncompliance actions that do not negatively impact the environment; 2) exempt Categorical Industrial Users from additional oversight requirements if they discharge less than 0.01% of the POTW’s design flow and head works loading; 3) redefine “significant noncompliance” criteria to allow POTW’s flexibility in designating “significant noncompliance” under extenuating circumstances that delay paperwork filing; and 4) substantially reduce sampling requirements for pollutants not present. These

modifications would make significant improvements to the pretreatment program and avoid unnecessary oversight and paperwork burdens.

Significant burdens reductions would accrue with this rule without any negative environmental impacts. In addition, state regulatory agencies are in favor of the changes and the environmental groups have not expressed vehement opposition to the changes. EPA has targeted to have the rule finalized by the end of 2004.

Amendments to MACT Standard for Chromium Emissions

EPA proposed Chrome MACT Amendments in the Federal Register on June 5, 2002. The proposal includes several changes to the current MACT standard that governs chromium air emissions from metal finishing operations: (1) flexibility for plating tank reconstruction to avoid review under New Source Review program; (2) flexibility for enclosed tanks “technically” out of compliance with emission standard; (3) expanding pressure drop allowance; and (4) streamlining the current chrome MACT to allow the use of fume suppressants for hard chrome in lieu of mechanical control equipment without having to complete a source test. The amendments need to be finalized in order to facilitate additional flexibility for facilities to demonstrate compliance with the Chrome MACT standard without relaxing any environmental and health protections.

Permanent Deferral of Duplicative Federal Air Permitting Requirements

EPA is developing a proposed rulemaking that will save metal finishing facilities from an estimated \$30,000 to \$50,000 burden annually, as well as avoid annual regulatory burdens and major enforcement headaches. Currently, these facilities comply with federal air emission standards that are governed by state and local permits. Requiring an additional layer of federal permitting on top of the existing permit process would simply increase a facility’s administrative costs and burdens without achieving further environmental benefits. The rulemaking would “permanently exempt” finishing facilities from cumbersome federal permitting requirements on top of current emission control standards. Without the rulemaking, the expansive, duplicative and unnecessary Title V federal permitting requirements would automatically apply to metal finishing facilities by December 2004.

Reform of Toxic Release Inventory (TRI) Reporting of Coincidental Manufactured Compounds

As the TRI program has expanded and matured, the original intent of the program has become obscured by the increasing complexity of the requirements, uncertain science, and incomprehensible regulatory interpretations. In addition, EPA continues to add reporting requirements through informal procedures (such as the TRI Reporting Forms and Instructions, the EPCRA Section 313 Questions and Answers, guidance documents and interpretations) rather than follow the appropriate notice and comment rulemaking

procedures. These troubling trends challenge the good faith reporting efforts of conscientious facility owners and operators.

In particular, the policy debate is focused on complex TRI reporting requirements such as transient chemical intermediaries, or coincidentally manufactured metal compounds. Under the misguided agency interpretation, facilities must count the numerous chemical reactions in plating baths as coincidental manufacturing of metal compounds in determining thresholds for reporting. This “manufactured” regulatory accounting system essentially reduces the statutory threshold reporting levels significantly, thereby forcing significantly more small businesses to file TRI reports. Not only does this policy make the TRI reporting more complex and confusing than it needs to be, it also creates a potential enforcement trap for facilities making good faith efforts to comply with the regulatory requirements. OMB has previously identified manufactured metal compounds as a priority issue for regulatory reform and further guidance from EPA.

Revised TRI Reporting of Lead Compounds

EPA lowered the TRI reporting threshold for lead and lead compounds to 100 pounds. This rule requires facilities to calculate the amount of lead and lead compounds that they manufacture (including coincidental manufacture), process or otherwise use to determine whether they trigger the 100-pound threshold starting January 1, 2001. In addition, no *de minimis* exemption applies to these compounds, so any amount of lead or lead compounds must be accounted for, regardless of how small. Facilities are required to report releases of lead and lead compounds if it exceeds the reporting threshold of 100 pounds for lead or lead compounds in a calendar year on the Form Rs submitted on July 1, 2002. Reporting is required even if the facility does not release any lead or lead compounds. Given the low reporting thresholds, this new reporting requirement will apply to many operations that pose little, if any, potential environmental impact. This rule is clearly a case of more reporting for less useful information.

OSHA’s New Chromium Workplace Exposure Standard

Pursuant to the court order, OSHA must propose a new standard by October 2004 and issue a final standard by January 2006. Depending on the final standards adopted by OSHA, this rulemaking could have devastating effects on facilities and industries that beneficially use chromium compounds.

The current permissible exposure limit (PEL) for chromium is set at a ceiling concentration of 100 $\mu\text{g}/\text{m}^3$. OSHA is considering a significantly more stringent new PEL in the range of 0.25 to 10 $\mu\text{g}/\text{m}^3$ and additional hygiene practices, testing and medical monitoring requirements that would be triggered by an action level set at one half of the new PEL. This rulemaking will have a significant impact on small businesses, and could be devastating to the metal finishing industry.

For example, OSHA estimated that facilities could meet a PEL of 5-10 $\mu\text{g}/\text{m}^3$ with minimal compliance costs (including no engineering controls) of approximately \$5,000

per facility per year. Detailed industry estimates put the additional compliance costs at more than \$300,000 per facility per year for a small facility (*i.e.*, annual revenues of \$1.5 million and 20 employees). These costs would force 30-50% of small job shops to close.

In addition, the control technologies identified by OSHA would not guarantee consistent compliance with the low PELs under consideration in the draft standard. This is particularly true considering that the engineering controls must be designed to achieve exposures below the action levels set at one half of the PEL. Otherwise, facilities would have to implement the additional hygiene practices (e.g., separate shower and change room facilities), medical surveillance, exposure assessments, record keeping and testing requirements triggered by the action level.

Consistent with its obligations under SBREFA, OSHA must make efforts to minimize the impact of the new standard on small business. OSHA should consider scientific data, costs, and economic impact of PEL of 20 $\mu\text{g}/\text{m}^3$ or greater. Such higher PELs are justified by existing health impact studies as well as technical and economic feasibility analyses.

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We believe that these nominations, when addressed, will reduce unnecessary regulatory burdens on small businesses, protect human health and the environment, and provide companies an opportunity to compete successfully in the global marketplace. For most metal finishing operations, this much needed regulatory reform can be the difference between being profitable and being forced to shut down operations or layoff more workers.

On behalf of the National Association of Metal Finishers (NAMF), the American Electroplaters and Surface Finishers Society, Inc. (AESF) and the Metal Finishing Suppliers' Association (MFSA), we appreciate the opportunity to provide these comments. If you have any questions or would like additional information regarding these comments, please contact Christian Richter or me at (202) 457-0630.

Sincerely,

Jeffery S. Hannapel
Vice President, Regulatory Affairs