Motor & Equipment Manufacturers Association
Your First Call for Global Intelligence on the Motor Vehicle Supplier Industry

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Executive Office of the President
Office of Management and Budget
725 17th Street, NW
Washington, DC 20503

Re: February 13, 2004 Release on OMB Review of Manufacturing Regulations

MEMA expresses its thanks to the Office of Management and Budget (OMB) for the opportunity to submit comments on regulations, which have been deemed burdensome and overly troublesome by companies within our membership. ***MEMA requests that the content of this document remain confidential and be utilized solely within the confines of the OMB's ongoing regulatory review.*** We ask that this document and its contents not be shared outside of OMB without MEMA's explicit permission.

Founded in 1904, MEMA exclusively represents and serves manufacturers of motor vehicle components, tools and equipment, automotive chemicals and related products used in the production, repair and maintenance of all classes of motor vehicles. MEMA's three market segment associations serve all of the motor vehicle supplier industry: aftermarket – Automotive Aftermarket Suppliers Association (AASA); heavy duty – Heavy Duty Manufacturers Association (HDMA); and original equipment – Original Equipment Suppliers Association (OESA). A large percentage of MEMA's membership consists of small and medium-sized businesses in the United States.

In the case of each regulation nominated, MEMA has attempted to provide as much information as possible given the specific accounts of our members. Please feel free to contact Ana Lopes of MEMA at 202 312 9241 if any further information is necessary. MEMA commends President Bush and his Administration for this landmark effort to work with U.S. manufacturers and to address inefficiencies in the regulatory structure that are placing American firms at a disadvantage. MEMA requests that OMB evaluate and take into consideration the following regulatory burdens, nominated by MEMA member companies in the United States, as part of its review:

Regulations Nominated for Review by the U.S. Automotive Parts Industry:

1. **Regulation: Federal Motor Vehicle Safety Standard (FMVSS) 108 (lamps, reflective devices and associated equipment)**
   Implementing Agency: Department of Transportation (National Highway Traffic Safety Administration - NHTSA)

Background:
FMVSS 108 served as one of the first standards issued by the NHTSA more than 30 years ago. Over the years, Standard 108 has been amended frequently through a process that can fairly be characterized as unplanned engraftment, so much so that it has become extremely difficult to understand and interpret. As such, NHTSA presently expends a significant portion of its scarce

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time and resources on issuing interpretations of this standard. This cumbersome and difficult process could be eliminated by the creation of a "user friendly" rewritten standard. Thus, MEMA is requesting that NHTSA complete a rewrite or "clean-up" of the 108 standard. This proposal is strongly supported by many of MEMA's member companies, most prominently the North American manufacturers of vehicle safety equipment, including headlighting and signal lighting products, reflex reflectors, retroreflective conspicuity tape, emergency warning triangles, emergency lighting, rearview mirrors, supplemental information devices, and other safety equipment for truck, trailer, passenger, emergency service and related vehicles. There is support for this initiative within NHTSA. During the NHTSA/industry meeting on Nov. 20, 2003, Stephen Kratzke, NHTSA's Associate Administrator for Rulemaking, confirmed that NHTSA's staff supports the effort to reorganize this standard and to make it more understandable. Kratzke agreed that the standard in its present form is incomprehensible, but added that NHTSA has had difficulty in completing this task as the agency has a limited number of engineers.

Impact on the Industry:

This continued delay of the 108 rewrite represents a significant obstacle to a large segment of the motor vehicle equipment industry which has awaited the promised re-write of Standard 108 for a considerable amount of time. It is our understanding several parts of the rewrite are essentially complete. MEMA believes it is fair to state that FMVSS 108 regulates more manufacturers, and that the agency provides more interpretations of this Standard to this constituency, than is the case with any other FMVSS. Indeed, the regulated or otherwise affected parties under FMVSS 108 include manufacturers of motor vehicles, producers of a broad range of lighting and reflective products, component suppliers such as light source manufacturers, test equipment and laboratory entities, motor vehicle repair businesses, and research organizations.

FMVSS 108 is an important regulation very much in need of an ordering and editing process which will give coherence to its meaning and wide-ranging applications. Clarity of the Standard will help achieve greater compliance. New lighting technologies on the forefront such as HID (High Intensity Discharge), LED (Light Emitting Diode), AFS (Adaptive Front Lighting System) and ARS (Adaptive Rear Lighting System) will require updated relevant regulations to implement these technologies in a consistent safe manner. MEMA and its Congressional supporters have strongly urged NHTSA to complete the 108 re-write process and to ensure that rulemaking to accomplish this safety-enhancing result can be completed as soon as possible.

Recommended Change:

NHTSA has presently indicated that the rewrite of the 108 standard, which in a current form represents a substantial burden on legitimate U.S. auto parts manufacturers who are working to ensure compliance, is last on its list of lighting priorities and to be addressed in 2005 at the earliest. NHTSA formally announced in March 2004 that it was withdrawing a 1998 notice of proposed rulemaking (NPRM) that would have amended the 108 standard to reorganize the sections related to headlighting. NHTSA stated "The intention of the rulemaking was to remove inconsistencies and to facilitate easy reference to the standard, in an effort to improve its comprehensibility." The termination of this effort - an exercise that had been ongoing since 1998 – came as a blow to the auto parts industry. The industry will be further disadvantaged if the agency completes rulemakings on other lighting issues in the short-term (such as glare) and then simply adds them on to an already incomprehensible standard. Per year, NHTSA receives more requests from industry for interpretations of the 108 standard than requests for any other single standard. MEMA stresses the need for NHTSA to complete this rewrite as soon as possible and to eliminate this resource and time drain that has negatively affected U.S. manufacturers as well as NHTSA's own internal operations who must constantly reinterpret the standard. The lack of transparency in the standard also hinders enforcement efforts by NHTSA. MEMA remains

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committed to addressing this problem and has extended its hand to NHTSA to see if a cooperative effort could be developed between the agency and the industry to finish this much-needed rewrite.

2. **Regulation: Preemption Exemption for Environmental Regulations in the Clean Air Act – Formulation and Labeling Requirements**
Implementing Agency: Environmental Protection Agency (EPA)

Background:
A prominent problem for manufacturers was created when the federal government gave preemption exemption for environmental regulations in the Clean Air Act. This has enabled states to increase and/or create environmental requirements based on local concerns. This has lead to a myriad of formulation and labeling issues that cause undue hardship to consumer product manufacturers. Prominent examples include California Proposition 65 which mandates label warnings for products containing suspected carcinogens. California Proposition 65, known as the Safe Drinking Water and Toxic Enforcement Act, was enacted in 1986. Proposition 65 requires the Governor of California to publish an annual list of chemicals known to cause cancer or reproductive toxicity. Another example can be found in the ongoing regulation of household products by the California Air Resource Board. California, Texas, Phoenix, AZ and Atlanta, GA are also now regulating the volatile organic compound (VOC) content of windshield washer fluid, all utilizing different standards and thus placing a costly burden on consumer product manufacturers.

Impact on Industry:
Currently, many counties and cities are enacting additional regulations over and above state and federal guidelines. All of these issues significantly increase the cost of doing business and interfere with interstate commerce. The auto parts industry has noted that many of these additional regulations constitute a burden, particularly on small and medium sized businesses.

Recommended Change:
The preemption exemption should be eliminated for the regulation of products sold in interstate commerce.

3. **Regulation: Mercury Regulations / Great Lakes Initiative**
Implementing Agency: Environmental Protection Agency

Background:
In 1995, EPA and the Great Lakes states agreed to a comprehensive plan to restore the health of the Great Lakes. The EPA issued its Final Rule on Water Quality Guidance for the Great Lakes System in March 1995. This rule utilized water quality criteria, methodologies, policies, and procedures to establish consistent, enforceable, long-term protection for fish and shellfish in the Great Lakes and their tributaries, as well as for the people and wildlife who consume them. The Final Water Quality Guidance includes criteria for states to use when setting water quality standards for 29 pollutants, including bioaccumulative chemicals of concern, and prohibits the use of mixing zones for these toxic chemicals.

Impact on Industry:
The issue of mercury, particularly as regulated under the Great Lakes Initiative (GLI) and, as a result, subsequent emerging state rules (e.g., water discharge permits and total maximum daily loads (TMDLs), represents a troublesome regulation for the auto parts industry. Essentially, using the GLI as justification, state agencies (e.g., MDEQ) are ratcheting down water quality limits for

dischargers to at or below background (i.e., below levels in rainfall, and below some naturally occurring levels). This alteration represents a potential significant cost for the impacted plants/facilities of U.S. manufacturers to manage and control, with little environmental benefits. This is particularly true when these facilities are insignificant sources of mercury. The industry contends that most direct and indirect water dischargers do not presently possess the ability to remove mercury at such stringent levels in a systematic and reliable manner. In order to control mercury at these extremely low levels, virtually all materials that enter the stream of commerce would have to be analyzed using ultraclean and ultrasensitive analytical technology in order to identify mercury residues.

State agency and EPA officials have stated that they are unable to address this concern as their hands are tied due to the GLI limits. However many of the GLI limits have utilized outdated scientific and overly conservative assumptions on risk that need to be re-evaluated based on the current weight of the evidence. Cost and benefit analyses were not explicitly provided in terms of compliance with these rules, but the estimates presently available indicate up to $10 million per pound of mercury removed and up to $2 million annually. Strict enforcement of these low mercury limits would be a significant economic burden for the manufacturing community, in particular at a time when many government officials are trying to foster flexibility, voluntary approaches, and competitiveness.

Recommended Change:
The industry recommends that the EPA amend the present regulation and amend the GLI provision to permit a re-evaluation of some GLI limits and thus ensure that the appropriate scientific evidence has been utilized and that the resulting levels do not impose an overly burdensome burden on U.S. manufacturers without an appropriate level of benefit to the environment. The EPA should be able to intervene in this process and assess the integrity of a GLI mandate when an undue burden is clearly being placed upon American businesses.

4. Regulation: Family Medical Leave Act (FMLA) (29 CFR Part 825) Implementing Agency: Department of Labor

Background:
The Family and Medical Leave Act (FMLA), enacted in 1993, requires that employers with more than 50 employees provide up to 12 weeks of unpaid leave annually to their employees for certain medical reasons or for the birth or adoption of a child. Generally, employers must maintain insurance coverage for employees who are on FMLA leave and must reinstate them to the same or equivalent job positions. An employer covered by FMLA is any person engaged in commerce or in any industry or activity affecting commerce, who employs 50 or more employees for each working day during each of 20 or more calendar workweeks in the current or preceding calendar year. Employers covered by FMLA also include any person acting, directly or indirectly, in the interest of a covered employer to any of the employees of the employer, any successor in interest of a covered employer, and any public agency.

Impact on Industry:
The U.S. auto parts industry has cited several provisions within the FMLA as constituting troublesome and burdensome regulations. One member company noted that they are running 15-20 percent over on necessary manpower to cover employees that do not report to work as a result of this regulation. The regulation ties the hands of the employer in terms of "managing the benefit" which is to say that the employer's human resources division cannot contact doctors to confirm or probe to see if the employee actually needed the entire day off.

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- **Definition of Health Condition:** The industry has noted that one of the most significant challenges within the FMLA is the loose definition of health condition. The industry contends that there needs to be a more stringent definition of what specifically constitutes a "serious health condition" and an "acceptable" and "unacceptable" list of conditions. Also, the industry believes that the FMLA should be altered to allow for required documentation for repeated intermittent FMLA leaves and to allow the company's human resources staff to speak to the associate's doctor if necessary. The industry believes that communication between the FMLA representative and the physician would be beneficial.
- **Administration of the FMLA and Absenteeism:** The industry has noted that the administration of the FMLA requires a great deal of time and creates an additional burden on operations to replace absent workers. As the FMLA permits associates to utilize partial days and tardies, businesses face an onerous task in maintaining and organizing the FMLA benefits. In addition, companies are placed at a competitive disadvantage when faced with a high absenteeism rate and a 12-week absence period from an employee which is difficult for a company to absorb. Many of the companies within the industry already provide complete benefit packages that include disability benefits and paid vacation time. In addition, employees are routinely granted unpaid leave for personal situations. The intermittent provisions of FMLA and the loose validation requirements make it very difficult for businesses within the industry to schedule large-scale workforces.
- **Lack of Documentation:** Two conditions that were highlighted were migraines and asthma which are continuously noted as medical reasons for FMLA leave, yet the employer is not permitted to require medical documentation for these conditions.
- **Cost:** The estimated cost of the regulation to a business within the industry ranged from $50,000 to $4,000,000 per year. In addition, many companies must incur additional costs when they are forced to train associates in overtime in order to cover for associates that are out under FMLA. Other companies within our membership noted that continuous absenteeism is costing the business several hundred thousand dollars a year, including overtime requirements and the cost of often employing "backfills" to address critical shortages. MEMA members often have devoted specific staff to solely address the FMLA recordkeeping and maintenance requirements. One member company maintains one full time person at each of its plant's to attend to FMLA requirements, with a total of 2000 hours a week being devoted to the paperwork necessary for five separate plants to be in compliance.

Recommended Changes:

The industry recommends that certain language within the FMLA be clarified, in order to relieve the burden upon employers while still providing important protection and assistance for the employees. The industry requests that a more detailed definition of a "serious health condition" and a "health care provider" be developed and added to the existing statute to prevent abuse of the FMLA program. The industry requests that the FMLA be amended so that employers could contact doctors for clarification when necessary and that an employer be permitted to require a doctor's note when an employee has been out. Certain employers have also requested that the benefit be shortened to 6 weeks versus 12 weeks. The industry also requests that the FMLA language be amended to restrict the opportunities for intermittent leaves and to impose certain guidelines addressing the manner in which intermittent leaves may be taken by an employee. Further, the industry requests that the Administration consider an exemption for corporations that already provide their employees with generous leave packages which would accommodate such absences through disability leaves, paid vacation time, personal leaves, etc.

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5. **Regulation: Clean Air Act (CAA) Title V**
Implementing Agency: Environmental Protection Agency (EPA)

Background:
Adopted as part of the 1990 amendments to the Clean Air Act, Title V of the CAA governs permits. In 1989, President Bush proposed a number of revisions to the Clean Air Act including the establishment of a national permits program to make the CAA more transparent and easy to administer as well as an improved enforcement program to guarantee better compliance. Title V introduced an operating permits program to ensure compliance with all applicable requirements of the Clean Air Act and to enhance EPA's ability to enforce the Act. All air pollution sources subject to the program must obtain an operating permit. The states actually develop and implement the program, but the EPA is responsible for issuing the permit program regulations and for reviewing each state's proposed program.

Impact on Industry:
The auto parts industry believes that the chemicals and reporting quantities in this regulation are very easy to understand. However, the time and cost required to opt out because the "potential to emit" exists, is unwarranted. The estimated amount of paperwork required to comply with this regulation for one company is $25,000.

Recommended Change:
The industry is recommending that the EPA remove the "potential to emit" section so that companies have to report only if they exceeded the actual reporting quantity (i.e. provide EPA with a single sheet, reporting that you don't need to report).

6. **Regulation: The Resource Conservation and Recovery Act (42 U.S.C. s/s 6901 et seq.) – Clean Up Standards for PCB**
Implementing Agency: Environmental Protection Agency (EPA)

Background:
The Resource Conservation and Recovery Act (RCRA) of 1976, which amended the Solid Waste Disposal Act. created a regulatory structure for the management of solid and hazardous wastes. RCRA permits the EPA to control the generation, transportation, treatment, storage, and disposal of hazardous waste in the United States. RCRA also addresses the agency's authority in terms of the management of non-hazardous wastes.

Impact on Industry:
The industry's comments focus on the clean up standards governing polychlorinated biphenyl (PCB). One member company noted that it requires an excessive amount of cost and time to achieve a clean-up level of 1 PPM of PCB in the ground without consideration of actual risk posed by the presence of the PCB. Just one clean-up at one auto parts company typically costs $500,000. One company has estimated that it requires forty hours of paperwork and an estimated $40,000 costs for consultants for one clean-up.

Recommended Change:
The industry is recommending that the EPA permit a risk based screening criteria to be applied prior to the work on a site, to ensure that a clean-up is necessary.

7. **Regulation: Occupational Safety and Health Administration (OSHA) – Anonymous Complaints**
Implementing Agency: Department of Labor

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Background:

The Occupational Safety and Health Act (OSHA) was signed into law in 1970 and was designed to ensure safe and healthy working conditions for the American workers. To accomplish this purpose, employers are required to comply with two guidelines: General Standards and the General Duty Clause. The auto parts industry supports the tenets of OSHA and strives to provide the best possible working conditions for its workers.

Impact on Industry:

Companies within MEMA's membership, however, have noted that there is excessive cost to their business when they are required to reply to inspections caused by anonymous complaints to OSHA. The companies have detailed that these complaints often stem from disgruntled workers and are not based on credible evidence of a violation. The burden upon companies to keep track of all the relevant recordables and to maintain the recordables audits process already represents a significant time burden. One MEMA member company noted that it employs 20 staff members devoted solely to ensuring compliance with worker safety regulations. For each OSHA complaint that must be addressed, the estimated cost is $2,000.

Recommended Change:

The industry recommends that the existing OSHA mandate be altered so that when an OSHA inspector arrives, he/she is able to share additional information on the complaint, including names if needed, with the company. Businesses have expressed the view that they can comply more efficiently if the complainant is known and that the sharing of additional information on the complaint could help to reduce the frivolous and malicious complaints. The industry does support all appropriate protections for the employee in question. Also, the industry recommends that recordables under OSHA mandates be limited to more serious items.

8. **Regulation: Pretreatment Standards for Existing Sources (40 CFR Part 433.15)**
   Implementing Agency: Environmental Protection Agency

Background:

Part 433 of the Code of Federal Regulations sets forth mandates for the Metal Finishing Point Source Category.

Impact on Industry:

One MEMA member company noted that their wastewater is permitted through the Detroit Water and Sewerage Department (DWSD) via a permit holder who has authority from the EPA to administer the program. The permit follows EPA 40 CFR Part 433. As a condition to the permit, the company is required to conduct quarterly water samples to assure the DWSD that the company is in compliance with their specified limits. The burden on this business stems from the fact that the DWSD can appear at the facility without notice; thus, if the company conducts its required quarterly samples and then the DWSD appears, the company is then forced to submit another round of sampling. The company may also end up having to conduct a second round of tests because of the inconsistencies between the analytical laboratories. Each round of sampling typically costs the company $4,000. The estimated cost of the regulation to this business is $20,000 per year. In terms of paperwork, this business is required to complete and submit two reports to DWSD with quarterly reporting included in the preparation for that submission. The company also employs one full time environmental engineer to ensure compliance.

Recommended Change:

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The industry comprehends the need for this regulation and for the sampling conditions, but requests that companies be granted the flexibility needed to conduct their quarterly samples. The specific recommendation is to alter the existing statute so that the flexibility of conducting the required quarterly sampling could be guaranteed as occurring at the same time the DWSD (or relevant body) visits the facility. If the DWSD does not come to that facility during the specific quarter or by a certain timeframe, then the company would proceed to sample at that time in order to demonstrate full compliance.

9. **Regulation: The Superfund Amendments and Reauthorization Act of 1986 (SARA) – Title III Form R**
   Implementing Agency: Environmental Protection Agency (EPA)

Background:
Enacted in 1986, the Superfund Amendments and Reauthorization Act of 1986 (SARA) amended the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), commonly known as "Superfund." Title III of SARA included a free standing law, the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), which was intended to provide the public and local governments with information concerning potential chemical hazards present in their communities. EPCRA does not place limits on which chemicals can be stored, used, released, disposed, or transferred at a facility, but requires that plant or facility to document, notify, and report information.

Impact on Industry:
The auto parts industry has cited the enforcement section of SARA as being overly burdensome. The main reason is that the penalty for a clerical error, such as not reporting a specific chemical, is overly high. Companies are also forced to complete an excessive amount of paperwork in order to generate the "why the fine will be issued" report and are forced to complete unduly burdensome requirements in order to self report an omission. One U.S. auto parts company spent $15,000 in order to self-report an admission. The company estimates that it costs $70,000 a year just to complete the paperwork associated with compliance with the SARA regulation. The estimated cost of the regulation to one particular business was cited as $16,550 (for one item).

Recommended Change:
MEMA requests that the enforcement provisions of SARA be altered so that a company is not fined or penalized if there was no pollution in a specific case. The enforcement provisions should be altered to reward companies that demonstrate integrity and should not make it overly burdensome and expensive for companies to self-report an accidental omission.

10. **Regulation: Health Insurance Portability and Accountability Act (HIPAA) of 1996**
    Implementing Agency: Department of Health and Human Services

Background:
Enacted in 1996, the Health Insurance Portability and Accountability Act of 1996 (HIPAA) is implemented by the Centers for Medicare & Medicaid Services (CMS). The law was intended to amend the Internal Revenue Code of 1986 to improve portability and continuity of health insurance coverage in the group and individual markets, to combat waste, fraud, and abuse in health insurance and health care delivery, to promote the use of medical savings accounts, to improve access to long-term care services and coverage, to simplify the administration of health insurance, and for other purposes.

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Impact on Industry:
Companies within the industry have cited difficulty in complying with this regulation due to multiple effective dates and the need to reengineer existing processes to eliminate or reduce exposure. Companies have been required to invest considerable resources and time into training in-house staff to ensure compliance. One company estimated that it requires 400 hours for the initial implementation of processes and an audit trail. The company estimated that it was required to spend $10,000 to commence implementation with this regulation in order to reprogram systems to comply with the regulated formats and to produce and store all HIPAA documents. In addition an employee was required to be designated as a HIPAA compliance manager, adding further duties to the compliance staff within this company. A considerable amount of paperwork burden is also associated with this regulation as an additional form is required for every covered participant that loses his or her health care coverage. There has been further concern that the government may commence a renewed campaign to confirm compliance with the "signed release" requirement associated with inquiries, which may result in additional costs for U.S. manufacturers who are already in compliance.

Recommended Change:
The industry notes that many of its members have consistently maintained extremely high standards for the protection of its employees' personal health information and had stored that data in secure formats; however, they have now been forced to incur substantial cost to adopt the formal mechanism required to demonstrate compliance and to adopt the government-set standard for such information.

11. Regulation: NAFTA Certificates of Origin
Implementing Agency: Department of Homeland Security (U.S. Customs and Border Protection)

Background:
The North American Free Trade Agreement (NAFTA), which took effect in 1993, governs trade relations between Canada, Mexico, and the United States. Under the NAFTA agreement, goods traded between the three nations garnered preferential tariff treatment on goods traded. The three partners created a uniform NAFTA Certificate of Origin that importers must possess and file with Customs in order to qualify for preferential tariff treatment. The Certificate of Origin explains the importer's claim that the goods qualify as originating under NAFTA and should receive preferential tariff treatment.

Impact on Industry:
The paperwork associated with the NAFTA certificates of origin has proved to be an extremely time consuming process for some companies within the automotive parts sector. The certificate also requires a great deal of detailed information, which at times engenders difficulties among suppliers and vehicle manufacturers given the sensitivity of some of this data.

Recommended Change:
The industry requests that the Administration examine ways to reduce the paperwork burden associated with products that are produced and travel between the US, Canada and Mexico and, thus, are duty free. MEMA supports simplification of the NAFTA certification to include only the name and address of the certifying party, the period covered, a description of the good, whether or not it is eligible, and the country of origin. Simplifying the NAFTA certificate form would significantly reduce administrative burden, and therefore the cost to producers, exporters and importers, and would facilitate NAFTA trade. We do not think that simplification of the certificate at this more mature stage of the NAFTA will result in any significant compromise in

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the integrity of the intended purposes of the certificate or its use in the NAFTA. MEMA does not believe that simplifying and clarifying the certificate requirements would decrease the issuer's obligation to maintain the relevant records needed for verification.

END