



Lawrence A. Fineran

Vice President

Legal and Regulatory Reform Policy

July 21, 2006

Ms. Lorraine Hunt
Office of Information and Regulatory Affairs
Office of Management and Budget
New Executive Office Building, Room 10202
725 17th Street, NW
Washington, DC 20503

Dear Ms. Hunt:

Thank you for the opportunity to share the comments of the National Association of Manufacturers (NAM) regarding the 2006 *Draft Report to Congress on the Costs and Benefits of Federal Regulations (Draft Report)*. I apologize that these comments are being submitted past the due date, but I hope that the Office of Information and Regulatory Affairs (OIRA) will nevertheless take them into consideration as it prepares the 2006 *Final Report to Congress on the Costs and Benefits of Federal Regulations (Final Report)* for the Office of Management and Budget (OMB).

The NAM continues to be pleased with the attention in the 2006 *Draft Report* to the directive in Section 624 of the Treasury and General Government Appropriations Act of 2001 (P.L. 106-554), also known as the Regulatory Right-to-Know Act (RRKA), for OMB to make suggestions about how to improve the regulatory process and/or regulations in place. In particular, we are very pleased that this year's focus is on the problems companies face in trying to comply with differing regulatory schemes around the planet.

Status Report on Improving Manufacturing Regulations

The NAM initially had concerns that the 2006 *Draft Report* did not discuss the status of the manufacturing-related regulations nominated for improvement in 2004. The NAM was glad to learn, however, that during the July 13 hearing on this initiative before the House Small Business Subcommittee on Regulatory Reform and Oversight, OIRA made a commitment to include information on the progress of this project when OMB submits the 2006 *Final Report*.

As the NAM noted in its testimony at the July 13 hearing, it is highly imperative for OMB to publicize as much as possible the progress — if any — that agencies have made to improve their regulations. This allows agencies that have been responsive, such as the EPA, to

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let Congress and the public know that they have tried to improve their regulatory requirements. It also exposes those agencies that are resisting changes to problem regulations under their purview.

In that regard, the NAM encourages OMB to include in the 2006 *Final Report* a definitive explanation as to whether OSHA will ever update its regulation requiring adherence to National Fire Protection Association (NFPA) 1969 — as opposed to current — fire standards for boat building found at 29 C.F.R. 1910.107 and, if so, when or, if not, why not. Fixing this OSHA fire-standard is more industry-specific than the NAM would normally devote the time and space for in these comments. The failure of OSHA to address the problems of 29 C.F.R. 1910.107 have become symbolic, however, to the NAM's broader membership about whether there is a commitment by OIRA to have the agencies truly work on improving their regulations if, for whatever reason, the agency is resistant.

The NFPA updated this standard more than ten years ago; regulated entities have petitioned the agency through regular processes since then to update the standard; the NAM and National Marine Manufacturers Association (NMMA) nominated this antiquated regulation during OMB's 2002 call for problem regulations that could and should be fixed; when nothing happened with this rule through the 2002 exercise, the NAM and NMMA renominated 29 C.F.R. 1910.107 as part of OMB's call for improving regulations that affect manufacturing; when the "List of 76" regulations for further review were released on March 9, 2005, this simple update became part of a much larger project, thus allowing OSHA to respond that it is working on it without having to show much.

Although OSHA has instructed its inspectors not to issue citations if an affected entity is using modern fire standards, far too often state and local officials — relying on the C.F.R. and not aware of the problem with the standard — will do so. It takes wasted time, effort, money and productivity to have these citations waived or dismissed (if the "violator" even knows how to fight it).

There may be problems with the revised standard that the NAM is not aware of, which may have caused OSHA not to proceed to a rulemaking, but it has been a decade and the NAM, NMMA and other parties have simply asked for a rulemaking subject to public notice-and-comment where such issues can be addressed. OSHA's — and OMB's — failure to fix a regulation with problems as obvious as those in 29 C.F.R. 1910.107 contribute to the public's perception of agencies more concerned about their own operations rather than how regulations operate in the "real world." The NAM would like to work with OMB and the new OSHA administrator to address this as soon as possible because of the confusion by local fire marshals and other officials when they see the standard as it exists in the C.F.R.

On a broader level, the NAM encourages OMB to include in its 2006 *Final Report* a discussion about how the effort to improve regulations affecting manufacturing is more about compliance than it is easing regulatory standards. Public policy goals are not furthered when there are paperwork burdens or other inefficient or impractical requirements that hinder voluntary compliance. These public policy goals include international competitiveness for domestic manufacturers so, again, the NAM appreciates the attention paid to international developments in regulatory policy.

Comments on Chapter III “International Developments in Regulatory Policy”

Regulatory policies and government-mandated technical requirements play a key role in international trade affecting market access for a wide range of products. In today’s global economy, manufacturers are finding that trade barriers related to regulatory policies and practices are often more serious than traditional trade barriers, such as tariffs or quotas. With U.S. merchandise trade expected to exceed \$3 trillion in 2006, it is vitally important for the U.S. economy as a whole that the U.S. government ensure that regulatory policies not only address societal needs but also facilitate the growing volume of U.S. imports and exports.

The NAM is pleased to see that the 2006 *Draft Report* includes a detailed summary of a variety of U.S. initiatives aimed at harmonizing, where possible, U.S. and foreign regulatory policies and facilitating trade where differences exist. Manufacturers are particularly concerned about the growing divergence in U.S. and European Union (E.U.) regulatory policies, notably on control of chemicals and other hazardous substances, product recycling, energy efficiency standards and the marketing of products containing genetically modified organisms (GMOs). These differences have resulted in widely differing product standards that significantly raise the cost of production or, in some cases, prevent market access altogether. Managing the problem is becoming even more challenging for manufacturers as other important trading partners, such as China and Korea, adopt regulatory approaches similar to the E.U.’s or develop their own unique national policies.

The U.S.-E.U. regulatory cooperation initiative and others in the Asia-Pacific Economic Cooperation (APEC) forum and the North American Free Trade Agreement (NAFTA) offer promise for moving toward more harmonization and less divergence. Progress, however, has been slow, particularly with the E.U. U.S. regulatory agencies are still not devoting adequate resources to this effort, in part because of the lack of resources but also because they do not have a clear mandate to consider the impact of new regulation on trade. Although Executive Order (E.O.) 12866 directs agencies to assess the impact of regulatory policies on trade and cooperation with foreign counterpart agencies to promote harmonization, E.O. 12866 should be updated to provide regulatory agencies with more explicit guidance as to the importance of

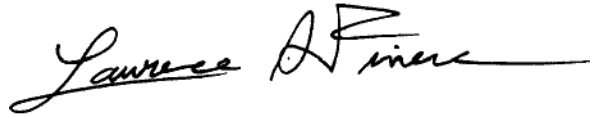
July 21, 2006
Page 4

international considerations. Otherwise, we are likely to see a major increase in the cost of regulatory compliance for U.S. industry and a further erosion of U.S. competitiveness in the global marketplace.

Conclusion

Thank you, again, for the opportunity to comment on the 2006 *Draft Report*. Please let me know if you have any questions or need additional information. I can be reached at (202) 637-3174 or lfineran@nam.org.

Sincerely,

A handwritten signature in black ink that reads "Lawrence A. Fineran". The signature is written in a cursive style with a long horizontal line extending to the right.

Lawrence A. Fineran
Vice President
Legal and Regulatory Reform Policy