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Vice President

Regulatory and Competition Policy

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VIA E-MAIL

Ms. Mabel Echols
Office of Information and Regulatory Affairs
Office of Management and Budget
New Executive Office Building, Room 10201
725 17th Street, NW
Washington, DC 20503

Dear Ms. Echols:

I very much welcome the opportunity to comment on behalf of the National Association of Manufacturers (NAM) on the *2007 Draft Report to Congress on the Costs and Benefits of Federal Regulatory Programs (Draft Report)*. As we have with most previous reports, the NAM will leave to others more steeped in statistical analysis a critique of the numbers as reported by the Office of Management and Budget (OMB). The NAM is pleased, however, to offer its thoughts on how to improve "the transparency, accountability, and effectiveness of the regulatory process."

The NAM takes a particular interest in the promulgation of regulations and related compliance issues, since manufacturing is the sector of the economy most affected by regulatory compliance requirements, with smaller manufacturers shouldering the largest burden as measured by cost per employee. In "The Impact of Regulatory Costs on Small Firms," released by the Small Business Administration in September 2005, Mark Crain estimates that the regulatory compliance cost for all firms with 500 or more employees is $5,282 per employee; for firms with 20 to 499 employees, the per employee cost is $5,411 and for firms with fewer than 20 employees, the regulatory cost per employee is $7,647.

When broken down by sector, the report notes that the average regulatory compliance cost per employee for manufacturing firms is $10,175 versus $5,633 for firms in all sectors. The per-employee regulatory compliance cost for manufacturers with fewer than 20 employees is more than two-and-a-half times higher than it is for manufacturers with 500 or more employees. For small manufacturers, the figure is $21,919 compared to $8,748 for large firms. Manufacturers with between 20 and 499 employees bore a per-employee cost of $10,042 for regulatory compliance.

Specifically, the NAM hopes to see the following regulatory improvements implemented or finalized:

- **Finish the "List of 76".** On March 9, 2005, OMB's Office of Information and Regulatory Affairs (OIRA), released a final list of 76 regulatory improvements "particularly as they affect manufacturing" that was based on public nominations in response to an invitation in the *2004 Draft Report*. The NAM was pleased that many of its recommendations were included, and that of the seven major regulations highlighted in its submission, six were included on the list. Yet, more than two years later, a number of the 76 regulations remain to be acted upon. OIRA needs to provide a periodic update as to the status. The current update was only posted as a result of congressional pressure. Since it has been three years since the start of this project, OIRA needs to make clear that agencies are to finish their review as soon as possible if they have not already done so. To the extent that agencies have finished, OIRA needs to let the public know what was done or not done, when and why.

- **Information Quality Act (IQA) Correction Requests.** The Draft Report (at pp. 40-41) shows that agencies frequently fail to meet their deadlines for responding to requests for correction under the IQA (Section 515 of the Treasury and General Government Appropriations Act of 2001, P.L. 106-554). When agencies do respond, the response often is a denial or a deferral. *Id*. These facts raise the question of whether agencies are delaying responses and denying legitimate requests for correction because the agencies know that the Department of Justice (DOJ) maintains that the IQA is not subject to judicial review. To ensure that agencies respond appropriately to requests for correction, OIRA should create and post on its Web site a chart for tracking the status of requests for correction, noting whether the deadline was met and whether the request was granted, denied or not acted upon. This will enable stakeholders to determine how seriously agencies are taking their obligation to adhere to the IQA guidelines. In addition, OIRA should investigate the reasons for the delays in agency responses to correction requests and determine whether agencies are stalling. OIRA also should review agency deferrals and denials to determine whether they have a legitimate procedural or substantive basis. Perhaps most importantly, OMB should revisit with DOJ whether this Administration wants to continue to assert that agency decisions on requests for correction of information disseminated by the agencies are not subject to judicial review, thereby allowing agencies that issue erroneous information to be the final arbiter of the accuracy of the information. The experience of the Regulatory Flexibility Act (RFA, 5 U.S.C. Secs. 601-612), where agencies routinely maintained that its provisions did not apply until Congress explicitly made such assertions subject to judicial review, is instructive. Agencies are now much more thoughtful before making a determination that the RFA does not apply.

- **Small Business Liaisons.** While wanting to comply with a myriad of applicable regulations, small businesses in particular can find the process of learning what they need to do daunting. Agencies are already supposed to have a person or office to serve as a "one-stop" resource for smaller businesses but finding who or where that is is all too

often an intimidating and frustrating experience. The NAM encourages the Administration to make this a core function of the presidential appointee who will be responsible for compliance with regulatory statutes and executive orders under E.O. 12866 as amended.

- **Letters Replacing Guidance Documents.** NAM member companies and associations are reporting an increasing use of letters from agencies in lieu of guidance documents. For example, a number of them have received letters from the Environmental Protection Agency's (EPA) Office of Pollution Prevention and Toxic Substances regarding Toxic Substance Control Act Inventory Update Reporting. Many of these letters conflict with each other and previously published agency guidance. When approached by one industry trade association regarding the content of one such letter, an agency employee replied that the position taken in the letter was consistent with what the office told other associations. It appears that the agency has inappropriately developed an unpublished, de-facto policy. If true, this appears to be an effort to evade the requirements of the Good Guidance Practices Bulletin. The NAM urges OMB to investigate and to make clear to agencies that guidance documents disguised as letters are subject to the January 18 Bulletin from OMB Director Portman.

- **Streamlining and Updating the Freedom of Information Act (FOIA).** The NAM is supporting S. 849, the OPEN Government Act, which would provide for more efficient and speedy handling of FOIA requests while maintaining the prohibition on disclosure of confidential and proprietary information. The NAM urges the Administration to work with Senators Patrick Leahy (D-VT) and John Cornyn (R-TX), as well as other congressional supporters, to help fashion a good bill that will be signed into law. Agencies, as always, have been and will be resistant to making FOIA procedures easier for requestors, so the leadership of OMB would be helpful and appreciated.

- **International Regulations and Trade.** As markets become more global, America's manufacturers are increasingly challenged to reconcile differences between U.S. technical requirements and regulatory policies and those developed by foreign governments and international standards bodies. In recent years, this challenge has become even more formidable because some trading partners, such as the European Union, are actively promoting their own technical standards as the only acceptable "international" standards. The NAM urges OMB and OIRA to encourage, where appropriate, international harmonization of technical standards and regulatory policies and more international outreach to advance that goal. At the same time, U.S. agencies need to work proactively to ensure that foreign governments do not use technical requirements and regulatory policies to advance narrow commercial goals or protect domestic industry. As a matter of policy, the United States should encourage its trading

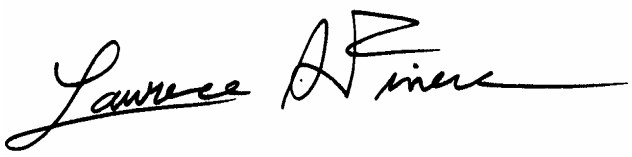
partners to apply good regulatory principles, particularly sound scientific and economic principles and high standards of transparency.

- **Alternative Dispute Resolution.** Where a dispute over compliance arises, litigation should be the last resort rather than the first. OMB should begin to encourage agencies and the Department of Justice to seek out alternative dispute resolution in order to minimize litigation costs for both the federal government and the alleged violator.

- **Compliance Assistance versus First-Time Enforcement.** The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA, P.L. 104-121) requires agencies to establish policies for waiving the penalties for first-time, minor violations of agency rules, with the hope of increasing compliance. While some agencies are in full compliance with SBREFA, others have been slow to implement the spirit of the law even if they have established policies. OMB needs to review how closely agencies follow this provision of SBREFA.

The NAM is pleased to offer these suggestions and other comments for improving the regulatory process. If you have any questions or need additional information, please do not hesitate to let me know.

Sincerely,



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