

March 16, 2009

Via E-Mail [oir_submission@omb.eop.gov]

The Honorable Peter Orszag
Director
Office of Management and Budget
Room 10102, NEOB
725 17th Street, NW
Washington, DC 20503

Re: Request for Comments Regarding Federal Regulatory Review

Dear Mr. Orszag:

Thank you for providing the public an opportunity to comment on the development of a set of recommendations to the President for a new Executive Order on Federal Regulatory Review.¹ The National Marine Manufacturers Association (NMMA) has a strong interest in government regulation and the critical role of the Office of Information and Regulatory Affairs (OIRA) in the regulatory review process. NMMA urges the Office of Management and Budget (OMB) and the President to retain the OIRA's oversight of the regulatory activity of agencies and to retain the overall structure of President Clinton's Executive Order No. 12,866, Regulatory Planning and Review. NMMA supports the comments filed by the National Association of Manufacturers and also provides these additional comments below.

The Relationship Between OIRA and the Agencies

Too often the debate on regulatory policy centers on a few highly controversial rules where policy differences are at the extreme. These are the minority of rules and the focus on these rules in the public debate distorts the real world regulatory review process and the legitimate role of the OMB in regulatory review policy. Regulatory review should not be thought of as a process to block or approve regulations, but rather as a way to ensure that a clear, thoughtful, analytical process is used to determine if an agency should act, if so then to find the best way for an agency to act. It is vitally important that agency regulation drafters and review officers know that their actions will be held to a standard. This makes everyone who touches a

¹ *OMB Federal Regulatory Review*, 47 Fed. Reg. 8819 (Feb. 26, 2009).

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draft regulation accountable. Agencies, like individuals, often become enamored with a particular solution and will act with blinders on to other alternatives. This is sometimes referred to as a solution in search of a problem and is a real concern to those in the private sector who often bear the costs of these ill-advised policies as well as the public who will ultimately pay those costs. In addition, agencies typically will draft regulations with the core constituency in mind and can often be unaware of even the existence of parties that will also be brought into the rubric of a particular proposed rule. For these reasons, OIRA in the Obama Administration should retain the ability to set regulatory review standards and to review specific regulations as appropriate. These standards should include a robust costs-benefits analysis. In addition, OIRA should have the ability to review any regulation flagged for concern by the Small Business Administration (SBA) Office of the Advocacy.

OIRA's relationship with the SBA Office of the Advocacy is critical to effective OIRA regulatory review and interagency coordination. Small businesses are the driver of employment in the U.S. and are disproportionately affected by regulations. The vast majority of NMMA members are U.S. based small- to medium-sized manufacturing businesses who cannot afford large regulatory compliance staffs. The regulatory process can be impossible for a small business to navigate without assistance. Small businesses often find out about regulatory proposals at the end of a multi-year process and find that an agency is unresponsive to late-raised concerns. It is critical to have strong coordination between the OIRA and the SBA, Office of the Advocacy so that Advocacy can assist small businesses and give them a voice in this process at an earlier stage thus, providing meaningful regulatory review. NMMA urges OMB to continue the tradition of close coordination with the SBA Office of the Advocacy and to look for opportunities to expand that coordination.

The role that OIRA plays in coordinating between agencies is vital. Agencies are, by design, subject matter experts that do not have an understanding of how their policies may impact other agencies, states or even private actions. OIRA is in a position to ensure that a coordinated federal policy is put forth. This function simply cannot be done by another party and should be retained under any new regulatory review regime.

Principles of Regulation –Standards

NMMA strongly supports including in any Obama Administration regulatory policy a provision encouraging agencies to use voluntary industry standards as the basis of rulemaking instead of the creation of government-unique standards, where appropriate and permitted by law. *See* Director Raines' OMB Circular A-119. Voluntary consensus standards that are developed and adopted through an open and transparent process can provide enormous efficiencies for agencies, industry and society and should be encouraged.

Disclosure and Transparency / Encouraging Public Participation in Rulemaking

Agencies should be held accountable in the drafting of their rules to make sure they are understandable to the public and to provide additional informational guides at the time a rule

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goes final. All rulemakings should be easily discovered by interested parties. Regulations.gov is a valuable, but limited tool. The system needs to be more user friendly and provide summary and background information on a regulatory proposal. The website should also include information at a rulemaking's earliest stages – pre-docket. In addition, to assist a reader in understanding a proposal, the information contained in reginfo.gov should be added to the Regulations.gov site. NMMA urges OMB to consider adding all of its regulatory review disclosures to the site as well.

Conclusion

The decisions made by regulatory agencies have direct real world consequences. NMMA members are under severe economic stress and are more vulnerable than ever before to unexpected costs of operation. This Administration must carefully consider the impact of regulations to ensure that regulatory policy doesn't have the unintended consequences of eliminating jobs. A good regulatory review policy will ensure that balance is achieved in an open and transparent process that will provide real net benefits to our nation.

By way of background, the National Marine Manufacturers Association (NMMA) is the leading national recreational marine trade association, with nearly 1,700 members involved in every aspect of the boating industry. NMMA members manufacture over 80 percent of recreational boats, engines, trailers, accessories and gear used by boaters and anglers in the United States. The U.S. boating industry is comprised mostly of small- and medium-sized businesses, and our products are primarily made in America by American workers. The U.S. exported more boats and engines (\$2.9 billion) in 2007 than were imported (\$2.5 billion) resulting in a trade surplus of \$391 million.

Please contact me at [REDACTED] for any additional information.
Thank you again for your time and consideration of this request.

Sincerely,



Cindy L. Squires, Esq.
Chief Counsel for Public Affairs and Director of Regulatory Affairs