TESTIMONY OF

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on behalf of the
NATIONAL ASSOCIATION OF MANUFACTURERS

before the
COMMITTEE ON GOVERNMENTAL AFFAIRS
UNITED STATES SENATE
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Executive Summary

In this testimony, the National Association of Manufacturers calls for enactment of S. 59, the Regulatory Right-to-Know Act, and for the creation of a Congressional Office of Regulatory Analysis (CORA). S. 59 would require the Office of Management and Budget (OMB) to issue a report on the cost and benefits of federal regulatory programs. The last two appropriations bills for OMB have contained this congressional directive, and S. 59 would make the annual report permanent. The NAM believes that this report would help agencies determine where they should focus their limited resources in order to be more efficient and effective. Creation of CORA would allow Congress to more effectively oversee agency rulemaking by providing Congress with its own source of reliable, independent information about the promulgation of regulations. In the increasingly global economy, NAM member companies face intense international competition. Enactment of S. 59 and the establishment of CORA would help lead to more effective regulatory programs, thereby lessening unnecessary and inefficient costs to U.S. industry.

TESTIMONY

Mr. Chairman, members of the committee, my name is Arthur J. Dyer. Thank you for the opportunity to testify on S. 59, the Regulatory Right-to-Know Act, and on the establishment of a Congressional Office of Regulatory Analysis. I am president of the Metal Products Company in McMinnville, Tenn., and am before you to represent the views of the National Association of Manufacturers (NAM). I am accompanied by Larry Fineran, assistant vice president and director, resources, environment and regulation, for the NAM.

The Metal Products Company is a small contract manufacturer of sheet metal fabrications and stampings located in a rural section of middle Tennessee. My father founded MPC in 1947, and today we have almost 100 employees and more than $12,000,000 per year in sales.

The National Association of Manufacturers (NAM) is the nation's largest national broad-based industry trade group. It's 14,000 member companies and subsidiaries, including approximately 10,000 small manufacturers, are in every state and produce about 85 percent of U.S. manufactured goods. The NAM's member companies and affiliated associations represent every industrial sector and employ more than 18 million people.

The NAM's mission is to enhance the competitiveness of manufacturers and improve living standards for working Americans by shaping a legislative and regulatory environment conducive to U.S. economic growth, and to increase understanding among policymakers, the media and the general public about the importance of manufacturing to America's economic strength.

The NAM supports both the Regulatory Right-to-Know Act and the establishment of a Congressional Office of Regulatory Analysis. The NAM believes that each proposal will contribute to improving the regulatory process and the efficiency of regulatory programs. Neither bill will harm efforts to protect public health, safety, the environment or the public interest (such as consumer or antitrust programs). To the contrary, they should provide guidance to the agencies about how best to use their limited resources. They should also provide a signal to Congress and the public at large about how effective regulatory programs are, whether they should be changed and what further refinements should be made. The NAM thanks you for your efforts in support of the Regulatory Right-to-Know Act during the 105th Congress, as well as the time and effort that Senator Richard Shelby expended last Congress on behalf of S. 1675, the Congressional Office of Regulatory Analysis Creation Act of 1998. (When S. 1675 is referenced in this testimony, it refers to the bill introduced during the 105th Congress.)

Regulatory Right-to-Know Act

In this era of international global competition, manufacturers cannot raise the prices for the goods being produced by 18 million Americans. The only way to continue increasing prosperity for Americans is to increase productivity through investment and cutting costs. Regulations, whether beneficial or not, almost always add to costs, sometimes substantially, and decrease capital available for investment.

Therefore, the NAM has been a vigorous supporter of increased congressional and agency attention to minimizing the cost impacts of federal regulations through honest risk assessments, risk prioritization and cost/benefit assessments of alternative risk mitigation proposals.

The two bills under discussion today both would contribute to this overall goal. S. 59 will improve and make permanent an overall reporting structure that will enable agencies, Congress and the public to weigh the costs and benefits of the current archeological pile of regulations that now affects commerce, our health and safety, and the environment. Any new regulations will be assessed by an Office of Regulatory Analysis. Such an office will facilitate congressional oversight of the regulations that agencies promulgate to implement federal regulatory statutes and, hopefully, ensure that the regulatory costs will be in line with the real benefits envisioned by the laws.

As the committee is well aware, federal regulations cost Americans approximately $700 billion per year, or about $7,000 for every household. This burden has rightly been dubbed a "hidden tax." Of course, the NAM recognizes that regulatory programs provide substantial benefits. However, except for the appropriations amendments for the past two years offered by you, Mr. Chairman, and your predecessor, Senator Ted Stevens, an overall accounting of this hidden tax would not show up anywhere in any official government document.

Exactly a week after the tax-filing deadline for most Americans, I am certain that many wonder, as I do, what we are actually getting in return for sending these hard-earned dollars to Washington. Similarly, it is healthy to question what we are getting for our hidden tax dollars. While OMB has acknowledged that its two existing reports submitted to Congress in response to the Stevens and Thompson amendments are rough estimates at best and can be improved, the reports have begun to shed some light on the answer to the question that Americans ask at this time of year. Making permanent these regulatory cost reports will help both to refine the methodology and to allow year-to-year comparisons.

In talking about the Administration's Reinventing Government initiative, Vice President Al Gore has referred to the American people as "customers" of government agencies. I prefer to think of myself – and other Americans – as part owners. As an owner, I'd like to know how effective government agencies are. In this regard, I am not talking about numbers of on-site inspections or fines levied. Rather, what are the goals of enabling statutes administered by the agency, and how efficiently are these goals being met? Are these goals being retested in light of improved science and technology?

If you will allow me, I would like to explain how this proposed legislation relates to how I operate my own business. About once a quarter I gather my employees in small groups and go over our financial condition. I project on the wall our financial statements and the status of our bonus plan, and I go over things like sales projections and upcoming equipment purchases. When I am implementing some new program or change in operation, I always explain what we are doing and why. I try to convey exactly what we want to accomplish and what the benefits will be. My employees are much more likely to implement some new program successfully if they see how it will benefit them as individuals and the company as a whole. But much more important that that, I have an opportunity to listen to their comments about whatever it is I'm proposing. "Have you thought about this?" or "Wouldn't it be better it we if we did that?" My employees are usually much closer to the problems than I am, and I recognize that they usually know much more about how to fix them. Their questions, comments, gripes and suggestions always help to improve whatever we're about to do. I suggest that small business people throughout the country are much closer to the problems than the regulators and bureaucrats who try to solve them are. I believe that American businesspeople truly want to do what's right for their employees, their customers, and their country. The Congressional Office of Regulatory Analysis and the Regulatory Right-to-Know Act would provide all Americans, from the members of this committee to me and my employees, an opportunity to have a more open and honest debate, based on more objective information, about regulatory agencies' decisions. We all want to do what is right, but in today's competitive global environment, we simply cannot afford to waste time and money on the wrong regulatory solutions.

I believe that a comprehensive analysis of each regulatory function – especially major rules – could help the Administration, Congress and others determine where resources should be focused in order to maximize their impact. I know personally that I need to continually review each aspect of Metal Products Company to determine where improvements can and should be made. I believe open debate and reviews will help the regulatory agencies as well.

The current OMB opposes enactment of the Regulatory Right-to-Know Act. I find this puzzling. Executive Orders over the past quarter century have directed agencies to use cost-benefit analysis, at least for major rules. In addition, as I noted, two consecutive bills providing appropriations for OMB have mandated that OMB carry out the essential elements of S. 59.

The Office of Information and Regulatory Affairs (OIRA), in particular, should be able to institutionalize the provisions of S. 59, since it has a mandate under Executive Order 12866 (and, before that, E.O. 12291) to ensure that cost-benefit analysis is performed for major rules. Despite this, OMB notes "data gaps" and inconsistencies among agencies as reasons why it could not provide a better estimate in the reports responding to the Stevens and Thompson amendments. S. 59 would grant OIRA additional arrows in its quiver – as well as statutory direction and incentives to eliminate the data gaps and accomplish the goals of S. 59.

S. 59 has many provisions that would be helpful, both to OMB as it prepares its net benefits report and to those interested in the results of that report. First and foremost, it directs OMB, in consultation with the Council of Economic Advisors, to issue consistent guidelines to standardize the most plausible indicators of costs and benefits and requires OMB to review agency adherence to these guidelines. Codifying the requirement to issue consistent guidelines is an important improvement that addresses the most vivid example of cavalier analysis by an agency in last year's report: the reliance on EPA's estimate of "up to" $3.2 *trillion* in benefits under the Clean Air Act. OMB acknowledged concerns about this estimate, but rather than review it for accuracy or correct the methodology, it merely incorporated EPA's numbers. The peer review of the net benefits reports, provided for in Section 7 of S. 59, would give OMB an additional tool with which to review agency–prepared reports for adherence to the guidelines and sound economic methods.

The NAM is pleased that S. 59 continues with the public notice-and-comment provisions. This is important because it allows experts not involved in the peer review to highlight problems with the methodology and offer suggestions for improvement.

Congressional Office of Regulatory Analysis

The establishment of a Congressional Office of Regulatory Analysis (CORA) (which presumably would offer appropriate comments on the viability of the analysis in the annual OMB net benefits report) would serve as an additional check on OMB for sound analysis in the net benefits report. Furthermore, CORA would provide oversight committees with an additional resource of reliable, independent information. In the last Congress, the NAM was a strong supporter of creating CORA. Indeed, the NAM led industry's efforts for its enactment and looks forward to doing so once again.

As proposed in S. 1675, CORA would have been an independent congressional agency. It would have been funded at about $5 million, which is equivalent to OIRA. Most resources and personnel would have come from the General Accounting Office (GAO) and the Congressional Budget Office (CBO).

Although the NAM is disappointed that S. 1675 did not become law, this Congress has the opportunity to make changes to that proposal in response to those who had legitimate concerns.

Chief among these changes would be not to make CORA an independent agency. Rather, it could be a specified function of an existing congressional office. While GAO has had experience over the years with regulatory review, placing CORA under CBO would make a statement that CORA is the congressional equivalent of OIRA, which is housed within OMB. In addition, CBO would be better equipped to handle the reviews of the cost-benefit analyses. Thus, when the bill is re-introduced, the NAM encourages the sponsors to place CORA within CBO.

Another criticism that should be acknowledged regarding last year's bill is that, even though CORA was conceived as a non-partisan office, selection of the director by the Speaker of the House and the Senate Majority Leader, as provided in last year's bill, would be inherently political. Establishing CORA within CBO would put this argument to rest. (The NAM would like to note, however, that the selection of the director of CORA in S. 1675 was akin to the selection of the CBO director. Any equivalent concerns raised at the time of passage of the Congressional Budget and Impoundment Act of 1974 have long been put aside and, with the passage of time, the procedure of selecting the CBO director is now accepted.)

One criticism of the CORA proposal that the NAM rejects is that CORA would be duplicative of OIRA. This is tantamount to saying that CBO is duplicative of OMB. While this may have been a concern at the time of CBO's creation, history and experience show that the results of any tension between it and OMB have been positive: The competition has led to better analyses and a system of checks and balances.

Similarly, establishment of CORA is an idea that is long overdue. It has not been uncommon for an agency to produce a slanted cost/benefit analysis to justify a regulatory choice or statutory mandate. Oversight committees have always been at the mercy of these slanted analyses, as has GAO in its reports to Congress on major rules under the Congressional Review Act. CORA, on the other hand, would fastidiously review agency procedures and analyses to ensure compliance with statutes, such as the Administrative Procedures Act, the Small Business Regulatory Enforcement Fairness Act, the Paperwork Reduction Act, the Congressional Review Act and the Regulatory Flexibility Act. In addition, CORA would help ensure that agencies follow executive orders and other regulatory procedural requirements. Such a consolidated review would substantially assist oversight committee members and staff, whose expertise would be more on the substantive issues rather than on these procedural ones.

In order to avoid a log-jam of analyses at CORA, S. 1675 correctly provided for CORA to prioritize its analyses of rules. Major rules would have first priority, followed by requests from committees and then individual members.

Another function of CORA would be to explore alternative ways to meet the goals of a regulation that would be more effective than the rule as promulgated. This additional analysis would provide a fresh perspective on how the statutory goal might be achieved. Accordingly, if an agency promulgated an inferior approach, CORA could provide Congress with information regarding more efficient alternatives to consider as a statutory amendment or, using the Congressional Review Act, to reject the more burdensome alternative.

Finally, S. 1675 called for CORA to issue a net benefits report similar to the one envisioned in S. 59. The NAM hopes that the re-introduced bill will retain this requirement. Combined with the

requirement in S. 59, separate reports by OMB and CORA would provide a check for both to use sound methodologies.

Passage of the Regulatory Right-to-Know Act and creation of a Congressional Office of Regulatory Analysis would both improve the performance of the federal regulatory program by improving our understanding of the priorities and resource commitments embodied in existing regulations and by providing Congress with additional tools to review new regulations.

On behalf of the NAM, I thank you again for this opportunity. I would be pleased to answer any questions you may have.