

# **NAM POLICY POSITIONS**

Submitted for Approval - NAM Board of Directors

February 29 - March 1, 2016

# Preamble to NAM Policy Positions

Modern manufacturing is the backbone of the American economy, and the mission of the National Association of Manufacturers is to advance policies that will strengthen our industry while improving the lives and livelihoods of the men and women who make things in America. Americans of all backgrounds believe in manufacturing. They know that when manufacturing is strong, America is strong.

The policy agenda of the NAM advances ideas from across the political spectrum, rooted in the values that make America an exceptional nation: free enterprise, competitiveness, individual liberty and equal opportunity. We believe in an America that embraces the entrepreneurial spirit, that leads the way in innovation, that ensures everyone is free to pursue their dreams and that gives them the same chance to succeed.<sup>1</sup>

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<sup>1</sup> This preamble was unanimously supported by the NAM Board of Directors at the Spring 2019 meeting in Scottsdale, AZ.

# International Economic Affairs Policy

## IEAP-01 International Trade Policy

### **1.01. International Trade**

The objective of the NAM's international trade policy is to strengthen manufacturing in America and improve the competitiveness of American manufacturing in the worldwide economy. Fairly- conducted trade provides opportunity for growth and expansion of manufacturing in America, increases the range of goods and services available to consumers, enhances market-based production globally, and contributes to closer understanding and cooperation among nations.

The NAM believes this objective can best be achieved by limiting costs and other impediments imposed on U.S. manufacturers and by pursuing and utilizing a rules-based international trading system that enhances the role of free market forces and promotes respect for the rule of law, while seeking to eliminate market-distorting governmental intervention.

#### **1.01a. International Trade Negotiations**

Free and open market-based trade is often seriously distorted by governmental intervention and weak standards, particularly related to private property and commercial operations. In seeking to level the playing field globally for manufacturing in America, the NAM advocates initiatives that obtain genuine market access for U.S. manufacturing and that promote strong standards to protect private property and grow commercial activities in a predictable rule of law based system, including through trade agreements that offer mutually-beneficial commercial opportunities. Trade agreements should seek the elimination of market-distorting governmental intervention in international trade and promote effective and enforceable compliance to agreed and transparent rules of fair competition and the protection of private property, including intellectual property, contracts and related commercial activities. In this process, the effectiveness of U.S. trade laws must not be diminished.

While the NAM prefers that trade negotiations be conducted multilaterally in the World Trade Organization (WTO) where possible, the NAM also believes that bilateral and regional agreements have an important role in opening markets for manufacturers in the United States. To that end, the NAM seeks to have the Office of the U.S. Trade Representative funded adequately to enable effective negotiation and enforcement of multilateral, regional, and bilateral agreements.

It is generally impractical for the NAM to attempt to speak for its many diverse members regarding individual sector priorities in international negotiations unless such specific matters are non-controversial, are broadly supported by NAM membership and represent strong principles that are applicable to manufacturing generally.

#### **1.01b. Multilateral Negotiations**

The NAM strongly supports the rules-based, enforceable international trading system embodied in the World Trade Organization (WTO) and its various components. In addition to reducing tariffs and non-tariff barriers and fostering trade facilitation, areas in the WTO where the NAM feels improvements are necessary include the development of new understandings regarding industrial and investment policies with implications for international trade; further progress in addressing non-tariff barriers to trade, both long-standing barriers and emerging barriers, including those affecting digital trade; greater protection for intellectual property rights; expanding membership in the Government Procurement Agreement; and the adoption of agreed rules governing trade in services that affect manufacturing.

The NAM supports consideration of new negotiating approaches in the WTO, including stand- alone sectoral negotiations such as the expansion of the successful Information Technology Agreement and the conclusion of an ambitious Environmental Goods Agreement, plurilateral agreements among willing countries, and other new directions that would generate greater market access, reduce foreign market distortions and facilitate trade expansion.

### **1.01c. Bilateral and Regional Negotiations**

The NAM also supports mutually beneficial and comprehensive bilateral and regional trade negotiations that will reduce tariff and non-tariff barriers to U.S. exports, expand bilateral commercial relations and provide for WTO-plus trade relationships. Such negotiations should establish a strong set of enforceable rules that govern and protect trade and investment, reflect the realities of modern supply chains, address trade-distorting practices of state-owned and state-influenced enterprises, and result in the United States obtaining concessions that are at least equivalent to the concessions granted by the United States. With the growth of new technologies, trade agreements must also include commitments to liberalize cross-border data flows of information and access to digital products and services, and prohibit related localization requirements, including but not limited to requirements to use local data information infrastructure and storage. Impartial reviews of the effectiveness of these agreements should be conducted periodically. In negotiating such agreements, the United States should also commit to eliminate its merchandise processing fee for goods trade by parties to such agreements.

The negotiation of any new bilateral or regional agreements that includes countries subject to earlier agreements must preserve the strongest market access, trade enforcement and standards on intellectual property, investment and other horizontal rules of either the new agreement or the existing trade agreement. There should not be any lessened market access or erosion of concessions in existing trade agreements. USTR should provide accessible, clear and detailed information on the differences between such agreements and provide manufacturers in the United States, including small- and medium-sized manufacturers the information and tools they need to ensure that they can benefit as strongly as possible from both existing and new agreements.

### **1.01d. Small and Medium-Sized Exporter Needs**

The NAM believes that trade negotiations can play a vital role in lowering the transaction and opportunity costs of foreign trade, a process that is especially critical to the ability of smaller companies to engage in international trade. By reducing tariffs and non-tariff barriers, particularly unnecessary fixed cost trade barriers like regulatory, licensing, and physical presence requirements, trade agreements make more transactions and smaller sales profitable. Customs harmonization, financial services liberalization, the enabling of electronic commerce and the harmonization of international standards also help to create an environment in which small and medium-sized manufacturers (SMM's) can actively participate in international trade, and the NAM supports the inclusion of such features in trade agreements. The NAM also supports mechanisms to streamline trading processes for small and medium-sized manufacturers, including through simplifying documentation requirements and establishing a meaningful de minimis threshold at which low-value shipments can cross borders free from tariffs to reduce paperwork for small business exporters.

### **1.01e. Trade Promotion Authority**

With the Administration having the constitutional authority to negotiate internationally and the Congress having the constitutional authority to regulate trade, the NAM believes durable trade negotiating authority that provides an effective framework for the Administration and Congress to work jointly to promote the negotiation and implementation of trade agreements is a fundamental requirement of an effective U.S. negotiating structure. Such authority has been provided in the past through Fast Track and Trade Promotion Authority (TPA) legislation. The NAM believes that TPA should continue to be renewed, and that the negotiating objectives and procedures embodied in the Bipartisan Congressional Trade Priorities Act of 2015 should generally serve as the foundation for that renewal, recognizing that updates to such objectives will be necessary as technologies and other innovations impact global trading relationships. The NAM believes that it is critical that any Administration work closely with Congress and industry throughout the negotiation of trade agreements to ensure that they are pursuing the TPA objectives set forth and are not seeking outcomes contrary to those objectives.

## **1.02. Eliminate Trade-Distorting Practices and Defend, Preserve and Enhance the Effectiveness of WTO-Consistent U.S. Trade Law**

To build and enhance public confidence in an open trading system, the U.S. government must maintain a level

playing field that provides manufacturers in the United States greater access to foreign markets. The U.S. government must ensure that market-distorting trade practices are addressed effectively under internationally agreed-upon rules and bilateral agreements. The NAM believes that artificial competitive advantages arising from governmental distortions should be vigorously opposed using dispute settlement, application of trade laws and negotiated remedies.

The NAM also supports the principle of soundly applied and effective trade adjustment assistance.

#### **1.02a. Elimination of Trade-Distorting Subsidies**

The NAM supports elimination of trade-distorting subsidies in both market and non-market economies and the development of stronger WTO, FTA and other disciplines against subsidies or restrictions that have the effect of subsidizing local production at the expense of imports, including non-security related export restrictions such as export taxes.

#### **1.02b. Elimination of Forced Localization Barriers**

Forced localization barriers, including measures designed to protect, favor or stimulate domestic industries, services providers and/or intellectual property through requirements that distort commercial purchases and consumer choice. The barriers are proliferating, particularly in key emerging markets, and appear to violate fundamental national treatment provisions of the GATT and various WTO Agreements. Forced localization poses a serious and growing threat to manufacturing and jobs in the United States, increasing costs and security risks, blocking trade in manufactured goods, including in many innovation-intensive sectors, and undermining hard-won technology and productivity gains that have improved the competitive advantage of manufacturers in the United States. The NAM works with the United States government, other business organizations domestically and internationally and foreign governments to eliminate trade- and investment-distorting forced localization measures imposed on commercial entities.

#### **1.02c. Enforcement of WTO-Consistent U.S. Trade Remedy Laws**

The NAM supports the effective enforcement of U.S. trade remedy laws in a manner consistent with U.S. international obligations to counteract trade-distorting foreign practices on the part of both market and non-market economies, including circumvention of countervailing duty and antidumping orders. The NAM also encourages greater transparency of trade remedies internationally to help achieve equity in competitive conditions and strengthen international trade disciplines. The NAM encourages the Administration and Congress to work together to ensure the effectiveness and enforcement of U.S. trade laws and the overall competitiveness of the U.S. manufacturing economy.

The NAM also seeks greater access to U.S. trade remedy laws for small and medium manufacturers, including recourse to governmental self-initiation of trade cases. The NAM is committed to ensuring its members are fully informed of the options available under U.S. trade laws.

The NAM urges the U.S. government to fund adequately the agencies responsible for enforcing U.S. trade laws and to support full enforcement of trade remedy laws in the face of growing foreign evasion.

#### **1.02d. WTO Dispute Settlement**

The WTO dispute settlement process is the key enforcement mechanism for ensuring compliance with multilateral trade obligations. The NAM believes all WTO member economies, including the United States, should comply with WTO agreements, including the Dispute Settlement Understanding.

The NAM favors aggressive U.S. government use of WTO dispute settlement procedures to obtain foreign compliance with multilateral obligations and to eliminate unfair practices. The NAM also believes that the United States should continue to seek further improvement and reform of the existing WTO dispute settlement procedures and should consult with industry on specific priorities. The United States should continue to work to ensure adequate funding and more expeditious processing of dispute settlement cases.

### **1.02e. Compliance with Bilateral/Regional Agreements**

The NAM supports effective compliance with all provisions of bilateral and regional agreements negotiated by the United States. Signing trade agreements is only the first step in obtaining more open markets. Implementation of agreements with follow-up, monitoring, enforcement, and periodic review is essential to obtain full benefits. The NAM believes it is of particular importance that the United States ensure full compliance of the other country(ies) with bilateral and regional trade agreements before the agreement enters into force with that country (or countries) and establishes regular reviews with individual countries to address emerging issues.

As with the WTO dispute settlement process, the NAM favors aggressive U.S. government use of FTA dispute settlement procedures, in consultation with industry, to obtain improved foreign compliance with bilateral and regional obligations and to eliminate unfair trade practices.

### **1.03. Intellectual Property Rights (IPR) Protection**

Theft of intellectual property in all forms has become an epidemic around the world and accounts for a rising portion of world trade. Fake products and other forms of IPR violations undermine innovation, impose a staggering cost in terms of lost sales and jobs, undercut brand reputations, increase risk and create real and actionable liabilities, and create serious health and safety hazards. Increasingly, the value of American manufacturing companies aligns more closely with their intellectual property - the patents, trademarks, trade secrets, mask works, and copyrights they hold. For U.S. companies to thrive in the global economy, a new commitment must be undertaken to address all forms of intellectual property theft.

In addition to outright theft, there is also a growing trend among some emerging countries to accelerate technology transfer by forcing the licensing of patents for “essential” technologies and the disclosures of trade secrets as a condition of market access. The NAM opposes this trend and is strongly supportive of U.S. and international efforts to prevent erosion of IPR.

The NAM supports reform and harmonization of the global patent and trademark system in a way that improves global IPR protection, ensures robust enforcement of IPR rules, builds support among all countries on the importance of enforcing IPR rules, and reduces costs and increases efficiencies in establishing global IPR protections in all nations.

The NAM encourages U.S. government interagency coordination and cooperation to maximize the effective use of U.S. resources and trade tools aimed at preventing IPR erosion and enforcing IPR protections globally. The NAM also encourages U.S. government outreach and cooperation with other trading partners to prevent IPR erosion and enhance IP enforcement.

Counterfeit and pirated products constitute a significant threat to the U.S. manufactured product supply chain with over \$1 billion in counterfeit cargo seized annually that result in lost American jobs and business for manufacturers in the United States. Among the top counterfeit commodities found to be imported are wearing apparel/accessories, consumer electronics and computers, pharmaceuticals and personal care products, handbags and wallets, footwear, watches and jewelry, optical media, toys and other consumer products.

The NAM urges the U.S. government to enforce customs laws aggressively, ensure customs officers have all necessary authorities and training to seize counterfeit and pirated goods, and fund adequately the agencies responsible for enforcement and application of IPR protection. The NAM supports public policy measures in the United States and abroad that remove obstacles to full adherence to bilateral and multilateral conventions on intellectual property; provide improved access for U.S. copyrighted works and trademarked goods in foreign markets; and increase assurance of nondiscriminatory (national) treatment for intellectual property developed and held by U.S. companies.

Trade secrets are increasingly important for U.S. manufacturers, but they receive inadequate protection in many markets. The NAM supports actions to strengthen trade secret protection and to ensure effective civil and criminal enforcement at home and abroad, including full implementation of WTO provisions and inclusion

of “gold standard” commitments that expand protections in ongoing and future trade agreement negotiations. Such actions prevent the forced disclosure of proprietary information as a condition of market access, ensure fair and consistent treatment and provide effective enforcement. Further, the NAM commends the USTR to include in its pending and future negotiations a provision for trade secret owners to pursue a cause of action within our trading partners’ federal judicial systems.

#### **1.04. Technical Standards, International Regulatory Policies and Conformity Assessments**

Improved market access and decreased costs of exporting can be achieved through reducing unique regulatory and technical standards as well as conformity assessment procedures. The NAM works to prevent and reverse the proliferation of unique regulatory and technical standards and related requirements as trade barriers by promoting countries’ reliance on the WTO Technical Barriers to Trade (TBT) Agreement for the development of international standards and the principle of national treatment for conformity assessment bodies. The NAM is also seeking strong TBT provisions and improved regulatory frameworks in ongoing bilateral and regional trade negotiations and to build support for good regulatory practices and standards development.

##### **1.04a. Market Access Solutions**

The NAM supports the maximum harmonization of standards and regulatory requirements and also seeks the adoption of international standards where possible. Where this is not possible, the NAM seeks other pragmatic solutions, such as the use of national treatment for conformity assessment bodies and international schemes that provide for acceptance of test results as a means to achieving compliance in the destination markets. The NAM also seeks to prevent and reverse the proliferation of unique regulatory and technical standards as trade barriers, including through full enforcement of the WTO TBT Agreement and bilateral and regional agreements and the inclusion of provisions in bilateral and regional trade negotiations that promote the adoption of international standards, market-determined conformity assessment and certification requirements and full national treatment for U.S. manufacturers, standards developers, and testing and certification bodies. Standards, technical regulations and conformity assessment procedures should be applied evenly to both imported and domestic goods. These processes should be transparent and allow reasonable opportunities for public access to all stakeholders.

##### **1.04b. Voluntary Standards**

Voluntary standards, developed by industry through trade associations, technical societies, and accredited standards development organizations, have made a major contribution to orderly industrial development without impairing the flexibility of enterprise. We believe that American industry should continue to build comprehensive, integrated standards consistent with its advancing needs. The NAM also endorses promoting science-based regulatory processes and facilitating trade by eliminating unnecessary technical barriers to trade, promoting greater regulatory cooperation and good regulatory practices, and the value of public–private collaboration in standards development.

The U.S. voluntary consensus standards system is market-driven, private-sector led and government supported. The NAM supports cooperation between standards development organizations and U.S. government agencies to help the United States to assure its trading partners that non-tariff barriers are not created by such voluntary standard.

#### **1.05. Trade and Current Account Imbalances**

The NAM seeks the development of strong, reciprocal trading relationships with other nations that promote market-forces, rather than government distortions, to govern trade in manufactured goods. When barriers exist or governments engage in market-distorting activity, U.S. trade and current account deficits can grow, which can harm or threaten manufacturing industries in the United States and potentially U.S. growth and standards of living.

Where foreign unfair trading practices that injure or threaten U.S. commerce can be identified, those practices themselves should be the proper focus of U.S. government attention, and not the foreign trade surpluses with which they may be associated. The application of U.S. trade sanctions against others solely on the basis of

their bilateral trade surpluses with the United States runs counter to the letter and spirit of the World Trade Organization, and the NAM is opposed to amending U.S. law so as to force action against trading partners of the United States solely on the basis of their trade balances with this country.

The growth of value-added production through global supply and production chains has led to a large increase in trade in intermediate goods that has challenged the ability of U.S. and global trade data to reflect accurately trade flows and deficit or surplus conditions particularly on overall trade flows. The NAM supports efforts of the U.S. government, the WTO and other fora to develop more accurate measures of trade flows without imposing undue costs or requirements on manufacturers in the United States.

### **1.06. Export Promotion**

The NAM supports a strong U.S. government export promotion program aimed at helping U.S. companies, particularly small and medium-sized companies, find new customers and markets for their exports. Such programs should include strong U.S. government advocacy by relevant agencies across the U.S. government.

#### **1.06a. Export Promotion Programs**

The NAM urges adequate funding of export promotion programs sufficient to provide export assistance for all significant markets, with particular attention to dynamic emerging markets. The NAM believes that an effective export promotion program must be affordable, particularly for small and medium-sized firms. The NAM believes export promotion programs should be flexible, with resources able to shift to facilitate exports to the most rapidly growing markets. The NAM also urges close coordination among the export promotion organizations and export financing organizations. There should be close consultation between the export promotion agencies and the private sector to ensure the maximum effectiveness of the programs.

#### **1.06b. Joint Export Ventures**

The NAM supports the continuation and promotion of joint export trade by entities organized pursuant to the U.S. Webb-Pomerene and Export Trading Companies Acts which are openly transparent, registered with U.S. government authorities, and generate efficiencies and economies of scale to the benefit of U.S. exports, overseas consumers and global competition. The Webb-Pomerene and Export Trading Companies Acts authorize the formation and operation of U.S. export joint ventures, whereby registered associations and corporations are granted limited exemption from U.S. antitrust laws provided they operate solely in export or the course of export, are not in restraint of the export trade of any domestic competitor, and do not substantially lessen competition in the United States.

### **1.07. International Business Conduct**

The NAM believes that companies must maintain high standards of ethical business conduct abroad as well as at home. The legal requirements in a host country should be strictly observed even if local authorities are unable or unwilling to enforce them. Companies should respect relevant international instruments where national law is absent. To the maximum extent feasible, international agreements should be sought that would promote the rule of law that will place U.S. firms in comparable positions to firms of other countries with respect to the conditions of doing business.

In today's global economy, there is a need to reaffirm commitment to fair and ethical competition in all commercial settings. Bribery and extortion are often difficult to disentangle, but both are obviously harmful and dangerous to private enterprise and should be vigorously prosecuted under applicable national laws. Bilateral or multinational agreements, such as the OECD's Anti-Bribery Convention, which help advance the objective of full and fair enforcement of effective national laws in all trading nations, should be implemented by more countries. Corporate management should also take international measures necessary to ensure company adherence to the highest standards of international business practice.

### **1.08. Relations with Developing and Emerging Economies**

The NAM believes that maximum reliance on free private enterprise and market forces will provide the best economic development results. At a minimum, the private sector requires an adequate system of laws and regulations affording protection of contractual and industrial property rights and a fair dispute settlement

mechanism in order to contribute the type of long- term trade and investment benefits most needed in a developing country.

The NAM supports encouraging emerging economies to participate fully in the rules-based world trading system, including by providing effective market access to U.S.-made goods and services and respecting and enforcing core standards of private property and commercial contracting.

The NAM supports well run capacity-building programs to promote development, the respect for the rule of law, and the increased commercial opportunities that are vital prerequisites to robust and improved trade relations. The NAM also encourages developing countries to eliminate trade-distorting practices and to open further their markets to trade and investment that will promote growth and higher living standards. To remove physical trade barriers, the NAM urges the United States and other governments to promote improved access to resources for infrastructure lending and investment, while also encouraging developing countries to put in place the legal, financial and other rule of law systems that are critical to attract and use effectively such resources.

#### **1.08a. Preferences**

The NAM supports the U.S. preferences programs as a means of aiding economic development in developing economies, reducing U.S. producer and consumer prices, and providing an inducement to those countries to respect the norms of international commerce, including due regard for property owned by U.S. citizens, including intellectual property; equitable and reasonable access both to markets and basic commodity resources; adequate observance of labor and environmental provisions, and actions to reduce distorting subsidy and investment practices and policies. Preferences programs should not be viewed as an entitlement, and a recipient's eligibility should be reviewed regularly and rigorously.

#### **1.09. Access to Basic Manufacturing Inputs**

U.S. manufacturers require access to basic inputs to the manufacturing process in order to become and remain competitive in the global economy. The NAM supports the renewal of Miscellaneous Tariff Bills and other measures to eliminate distortions in the U.S. tariff code by eliminating duties on imported products for which there is no or insufficient domestic production and availability. The NAM opposes government policies and practices that unfairly limit the availability and raise the cost of such inputs, thereby reducing the competitiveness of U.S. manufacturers.

#### **1.10. Trade Facilitation and Enforcement**

The NAM supports efforts to facilitate legitimate trade, reduce costs and streamline procedures at U.S. borders, without in any way diminishing trade, customs, and other law enforcement. The NAM believes that increased security at our borders and the efficient flow of goods across our borders can and should be mutually supportive objectives. While fully recognizing the need for enhanced security, the NAM believes it is important to seek a better balance of trade facilitation and security objectives at U.S. borders.

The NAM supports legislative initiatives to set priorities for U.S. Customs and Border Protection (CBP) and provide clear policy guidance. Many manufacturers in the United States have global supply chains that depend on imported materials, parts components and finished products to compete not only in the U.S. marketplace but also in foreign markets. The NAM supports efforts to streamline trade and measure progress within CBP, and we encourage CBP to work with the private sector and with participating government agencies (PGAs) to ensure commercially meaningful benefits for industry participants of partnership programs like Customs-Trade Partnership Against Terrorism (C-TPAT). Additionally, the NAM supports setting a baseline de minimis threshold of at least \$800, under which low-value shipments can be shipped free from tariffs. We also support efforts to encourage foreign countries to set a similarly meaningful de minimis threshold that would benefit U.S. exporters, particularly small business exporters.

Additionally, the NAM supports the objectives of the WTO Trade Facilitation Agreement (TFA) as approved in December 2013 – well as international efforts to implement the agreement. The TFA contains provisions for expediting the movement, release and clearance of goods, including goods in transit. It also sets out measures

for effective cooperation between customs agencies and other appropriate authorities on trade facilitation and customs compliance issues. It further contains provisions for technical assistance and capacity building in this area.

Effective measures are needed to combat unfair and illicit trade, including through free trade zones. Every year, illicit trade in counterfeit and pirated goods and other products costs governments and legitimate businesses billions of dollars in lost sales and revenue, while contributing to organized criminal enterprises. The NAM supports system-wide action to combat illicit trade, involving cooperation across national government agencies and international organizations. The United States should seek commitments in trade agreements requiring partner governments to adopt and maintain laws providing for strong cooperation and enforcement procedures and deterrent penalties.

### **1.11. Inequity in WTO Tax Provisions**

The NAM believes that there is no sound economic rationale for the WTO to allow border-adjustability for "VAT" and other indirect taxes used by other governments, but not to allow such border-adjustability for corporate and other direct taxes used in the United States. Fixing this WTO provision has long been a goal of U.S. trade policy. The NAM believes that this WTO provision harms the competitiveness of U.S. goods, and supports determined efforts by the U.S. government to end this inequity.

### **1.12. Trade-Related Aspects of Climate Change**

The NAM believes that mitigating the impact of global warming by reducing greenhouse gas emissions is a significant and important goal for all nations. Any initiatives to achieve this goal, however, must not put American manufacturers at a relative competitive disadvantage. If actions are not taken by all significant emitters, there is substantial risk of carbon leakage that could nullify the effects of unilateral domestic action.

#### **1.12a. Multilateral Framework Agreement**

The NAM believes that a WTO-consistent comprehensive global framework agreement should be sought to determine rules governing any border measures. If such a comprehensive agreement proves impossible, then a WTO-consistent plurilateral agreement should be sought with as many participants as possible. Any international agreement must take into consideration the methods that will be used to enforce commitments, and these must be fair, transparent and effective.

If unilateral measures by the United States prove necessary, they should comply with our international obligations and give careful consideration to the potential for harmful effects on U.S. manufacturers of possible reciprocal actions by our trading partners and take into particular account the vulnerability of small and medium sized manufacturers. The goal of any agreement or unilateral measure should be to prevent carbon leakage by ensuring that no country gains a competitive advantage by failing to take action to reduce carbon emissions.

#### **1.12b. Protection of Intellectual Property Rights (IPR)**

The NAM also believes there needs to be a careful balance on the part of the United States and other developed nations in how intellectual property-related issues are treated in a global or plurilateral climate change agreement. It is vital that the intellectual property rights of manufacturers be fully protected. The United States should not enter into any commitments that would require non-voluntary transfers of technology relevant to the achievement of greenhouse gas emission or other environmental goals. Compulsory transfers of technology would seriously threaten both the future competitive position of the United States and the development of new technologies to achieve environmental objectives, while also putting at risk manufacturing jobs in environmental technologies in the United States.

#### **1.12c. Trade in Environmental Goods & Services**

The NAM urges the United States Government to accelerate efforts to obtain an Environmental Goods Agreement in the WTO, or with willing trading partners, that would eliminate all possible tariff barriers to the purchase of environmental goods and technologies. The NAM continues to support as well efforts to eliminate non-tariff barriers and other measures and the full protection of the IPR rights of manufacturers in the United

States. Eliminating tariff and non-tariff barriers would substantially reduce the cost of investments to improve the global environment, increase the use of environmental goods and services, and provide an incentive for the more rapid development of these technologies.

### **1.13. Sanctions**

The NAM supports the global system of rules that promote trade and investment on a level playing field and create new economic opportunities. While recognizing that the application of targeted multilateral sanctions can help achieve U.S. foreign policy objectives, the NAM believes that the United States should avoid applying counterproductive unilateral economic sanctions. Unilateral sanctions cover a range of policy tools, from import bans and embargoes to restrictions on U.S. investment and non-U.S. person activity overseas. Rather than altering the behavior of foreign governments, unilateral economic sanctions applied by the United States often create a vacuum that is quickly filled by foreign governments and companies.

The NAM will continue to serve as a resource for manufacturers in the United States that are striving to comply with increasingly complex sanctions regimes.

#### **1.13a. Humanitarian Trade**

Manufacturers in the United States produce and export a range of goods intended for humanitarian trade. These products are often licensed for export to sanctioned entities. The consistent treatment of humanitarian trade is important both to manufacturers and to the populations of countries whose governments face U.S. sanctions. The NAM supports strong and explicit humanitarian exemptions for licensed exports with respect to product coverage as well as the necessary financial transactions related to this trade.

**Adopted Winter 2016 and effective until Winter 2020**

## **IEAP-02 International Investment and Finance Policy**

### **2.01. International Investment**

The fundamental role of the NAM is to promote manufacturing in the United States. Because investment is so important for business growth and competitiveness, the NAM places a high priority on advancing domestic and international policies that favor investment in U.S. manufacturing and enable U.S. manufacturers to take advantage of growing opportunities in the global marketplace.

Over the last several decades, foreign investment flows have increased substantially to over \$1 trillion in an average year, with over \$20 trillion dollars invested across borders. Overall, the United States has been the world's largest source of investment into foreign markets and also the largest recipient of inward investment from abroad. As the pace of globalization has accelerated, though, inward and outward foreign investment have come to play an increasingly important role in U.S. industry, strengthening the competitiveness of manufacturers in the United States and facilitating their access to developed and emerging markets. Official U.S. data demonstrate that inward investment into the United States by foreign firms supports millions of U.S. manufacturing jobs and increased capital investment and research and development. U.S. investment overseas also supports U.S. manufacturing jobs and operations by increasing sales to foreign consumers and boosting U.S. exports, research and development and capital expenditures. U.S. companies with investments overseas are much larger exporters than companies without foreign operations and contribute importantly to the U.S. economy. The impact of international investment on U.S. manufacturing is substantial and growing, and benefits accrue to both large multinational companies and SMMs.

While global investments have risen substantially over past decades, global competition and other challenges impede both global and U.S. growth in foreign direct investment. Furthermore, U.S.-based manufacturers face new and more complex investment restrictions abroad and legal uncertainty in the protection of their investment overseas, while regulatory uncertainties here at home as well as U.S. taxation burdens limit the attractiveness of the United States as a destination for foreign investment. While all U.S. investors are adversely affected, the burden of foreign investment restrictions and weak legal protections weigh particularly

heavy on smaller companies that have limited resources to manage foreign investment challenges.

### **2.01a. Principles**

Continued high levels of foreign investment both inward and outward are vital for the future of U.S.-based manufacturing. To achieve the greatest economic benefit and ensure a level playing field for all investors, the NAM believes investment should be based on the following principles:

- Investment decisions should be made by private sector entities based on market and commercial criteria.
- Government involvement in investment decisions should be conducted in the most limited manner possible. Any restrictions on investment should be limited to legitimate issues of national security. Government subsidization should be avoided.
- Transparency, clarity and the rule of law on issues relating to investment, including national treatment, are essential to promote fairness, equity and maximum economic benefit for both investors and recipients of investment.

### **2.01b. Outward Foreign Direct Investment**

Given the importance of international investment to the growth and competitiveness of the U.S. manufacturing base, greater efforts should be made to extend a framework of well-established rules governing foreign investment in developed and developing countries. This framework is fundamental to managing the risks associated with foreign investment, obtaining equitable treatment for U.S. investors and ensuring access to international arbitration that will provide fair treatment in investment disputes. These rules are also important to ensure that U.S. companies have opportunities to invest and participate in the economic growth of foreign countries—particularly emerging markets—and are not unduly restricted by foreign governments, for example, through equity caps or similar investment restrictions. Bilateral Investment Treaties (BITs) and strong investment chapters in the free trade agreements that the United States negotiates are key to advancing these goals. The U.S. government should continue extending this network of agreements, maintaining the highest level of quality in the texts of the agreements.

Existing agreements are principally with developing countries. The NAM supports negotiations to extend investment provisions with all major emerging markets and transitioning economies with which the United States can negotiate high-standard agreements that open foreign markets on a non-discriminatory basis to U.S. investment, provide full protections to U.S. investment and access to neutral investor-state dispute settlement for all industries.

The overwhelming proportion of U.S. foreign direct investment is in developed industrial economies. In addition to multilateral agreements, the NAM supports U.S. government negotiations of bilateral or regional investment agreements with those economies as well to obtain the fullest possible non-discriminatory access, property protections and access to neutral investor-state dispute settlement for U.S. foreign direct investment.

All appropriate bilateral, regional and multilateral channels should be employed to educate foreign governments on the economic benefits of facilitating foreign investment and the importance of maintaining high standards of investment access, protection and access to neutral dispute settlement. The NAM believes that the following basic principles of equitable treatment are particularly important and should be included in investment agreements:

- National treatment for foreign investment (i.e., according foreign investors treatment no less favorable than that accorded to domestic investors);
- Most-favored-nation (MFN) treatment for foreign investment (i.e., according U.S. investors treatment no less favorable than treatment accorded any other foreign investors);

- Minimum standard of treatment in accordance with customary international law, including fair and equitable treatment and full protection and security;
- Protection against direct or indirect expropriation or nationalization of foreign investment without prompt, adequate and effective compensation;
- Freedom from performance requirements and localization mandates (including technology transfer or localization requirements) relating to foreign investment;
- Access to unbiased third-party arbitration to settle investor-state disputes;
- High standards of transparency in investment-related matters, including arbitral proceedings; and
- Freedom to make financial transfers relating to foreign investments without delay into and out of individual countries.

A bedrock principle of the NAM is that bilateral and other investment agreements both with developing and developed countries must contain effective provisions for investor-state dispute settlement mechanisms for all breaches of the investment provisions and for breaches of investment contracts between foreign governments and U.S. investors relating to natural resources, infrastructure and other longer-term substantial investments. These provisions are important for enforcing the provisions of the investment agreements and are a critical tool for smaller companies seeking fair and effective redress in cases of disputes with foreign governments.

The NAM also believes that trade preferences should not be extended to countries that are in breach of obligations they have assumed under a bilateral investment treaty with the United States or with other bilateral or multilateral obligations affecting U.S. investment in their countries.

### **2.01c. Inward Investment**

The NAM supports longstanding U.S. policy on essentially unrestricted foreign direct investment into the United States. U.S. industry and the economy as a whole benefit substantially from this investment. The NAM seeks to have the United States be a strong manufacturing and export platform for both domestic and foreign investment. At the same time, the NAM recognizes the need for regulatory oversight of foreign investments that could threaten U.S. national security.

The NAM believes the Committee on Foreign Investment in the United States (CFIUS) process provides an appropriate balance that protects national security without unduly reducing the ability of the United States to compete for global foreign investment. The NAM believes care should be taken to ensure that future regulatory clarifications of or potential changes to the CFIUS process maintain this careful balance and do not inadvertently expand the scope of the law.

### **2.01d. Oversight on Government-Directed Investments**

Overall U.S. economic interests and the interests of U.S.-based manufacturers are served by promoting a global marketplace in which foreign investment decisions are made by the private sector based on market and commercial criteria.

The global financial and investment situation continues to change, with national funds available to a number of potential investors. As foreign governments consider how, where and under what conditions to invest those funds, significant changes and possible distortions could become serious problems.

Sovereign wealth funds (SWFs) and other government-directed investments, including aid to "national champions" and foreign policy-related restrictions on investment, including portfolio investments and purchasing decisions, deserve continued attention. Regarding foreign investment by SWFs, the NAM supports efforts to promote transparency, independent decision-making and accountability as reflected in the IMF Santiago Principles.

Foreign investment by state-influenced or state-owned enterprises (SOEs) poses challenges to global investment flows that require careful consideration. A key principle concerning SOEs should be “competitive neutrality” whereby governments ensure that SOEs act in accordance with commercial considerations and do not enjoy unfair advantages that distort investment flows. Key principles that apply to bilateral investment should apply equally to the investments and commercial actions of SOEs.

The NAM will continue to monitor developments carefully, with the goal of persuading U.S. and foreign governments to ensure that investment flows are as free of government distortions to the market as possible.

## **2.02. International Monetary Policy**

### **2.02a. International Monetary System**

The primary objective of any monetary/exchange rate system should be to facilitate international trade and investment by ensuring that exchange rates realistically reflect the relative level of prices and costs in different countries and are flexible enough to respond to changes, over time, in such relationships.

Long-term misalignment of currencies can lead to global imbalances that can take years to resolve. Prolonged undervaluation of currencies confers an artificial advantage on an economy's exports as well as resulting in increased domestic inflationary pressure and the misallocation of capital. Given increased global economic integration, these negative effects can have far-reaching consequences on global growth and prosperity.

The NAM believes that exchange rates should reflect market forces and be determined by the marketplace. Governments should not engage in protracted intervention to counter market forces and maintain misaligned exchange rates for their currencies.

The NAM believes an international monetary system that is both flexible and responsive to fundamental economic factors will be most helpful in fostering continued orderly growth in international trade and finance.

### **2.02b. International Monetary Fund**

The International Monetary Fund's (IMF) role is critical to the stability of international exchange rate policies. Article IV of the IMF states that "members shall avoid manipulating exchange rates or the international monetary system in order to prevent effective balance of payments adjustment or to gain an unfair competitive advantage over other members," and a related provision defines manipulation to include "protracted large-scale intervention in one direction in the exchange market."

The NAM fully supports the IMF's bilateral surveillance policy that aims to avoid instability arising from exchange rate policies. It represents an important step in the IMF's fundamental mission of ensuring international monetary and financial stability and the orderly adjustment of imbalances arising from exchange rates.

In particular, the NAM welcomes the emphasis placed on external stability as an overarching organizing principle for surveillance and on the clarification of the concept of currency manipulation to include fundamental currency misalignment, regardless of the purpose of exchange rate policies.

### **2.02c. U.S. Government Role**

It is the responsibility of the U.S. government to ensure that U.S. currency reflects a sound, market-determined value. The preferred means to accomplish this is through bilateral and/or multilateral efforts that comply with international monetary rules and obligations.

The NAM calls on the U.S. government to support the IMF principles, to use them in resolving imbalances, and to explore as needed new tools to ensure their implementation.

The NAM believes that the Administration should work multilaterally with the G-7, G-20, APEC and other

international organizations to ensure that countries fulfill their obligations under the IMF with regard to exchange rate policy, including coordinated actions, such as the 1985 Plaza Accord.

The U.S. Treasury Department has responsibility for ensuring that U.S. trading partners are acting responsibly in implementing their exchange rate and monetary policies. The NAM supports a vigorous negotiation process as the most desirable course to achieve results.

The Treasury Department should rigorously enforce relevant U.S. statutes, cite countries when the statutory criteria are satisfied and promptly initiate consultations and negotiations to resolve the imbalances.

## **2.03. International Finance Policy**

### **2.03a. Export-Import Bank (Ex-Im Bank)**

As export promotion and export financing have become increasingly competitive, most major trading nations have created export credit agencies (ECAs) that provide government guarantees and insurance to mitigate the risk of foreign transactions that commercial banks often avoid. As the official ECA of the United States, the Ex-Im Bank finances billions of dollars annually in U.S. exports, much of it in manufactured goods.

Ex-Im's export working capital and buyer financing often provide the only available access to capital for export intensive SMMs. Given the highly competitive global environment of export financing, Ex-Im must streamline and innovate to remain competitive with the ECAs of other nations and provide U.S. exporters with globally competitive financing that takes into account the reality of global supply chains. This includes Ex-Im responses to tied aid offers. The NAM supports Ex-Im's efforts to assist SMMs in obtaining export financing.

In the face of growing global competition, the NAM will work to ensure that Ex-Im Bank's resources and policies are competitive and sufficient to expand U.S. exports. Ex-Im should function as a strong independent agency of the U.S. government, serving U.S. exporters within the framework of U.S. foreign economic policy. The NAM supports Ex-Im Bank's efforts to operate on a self-sustaining basis, based on income from fees and interest.

The NAM believes Ex-Im should maintain its legally required economic impact assessments of the transactions that it finances. The NAM believes that, to prevent unfair competition, the U.S. government should seek to have all major nations abide by the export credit rules of the OECD Export Credit Arrangement.

### **2.03b. Small Business Administration (SBA)**

Export finance loans and guarantees also are offered by the U.S. Small Business Administration (SBA). The SBA's export working capital and short-term export financing for smaller companies supplement the financing offered by Ex-Im Bank. The NAM believes that the SBA should have the resources and focus to continue and expand its work with smaller U.S. exporters.

### **2.03c. Overseas Private Investment Corporation (OPIC)**

As the primary U.S. government agency focused on supporting private sector investment in the developing world, OPIC provides a reliable channel for access to capital for small and medium-sized companies in emerging markets that typically lack strong financial services sectors.

Through its political risk insurance, direct loans, guarantees and equity funds, OPIC has helped mobilize and facilitate billions of dollars in U.S. private capital investment. It has done so at no net expense to the American taxpayer and without competing with private sector financing.

The NAM believes OPIC should continue to provide support to U.S. private sector investment in developing countries that is not available elsewhere. The agency also should maintain its strong support for smaller transactions by U.S. SMMs.

### **2.03d. Multilateral Development Banks**

Recognizing the importance of trade in supporting economic development and growth, several multilateral development banks—including the World Bank, the Asian Development Bank (ADB), the African Development Bank (ADB), the European Bank for Reconstruction and Development (EBRD), the Inter-American Development Bank (IADB) and the International Finance Corporation (IFC)—are providing important international trade financing. The high-quality financial services offered by the multilateral development banks in emerging markets, which lack financial services and ready sources of capital, provide the platform needed to build trading relationships.

The NAM believes that the U.S. government, as a significant stakeholder in the multilateral development banks, should encourage efforts to strengthen international trade financing. The multilateral development banks should concentrate their resources on markets where reasonably priced private sector trade financing is unavailable.

The NAM supports increased anti-corruption efforts on the part of the World Bank and other multilateral development banks. Any initiatives of these banks must not provide opportunities for countries to move away from the goal of transparency and anti-corruption principles.

**Adopted Winter 2016 and effective until Winter 2020**

## **IEAP-03 Export Controls and National Defense Trade Policy**

### **3.01. Export Controls**

Export controls play a vital role in protecting U.S. national security and foreign policy objectives. Such measures also serve the country's security needs by helping to sustain a dynamic, innovative and globally competitive manufacturing sector that can actively engage in international trade and leverage the technological resources and capabilities of U.S. firms and their foreign partners.

Globalization has fundamentally changed how many industries manage production and develop new technologies for commercial and military uses. Despite efforts to reform the U.S. export controls over the past decade, the system has not kept pace with these developments, continuing to impede the nation's ability to advance its security and competitiveness goals. Burdensome export licensing has adversely affected efficiency, interoperability and the exchange of technology with close allies and other partners.

The NAM, therefore, is committed to sustaining and expanding ongoing efforts to modernize the export control system so that U.S. manufacturers can maintain the nation's global leadership in innovative technologies, share critical technologies with our allies and compete on a level playing field in the international marketplace. A modernized export control system must be predictable, transparent and efficient. Key NAM goals are to:

- Rationalize the export licensing system to reduce costs and processing times, ensure clear lines of agency jurisdiction and increase cooperation and efficiencies among the agencies involved in the process.
- Complete the restructuring of the export control technology control lists and institute systematic and regular reviews to update these lists, clarify definitions and interpretations so that those items and technologies posing the greatest risk to national security and foreign policy are appropriately controlled, and target limited resources on safeguarding these sensitive items. Conversely, those technologies that no longer warrant stringent controls should be shifted to the appropriate licensing jurisdiction or decontrolled.
- Institute new licensing protocols to facilitate the intra-company transfer of controlled technologies and items between U.S. companies and their foreign subsidiaries and within companies' U.S. facilities, so long as the companies maintain appropriate standards of internal controls and

compliance.

- Revise the framework for program licensing to support U.S. Government international security cooperation programs by eliminating redundancies to facilitate technology-sharing with the nation's closest friends and allies. The NAM also supports enhanced license exemptions for exports of technology on the U.S. Munitions List (USML) that support U.S. government, military, and intelligence activities abroad and relevant space and homeland security programs.
- Improve industry-government cooperation by setting reasonable enforcement standards and practices for punishing bad actors while improving educational programs, outreach and incentives to help companies that make good faith compliance efforts.
- Establish and apply a more meaningful standard for determining "foreign availability" to minimize U.S. controls on items readily available from other sources in the global marketplace.
- Recalibrate and simplify encryption controls that subject only a narrow list of encryption-related items to licensing requirements.
- Develop a more effective system of multilateral controls, minimize unilateral controls and seek greater harmonization of export controls among major trading partners with a view to both protecting national security interests and leveling the international playing field for U.S. exporters.
- Create more efficient and user-friendly automated processes for determining what items and technologies are on control lists, applying for licenses, facilitating any necessary interagency reviews, and securing export authorizations.
- Review the application of U.S. export policy restrictions on controlled items, such as restrictions placed on unmanned aerial systems, which limit U.S. competitiveness and cooperation opportunities.
- Ensure that changes to U.S. government IT systems reflect industry standards and practices. Efforts to create a single licensing form and interface should also simply and streamline the application process for less-sensitive exports – particularly those to allies and partners.

The NAM believes defense trade and technological cooperation with friends and allies strengthens America's competitive edge, sustains the defense industrial base and enhances our national security. Enabling high-technology R&D in the U.S. is essential for developing the cutting-edge technology and defense products needed to protect national security and economic competitiveness.

The U.S. government should continue efforts to focus federal resources on managing the greatest risks for exports of controlled technologies, to bring transparency and coherence to these regulations, and to enhance the competitiveness of manufacturing and technology sectors in the United States.

The term "export controls" includes the laws and regulations controlling exports, re-exports and deemed exports.

**Adopted Winter 2016 and effective until Winter 2020**

## **Tax, Technology and Domestic Economic Policy**

### **TDEP-01 Tax Policy**

#### **1.01. Principles of Tax Policy**

### **1.01a. Tax Policy**

Tax policy plays a critical role in the ability of manufacturers to thrive in the United States and effectively compete in a global economy. The NAM supports a federal tax system that meets the following principles:

- Tax policy should promote economic growth, U.S. job creation and the ability of U.S. manufacturers to compete in world markets.
- Simplicity and stability should be important goals of federal tax policy.
- The tax burden should be as low as possible, broadly based and nondiscriminatory.
- An important objective of long-term tax policy is to establish competitive tax rates that are low enough to attract the capital formation and investment necessary to ensure durable economic growth.

### **1.02. Encouraging Investment (General)**

Capital formation is key to economic growth, U.S. job creation and competitiveness. In order to maintain a healthy economy, tax policy should help ensure that the United States is the best country in the world in which to manufacture. An essential element of this is that tax policy should attract private sector capital formation including foreign direct investment. Such policies will strengthen the economy and help improve the overall budget picture.

#### **1.02a. Capital Cost Recovery**

Promoting investment by reducing the cost of capital should be an integral part of U.S. tax policy. An effective way to spur business investment and make U.S. manufacturing more competitive is through a strong capital cost recovery system. An ideal system would allow companies to expense capital equipment in the tax year purchased. First-year expensing lowers the cost of capital, increasing the number of profitable projects a firm can undertake and supporting job creation and retention.

- **Government Mandated Expenses:** Capital expenditures to comply with governmentally mandated standards or procedures, such as those related to homeland security, the environment and safety and health, should be fully deductible in the year incurred, at the election of the taxpayer.

#### **1.02b. Deductibility of Interest**

The deductibility of interest is an important capital structure measure. As a capital-intensive industry, manufacturers believe it is important to maintain full deductibility for interest on bona fide debt given the role it plays in funding new investments and business operations.

#### **1.02c. Capital Gains**

Tax policy should recognize that capital is not income and that investment in capital produces income and only the resulting income stream should be subject to income tax. The tax rate on capital gains for both individuals and corporations should be as low as possible.

#### **1.02d. Dividend Taxes**

Under current federal tax law, dividend income for corporate entities is taxed twice: once to the corporation and again to the individual recipient. This double tax burden creates a bias against corporate earnings and should be eliminated. At a minimum, in order to allow dividend-paying public companies to attract shareholders and finance investment, policy makers should keep the tax rate on dividends as low as possible and on par with tax rates on capital gains.

#### **1.02e. Estate and Gift Taxes**

Estate and gift taxes have an adverse effect on the capital and initiative needed for industrial activity and expansion of employment opportunities, as well as for the continuation of separate business enterprises. A long-term objective of tax policy should be to repeal estate and gift taxes. If repeal is not achievable in the

short run, Congress should focus on keeping the tax rates as low as possible and providing a generous exemption amount.

### **1.03. The Corporate Income Tax**

Corporations play an integral role in our society and are major contributors to our country's robust economic growth and strong democratic government.

#### **1.03a. Corporate Tax Rates**

The NAM supports reducing the top federal corporate tax rate to 25 percent or lower to create a tax climate that allows U.S. companies to effectively compete in the global marketplace and attracts foreign direct investment to the United States. Any rate reduction should not increase the tax burden on manufacturers. Reducing the corporate tax rate to a level that ensures U.S. competitiveness globally will lead to greater economic growth, more jobs and higher wages for workers, an increase in productivity levels, more business investment and lower inflation. See 2.0 Fundamental Tax Reform.

#### **1.03b. Double Taxation of Corporate Earnings**

See 1.02d. above

#### **1.03c. Corporate Reorganizations**

The tax-free treatment of corporate distributions and changes in corporate organization and ownership is an important factor in ensuring smooth continuity of business operations.

#### **1.03d. Taxation of Net Business Income**

As applied to business taxpayers, the federal income tax should be a tax on net income, i.e., gross income, less deductions for all costs incurred in producing such income.

- **Gross Receipts:** In an income tax based system, denying a deduction for all or part of costs incurred in the ordinary course of trade or business, such as expenses related to executive compensation or compensatory amounts paid pursuant to legal settlements, changes the nature of the tax system from a tax on income to a tax on gross receipts. Gross receipts are an inappropriate and inequitable base for the imposition of federal taxes on business income, leading to widely disparate tax burdens among business taxpayers.
- **Discriminatory Taxation:** Singling out a particular type of business expenditure, income or industry sector for discriminatory taxation is objectionable in principle, particularly when the underlying rationale is to generate additional revenue rather than to develop fair and consistent tax policy principles.

#### **1.03e. Economic Accrual**

Income should be measured and taxed as it is accrued economically. It is inappropriate for the tax system to recognize income prematurely or to tax "phantom" income.

### **1.04. Minimum Taxes**

A mandatory, parallel tax system, e.g., the alternative minimum tax (AMT), is an unacceptable way of addressing perceived deficiencies in the tax system that adds complexity to an already complicated system. Both the corporate and individual AMT should be repealed.

#### **1.04a. Corporate AMT**

The corporate AMT distorts business decisions and imposes needless complexities and administrative burdens on both taxpayers and the Internal Revenue Service (IRS). By definition, companies paying the AMT are paying higher taxes than they would otherwise pay under the regular corporate income tax system. Eliminating the corporate AMT would simplify some of the most complex compliance provisions of the tax code.

- **Corporate AMT Credits:** Because the AMT represents a prepayment of tax liability, any AMT repeal legislation also must address the problem of accumulated, unused AMT credits. Companies with

unused AMT credits essentially are making interest-free loans to the federal government that only will be repaid when the company has sufficient regular income tax liability in the future. Congress did not intend for the AMT to serve as a permanent tax increase, which effectively becomes the case if taxpayers cannot use AMT credits. Pending repeal of the corporate AMT, companies with AMT credit carryovers should be allowed to realize those credits, without delay, through accelerated utilization, refunds, etc.

#### **1.04b. Individual AMT**

Many manufacturers are organized as S-corporations or other "pass-through" entities and are potentially subject to the individual AMT and higher taxes. The NAM believes that the individual AMT is a flawed system and should be repealed without imposing other tax increases.

#### **1.05. International Tax Policy**

Global investment by U.S. companies plays an important role in the growth and vitality of the U.S. economy. Despite the benefits to the economy of having American companies expand beyond our shores, U.S. tax laws make it difficult for U.S. companies with worldwide operations to compete. The U.S. tax system, including high corporate tax rates and highly taxed exports, increases the cost of doing business for U.S. companies with global operations. In addition, the U.S. system taxes income regardless of where it is earned. Unlike companies from many other countries, U.S. multinationals generally have a higher tax burden and more constraints on reinvesting foreign earnings in the United States than non-U.S. multinationals—a significant disadvantage when U.S. companies are competing against non-U.S. multinationals and local firms for business in a global marketplace. The United States should overhaul its international tax rules by adopting a competitive territorial tax system that does not disadvantage any particular industry, type of income or business entity. A complete overhaul of the U.S. international tax rules should be part of broader comprehensive tax reform.

##### **1.05a. Territorial Tax System**

See TDEP-02 2.01. Comprehensive Tax Reform below.

##### **1.05b. Taxation of Export Income**

The international array of U.S. tax and trade policies and practices limits the ability of firms located in the United States to compete effectively in export trade. Policymakers should look for ways to reduce the tax burden on export-related activities. See also IEAP-01 International Trade Policy Sec. 1.12.

##### **1.05c. Foreign Investment in the United States**

Foreign-owned companies play an important role in the growth and vitality of the U.S. economy. Like their domestic counterparts, they provide high-paying jobs for millions of Americans and are an important source of U.S. exports. Because of the importance of foreign direct investment to the U.S. economy, it is critical that policymakers avoid imposing discriminatory taxes on foreign-owned companies. Congress should focus on tax policies that maintain and attract more capital investment, rather than discourage it.

##### **1.05d. Tax Treaties**

For more than eighty years, income tax treaties have played a critical role in promoting U.S. bilateral trade and investment. The NAM supports the proactive expansion of its current tax treaty network. Globally competitive tax treaties protect U.S. businesses, large and small, from double taxation of income earned overseas and reduce U.S. withholding taxes, thus encouraging foreign companies to invest in the United States. In addition, the NAM supports including in tax treaties, administrative procedures for U.S. taxpayers, treaty-partner taxpayers, and the U.S. and foreign taxing authorities to resolve disagreements and assist in the enforcement of individual countries' tax laws.

#### **1.06. Taxation of Pass-Through Entities**

Nearly two-thirds of manufacturers operate as "S"-corporations or other "pass-through" entities and pay income taxes at individual rates. High tax rates on pass-through businesses will take resources away from investment and jobs. In addition, the tax code should recognize the special type of risk factors involved in the operation of

pass-through businesses and their limited access to capital markets. Manufacturing is a capital-intensive industry and, for pass-through entities, the capital to grow and expand operations, increase product lines and hire additional workers most often comes directly from the owners. A higher tax burden negatively impacts these businesses and their ability to reinvest.

#### **1.06a. Self-Employment Taxes**

Efforts to alter the definition of net earnings from self-employment could negatively affect the nearly two-thirds of manufacturers that operate as pass-through entities. The impact of any changes to self-employment definitions should be analyzed to determine if such proposals would have unique impact on pass-through businesses.

#### **1.07. Taxation of Employee Benefits**

Tax law should recognize that private sector employee benefit plans are an efficient means of delivering medical, health and retirement benefits. The tax treatment of employee medical, health and retirement benefit plans should allow employers to exercise reasonable discretion in determining the types, coverage, conditions of eligibility, contributions and investments necessary to attract and retain qualified workers in a globally competitive market.

#### **1.07a. Retirement Security**

The NAM believes tax policy should encourage, rather than impede, the adequate funding of private voluntary retirement plans. Accordingly, income and gains of the assets of such plans should be permitted to accumulate free of all taxes. Voluntary employer-sponsored retirement plans should not be subject to additional premiums, taxes or fees that significantly add to the costs of providing employees with these benefits. The federal government can best help individuals attain economic security by fostering economic conditions and incentives that encourage individuals to seek retirement security through personal savings and investment.

- **Social Security Reform:** The Social Security system should be adequately funded or reformed to preserve the current safety net for American workers. However, the NAM believes that the projected shortfalls in the system should not be paid for by increasing costs to employers.

#### **1.07b. Health Care**

Tax policy related to health care should focus primarily on containing health care costs and not on raising revenue. Tax incentive plans such as health savings accounts and flexible spending accounts should be available to encourage employees to make market-based decisions on health care choices. Additional information on NAM's health care policy positions is included in the Human Resources Policy (HRP) section.

#### **1.07c. Retiree Health Benefits**

Employers electing to provide retiree health benefits should be permitted maximum flexibility in plan design and funding. Strict rules for pre-funding, minimum standards for accrual, vesting or policies that bring additional costs and fees should be avoided. Such structures tend to discourage employers, especially small ones, from offering retiree health benefits.

#### **1.07d. Long-Term Care**

Long-term care insurance products should be taxed on the same basis as non-cancelable accident and health insurance and permit the tax-favored accrual of actuarially sufficient reserves for these products.

#### **1.07e. Executive Compensation**

In order to grow a strong and competitive manufacturing economy, manufacturers need to be able to recruit world-class talent at all levels. The NAM supports flexibility in the design of benefit packages, including executive compensation, to ensure manufacturers can recruit and retain leaders who will grow the business, create more jobs and contribute to overall economic growth. Reducing or eliminating deductions for executive compensation and other benefit packages unnecessarily targets a valid business expense and does not represent sound tax policy. See also TDEP-04 Corporate Finance and Management Policy Sec. 4.01h.

## **1.08. General Tax Policy Issues**

### **1.08a. Tax Accounting**

Tax accounting should conform to generally accepted accounting principles although differences that stem from tax policy objectives are appropriate. Policy makers should avoid treating deductions of an accrual basis taxpayer on a cash basis unless income items are treated on a similar basis.

### **1.08b. Tax Changes**

Tax rates, deductions, credits and exemptions should continue to be established by statute.

### **1.08c. Retroactive Taxation**

The retroactive imposition or increase of taxes, through statute or regulation, is fundamentally unsound, unfair and punitive and is strongly opposed by the NAM. Likewise, year-to-year gaps in tax policy that result in retroactive extensions of expired tax provisions should be avoided in favor of permanent or longer-term extensions that provide more certainty. Any extension of an expired tax provision intended to lower the tax burden should be done seamlessly.

## **1.09. Tax Administration**

### **1.09a. Taxpayer Obligations and Rights**

The obligations and rights of taxpayers should be established by statute, to the extent possible. Both statutes and necessary supporting regulations should be designed to improve the administration of the tax laws and include collection, enforcement and appellate procedures that minimize and penalize tax evasion and corrupt practices.

Tax laws and regulations should not penalize, unduly burden or harass conscientious taxpayers by presumptions of guilt, unreasonable burdens of proof or by onerous information and recordkeeping requirements.

### **1.09b. Payroll Tax Reporting**

Procedures for withholding, collection and payment of individual income and payroll taxes should be designed to ensure that revenues are collected with minimum administrative cost to the government and minimum compliance burden on employers.

## **1.10. Development of Tax Legislation**

As the legislative branch of the federal government, Congress has the sole authority for making new laws or changing existing laws. The NAM strongly supports long-standing procedures for the development and enactment of federal legislation and the approval of tax treaties. In particular, representatives of the taxpaying public should have the opportunity to present their views and recommendations.

The NAM believes it is important for the committees of jurisdiction to hold fair and adequate public hearings on proposed tax policy changes before developing and considering legislation. Where necessary, Congress should exercise its oversight authority of the Executive Branch to ensure that tax legislation is properly implemented.

## **1.11. State and Local Taxes**

Trade among the states, and between the United States and other nations, must not be subject to rules that interfere with the free flow of goods and services in interstate and international commerce. To preserve due process of law, no state, or political subdivision thereof or the District of Columbia, should have jurisdiction to impose or assess any franchise, income, gross receipts, sales, use or similar taxes on persons engaged in interstate or foreign commerce unless such persons maintain a sufficient physical nexus.

## **1.12. Industry-Specific Taxes**

The NAM believes the primary purpose of federal tax laws should be to raise revenues from as broad and fair a base as possible and in a manner that does not unfairly burden specific products or sectors of the economy. Congress should disclose the primary purpose of any new tax. If the purpose of a tax is to raise general revenue, then industry- or product-specific taxes are the least fair and least efficient means of meeting that goal and should be avoided. As a matter of general principle, industry- or product-specific taxes inhibit the growth of the targeted sector, impede the ability of targeted companies to compete globally, distort resource allocation and unnecessarily complicate the tax code.

### **1.12a. Environmental Taxes**

Environmental taxes, when unilaterally imposed only on U.S. taxpayers, impair the ability of products to compete in the global marketplace against foreign products. If policymakers use the tax code to achieve environmental changes, any environment-related tax proposal should meet the following policy criteria:

- **Direct Relationship.** The tax should bear a direct relationship to the environmental objective; and
- **No Add-Ons.** The tax should be in lieu of and not in addition to direct environmental regulation. Business should not be burdened both with the cost of direct regulation as well as with taxes or fees imposed to accomplish the same objectives. That is simply an indirect form of double taxation.

### **1.13. User Fees**

For purposes of this policy, a user fee is a charge paid only by a class availing itself of, benefiting from, or subject to, regulation under a governmental activity, service or product and is not imposed on the general public. Income and payroll taxes are not considered user fees.

Because of the role user fees play in financing government activities, the NAM believes the imposition of user fees should be limited based on the following principles:

- **Not for General Revenues.** User fees linked to a specific activity, service or product should not be used to generate general revenues, since this disproportionately and unfairly burdens an economic sector with societal costs that should be more broadly distributed; and
- **A Supplement to Government Funding.** User fees consistent with the foregoing principle can play a key role in providing multi-year predictability and stability for certain government agencies. These fees should be in addition to federal appropriations and not a substitute for the government's role in funding such activities; and
- **Targeted.** In general, a user fee should apply to all beneficiaries of the public good being provided for by a user fee.

### **1.14. Excise Taxes**

As a matter of basic principle, excise taxes should be imposed at nondiscriminatory rates across a broad base in order to achieve fairness, avoid disproportionately burdening narrow sectors of the economy and minimize regressive impacts on consumers.

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## **TDEP-02 Policy on Comprehensive Tax Reform**

### **2.01. Comprehensive Tax Reform**

The NAM believes that our current tax system is antiquated and fundamentally flawed and discourages economic growth and U.S. competitiveness. Because of the critical importance of manufacturing to our nation's economy, any effort to rewrite the federal tax code should result in a fiscally responsible, comprehensive plan that allows U.S. manufacturers to prosper, grow and create jobs.

To achieve these goals, any tax reform plan should:

- **Encourage Investment and Job Creation.** Capital investment is key to economic growth, job creation and competitiveness. An effective way to spur business investment and make the tax system more competitive is through a robust capital cost recovery system. Any tax reform plan should create a tax climate that encourages capital investment and job creation via a robust capital cost recovery system that allows full deduction for all business costs.
- **Lower Tax Rates for Businesses.** Tax reform must reduce the top corporate tax rate to 25 percent or lower to allow U.S. companies to effectively compete in the global marketplace and attract foreign direct investment to the United States. In addition, nearly two-thirds of manufacturers are organized as “pass-through” entities and pay taxes at individual rates. It is critical that the tax rates on pass-through businesses be as low as possible. A new system should not increase the tax burden on these businesses as a way to pay for other tax reform measures.
  - **Business Integration.** The NAM also believes that business income should only be subject to one level of tax.
- **Provide Strong R&D Incentives.** It is critical that any tax reform plan recognize the important role of research and technology investment in creating U.S. jobs and spurring innovation. The goal is for the United States to retain and attract global research and development (R&D) activities and to ensure manufacturers in the U.S. are the world’s leading innovators.
- **Promote International Competitiveness.** Current U.S. tax laws make it difficult for U.S. companies with worldwide operations to thrive and compete in the global marketplace. If U.S. companies cannot compete abroad, where 95 percent of the world’s consumers are located, the U.S. economy suffers from the loss of both foreign markets and domestic jobs that support foreign operations. To make manufacturers in the United States more competitive, the NAM supports moving from our current worldwide approach to a modern, competitive international tax system that also addresses these issues:
  - **The Double Tax Burden.** A U.S. territorial system should be based on the principle that there should be no double tax burden imposed by the United States. A new system should exempt active foreign earnings from taxation and avoid the imposition of a stealth tax on foreign earnings through expense allocations.
  - **International Norms.** A U.S. territorial system should be structured to enhance U.S. competitiveness, not raise revenue. Moving to a territorial system like those used by other industrialized countries will allow U.S. companies to be more competitive. While protections for the U.S. tax base may be necessary, any such protections should target actual instances of base erosion and should not apply to business activities that do not erode the U.S. tax base. Specifically, the NAM opposes minimum taxes or base erosion protections that have the effect of applying a minimum tax rate to a broad category of overseas business income. These types of provisions are inconsistent with a territorial-type system and would put U.S. multinationals in an uncompetitive position since these types of taxes are not imposed by other countries.
  - **Repatriating Overseas Earnings.** A move to a territorial tax system should include rules that allow repatriation of foreign earnings on a voluntary basis, minimize administrative and compliance costs on companies and allow existing foreign business entities to compete in a global marketplace.

On a broader note, Manufacturers also support efforts to make the tax code a simpler, fairer and more balanced system that treats all businesses fairly without regard to size, type of entity or sector. To that end,

any new system should:

- **Not Increase Manufacturers' Tax Burden.** Any base broadening as part of tax reform should recognize the impact of those changes on economic growth. Some current tax provisions are key to a strong manufacturing sector and broader economic growth, and the benefits of these policies should be maintained in a new system. Moreover, any alternative that shifts more of the current tax burden onto manufacturers will hamper economic growth and job creation.
- **Reduce Complexity.** A new system should incorporate rules that make it easier for the Treasury Department to administer the law and for taxpayers to comply with the law. Unnecessary complexity is not productive from an economic perspective and undermines taxpayers' confidence in the fairness of the law.
- **Be More Predictable.** A tax code that is predictable and that provides certainty is essential for effective business and tax planning. In particular, policy makers should focus on permanent provisions to create confidence and consistency in investment decisions. A fair and stable tax code will make it easier for U.S. manufacturers to compete in the global marketplace.
- **Include Fair Transition Rules.** A new system must include broad transition rules that provide fair and equitable treatment for taxpayers that have generated substantial attributes based on current law. For example, it is important for transition rules to allow future timely utilization of tax attributes, e.g., net operating losses, alternative minimum tax credits, foreign tax credits, depreciation, etc., that have been generated but not yet utilized under the current system. It also is important to preserve the overall domestic loss rules. While NAM supports a move to a competitive territorial system (see above), it is imperative that the existing worldwide tax system retain robust and fully functioning FTC rules in order to avoid double taxation until a move to a competitive territorial system can be enacted.

**Adopted Winter 2016 and effective until Winter 2020**

## **TDEP-03 Economic and Budget Policy**

### **3.01. Economic Policy Statement**

The private sector generates economic growth that benefits all citizens. Therefore, a central objective of federal fiscal policy should be to provide a favorable climate in which the private sector can flourish.

#### **3.01a. Government Spending**

A critical factor in our nation's overall economic performance is the private sector's ability to form and retain capital for productive investment and job creation. To allow the private sector to perform this vital role, federal spending and lending programs should be carefully reviewed and limited so that the private sector is not preempted from the capital markets or crippled by the burden of taxation. Eligibility criteria, indexing of benefits and the scope of entitlement programs should be reviewed and equitable adjustments should be made in order to ensure the future soundness of needed programs. Government agencies should be encouraged to contract with private sector facilities and personnel for commercial activities when doing so would be more efficient and cost competitive.

### **3.02. Budget Policy**

#### **3.02a. The Federal Budget**

Congress and the Executive Branch should work to control spending so that the federal revenue gain from economic growth and good tax policy can be used to decrease future federal deficits and reduce the federal debt as a share of GDP.

- In efforts to reduce the federal debt and deficits, policymakers should focus both on real and

immediate spending cuts and longer-term changes.

- Fundamental reform of entitlement programs is needed to get our structural budgetary imbalance fixed. In order to achieve long-term stability in entitlement programs, reforms must be undertaken to create programs that are fiscally sustainable.
- Discretionary spending also warrants close scrutiny. Any long-term plan should include the continuous review of federal spending programs so that budget outlays can be controlled by reducing, restructuring or terminating outmoded or non-essential programs.
- At the same time some federal spending programs are necessary and important to our nation's economic and national security, including federal spending on defense, education, infrastructure and R&D. Consequently, policy makers should avoid across-the-board caps or cuts on federal spending.

### **3.02b. Federal Budget Spending**

Due to the size of the federal budget and its impact on the economy, it is imperative that policymakers strengthen and make more transparent the budget, scoring and appropriations processes and subject the entire range of government programs to comprehensive, objective analysis. This budget review should reflect the nation's economic priorities, both domestic and international.

### **3.03. Monetary Policy**

The objectives of money and credit management should be the stable and efficient non-inflationary growth of the economy, as well as lower and less volatile interest rates. The money supply policy should facilitate the consistent and sustainable long-term trend in the growth of the real gross product.

The responsibility for regulating the supply of money and credit should remain vested solely in an independent Federal Reserve System.

U.S. fiscal and monetary policies should recognize their interaction with economic developments abroad, including the exchange rate for the dollar and U.S. competitiveness in international trade. Currency values should be determined by market forces. Direct controls on the movement of capital should not be used because they inhibit the free market economy and risk damage to world trade and development.

### **3.04. National Defense**

The NAM believes that its role in national defense is broadly parallel to that of a concerned citizen actively seeking full security for the nation without commitment to any military strategy, system of weapons or level of public expenditure. A primary responsibility of industry in national defense is to promote the development and maintenance of an industrial production base capable of responding to the civilian and defense needs of the nation in any emergency.

#### **3.04a. Threats to National Security**

The NAM believes the existence or potentiality of threats to the nation to be the sole justification for a defense establishment and an adequate defense production capability. A continuing awareness and comprehension of the dynamic character and magnitude of threats to U.S. security and, hence, world peace, is fundamental to intelligent resolution of all defense issues. The NAM therefore favors an improved understanding within industry, government and the public of the nature, source and extent of forces hostile to the security of the United States.

#### **3.04b. Economic Security**

The NAM believes economic security is dependent upon a strong and robust defense industrial base. Defense trade and technological cooperation with friends and allies strengthens America's competitive edge, sustains the defense industrial base and enhances our national security. Nurturing high-technology R&D in the U.S. is essential for developing cutting-edge technology and defense products needed to protect national security and

economic competitiveness.

## **Adopted Winter 2016 and effective until Winter 2020**

### **TDEP-04 Corporate Finance and Management**

#### **4.01. Corporate Governance General**

The NAM recognizes that the establishment and governance of business entities are matters of state law. Although the federal government legitimately regulates market mechanisms and establishes rules of disclosure for the protection of small shareholders, the governance of business entities is a matter appropriately regulated by the states.

#### **4.01a. Disclosure of Information**

The NAM believes shareholders should have access to information that is material to their investment decisions, consistent with applicable law. However, business entities should not be unnecessarily burdened by government regulation or required to disclose information that might be advantageous to competitors while not of significant benefit to shareholders. Furthermore, when considering the adoption of regulations that require disclosure of information, government entities should take into consideration the cost of compliance.

#### **4.01b. Responsibilities of Management and Directors**

The structure of corporations and other business entities entails the separation of ownership and control and, as a consequence, creates necessary fiduciary relationships among management, directors and the shareholders. While the specific duties implied by such relationships may vary from state to state, the NAM reaffirms the following general propositions:

- Management and directors should pursue the goal of maximizing the long-term value of the entity as an ongoing enterprise.
- Directors should represent the interests of the shareholders as a group and the entity as a whole in directing the business and affairs of the entity.
- Consistent with the fiduciary and policy role of the Board of Directors, determining executive compensation is appropriately the responsibility of the Board.

#### **4.01c. The Business Entity's Constituencies**

The NAM believes that as responsible citizens, business entities should maintain positive relationships with other constituencies and consider the effect of business decisions on their constituencies. The NAM believes, however, that the fiduciary duties of management and directors are limited to shareholders and the entity as a whole. Extension of the director's legal accountability to groups other than shareholders would adversely affect the ability of management and directors to maximize the performance of the enterprise.

#### **4.01d. Shareholder Communication**

The separation of ownership and control has furthered economic progress by permitting expert management of business enterprises, creating risk-bearing enterprises through the diversification of risk over large groups of investors and facilitating limited liability investment opportunities for shareholders. Implicit in the notion of expert management and risk taking is the efficacy of the business judgment rule, and its corollary, the division of decision-making responsibility among shareholders as a group, management and the directors. By investing in the business entity, the shareholder enters a relationship established by the entity's organizational documents and the law of the state of organization that thus directly facilitates expert management of risk-bearing enterprises, as well as the furtherance of individual investment objectives.

Communication between shareholders and management is accomplished effectively through the current proxy process, annual meetings, annual reports, analyst meetings and other communications. Shareholders are also

free to correspond with business entities to make their individual views known. The NAM believes, therefore, that there currently are ample channels of communications to protect shareholders' ability to be heard and to assure the smooth functioning of business entities. Compelling the expansion of these channels beyond what is traditionally employed would be inconsistent with the principle of separation of ownership and control and may compromise the effectiveness of expert management, as well as limit the risk-bearing function of business entities.

#### **4.01e. Principles on Shareholder Activism**

The NAM believes:

- A company's Board of Directors is best positioned to responsibly oversee the effective operation and management of a company to maximize performance of the organization and provide long-term value to shareholders.
- While the establishment and governance of business entities are matters of state law, the federal government may play an important oversight role. Occasionally, the federal government may propose changes to existing rules that restore balance between protecting investors and upholding a company's ability to compete, grow, and create jobs. The federal government should avoid one-size fits-all requirements and any regulations should be carefully tailored and not unduly burdensome to companies.
- Manufacturers must be able to make investments in R&D and other initiatives that will promote long-term growth and value for the company, its shareholders, and the economy. Corporate governance policies should not allow a small group of activist investors to significantly limit these important investments simply for short-term gains.
- The shareholder proposal process should ensure that only shareholders with a real long-term and material stake in the company are permitted to avail themselves of the process.
- Shareholders should receive proper and adequate disclosure of information material to investment decisions. Companies should not be required to disclose duplicative information or information that seeks to advance any social policy or political agenda but does not contain information necessary for making investment decisions.
- Manufacturers should not be required to include unnecessary or redundant shareholder proposals in their proxy materials, nor should they be required to include proposals that would undermine or conflict with the ordinary nature of the business or its business model.
- In line with the Securities and Exchange Commission's (SEC) mission to protect investors; maintain fair, orderly, and efficient markets; and facilitate capital formation, the SEC should continue to provide interpretive assistance to companies on various SEC rules and forms, including on shareholder proposals that may be excluded from the company's proxy materials.
- Communication between shareholders and management is accomplished effectively through the current proxy process, annual meetings, annual reports, analyst meetings and other communications.
- Regulators should ensure that proxy advisory firms consider the long-term impact that an activist shareholder's objectives may have on the company, its employees, and the economy when making voting recommendations.
- Regulators should hold proxy advisory firms to high standards of accuracy, transparency and accountability.

#### **4.01f. Business Philanthropy**

The NAM believes that a business entity can effectively demonstrate its concern for society through philanthropic activities. Such programs, handled in a businesslike manner, can also serve the business's own needs, show it to be a responsible citizen, benefit the communities in which it operates and in which its employees live and strengthen independent effort for innovative alternatives.

The principal alternative to private philanthropy is government funding, a system of complex and costly redistribution of tax dollars, which the NAM considers an inherently less efficient, flexible and innovative method. Accordingly, the business community can remain consistent in its initiative to reduce dependence on government by expanding its philanthropic activities.

#### **4.01g. Conflict-of- Interest Laws**

Government should be free to seek and fully utilize the skill and knowledge of business executives in public service without undue hardship to those who are willing to serve. The conflict-of-interest laws should be reviewed regularly and revised to this end.

#### **4.01h. Executive Compensation**

In order to grow a strong and competitive manufacturing economy, manufacturers must recruit world-class talent at all levels. The NAM supports flexibility in the design of benefit packages, including executive compensation, to ensure manufacturers can recruit and retain leaders who will grow the business, create more jobs and contribute to overall economic growth. The NAM believes that reducing or eliminating deductions for executive compensation and other benefit packages unnecessarily targets a valid business expense and does not represent sound tax policy.

### **4.02. Corporate Finance**

#### **4.02a. Derivatives**

Derivatives include financial instruments that are important to non-financial businesses, like manufacturers, in managing many forms of business risk. The role of government in relation to these derivatives is to ensure the integrity of various financial systems while balancing the risks inherent in a market-based economy. The NAM believes:

- Each party to a derivatives transaction bears responsibilities. The dealer should be responsible for fully disclosing the nature of the transaction and its inherent risks; the end-user should bear responsibility for determining its suitability.
- Any oversight of derivatives activities should be coordinated among domestic and international regulators, including taxing authorities.
- Derivatives end-users should not be unnecessarily burdened by regulations. In the situation where regulations are proposed, the rules should reflect a sensible balance between the critical need to manage business risk and the costs associated with such regulation.
- Accounting standards should reflect the complex and varied nature and uses of derivatives and permit reporting of derivatives' gains and losses consistent with reporting for the risks being managed. Responsibility for these standards should reside with the private sector, i.e., the Financial Accounting Standards Board (FASB) and the American Institute of Certified Public Accountants (AICPA).
- The requirements of disclosure to investors by end-users should be based upon materiality of the risk to the investor's investment rather than the type of instrument used.
- Decisions concerning the use of derivatives by businesses, and the framework guiding any transaction, should be left to the business judgment of management and its counterparties.

#### **4.02b. Capital Formation**

As a capital-intensive industry, manufacturers need access to funds necessary to operate and grow their businesses. To this end, businesses should be allowed full access to both debt and equity financing without being subject to costly and unnecessary government regulation.

**Adopted Winter 2016 and effective until Winter 2020**

## **Labor, Legal, and Regulatory Policy**

### **LLRP-01 Employee Relations Policy**

#### **1.01. Employee Relations Overview**

In a democratic society, there is the need to afford employees at all levels the fullest degree of individual freedom and opportunity consistent with the coordination required for efficient operation. Both employers and employees have rights and obligations each must observe in order to develop and maintain positive relationships.

#### **1.02. Employee Involvement**

The NAM strongly supports the concepts of employee involvement (EI), employee participation and the use of teams to resolve operational issues and improve economic performance. In order to remain competitive in our global economy, employers need to fully utilize the economic potential of all their employees. Those employers who fully invest in their employees, provide them with the skills they need and empower them to perform their jobs in the workplace will gain a competitive advantage and be better positioned to continue to provide high-wage employment.

There is no protocol for a successful model of employee involvement. The form and mechanisms EI takes should be based on what is appropriate for a specific workplace. Mandated forms, compulsory programs and dictated "solutions" reduce operational flexibility and are counterproductive. Both employers and employees need the freedom and flexibility to determine their own specific methods and processes for improving performance and meeting customer demands.

#### **1.03. Union Relations**

##### **1.03a. Union and Employer Responsibility**

Labor relations should be conducted in a spirit of cooperation and mutual respect. Because employees, unions and employers all have a vital stake in maintaining workplaces that are productive and competitive, emphasis and resources should be placed on solving problems and resolving issues rather than on conflict and confrontation.

Any statute, either state or federal, dealing with the subject of labor-management relations should provide that:

- Both unions and employers are responsible for the acts of their respective agents who they have direct and immediate control of, under generally recognized rules of agency.
- Labor unions should be responsible under the law for the concerted activities of their members.

##### **1.03b. Collective Bargaining Procedures**

Where collective bargaining is in effect, both parties should participate with a sincere desire to make such bargaining effective, and the following principles should apply:

- Collective bargaining representatives of the employees and the employer should be equally responsible under the law to bargain in good faith and to adhere to the terms of their collective

bargaining agreements.

- Collective bargaining agreements should provide orderly procedures for settlement of disputes arising over the meaning or interpretation of a provision of the agreement.
- The use of grievance mediation should be encouraged in an ongoing effort to reduce costly conflicts and resolve disputes.

Mass picketing and all forms of coercion, intimidation or violence should be prohibited and all federal, state and local laws with respect thereto, should be impartially and adequately enforced. Some of the practices that should be subject to statutory regulation are jurisdictional strikes; sympathy strikes; strikes against the government; strikes to force employers or employees to ignore or violate the law; strikes to force recognition of any uncertified union; strikes to enforce featherbedding or other work-restrictive demands; and secondary boycotts, picketing or bannering.

In case a majority of all employees in an appropriate group have voluntarily, and without intimidation or coercion, elected collective bargaining representatives by secret ballot election, their employer should undertake, in good faith, to utilize such a relationship to achieve understanding and cooperation.

Federal labor policy and legislation should continue to encourage the free and lawful flow of facts and information between employees and employers when workers consider union representation. Laws or agreements that restrict the free flow of this information and prevent workers from hearing all of the facts should not be promoted at the federal level.

### **1.03c. Freedom of Choice in Union Membership**

The NAM supports the following principles:

- Every employee and prospective employee should be guaranteed freedom—without intimidation or coercion from any source—to join or not join a labor organization and to maintain or discontinue his/her membership, financial support and participation in its activities. The NAM firmly believes employees should have the right to information from both employers and union officials and an appropriate amount of time to review the information to better make important decisions impacting their jobs and families.
- No individual should be deprived of his/her right to work at a job available to him/her, and for which he/she is qualified. No individual or organization should be permitted to coerce, harm or injure the individual, his/her family or his/her property at home, at work, or elsewhere in any matter or action relating to his/her employment.
- In cases where a labor agreement exists, and where union dues are handled by payroll deductions, the conditions should be covered in the agreement. Such deductions should be subject to revocation upon the initiative of the employee.
- Employees who freely wish to be represented by a labor union should be organized in a collective bargaining unit that accurately reflects the long established “community of interest” doctrine, and which avoids counterproductive sub-groups of employees.
- Orderly procedures, free from coercion or intimidation from any sources, should be observed by employers, labor organizations and employees in determining whether a majority of employees in an appropriate group wish to deal individually with their employer or through collective bargaining representatives. This fundamental employee right to select or reject a bargaining agent should be guaranteed through secret ballot elections conducted by an appropriate agency with adequate safeguards.
- Strikes during normal operations, boycotts, slowdowns, picketing or other concerted interferences

undertaken to compel an employer to recognize any collective bargaining representative that has not been certified under orderly procedures should be prohibited by law, with effective penalties.

In the case of an economic strike, persons actually on the payroll on the date of a representation election are the ones genuinely interested in the outcome of a vote for representation. No artificial factors should prevent such persons from voting in such cases and voting rights in representation elections should be restricted to employees on the active payroll of the unit involved.

#### **1.03d. Union Political Funds**

The involuntary collection or use of funds by labor unions for political purposes should be prohibited by statute. The NAM supports the codification of the Beck Supreme Court decision, which holds that union members cannot be forced to have mandatory union dues go to political causes or organizations they do not support.

### **1.04. Government Relationship Labor Practices**

#### **1.04a. Authority of States**

States and territories should have and exercise the responsibility to enact and enforce legislation to regulate or restrict strikes, picketing or boycotts, and to protect the health and safety of the people of the states and territories during labor disputes, regardless of whether the same conduct might also be subject to federal regulation or restraint.

The right of the parties to reach voluntary agreement requires acceptance of the fact that failure to reach agreement may result in a strike or lockout. The possibility, and its attendant inconvenience, is part of the price we must pay for the maintenance of responsible collective bargaining.

Intervention in any manner, other than conciliation assistance, by the government in labor disputes should be kept to the absolute minimum. Such intervention should be limited to the unbiased and impartial administration of applicable labor laws. In the event of a strike or lockout that imperils the national health, safety or security, any restraining order issued to maintain the status quo should be of such duration as necessary to protect the public interest.

Every employer should have the ability to seek advice and services from legal counsel and other advisors concerning labor law, employee relations policy and other issues to make informed business and workplace decisions. In order to maintain the integrity of the decision-making process and to protect the attorney-client privilege, communications with an attorney and/or service provider, as well as financial expenditures for these communications and services on labor law and employee relations, should not be mandated to be disclosed.

#### **1.04b. Compulsory Arbitration**

No form of compulsory arbitration, including labor courts, should be imposed or required by law.

#### **1.04c. Secret Strike Ballot**

The law should provide for a secret vote under government supervision of all members of the bargaining unit on whether to strike or accept the company's last/final offer. Such votes should be taken at the request of either employer or union and either before a strike is called or afterward. It is further understood that more votes could be requested by either party, but only at some reasonable interval.

#### **1.04d. Plant Seizure**

Government seizure of plants and property in connection with labor disputes should be prohibited.

#### **1.04e. Plant Closings**

The NAM considers early notice of plant closings beneficial in helping dislocated workers find new employment. The NAM further finds it is advisable for corporations to act responsibly in plant closings by providing as much notice as possible.

However, as each plant closing situation is unique, the NAM does not see the wisdom in expanding the Worker Adjustment and Retraining Notification (WARN) Act, which already provides ample notification and remedies to workers. Acceptable public policy for the business community should focus on incentives to encourage early notice of workforce reductions rather than sanctions.

#### **1.04f. Ratification of International Labor Organization Conventions**

The NAM considers the need for, and the value, of U.S. ratification of International Labor Organization (ILO) conventions undemonstrated. The NAM also considers the review of individual conventions to involve complex issues, such as usefulness to U.S. economic and social conditions, employee welfare and business competitiveness—especially of small and medium-sized companies. Accordingly, the NAM sees the necessity for the following criteria, at a minimum, to be satisfied preceding ratification by the U.S. of any ILO convention:

- Each convention will be examined on its merits on a tripartite basis to determine if there are differences between U.S. federal and state law and practice and the convention's provisions.
- No ILO convention conflicting with federal law and practice will be ratified unless and until federal law and practice is conformed to the convention in advance and through the normal legislative process.
- No ILO convention which conflicts with state law and practice will be ratified unless and until the conflicts between the convention and state law and practice are resolved.

The NAM will oppose ratification if these minimal criteria are not fulfilled and the need and value of the convention is not demonstrated.

#### **1.04g. Government Employee Relations**

In their role as employer, citizen and major taxpayer, private employers have a vital and legitimate interest in government employer-employee relations at the federal, state and local levels. The rapidly increasing disruptive impact on the general public and the spillover effect of labor problems on private employers, which have accompanied the substantial growth of government employee unionization, require the business community to define a responsible position with respect to this important subject. The public interest can be furthered by the involvement of private employers in the development of appropriate legislation and in the promotion of sound personnel policies and practices, as well as harmonious employee relations at all levels of government.

Employers recognize that the principles of free speech, assembly and petition extend to employees in both the private and public sectors. Employees in both sectors should have the ability—without intimidation or coercion from any source—to join and support, or to refrain from joining and supporting, labor organizations of their choice. However, such government employees as policemen and firemen, who are charged with essential services involving the immediate protection of the public health and safety, should not be permitted to join or affiliate with labor organizations that represent other government employees.

In the interests of the public and the government employees involved, all forms of union security to compel employees to join or remain members of a union or to provide the check-off of union dues should be prohibited to ensure that complete freedom of choice is exercised.

Our constitutional form of government entrusts to the legislatures at all levels of government the sole right and responsibility to raise and appropriate revenues for all government operations, and to determine labor policy with regard to state and local government employees. Any attempt to counteract or interfere with this democratic system, other than through the exercise of the constitutional right to vote and petition the legislature, must be rejected. The final resolution of impasses and disputes involving purely economic matters having direct impact on government revenues or matters regulated by statute must remain with the duly elected representatives of the people.

For the same reason, strikes by government employees do not comport with our constitutional system of

government, and they should therefore be expressly prohibited. Strict compliance with the letter and intent of laws prohibiting strike activity by government employees must be maintained. Effective penalties for violation of the strike prohibition should be forthrightly and expeditiously levied.

Employers believe that notwithstanding the privilege to strike, equitable and meaningful voluntary measures should be provided to resolve labor-management impasses and disputes between government employers and their employees, subject to the sole right and responsibility of the legislature, as noted above. However, federal policy and legislation should not mandate collective bargaining for public sector employers.

Employers further believe it is essential to provide an environment conducive to the development of sound employer-employee relations for all government employees, whether or not they are members of, or represented by a union. These systems should provide equitable and realistic policies and procedures encompassing promotion, discipline, discharge, grievances, job classifications and definitions, job security and other appropriate matters involving the employer-employee relationship. The systems also should be designed to provide the most efficient and productive operation of the applicable government agencies. Any variations that may be agreed to by an agency and a union should be within the provisions of any applicable statute.

Where appropriate and when not in contradiction with any principle contained herein, the policy positions of employee relations, which encompass industrial relations in the private sector, shall apply to government employer-employee relations.

#### **1.05. Personnel Policies**

Employers should develop policies to encourage mutual respect and foster sound and friendly relationships between employees and employers so that harmonious and rewarding relationships are created. This will help attain good business objectives, providing more and better products at lower prices to more people.

#### **1.06. Equal Opportunity in Employment**

Equal opportunity in employment is a prime objective that employers should actively and continually support. The NAM supports and recommends the following principles:

- The formulation and implementation of individual corporate or institutional policies of equal opportunity at all levels of employment. In every instance, an individual's ability and qualifications to perform the job should guide the employment process.
- The development and implementation of procedures and specific plans to ensure equal treatment in the administration of all personnel matters without regard for race, color, religion, national origin, disability, sex or age, except where sex or age is a bona fide occupational qualification, sexual orientation or gender identity.
- Positive actions to achieve the understanding and cooperation of employees and, if applicable, their union representatives toward such objectives as those described above.

The implementation of equal opportunity principles can also be enhanced by the positive and responsible efforts of government. The NAM believes government, at all levels, can best fulfill its responsibilities by:

- Adoption of consistent, reasonable and working regulations and guidelines to the extent necessary to achieve the above.
- Fair and consistent application of such regulations and guidelines, including ample opportunity for judicial review and appeal where violations are alleged.
- Simplification of administrative procedures, reports and inspections, including elimination of burdensome and repetitive certifications and similar requirements.

- Elimination of duplication in administrative efforts among and between government agencies and levels of government.
- Supporting the rights of all employees to make voluntary, informed choices on benefits according to individual need. This includes the right of employees to make their own decisions to choose enhanced benefits, such as early retirement incentives, in exchange for releasing certain rights. The right to individual choice should not be diminished by legislation so rigorous as to deny employees the opportunity and right of choice.
- Upholding the clear and reasonable guidelines that create a predictable climate, such as statutes of limitation in filing discrimination claims.

### **1.07. Teamwork Through Better Understanding**

Two-way channels of communications between employers and employees are essential to the cultivation of good relationships and the encouragement of better economic, social and civic understanding.

These channels of communications provide the climate for a spirit of cooperation and understanding between employees and management, keep employees informed of policies, problems, and the future outlook of the company and keep management informed of the needs, desires, suggestions and reactions of the employees. Such communications by the parties should be assured the complete freedom of expression without governmental or other compulsion, regulation, restraint or interference.

### **1.08. Freedom of Speech and Property Rights**

Freedom of speech for both employers and employees, as protected by the Constitution, should not be impaired. Employers have the right to determine which individuals, businesses and organizations can have access to their workplaces, employer-provided equipment and information systems to ensure productive work environments and prevent disruptions which may hinder operations.

### **1.09. Employee Compensation**

High levels of job performance and employee satisfaction are encouraged by relating compensation that is both internally equitable and externally competitive to performance on the job. Employees are responsible for performing a fair day's work. There should be minimal interference by the federal or state governments in establishing mandatory wage rates and employers should have the ability to adjust wages as the economic market or other conditions dictate.

### **1.10. Technological Changes**

A higher standard of living for all can come about only as the result of efficient and profitable production of more and better goods and services. To this end, it is essential that:

- Employee efforts will be made more effective by technological improvements. Such improvements will be expedited by employee understanding of the benefits of technological improvements and by employee acceptance of the necessary changes in methods and equipment.
- Employers plan such changes so as to minimize disruption to employment.

### **1.11. Employment Stabilization**

The NAM recognizes steady employment and steady pay are of vital importance to employees and contribute to a sound economy. There is increasing evidence of the progress management is making to avoid wide fluctuation in employment and payrolls by modifying unstable factors within its control.

### **1.12. Length of the Work Week**

Any compulsory reduction in the length of the statutory 40-hour work week for overtime purposes will arbitrarily contribute inflationary pressure and adversely affect the economy of our nation and our ability to compete in the global economy.

### **1.13. Premium Pay Penalties**

Imposing a higher overtime rate or other pay penalties on America's production processes would raise costs and prices and create new obstacles to the economic growth essential to full employment.

### **1.14. Equal Pay for Work of Equal Value**

The principle of equal pay for equal work performance with the wage and salary structure of business establishments is sound. Differentials in compensation are soundly based when work performance and job requirements are the criteria.

### **1.15. Job Opportunities for Disabled Workers**

Employers know from experience that a disabled individual, when matched to the requirements of the job, is no longer disabled. Employers should endeavor to provide wider employment opportunities for the disabled by adhering to personnel policies that promote the hiring, retention and advancement of these individuals on a sound basis.

The NAM believes government at all levels can best fulfill its responsibilities by:

- Supporting the original intent of the Americans with Disabilities Act (ADA) and the necessary protections it provides applicants/employees who may have a physical or mental impairment, substantially limiting one or more major life activities.
- Supporting the current process by working proactively to ensure qualified individuals become productive members of the workforce.
- Encouraging the mutual, interactive aspects of the ADA that allow applicants/employees to engage their employer when appropriate to seek necessary accommodations.
- Allowing for the applicant/employee and employer to consider all circumstances regarding the disability or impairment so the qualified applicant/employee is matched to a position that meets his/her individual needs.

#### **1.15a. Accessibility**

The NAM believes that all covered employers and places of business have a duty to reasonably accommodate disabled individuals according to Title III of the Americans with Disabilities Act. To that end, the federal government should consider all cost and feasibility concerns in any revision of accessibility regulations.

### **1.16. Workplace Flexibility**

Within the framework of the statutory 40-hour workweek, employers must have maximum flexibility to vary the length of the workday and the number of days in the work week, without incurring premium pay penalties. Such flexibility is required to accommodate changes in technology and changes in work practices and employee needs.

In the establishment of optimum work schedules, which vary from company to company, consideration should be given to productivity and employee health and safety.

The federal government should recognize and promote the voluntary efforts of employers to respond to individual employee needs for work schedule flexibility. Employers believe that the federal government should not mandate workplace flexibility programs of any kind, including specific paid leave programs and systems that impede the flexibility of employers to design workplace programs that best meet the needs of their employees.

### **1.17. Substance Abuse**

There is a staggering financial and human cost of alcohol and other drug abuse in the workplace. Most importantly, the safety of workers and consumers is jeopardized by impaired employees.

The NAM supports the following voluntary measures to combat the problem of alcohol and substance abuse in the workplace:

- Employee alcohol and drug education and awareness programs;
- Establishment of overall company policies on substance abuse;
- Employee assistance programs; and
- The testing of employees for substance abuse.

### **1.18. Substance Abuse Testing**

As a key component of a successful drug-free workplace program, the NAM supports the right of employers to test employees and applicants, provided appropriate safeguards are instituted to assure testing accuracy.

It is the NAM's belief that any legislation addressing drug testing issues must include:

- Affirmation of employers' right to drug test under clearly defined circumstances;
- Pre-emption of restrictive state and local laws discouraging effective drug-free workplace programs; and
- Appropriate protections for legitimate employee concerns.

It should be up to the individual employer as to what a company's drug testing policy shall be. The NAM opposes any legislation prohibiting employers from testing applicants and employees for substance abuse.

### **1.19. Family and Medical Leave Law**

The NAM recognizes the evolution in the demographics of the workforce. Increasing numbers of employees with young children or elderly parents pose new human resource challenges.

Pressure from balancing family with job responsibilities weighs heavily on most employees. Employers must actively seek innovative solutions to the challenges of work and family life balance. All avenues of flexible benefit design and possibilities of accommodation should be explored to allow employees to remain on the job. Many employers have already instituted programs to help, including:

- Alternative Work Schedule—such as flextime, voluntary reduced work weeks, job-sharing, telecommuting, leaves of absence and part-time employment.
- Child and Dependent Care Programs—including onsite and near-site day care, day care subsidies and childcare vouchers.
- Employee Assistance Programs—to provide counseling for employees under stress from family responsibilities.
- Flexible Benefits Plans—to allow employees to choose benefits such as parental leave or day care in lieu of traditional benefits.

The economic feasibility of such programs will be different for each company. Only the individual employer can determine if such programs can and should be offered. Corporate policies on family and medical leave will be determined by many factors such as the type of business, competitive standards in the industry, size and skill of the workforce and the ability to assume costs.

The NAM believes government at all levels can best fulfill its responsibilities by:

- Ensuring that the original intent and important benefits of the Family and Medical Leave Act (FMLA) are realized without unnecessary expansions.
- Opposing federal initiatives that seek to mandate one-size-fits-all benefit programs on employers.
- Encouraging flexibility in the workplace rather than restricting employee benefit design. The globally competitive economy of the 21st century dictates that the most workable and universally beneficial legislation would retain and promote flexibility of programs and choices for employees and employers. Employers, not government, are in the best position to decide the type and scope of benefits to be made available to employees.

### **1.20. Occupational Safety and Health**

The NAM believes employers are responsible for providing a safe and healthful work environment and conducting effective occupational safety and health programs. These programs are essential to good employee relations and sound business practices. Employers must be able to maintain and utilize their authority and freedom to fulfill these responsibilities in the best way possible given their individual operations, equipment, workforce and business circumstances. Manufacturers believe both employers and employees have important roles in maintaining safe workplaces. To achieve our shared goals of maintaining safe workplaces, the Occupational Safety and Health Administration (OSHA) should be as much of a resource for manufacturers as it is an enforcement agency. Improving safety is most effective when all parties—employers, employees and OSHA—work together to achieve better results.

#### **1.20a. Occupational Safety and Health Programs – Employer Roles**

Employers should formulate and conduct sound safety programs, including definitive safety policies and effective engineering, administrative, educational, and motivational procedures. The NAM believes employers are best suited to:

- Establish programs and procedures, identify hazards, implement feasible and effective controls, and promote safe and healthful practices. Programs should be performance- oriented and communicated to all employees. Employers must be free to select the ingredients of a program and provide for employee participation that best fits their workplace environments.
- Encourage the interest and support of employees in safety and health programs. The ongoing support and interest of employees is essential to any safety and health program's success.
- Support and encourage safety and health education programs and activities, promote off-the-job safety and introduce employees and their families to the personal benefits of healthy lifestyles.
- Provide occupational health programs encompassing the preventive, curative and rehabilitative phases of occupational health.
- Promote workplace safety and health through programs, encourage employees to work safely and hold accountable anyone engaged in unsafe work practices.

#### **1.20b. Standards and Regulations – Government Roles**

All new occupational safety and health standards and regulations should be adopted through the current statutory and regulatory framework established by both Congress and the executive branch. This important framework is designed to preserve for all stakeholders a voice in the process of developing new standards and regulations. Sound scientific, data-driven research and review is a necessary basis for all new occupational safety and health standards and regulations. A thorough examination of the impact of standards and regulations on covered entities is required to ensure both their feasibility and worker

protection, which should be the primary objective of any standard and regulation.

Effective occupational safety and health standards and regulations can only be developed through active participation by employers in the rulemaking process, including the utilization of their affiliations with trade associations, standards organizations and national, state and local safety and health organizations. Employers should provide qualified personnel to participate in occupational safety and health standards and regulations development.

Occupational safety and health standards and regulations development must be supported by essential facts as they relate to injury/illness causes and effective interventions. Employers should participate in the development of these essential facts.

Occupational safety and health standards and regulations as set forth in this section, which are subject to government administration and enforcement, should be applied and interpreted in a uniform manner throughout the nation so as to not unduly burden interstate commerce and multi-state employers.

Current occupational safety and health standards and regulations should be reviewed to ensure they are working as intended. Prior to any new rulemaking, OSHA should practice due diligence in reviewing whether existing standards and regulations address emerging safety and health issues. OSHA should work to limit the regulatory burden on employers, especially the small manufacturer, whenever possible.

Employees' claims resulting from occupationally related injury or disease should be handled through existing state workers' compensation programs and individual employer benefit programs.

Effective occupational safety and health compliance is the responsibility of both employers and employees. In accordance with the Occupational Safety and Health Act of 1970, Section 5, every OSHA investigation and enforcement effort should review and address the compliance responsibilities of both employers and employees equally.

#### **1.20c. Enforcement of Workplace Safety Laws**

Employers must have access to due process rights when contesting alleged violations of OSHA standards and regulations. Federal policy should allow employers to stay abatement requirements pending the full completion of a challenge to the citation through the Occupational Safety and Health Review Commission. Criminal penalties for OSHA violations must be levied only when willful intent of repeated violations is clearly demonstrated by an employer.

To ensure that individuals tasked with enforcing OSHA standards and regulations are able to properly assess potential violations, OSHA officers who work with employers must undergo adequate levels of training and have experience in the sector or industry they are charged to enforce.

Proper education and training of OSHA compliance officers and inspectors will enable such personnel to better understand the dynamics of the workplaces they inspect and ensure they are competent to make fully informed judgments.

#### **1.21. Use of "Testers"**

The NAM opposes the use of "testers" who pose as job applicants, misrepresenting their interest in employment and often their qualifications. We believe that deception and misrepresentation have no place in the employment process. These unethical practices result in increased recruitment costs and missed opportunities for sincere qualified applicants. Accordingly, we believe the deceptive activities of testers should never be used.

#### **1.22. Employee Record Privacy**

The NAM believes personal privacy is important and certainly of premier importance in the business world. Specifically, the confidentiality and equality with which employee personnel records are treated has long been

a concern to employers. The NAM believes employers should follow all federal guidelines and existing laws designed to protect the records of employees.

### **1.23. Comparable Worth**

The NAM has a strong commitment to equal employment opportunity and supports vigorous enforcement of current anti-discrimination laws. Although we believe employers must ensure both men and women are given equal opportunity in hiring, pay and job advancement, the NAM does not support a comparable worth concept, whereby some government entity would impose its own measurement on the value of dissimilar jobs. This is abhorrent to a free enterprise system. It would result in a confused set of ever-changing government standards and prolonged litigation for devising employer compensation practices. Employers must be able to take into account market influences and the worth of particular jobs to their own companies. The federal government should restrict itself to enforcement of current anti-discrimination laws.

### **1.24. Affirmative Action**

The NAM supports affirmative action as an effective method of achieving civil rights progress. Employers realize it is good business policy to encourage and promote programs that enhance minority and female participation at all levels within the workplace. Affirmative action programs have strengthened the fabric of society and created an environment of cooperation and understanding among people of diverse backgrounds. In endorsing affirmative action, it should be made clear that goals, not quotas, are the standards to be followed in the implementation of such programs.

### **1.25. Individual Liberty**

A free and open marketplace is at its best when the sale and provision of goods and services are provided without regard to race, color, religion, national origin, disability, sex, sexual orientation or gender identity.

**Adopted Winter 2016 and effective until Winter 2020**

## **LLRP-02 Legal Policy**

### **2.01. Overview**

The costs of the American legal system are the highest in the world. As a percentage of GDP, the United States spends on average nearly twice as much as other industrialized nations on tort costs. Aggressive trial lawyers and their advocates view industry as a revenue source and are constantly working to find novel ways to increase the profits of litigation.

To ensure the competitiveness of American manufacturing, common sense and fairness must be restored to the legal system. Legal reform must be pursued at the federal and state level to restore balance between plaintiffs and defendants, apply reason and sound science, discourage frivolous claims and place appropriate limits on liability and damages.

### **2.02. Mandatory Statement of Terms and Conditions of Sale**

Industry stands fully in accord with the objectives of local, state and federal regulations protecting the consumer from false, deceptive or misleading representations as to the price, quality or conditions of sales of any product or service. Individual business firms, trade associations and industry-supported organizations have amply demonstrated respect for and responsibility to the consuming public.

The voluntary furnishing of information as to the terms and conditions of sale of any product or service is a basic element of good supplier-customer relationships. It is a function that is self-regulating in a free market and does not require government regulation for mandatory disclosure.

Before fraud in advertising or misrepresentation can be alleged, there must be a showing of reliance on the fraudulent information.

### **2.03. Consumer Representation in Government**

Industry believes that any effort to superimpose new governmental bureaus and departments seeking to represent citizens solely as consumers is unnecessary and undesirable.

It is fundamental that, in a free economy, the interest of the consumer is best protected by the market power inherent in the exercise of free choice. Industry believes that the established departments and agencies of government are fully representative of all members of the public and are aware of their interests as consumers. The protection of the public interest is synonymous with the protection of the consumer interest.

### **2.04. Packaging**

Packaging is an integral part of the ultimate product and adds to the satisfaction of consumer wants and needs. Accordingly, the NAM supports packaging and labeling principles that are conducive to fair and equitable trade practice and contribute to the health, safety and convenience of the consumer. It endorses packaging practices that provide for information regarding contents when it will be meaningful to consumers. It opposes packaging regulation that restricts the opportunity to create and innovate. It upholds the consumer's right to be informed and to have free choice of quality and function as well as price.

The NAM opposes regulatory policies that add to the cost of packaging, thereby increasing retail prices without commensurate benefit to the consumer. The Association believes that interstate commerce in packaged goods will be severely hampered, and costs and retail prices increased, if laws affecting packaging and labeling are not uniform nationwide.

### **2.05. Product Safety**

Product safety is of vital concern to industry not only for public-spirited reasons but also because it is essential to retention of customer confidence and long-term business success. Industry accepts its responsibility to protect the users and consumers of articles of manufacture against hazards which are incompatible with the public interest.

Industry believes that government and private programs for the reduction of product-related injuries must consider and be based upon the following factors:

- No article found in nature or manufactured is totally immune from the possibility of harmful interaction with individuals under all conceivable circumstances of human behavior.
- Product-related injuries resulting from an unreasonable safety risk because of design, material, workmanship or instructions are a small fraction of the total and are the only injuries over which the manufacturer has any form of control.
- Achieving effective safety standards without depriving consumers of useful products requires analysis and balancing of each product's usefulness, safety factors, size, design, versatility, convenience, cost and other public needs. Consumer interests are not unified, and any federal standards must take due account of the interests of different consumer groups.

The NAM endorses and encourages the following particular actions by and within the industrial community:

- Continuing attention to product safety from basic design through finished product.
- Emphasis by manufacturers and their associations on all forms of information regarding the installation, safe use, maintenance and disposal of products at all marketing levels and to the consumer.
- Establishment of voluntary safety standards where there is reasonable basis to believe that they

will serve the public interest.

- Industry-wide acceptance of government and public participation in a contribution to voluntary standards setting.
- Industry cooperation with the education efforts of public and private institutions, including the school system, to correct those behavioral patterns that are factors in product-related injuries.

Industry recognizes the legitimate interest of the federal government in the safety of products in national markets. In the development of national policy, the NAM believes that the following principles should apply:

- Federal safety standards are appropriate only where unreasonable safety risks are demonstrated to exist or be imminent and where voluntary standards have not been shown to be effective.
- Governmental process should act to encourage, not discourage, the vigorous voluntary mechanisms working for improved safety. Emphasis should be on voluntary action and informal procedures rather than on punitive action.
- Governmental agencies responsible for safety standards should comply with the procedural requirements of the Administrative Procedure Act and their organic statutes in promulgating standards or imposing sanctions.
- Authority of the agencies should not be extended to prescribe, monitor or to approve or disapprove the in-plant facilities, processes or procedures used by manufacturers for achieving compliance with the law.
- Safety standards should prescribe safety performance criteria as opposed to prescribing the means of achieving compliance.
- Safety standards should ordinarily apply on a product-by-product basis rather than to broad product categories.
- Criminal enforcement of product safety violations should be limited to circumstances where there is knowing and willful intent to violate the laws.

## **2.06. Tort Reform**

The National Association of Manufacturers supports the principle that balanced tort reform should be developed to address the present inequities that exist in the law. To this end, the NAM supports comprehensive and specific federal and state tort reform efforts that will provide clear standards for liability and true justice for all parties:

- A specific statute of limitations beyond which suit cannot be brought.
- A statute of repose commencing from the date on which a product enters the stream of commerce and ending on a date certain in the future that bars recovery in product liability actions.
- The safety of a manufacturer's products should be judged by the state of the art that was technically, operationally and economically feasible and readily available to the manufacturer at the time the product entered the stream of commerce.
- Evidence of post-accident modifications should be inadmissible as evidence of a defect in any product liability action.

- The manufacturer of a product should not be held liable for injuries insofar as they are caused or occasioned by unauthorized alteration made to the product by others.
- The manufacturer of a product should not be held liable for injuries insofar as they are caused or occasioned by misuse of the product.
- The manufacturer of a product should have a duty to warn of hazards associated with use of a product only when they are clearly foreseeable but not so apparent that injury could be avoided by the exercise of reasonable care without such a warning.
- Evidence of plaintiff's collateral sources of recovery should be admissible in product liability actions.
- Constitutional limits on excessive punitive damages should be enforced by effective statutory requirements and judicial review. Since punitive damages are intended to punish and deter conduct they should be imposed only where there is actual malice, intentional infliction of harm or a knowing and reckless disregard of safety, and after compensatory damages have been determined. Multiple punitive damages should be eliminated, including the prohibition of one state assessing damages for conduct that occurs solely outside the state. Punitive damages are inappropriate when a defendant utilizes good-faith product design or risk-utility analysis or conforms to reasonable government or industry standards. Punitive damages should be proportionate to comparable state civil penalties and should not be imposed as a substitute for legislation or regulation. Where punitive damages exist, legislative caps on punitive damages should be enacted and are constitutional. The wealth of the defendant is an inappropriate factor to consider when assessing punitive damages. All punitive damages awards should be reviewable *de novo* by appellate courts.
- Limits on class action and case consolidation should be enforced by effective statutory boundaries and judicial review.
- Sanctions for filing frivolous claims should be mandatory and not discretionary. Attorneys should not have the ability to knowingly file a frivolous claim and face no penalty if it is withdrawn. Defendants should be allowed to recover some of their legal costs in particularly egregious cases.
- Lawsuits should only be brought forth in jurisdictions where there is a significant nexus to the case and the choice of federal court should not be precluded because of some non-diverse or fraudulent parties.
- Alternative dispute resolution should be encouraged. The effectiveness of pre-dispute binding arbitration provisions in contracts should not be limited.
- Damages should be apportioned according to the actual responsibility of a defendant and not shared jointly.
- Litigation should not be the vehicle for the imposition of regulatory regimes on industries or companies. Regulation should be the result of legislative enactment or notice and comment rulemaking by an administrative agency.

### **2.07. Business Size and the Public Interest**

American business has grown to meet the needs and desires of the public and to reflect the growth of mass markets. Companies have grown as a result of having successfully met these needs and desires.

The public interest in fostering a free and competitive economy is best served where factors determining

the logical and efficient size and rate of growth of a business unit are permitted to operate without undue and arbitrary interference.

Small businesses continue to play an extremely important role in the economy. Our dynamic, complex business structure is competitive and ever-changing in nature and small businesses enhance the competitive market system.

Industry supports reasonable laws against monopoly and restraints of trade, and their fair and effective enforcement. However, business size, whether achieved by internal growth, acquisition or merger, is not in itself a criterion of undue concentration or a lack of competition. Mergers, acquisitions and joint ventures may well perform a valuable and needed function in our growing and changing economy and they demonstrate the dynamics of our free-enterprise system.

## **2.08. Antitrust Enforcement**

Laws regulating business conduct must be clear and explicit and be administered in a fair and consistent manner. The agencies charged with their enforcement should attempt to clarify their interpretation of these laws to avoid vagueness and ambiguities in enforcement of the laws.

Where appropriate, an effort should be made to obtain voluntary industry compliance with the Federal Trade Commission Act and the antitrust laws in preference to time-consuming investigation, formal changes and rulemaking. Using the antitrust laws as tools of social experimentation through novel regulatory theories is a disservice to the free enterprise system.

## **2.09. Administering Federal Antitrust Laws**

Because effective and fair administration of the antitrust laws is important to the public and to industry, it is essential that those who administer these laws be highly qualified and experienced and have fair and balanced judgment. In addition, they should work with their state and international counterparts to help ensure consistency in applicable statutes and administration.

## **2.10. Election & Lobbying Law**

### **2.10a. First Amendment & Political Participation**

The First Amendment includes protections for the freedom of speech, freedom of association and the right to petition our government. Intrusions upon these rights should be viewed critically and stopped when meant to silence or discourage points of view.

- Speech, especially political speech, must not be hindered. Attempts to limit speech about important issues facing the country are unconstitutional and inconsistent with our democracy.
- The ability of individuals to freely associate, including in corporate forms, is an essential freedom.
- Contributions to political candidates, committees and groups encourages more speech and greater involvement of the people in the political process.
- Disclosure of political contributions and expenditures is justified where the possibility of corruption is real. Disclosure regimes designed to embarrass, harass or prevent participation in the political process or through associations are inappropriate and unjustified.
- Manufacturers and their employees are important participants in the political process and should be welcomed in issue and political discussions about the future of our economy and our nation.
- Attempts to alter legal and regulatory definitions of forms of advocacy for legislative, regulatory or election activity can conflate prohibited acts with protected First Amendment speech. The NAM opposes efforts to restrict protected political speech through these methods.

### **2.10b. Political Action Committees**

The National Association of Manufacturers strongly supports the concept and role of political action committees (PACs). The association recognizes their contribution to an open campaign system and to the promotion of greater citizen involvement in politics and the development of public policy. PACs are only one part of a broad set of citizen activities to encourage understanding and participation in the political process.

### **2.10c. Government Financing of Congressional Campaigns**

The NAM strongly favors the existing system of voluntary citizen campaign financing and is completely opposed to total or partial government financing of congressional campaigns. The NAM believes that our representative form of government functions best when candidates seek voluntary contributions from the citizens or citizen groups.

Government funding through tax dollars of candidates for the U.S. Senate and House of Representatives would constitute a costly and drastic change in our election process. This unwarranted federal intrusion into the election process would also reverse the present healthy trend toward the reduction of many pervasive levels of bureaucracy in the federal government. In keeping with our representative form of government, public policy efforts should be directed toward encouraging greater citizen understanding of, and participation in, the political process.

### **2.10d. Competition in Campaigns**

The NAM supports fair competition in campaigns for elective office. Federal reforms should be implemented to equalize, to the extent possible, the standing between incumbents and challengers.

### **2.10e. Regulation of Lobbying**

The NAM supports simplification and clarification of the reporting requirements that apply to individuals and organizations discussing policy issues with the legislative branch. Disclosure and financial accounting provisions should be structured to encourage rather than discourage citizens, individually or through associations or coalitions, to discuss their views on the issues of importance with elected government officials.

Moreover, constitutional protections guarantee the freedom to associate and to petition the government for redress of grievances, including the right to form coalitions and associations that hire experts to assert those rights before the government.

Grassroots lobbying and activities to inform the public about important policy issues should have maximum protection against regulation or any efforts to suppress these basic constitutional rights to petition the government. The Supreme Court has repeatedly noted that robust public discussion was the intent and purpose of the First Amendment.

The NAM and its members support ethical standards of conduct in their own activities and in those dealing with government.

Laws regulating lobbying should treat enterprises that are owned in whole or in part by foreign parties, including domestic subsidiaries of foreign-owned enterprises, no less favorably than they treat domestic enterprises.

Broad definitions of lobbying must be carefully limited to registration and reporting and must not affect requirements relating to the extent of lobbying allowed by certain tax-exempt organizations.

Service as a registered lobbyist should not be a bar to government service subject to reasonable government regulation.

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## **LLRP-03 Regulatory Policy**

### **3.01. Regulatory Overview**

A favorable business climate is essential to the further expansion of the economy, creation of new products and additional jobs for our growing population, as well as the prosperity of our nation.

Prosperity for all segments of the economy stems from fair treatment in general legislation of a civil nature, administrative regulation and the recognition of the basic rights of all citizens, both individual and corporate.

The NAM recommends more emphasis on creating a favorable business climate by minimizing unnecessary regulatory burdens on manufacturers and promoting a smarter and more efficient regulatory system. The benefits of appropriate regulations are clear and supported by the public. The issue is how to enable the regulatory system to address legitimate concerns without unreasonably impeding innovation, research, development and product deployment. Too often in the regulatory process, the vital national public policy objectives of international competitiveness and technological innovation are given short shrift due to other competing mandates.

In order to promote industry, serve the general public and protect individuals and the environment, the NAM supports regulatory policies designed to favor markets and adhere to sound principles of science, risk assessment and robust benefit-cost analysis.

### **3.02. Principles of Effective Regulation**

The NAM believes:

- Appropriate regulation of aspects of private enterprise is recognized as a valid function of the federal government and is in the public interest. Such regulations should not unduly hamper the conduct of legitimate business activities.
- Executive departments should engage in periodic review of all their regulations to determine effectiveness, results and continued need for the regulations. Significant regulations should be sunset to force complete review and justification for continuation of the regime. Economic regulations should always be sunset since changes in the marketplace often obviate the need for such rules.
- Congress should use its authority under the Congressional Review Act to prevent the adoption of rules or regulations that are inconsistent with congressional intent, or that go beyond the legislation that the rules or regulations are designed to implement. A Congressional Office of Regulatory Accounting or a Joint Committee on Regulatory Review should be created to provide for periodic review of regulations and enhanced congressional oversight of the regulatory process.
- Regulatory programs' success should be measured by outcomes and improvements in economic and social welfare, not by amounts of fines or the number of enforcement actions. Federal agencies should focus resources on the most cost-effective and least intrusive means to achieve voluntary compliance. Compliance assistance programs, especially for small businesses, better serve the public's interest in achieving beneficial outcomes.
- Criminal enforcement of regulatory violations should be limited to circumstances where there is knowing and willful intent to violate the rules. With respect to recordkeeping, criminal intent to file an erroneous or incomplete report should not be inferred from the filing of routine paperwork that contains errors or omissions.
- Complexity, technological change and innovation in the marketplace mean that efforts to regulate all risk would be unsuccessful or destructive to the economy. Industry self- regulation should be

given an opportunity to develop in new areas as the first alternative to government regulation. No regulation should seek or purport to eliminate every possible risk. Regulations should be based upon sound science, credible economics and objective risk assessments.

- Regulations and supporting material should be written in plain, understandable language.

### **3.03. Regulations of Prices**

Adherence to free market principles assure that the public will obtain the maximum benefits from our economic system. Accordingly, the NAM advocates national policies that reflect the following principles:

- The market process, when operating in a climate of free choice, provides the best possible means for efficient and useful allocation of the nation's resources. Policies at all levels of government should reflect such free-market concepts.
- Prices are best determined by supply and demand in a free and fair competitive market. Prices cannot be maintained arbitrarily by the seller alone. Acts of government to alter the freedom of choice either to buy or sell at the free-market price tend to adversely affect the total economy. Government intervention must be justified and occur only upon a disruption of the market process.
- Aggressive competition within the marketplace is evidenced not by price alone, but by a diversity of product values and the freedom of consumers to choose, whether it be a price or a non-price value.
- The public interest requires the preservation of effective competition, which is the basic regulating and directing force in our free economy. An essential element of our economic system is the freedom to enter into such voluntary and mutually satisfactory arrangements as will best promote the efficient and economical distribution of goods and commodities from producers to the consumer. Industry believes that the interest of the consuming public is best served when such arrangements are free from unreasonable government regulation or restriction.

### **3.04. Reporting and Recordkeeping Requirements**

Congress, federal departments and agencies should adhere to the letter and spirit of the Paperwork Reduction Act in an effort to control and reduce the federal paperwork burden, including data collection, reporting and recordkeeping requirements. The need for the information should justify the time and money expended by both regulated entities and agency personnel.

The NAM also supports the concept of government-wide accountability for paperwork management and control resting within the White House Office of Management and Budget (OMB). OMB should also have control over a mandatory paperwork budget submitted by each agency. OMB should approve any reporting burden imposed on the public.

The public should have a period of at least 90 days to comment on information collection requests. Proposals for data collection, reporting or recordkeeping requirements should not duplicate existing requirements, and every effort must be made to use available information within the federal government.

The NAM supports sunset of data collection, reporting, recordkeeping and paperwork requirements. Those that are necessary and provide a useful function can and should be retained. The full burden of complying with such requirements should be accounted for. Electronic reporting or other process-based burden reductions should not be overemphasized in the calculations. Elimination of the information collection, reporting or recordkeeping requirement is the surest means to real burden reduction. Voluntary electronic reporting should be encouraged, but never as a substitute for elimination of unnecessary or duplicative information collections.

As a user of government information, data and statistics, industry recognizes the need for mandatory data collection in some circumstances. Such information should be collected and reported in the most cost-effective

manner, subject to appropriate protection for confidential business information.

### **3.05. Public Participation in the Rulemaking Process**

The NAM believes that public participation in the agency decision-making process is an essential mechanism that ensures political accountability. Starting with the Administrative Procedure Act, the federal government has recognized the importance of public participation in rulemaking and non-regulatory proceedings. To enhance the public's ability to participate, the government has adopted further guidance in the form of Executive orders, rules and procedures. The NAM supports full implementation of those public participation provisions. Agencies should notify the public and request comment on all regulatory, guidance and research actions at the earliest feasible stage. Public comment periods should be consistent with the complexity of the document and the amount of time the agency needed to prepare it. Public comment and agency responses to comments should be included in an online public record. To enhance participation by stakeholders, government documents should be written in plain, understandable language.

### **3.06. Freedom of Information**

The NAM recognizes and supports the public's right of access to certain types of information maintained by government. The submitters of confidential information provided to government have a corresponding right to expect that the confidentiality of such information shall be preserved. The NAM is especially concerned about the resultant harm to industry when disclosure is indiscriminate and fails to take into account the sensitive and confidential nature of business information. The NAM further believes that any statute providing access to government-held information must reflect a clear balance between the right of access and the right to confidentiality. A mechanism to safeguard confidential business information is essential if this balance is to be achieved. At the same time, public access to government information that is publicly releasable through the Freedom of Information Act should be as efficient and streamlined as possible.

### **3.07. Information Quality**

Agencies should effectively implement the Information Quality Act, including having transparent, established systems for ensuring that information disseminated by an agency is of high quality and for dealing fairly and expeditiously with petitions for correction of such information. An unbiased peer review of scientific and technical information should be an integral part of the regulatory process. Pre-dissemination review of information is just as critical as a robust petition process. Under the petition process, denial of a request for correction in whole or in part is final agency action under the Administrative Procedure Act and subject to judicial review.

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## **Energy and Natural Resources Policy**

### **ERP-01 Energy and Natural Resources**

#### **1.01. Overview**

Energy and natural resources are the life blood of manufacturing. Manufacturers need adequate, secure, reliable and affordable energy and raw materials to compete in the global marketplace. Luckily, the United States has a mix of energy resources and innovative technologies unmatched by any other nation in the world. The United States has abundant supplies of coal, natural gas and oil; our fleet of nuclear power plants cleanly and efficiently produce a substantial portion of the nation's electricity; renewable sources are growing quickly and diversifying the nation's energy portfolio; and advances in energy efficiency continue to cut manufacturers' energy costs.

The NAM therefore supports an "all-of-the-above" approach to energy. This strategy promotes the responsible development and use of all energy sources, including fossil fuels, nuclear, renewables and alternatives and recognizes the importance of energy efficiency to meeting future energy demands. Government policies

affecting energy, including those pertaining to the electric grid, must place a priority on reliability and must preserve manufacturers' global competitiveness. The NAM supports significant investments to modernize the national utility grid and utilize advanced metering infrastructure, distributed energy resources and other advanced technologies to improve efficiency, affordability, reliability and security.

The NAM and our member companies are committed to addressing global climate change while preserving competitiveness as set forth in Section 1.09 below.

Government should not be in the business of picking winners and losers in the energy space and must not impede or impair the ability of energy-producing and energy-consuming segments of industry to obtain adequate funding for energy-related investments. The NAM will identify and oppose overly restrictive regulations and the implementation of policies that limit or eliminate energy sources and production.

## **1.02. Oil and Natural Gas**

There are abundant oil and natural gas resources in the United States, and domestic demand for these resources continues to increase. For manufacturers, the nation's domestic oil and natural gas supply is an important component of our energy future. Moreover, a reliable balance between supply and demand is important to assure competitive, stable prices. In today's global economy, U.S. manufacturers must be assured of an adequate supply of competitively priced oil and natural gas for industrial and commercial use, such as petrochemical feedstocks, process gas uses and transportation fuels, and for power and steam generation.

### **1.02a. Production**

The NAM supports policies that promote the leasing, exploration and development of the nation's oil and natural gas resources in an environmentally sound manner. Exploration and development of promising areas onshore, offshore and in the Arctic can substantially lower our nation's energy vulnerability. Continued attention to complying with safety standards will help ensure minimal safety, environmental and health impact. New technologies such as hydraulic fracturing and horizontal drilling have made the extraction of unconventional resources, such as shale gas and shale oil, technically feasible and cost-effective. Continued development of these resources, as well as other North American resources like the Canadian oil sands, can provide a steady stream of secure, competitively priced energy for American manufacturers and consumers. A commitment to developing the nation's bounty of onshore and offshore sources of gas and oil will have a significant positive impact on this country's ability to meet its feedstock and energy needs. As is currently the case for states with onshore production from federal lands, and for Gulf Coast states with production from federal waters off their coasts, all states with federal offshore leasing and production should share in related federal revenues.

### **1.02b. Refining**

The refining industry is one of America's largest manufacturing sectors, and refined petroleum products play a critical role in meeting domestic transportation fuel demands. U.S. refineries process crude oil into products such as gasoline, distillate and jet fuels, heating oil and chemicals for domestic use and for export into world markets. U.S. refiners have responded to the call for a cleaner environment by producing cleaner fuels, such as reformulated gasoline, at competitive prices. Uninterrupted production of these products and the transportation infrastructure necessary to deliver them are essential to our national energy and economic security as well as to U.S. industry's ability to compete globally.

### **1.02c. Natural Gas, Manufacturing and Liquefied Natural Gas (LNG) Exports**

Industry relies on natural gas for much of its energy needs and as a raw material. The NAM believes policies that encourage the cost-effective use of natural gas to grow American manufacturing should be encouraged. The U.S. economy relies on natural gas for its energy needs and as a feedstock for commercial products. Natural gas is and will remain an important manufacturing commodity because of its scalability, affordability, versatility and efficiency. The NAM supports policies at the federal and state level that facilitate the responsible and expeditious development of natural gas resources, allowing these benefits to contribute to America's economic recovery and to accrue for energy consumers.

The dramatic increase in the domestic natural gas resource base and accompanying natural gas production has substantially reduced net imports of natural gas, paving the way for the U.S. to become a net exporter of natural gas. An adequate supply of natural gas is needed to meet the growing demand of the U.S. manufacturing sector and will be enabled by access to abundant domestic resources as well as increased access to global energy markets. The NAM strongly supports federal and state policies to accommodate growth in domestic natural gas production. We further believe abundant domestic natural gas resources can fuel a renaissance in U.S. manufacturing. The NAM fundamentally supports free trade and open markets as set forth in IEAP-01. We support a natural gas policy process that is open, transparent and objective.

### **1.03. Coal**

Coal is an abundant energy resource in the United States, a significant and important export commodity, and a vital part of our efforts to meet our energy and transportation needs. The NAM believes increasing the utilization of advanced clean coal utility and industrial generation technology as well as expanding coal-to-gas and coal-to-liquid technologies in an environmentally sound manner is an appropriate and desirable national policy. Coal generates a significant percentage of our nation's electricity and maintaining coal in a diverse national energy portfolio is in the national economic interest.

Government actions that unreasonably increase the cost of production and use of coal for limited environmental or health benefits are counterproductive. Unbalanced laws and regulations governing air, water and solid waste are currently the most crucial restraint on coal production and the use of coal by industry and utilities. Environmental policies should be reviewed and applied in a manner that balances reasonable environmental objectives with the need to have a diverse fuel portfolio, including continued cost-effective coal use.

### **1.04. Renewable, Alternative and Low-Carbon Energy Sources and Solutions**

Low-carbon, renewable and alternative energy resources such as wind, solar, geothermal, hydrogen fuel cells, hydropower, landfill gas, municipal solid waste (excluding paper which is commonly recycled) and sustainable biomass provide potential alternatives to traditional fossil fuels. Together these resources account for a steadily rising share of U.S. energy supply and development. A competitive market energy policy is the best way of encouraging economically sustainable alternative energy options. Government can play a positive role in support of the research and development of alternative energy sources or technologies at a pre-commercial stage. The NAM supports policies that encourage an energy mix including clean, renewable and low carbon energy resources and other power solutions and promote energy efficiency measures. Conversely, the NAM opposes federal government mandates for increasing the use of any energy source at the expense of any other. Significant grid improvements are needed and encouraged to ensure manufacturers have secure, flexible and competitive energy options. As the nation's energy mix expands and diversifies, government policies must place a priority on energy reliability.

Care must be taken to avoid potential adverse impacts on users of renewable feed stocks, agricultural and forest resources. Incentives should not create winners and losers in a quest for developing renewable fuels. In establishing federal renewable energy policies, the NAM encourages Congress to provide transparent assessments of costs and benefits, prioritize energy reliability, recognize regional differences in renewable energy resource availability, and not conflict with or pre-empt state programs already enacted, including well-constructed state renewable portfolio standards where they exist. Research and development efforts should be pursued related to potential utilization of non-traditional fuels and technologies as a means to enhance energy flexibility and expand diversification of energy supplies over time.

#### **1.04a. Combined Heat and Power**

Consistent with U.S. manufacturers' demonstrated history of innovation, the NAM supports policies to encourage investment in combined heat and power (CHP) systems. When economical, CHP systems allow end users to realize energy savings greater than upfront investment and ongoing operation and maintenance

costs and can reduce emissions. Policymakers should remove any remaining barriers that impede deployment of such energy efficient technologies. Working with all stakeholders, federal policymakers should consider model best-practices for states to address regulatory barriers to CHP deployment, including guidance for assigning reasonable fees and rates for interconnection to the local distribution grid, supplementary power, backup or standby power, maintenance, and interruptible power supplied to facilities that operate CHP systems that also allow for reasonable cost recovery by an electric utility based on the costs to provide these services and do not shift costs to non-CHP customers.

### **1.05. Energy Delivery Infrastructure**

The NAM supports continued improvements to laws and regulations that result in a transparent, streamlined and timely federal regulatory process for the siting and permitting of all energy delivery infrastructure, including oil and natural gas pipelines, energy transport by rail, and interstate electric transmission infrastructure. Cost-effective investments in transmission infrastructure to improve the reliability, capacity, efficiency and security of the electric grid promote a competitive wholesale electricity market which benefits residential, commercial and industrial ratepayers. Transparent assessment of the full cost of intermittent technologies, which require additional investments to maintain grid reliability and efficiency, should be recognized in cost/benefit analyses.

### **1.06. Demand-Side Management (DSM) Programs, Energy Efficiency Measures and Distributed Energy Resources**

The NAM believes that the provision of cost-effective DSM services by customer and aggregator programs, energy efficiency measures, and distributed energy resources can help ensure a reliable and adequate electricity supply at a lesser cost. Investments in and opportunities for technologies and measures that enable customers and aggregators to provide such services should not be precluded.

The NAM also believes that electric and natural gas utilities should not be precluded from meeting future electricity and natural gas needs with these technologies and measures. Utilities also must not be precluded from recovering prudently incurred costs when implementing these programs, measures and services, and non-discriminatory market opportunities for DSM services and distributed energy resources.

Unreasonable barriers to customer choice of power generation and efficiency improvements, including distributed generation, should be minimized. The NAM encourages cost-effective information exchanges that support demand-side management through data exchange between utilities and customers.

### **1.07. Hydroelectric Power**

Hydropower is a renewable resource that has demonstrated capability to provide affordable electricity in areas where nature provides such opportunities, and effectively complements the nation's other fuel resources to meet U.S. energy needs. Although hydro contributes a relatively small percentage of the nation's energy supply, it is a significant percentage of the renewable energy supply. It is energy efficient, with energy conversion efficiency in the range of 85-95 percent. The NAM supports the continued use and development of hydropower resources.

The NAM supports the streamlining of the regulatory process for hydroelectric power development through the elimination of redundant or contradictory regulatory steps and avoiding the imposition of conflicting clauses in other legislative initiatives such as those related to clean air, clean water and endangered species.

With regard to hydro projects owned and operated by the federal government itself, efforts to offset their impact on fish and wildlife (including Endangered Species Act initiatives) must be carefully balanced with the preservation of economic, recreational and public safety goals.

### **1.08. Nuclear Energy**

Nuclear power is a safe and vital source of cost-effective base-load electricity that does not emit criteria pollutants or greenhouse gases into the atmosphere. It is the largest source of non-emitting power generation in the United States and a major source of electricity for manufacturers. The NAM supports the continued development and operation of nuclear energy consistent with the protection of public health

and safety.

Nuclear energy helps ensure reliable and affordable electricity as part of a diversity of fuel sources. As the demand for electricity in the U.S. continues to grow, the NAM supports the construction of additional nuclear power plants that have been approved by the Nuclear Regulatory Commission to maintain a diverse portfolio of generating resources. The NAM also supports advanced nuclear technology for use in manufacturing as a source of carbon-free process heat.

In supporting the continued use and development of nuclear energy in the United States, the NAM supports the construction and operation of facilities covering all parts of the fuel cycle and nuclear energy generation, including power plants, fuel enrichment facilities, fuel fabrication plants, low-level and high-level waste handling and disposal operations, and other related facilities critical to supporting and expanding the nuclear energy industry.

The NAM supports policies that move the federal government to fulfill its legal obligation to remove used fuel from commercial nuclear power plants and manage its long-term disposal. We support the research, development and demonstration of technologies to close the fuel cycle while a permanent disposal facility, which is needed even if the fuel cycle is successfully closed, is developed. The NAM encourages the development of interim storage facilities for consolidating used fuel until recycling or permanent disposal facilities, or both, are available.

### **1.09. Energy Efficiency**

Manufacturers, including generators and users of energy, are committed to reducing our energy intensity and producing more energy efficient consumer products to help reduce the demand for energy, save money, lower costs and lessen greenhouse gas emissions. American society has much to gain from sensible efficiency and waste reduction measures across all sectors of the economy. Manufacturers, including generators and users of energy, continue to seek improvements to the New Source Review (NSR) process to reduce barriers to installation of energy efficient technologies.

#### **1.09a. Industrial Energy Efficiency**

Manufacturers use one-third of our nation's energy and are directly affected by the cost of energy in making products as well as by the cost of maintaining office operations. It is widely acknowledged that process and building system energy efficiency and conservation offer immediate and cost-effective opportunities to reduce energy cost inputs, reduce water use, stretch available energy supplies and decrease greenhouse gas emissions.

Manufacturers have taken the lead in making energy efficiency a priority. Improvements in energy efficiency in the manufacturing sector have helped the country to be more efficient in energy use per unit of GDP and reduced the energy intensity of the U.S. economy.

Manufacturers have achieved greater energy efficiency through cost-effective distributed generation, combined heat and power technologies, waste heat recovery systems, water reuse and recycling, high efficiency motor-driven systems, intelligent energy systems such as advanced metering infrastructure and demand response, and improved process manufacturing.

The most significant federal actions to increase industrial energy efficiency in the long run are those that will create a positive, reliable and unbiased climate for capital investment financing tools and other energy services agreements for new and existing plants, buildings and equipment across all sectors.

There is an important federal role to be played in basic research and development of new high-risk energy efficiency and waste minimization technologies in energy intensive industries, particularly where private sector incentives may be inadequate. Federal policies should provide a reliable investment environment for businesses of all kinds and sizes to pursue proven energy management technologies, practices and services.

The NAM believes that previous overly prescriptive federal energy policies have failed in large part because

cost-effective industrial energy efficiency improvements are best left to individual businesses and the competitive marketplace. Industrial energy management is a complex moving target that includes process innovation, long-term quality planning, energy assessments of building and equipment purchases, linkage of water and energy efforts, employee awareness, and waste minimization and recovery.

The NAM supports voluntary industry and market-driven benchmarking of industrial facilities and processes for the purposes of raising the level of awareness of best-in-class energy management possibilities. The NAM opposes the undue imposition of mandatory data collection programs. The federal role should be limited to supporting industry in the development of voluntary information exchanges.

The NAM also opposes the imposition of mandatory industrial energy efficiency targets. Federal energy efficiency targets would have no meaning to most companies because manufacturing energy consumption varies dramatically from plant to plant. Product demand, weather, water availability, fuel price swings and capital investments, such as pollution control technology, influence manufacturing energy consumption.

The NAM supports federal programs that encourage and help manufacturers, especially small and medium-sized manufacturers, to understand and deploy energy efficiency and energy management measures for the purposes of becoming more competitive in a global marketplace.

### **1.09b. Building Sector Energy Efficiency**

Manufacturers play a significant role in improving the efficiency of commercial and residential buildings. Since the building sector consumes approximately 40 percent of all energy used in the United States, the NAM supports market, regulatory and institutional reforms that increase opportunities to better utilize advanced technology and energy management practices to boost energy efficiency in buildings.

The NAM supports policies to enhance private sector investment in public building efficiency improvement projects, as well as policies that strengthen standards for existing commercial, industrial and residential buildings. These policies will:

- Promote consumer transparency through energy use labeling for buildings;
- Improve the existing national database of energy consumption information;
- Encourage open and visible access to energy usage and pricing;
- Partner with the private sector to support research, development and deployment of energy efficient technologies;
- Save taxpayers money by reducing government energy spending;
- Recognize and value energy efficiency investments; and
- Provide an incentive for states to update building codes.

Finally, the role of cooperative government-industry initiatives will be crucial in developing innovations that transform current construction and retrofit methods into an approach that fully integrates energy efficiency. Hand-in-hand with this is the development of techniques to maintain efficiency through the lifespan of buildings, including energy audit systems and techniques and best practice-sharing of both.

### **1.10. Climate Change**

The NAM and our member companies are committed to protecting the environment through greater environmental sustainability, increased energy efficiency and conservation and reducing greenhouse gas emissions. We know the U.S. cannot solve the climate change issue alone. The establishment of federal climate change policies to reduce greenhouse gas emissions, whether legislative or regulatory, must be done

in a thoughtful, deliberative and transparent process that ensures a competitive level playing field for U.S. companies in the global marketplace.

Therefore, any federal or state government policies must protect the international competitiveness of the U.S. marketplace economy. Any climate change policies should focus on cost-effective reductions, be implemented in concert with all major emitting nations recognizing the need for leadership by the U.S. and take into account all greenhouse sources and sinks. The NAM believes that federal climate policies generally should pre-empt state policies.<sup>2</sup>

### **1.10a. Carbon Capture (CCUS)**

The NAM supports continuing research, development and demonstration of carbon capture, beneficial use and storage (CCUS) technology as a means to facilitate expansion of the domestic recoverable oil and insure continued availability for energy conversion of the abundant oil, gas, and coal on federal lands. Any carbon dioxide (CO<sub>2</sub>) injection must not be classified as hazardous and permitting for injection must be streamlined and delegated to the states where the federal lands are located.

### **1.11. Natural Resources**

U.S. manufacturers require access to natural resources, such as rare earth elements and other critical materials, in order to produce products that are vital to the U.S. economy. Moreover, these resources are essential for the U.S. to remain competitive in the global manufacturing economy. Competition for raw materials should be market-based and not distorted by unwarranted or biased government action. The NAM supports government policies and actions that allow manufacturers access to these vital resources, support R&D, encourage the mining and processing of such resources, and support unimpeded trade thereof.

### **1.12. Energy Production from Federal Lands**

The NAM supports policies that facilitate the expeditious leasing, exploration and development of the nation's fossil energy resources in an environmentally compatible manner. These national resources on public lands are essential to our country's economic growth by insuring affordable and reliable energy for our homes and manufacturing facilities. The NAM opposes efforts to unnecessarily further restrict access to these national resources. The oil, gas, coal, oil shale, geothermal and uranium leasing programs, which have historically been inconsistent in their administration, have limited the potential to use a wide range of energy resources that lie beneath federal lands. A long-term, stable and reliable leasing policy must be maintained. The NAM therefore supports streamlining and expediting energy resource leasing and policies that limit royalties and fees to cost recovery for administration of the leasing programs.

**Adopted Winter 2016 and effective until Winter 2020**

## **EP-02 Environmental Quality and Sustainability**

### **2.01. Overview**

The NAM is committed to protecting the environment and to environmental sustainability, and fully supports the ongoing national effort to protect our environment and improve public health through appropriate laws and regulations. American industry has established a strong record in environmental protection: as the foundation of communities, manufacturers have made substantial investments over time to minimize their environmental footprint and continue to do so today. This commitment to innovation will ensure further progress toward reducing environmental impacts and increasing sustainability in operations.

A high standard of living depends upon a healthy environment, robust economic growth and an adequate and secure supply of energy at globally competitive prices. Quality of life encompasses complex economic and social considerations, including clean air and water, conservation of material and human resources, as well as continued economic development.

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<sup>2</sup> Section 1.10 was unanimously approved by the NAM Board of Directors at the Fall 2016 meeting in Washington, DC.

Environmental laws and regulations should be designed with utmost care to ensure that they are effective in achieving their desired objectives while at the same time avoid unnecessary adverse economic and social impacts.

Accordingly, measures to protect environmental quality should:

- Address an identified need and be based on facts, credible science and least cost means of implementation;
- Be based on factual data, with due regard for their total impacts on employment, energy used, resources, land use and other regional, national and international social and economic concerns;
- Promote innovation and recognize that technological advances over time have generally reduced the environmental impacts of energy production and consumption;
- Recognize the technological advances made by manufacturers and allow for a proper balance between economic growth and the protection of our environment;
- Take into account all future challenges, such as those posed by climate change and a changing environment, as well as those posed by the limitations of existing technologies;
- Utilize sound science and appropriate risk management processes to better focus our national effort and resources on environmental problems that pose a truly significant risk;
- Employ rigorous economic analysis to better understand potential economic impacts and cost-benefit relationships;
- Include a careful review and evaluation of the compliance timeframes that manufacturers are given to meet new standards or regulations; and
- Integrate a complete cumulative analysis of regulations' impacts on regulated industries, manufacturers and the economy.

## **2.02. Principles for Sustainability**

NAM member companies are committed to advancing sustainability efforts that positively impact manufacturing and industry's contributions to environmental protection, economic performance and the social well-being of the employees, communities, customers and consumers they serve. NAM members recognize these challenges and will respond by encouraging the adoption of sustainability best practices and application of life cycle analysis practices in the manufacturing sector. NAM members will work proactively with relevant stakeholders to ensure that the voice of manufacturing is heard and is contributing its positive story.

NAM members support the following principles for sustainability in manufacturing:

- Sound economic, social and environmental performance is an element of sustainable companies;
- Encouraging research, development and deployment of innovative, cost-effective technologies and operational improvements that will enhance sustainable manufacturing activities;
- Improving water efficiency;
- Minimizing natural resource impacts by increasing efficiencies and conservation to optimize raw material input and to reduce waste output;

- Continuing to improve the environmental, health and safety profile of manufacturing and its workforce by improving performance processes and products;
- Recognizing action taken by companies who are leaders in implementing voluntary sustainability practices and procedures;
- Managing land use and natural resources to provide economic benefit while protecting biodiversity;
- Collaborating and interacting with supply chain members to responsibly manage total environmental impacts; and
- Building sustainable practices to support, attract, develop and retain a highly skilled, diverse workforce.

### **2.03. Standards**

Standards serve an important role by providing for consistency of approach and quality of outputs for society. Standards should not be narrowly based on a single environmental medium but should take into consideration cross-media impacts that may occur when a standard results in the mere transfer of a pollutant from one medium form to another. Standards should reflect the fundamental difference between corrective programs, which involve retrofitting of existing facilities, and preventive programs, which involve the construction of new facilities and manufacture of new products. In those instances when standards are technology-based, each standard must be technically proven, achievable and cost effective. Once technology has been installed in compliance with current regulations, the installer should not be arbitrarily subjected to changed regulations for a reasonable period of time, taking into consideration the useful life of the equipment.

### **2.04. Hazard Identification, Risk Assessment and Risk Management**

The ability to systematically and effectively identify hazards, assess risks and manage those risks is critical to successful industrial activity. Those processes include the application of scientifically sound hazard identification and prioritization, objective, credible risk assessment, benefit-cost analysis, flexible, efficient and cost-effective risk management, and adequate opportunity for meaningful public participation in the risk assessment process.

Governments need to recognize the costs for environmental protection compete in a society with finite resources to address diverse worthy goals. Environmental laws and regulations should be based on scientific criteria resulting in cost-effective measures that provide significant environmental or human health benefit.

### **2.05. Compliance and Enforcement**

NAM recognizes that enforcement is a critical component of any environmental protection program. Great advances in environmental protection have resulted from practical, cooperative programs between regulated entities and regulatory agencies. As environmental problems require more technically complicated solutions and the global business environment becomes more competitive, greater emphasis should be given to such cooperative approaches and to providing compliance guidance before violations occur. The consequences of non-compliance should be proportionate to the violation and the consequences should drive compliance and prohibit recurrence of violations. Further, enforcement actions should not be used by regulators to extract improvement and investments in excess of regulatory requirements and permit conditions.

The government should continue to develop and implement methodologies to measure compliance with environmental regulations and associated environmental improvements. Decreased violations should be viewed in light of improved compliance rates and not as an enforcement failure. Enforcement should be applied consistently and equally to ensure fair competition.

Enforcement policies should recognize the need for regulatory flexibility when unique circumstances exist or unforeseen events occur. The federal government should work with states to be more flexible for federal laws

and regulations, while enforcement at the local level should be consistent within a state.

Citizen suits can be contrary to sound principles of regulatory law whereby clear standards of conduct are formulated and enforced by a regulatory agency subject to a right of judicial review. Citizen suits introduce uncertainties to pollution control enforcement policies, dissipate resources needed to carry out effective regulatory programs, stimulate litigation and are subject to exploitation. If allowed, such suits should be limited to local persons with affected interests in order to eliminate suits brought for nuisance or harassment purposes. The courts should not approve settlement agreements between regulatory agencies and plaintiffs in citizen suits that were negotiated without the full participation of affected regulated entities.

#### **2.06. Proprietary and Confidential Information**

The protection of proprietary and confidential information is of utmost importance to American industry at all government levels. Confidential Business Information (CBI) should be given the full protection intended by Section 1905 of Title 18 of the U.S. Code. Because of the need to protect trade secrets and other CBI, as well as the need to minimize paperwork burdens, information collection requests by federal agencies and their contractors should comply with the spirit and letter of the Paperwork Reduction Act. There should be no exception for surveys made pursuant to settlement agreements in citizen suits.

#### **2.07. Hazardous and Non-Hazardous Waste Management**

Waste products are generated by all segments of society, including industrial facilities, commercial establishments, residences and federal, state and local government agencies. To help ensure environmental protection and public health, the NAM supports a comprehensive, efficient and effective hazardous and non-hazardous waste management regulatory system that includes an accessible and affordable infrastructure. These systems should be implemented in ways that ensure effective environmental protection but minimize complexity and administrative burden.

The Environmental Protection Agency (EPA) has developed a comprehensive regulatory program for the management of hazardous and non-hazardous wastes pursuant to the Resource Conservation and Recovery Act (RCRA). In addition, the NAM supports significant voluntary industrial waste minimization initiatives that minimize volume, reduce toxicity and encourage recycle, reuse and reclaim processes to minimize waste.

##### **2.07a. Regulatory Process for Waste**

It is imperative that the distinction between hazardous and non-hazardous waste, as well as the distinction between waste and non-waste, is clarified. Regulations should be tailored to address the different types of waste appropriately. Responsible management of hazardous and non-hazardous waste demands that government, the public and industry cooperate in assessing and managing risk and ensuring regulations support various waste activities accordingly.

The NAM recognizes the primary rights and responsibilities of states regarding land use decisions. The federal government should encourage and support states in their efforts to locate private and public waste management facilities properly within their own jurisdictions. Economic development is dependent on adequate and properly safeguarded waste management facilities, including incineration, landfills and other treatment, storage, disposal facilities (TSDFs). Private ownership and operation of such facilities is desirable.

State responsibility for providing adequate waste disposal and treatment capacity is also recognized by federal law. Federal sanctions requiring states to meet this duty to public health and the environment are appropriate and should be vigorously enforced.

##### **2.07b. Waste Management Methods**

Adequate management capacity and techniques must be encouraged by the federal government in proportion to the development of new disposal requirements. No reasonably safe method or facility should be banned or prohibited until such time as superior alternative methods and facilities are available to handle the displaced hazardous and non-hazardous waste. The ability of some methods of managing hazardous and non-hazardous waste to mitigate environmental and health hazards has been questioned. When methods are

shown to be ineffective and pose an unreasonable risk to human health and the environment, their authorized use should be discontinued.

### **2.07c. State and Federal Responsibilities Regarding Waste**

State agencies are in the best position to consider and act upon local environmental needs and should have primary responsibility for creating and enforcing hazardous and non-hazardous waste management programs. Under existing law, these programs must be at least equivalent to the requirements set out under RCRA.

The NAM supports the EPA's delegation of and state assumption of regulatory authority over hazardous and non-hazardous waste management programs, so long as environmental protection is assured, and the states maintain a consistent approach to regulating these programs.

### **2.07d. Interstate Transport of Waste**

The commerce clause of the U.S. Constitution precludes the states from regulating interstate transport of waste. Companies need maximum flexibility to determine where to dispose of wastes for purposes of waste minimization, recycling, reclamation or treatment consistent with federal regulations. Bans, differential fees and other limiting barriers would prove detrimental to that flexibility.

### **2.08. Chemical Safety**

The NAM supports human health and environmental protection and is committed to ensuring that chemicals and other products are developed, manufactured, distributed and used safely. All stakeholders—including government, the private sector, and concerned citizens across the country—must be involved to make this effort a success.

NAM members are committed to manufacturing safe, innovative and sustainable products that provide essential benefits to consumers while protecting human health and the environment. No goal is more important than safety to manufacturers. Product safety provides the foundation of consumer trust, and manufacturers devote significant resources to achieve this goal. Environmental, health, and economic impacts should be reviewed and evaluated in all proposed regulations. Economic and societal benefits and costs should be considered in risk management determinations. It is of the utmost importance that innovation, safe product development and affordable consumer choice be encouraged and unnecessary barriers avoided.

#### **2.08a. Toxic Substances Control**

The regulation of toxic substances should be administered in a manner that protects health and the environment while avoiding unnecessary adverse economic impacts on business enterprises. The NAM supports chemical reporting requirements that reduce complexity and ensure that reporting occurs at the point of raw materials import in order to coordinate efforts and make global supply chains more transparent. It is of the utmost importance that barriers to innovation and new product development be minimized.

The U.S. chemical management system should be based on credible scientific information. Chemicals posing the greatest demonstrated risk should be targeted through prioritization of chemicals in commerce. Risk to sensitive subpopulations, such as children, should be considered in this process. Tiered and targeted testing should be conducted if necessary information is lacking, and a risk-based process should be used to assess if a chemical is safe for its intended uses. Regulation and prioritization should consider the degree of hazard and reasonable exposure potential associated with intended uses; provide reasonable timeframes for compliance; and ensure transparency, clarity and stakeholder participation.

To ensure the flow of interstate commerce, the U.S. chemical management system should be maintained at the federal level to establish and enforce consistent requirements among federal agencies and states. A "patchwork" approach to chemical management, in which individual states have their own chemical requirements, is ineffective, is contrary to principles of free interstate commerce, and decreases the competitiveness of U.S. businesses. To avoid overlap, policies should be coordinated to establish consistent standards and requirements, enhance protection of the public, promote innovation and competitiveness, and

avoid duplication, public confusion and unnecessary negative economic impacts.

### **2.08b. Use and Source Reduction**

Restrictions on manufacturing inputs will reduce the ability of domestic producers to compete in U.S. markets and to supply important export markets. The NAM opposes mandated toxics use reduction (TUR) because manufacturers are in the best position to determine what products to manufacture and how to make safe, reliable products.

As a regulatory approach the NAM supports risk management to control the use of chemicals. The NAM opposes phase-outs and bans on the production and use of specific chemicals without a determination of unreasonable risk. Reduction or elimination of chemicals should not be based on toxicity levels or listing rather than risk. The beneficial uses of chemicals to society should be carefully considered in attempts to eliminate risk, as greater or different risks might be incurred from alternatives or their absence. Compliance timelines should provide ample opportunity for strategies that result in environmental benefit and innovation or that strengthen U.S. competitiveness.

### **2.08c. Integrated Risk Information System (IRIS)**

IRIS assessments must be transparent: peer reviewed, subject to robust public comment and, when appropriate, subject to enhanced scientific analysis and methods. IRIS must rely on the best available scientific information regarding hazard and exposure, employ consistent and objective methods and models, utilize transparent procedures for evaluating data quality and be uninfluenced by policy. Public involvement should begin at the problem formulation stage.

### **2.09. Superfund Reform Principles**

NAM members have a substantial interest and concern regarding the requirements and operations of the Superfund program. While the NAM supports Superfund's goal of protecting human health and the environment, the Superfund program often requires an extraordinary investment of resources to obtain limited, if any, environmental benefits. Private sector spending on superfund also uses funds that could be invested in people, plants and equipment.

Retroactive imposition of liability, application of joint and several liability to unrelated parties, and imposition of effectively perpetual liability violate basic principles of equity and cripple efforts to remediate sites by spurring litigation.

If Superfund is to achieve its goals in a cost-effective manner, legislative reform should be based on the following principles. First, provide that Superfund is to be used only for sites that present real, significant risks to human health or the environment and that cannot be remediated in a timely manner under other programs, including state voluntary cleanup programs. Second, consistent with the Supreme Court's decision in *Burlington Northern v. EPA*, responsible parties should be held liable only for their fair share of the response costs unless there is no legitimate basis to allocate liability among the responsible parties.

Congress should construct a fair, broad-based funding system that recognizes that the public and private sectors, as well as individuals, have contributed to the creation of Superfund sites. Superfund sites resulted from manufacturing processes and disposal practices that benefitted society, such that the social costs of cleanups at sites without viable responsible parties should be spread over a broad spectrum of taxpayers. Congress should avoid where possible piecemeal reauthorization of Superfund, such as granting carve-outs from liability for municipalities. These will only further damage the program. EPA and states should select remedies based on sound science, realistic risk assessments and practical solutions. The law must recognize the limits of present technology, the need for practical solutions and site-specific risk assessments that focus on actual or probable exposure scenarios. Congress should limit recoveries for natural resource damages to the amounts needed to restore, replace, or acquire the equivalent of any injured natural resources. Finally, Congress should provide complete relief from future liability for a party who remediates a site.

## **2.10. Product Labeling and Marketing Standards**

A product label, when correctly used and understood by consumers, can facilitate consumer understanding. The NAM supports voluntary environmental labeling designed to communicate the following: achievement of meeting a standard or criteria; a characteristic for which no current national standard exists; manufacturers' commitment to the environment and protection of human health; the shared responsibility of government, industry and the consumer to create and support the recycling infrastructure; and information pertaining to recyclability, reuse and use of recycled materials.

The NAM encourages the use of uniform, national standards for voluntary labeling. Product claims should be substantiated by the manufacturers. These claims should be supported by uniform, generally accepted definitions and technical standards. The NAM supports enforcement against fraudulent or intentionally misleading claims. Enforcement of labeling should be conducted by the Federal Trade Commission with technical guidance from the appropriate governmental entities, industry and considering all other technically accurate information.

## **2.11. Water Quality Control**

The Federal Water Pollution Control Act, as amended by the Clean Water Act, established the objective to restore and maintain the quality of the nation's waters. Through limitations on wastewater discharges, water quality in the U.S. has significantly improved. American industry has made a major contribution to this national effort and will continue to support this objective.

### **2.11a. Pretreatment**

The Clean Water Act requires the establishment of pretreatment standards by the EPA for pollutants that interfere with, pass through or otherwise are incompatible with a Publicly Owned Treatment Works (POTW), as well as for those pollutants that prevent sludge use or disposal by such works. These standards are uniform, with no provision for adjustments.

A POTW is a public utility that is financially supported by industry, commercial establishments, institutions and residences. Like other such utilities, POTWs provide necessary services that support employment and economic growth. Many NAM members rely on the services provided by POTWs and thus have an interest in their efficient and continuous operation. The NAM supports pretreatment where it is demonstrably required to protect the operation of the POTW, prevent discharges that would violate the POTW's permit, or prevent the generation of sludge that would not meet regulatory standards.

The NAM also supports equitable user charges that are based on the true cost of treating a company's wastewater. The NAM further supports pre-treatment programs that incorporate the flexibility needed to respond to local conditions in cost effective ways that meet the goals of the Clean Water Act.

The NAM specifically recommends that:

- POTW authorities be allowed to implement their own pretreatment programs, which would include the establishment of local pretreatment standards as necessary to meet established permit conditions;
- All POTW National Pollutant Discharge Elimination System (NPDES) permits be enforced in the same manner as industrial NPDES permits, placing the responsibility for POTW discharges on the municipality in those cases where non-compliance results from POTW deficiencies as opposed to violations of permit limits by indirect dischargers. Non-compliance costs should be allocated accordingly;
- The EPA should retain a role in pretreatment by issuing guidelines to assist POTWs in understanding the elements of the programs necessary to meet the established permit limitations;
- States should be the primary enforcers of POTW permits. Only after a state and POTW have failed to initiate action within a reasonable time after violation of the POTW's NPDES permit should the EPA

become involved; and

- Each POTW should be solely responsible for its relationship with its customers. Federal or state agencies should not unduly interfere with decisions POTWs make to ensure adequate treatment of discharges from industrial customers;

The NAM also recommends that the EPA consider integrated facilities when establishing categorical pretreatment standards. Some industries have diverse manufacturing operations that are subject to more than one categorical pretreatment standard. In these "integrated facilities," it may be more cost-effective to combine waste water from each individual operation for treatment purposes. However, categorical pretreatment standards that apply to separate wastewater streams can be a barrier to such cost-effective pretreatment methods.

### **2.11b. Best Available Technology (BAT) Economically Achievable**

The installation of pollution control equipment by U.S. industry to meet current legal limits has resulted in major improvements in water quality. The NAM believes that the Clean Water Act should be implemented in a manner that protects human health and the environment while avoiding costly treatment requirements and other restrictions on industrial discharges that result in little, if any, additional benefit to the quality of U.S. waters. BAT can be defined, in effect, as the best control and treatment measures that have been or are capable of being used. Given the efficacy of existing treatment facilities in removing toxic pollutants and the unrealistic statutory deadlines for establishing toxic effluent limitations, the NAM makes the following recommendations:

- BAT limitations should be required only where there is a significant toxics problem. "Significant toxics problem" should be defined where present limitations are not protecting receiving waters and where further abatement of toxics would have a measurable, positive effect on receiving waters. Situations where a pollutant is present in the effluent solely as a result of its presence in intake waters should not be considered a significant toxics problem;
- Additional requirements for non-conventional pollutants should not be applied unless required to meet water quality standards; and
- A risk-based approach to the regulation of effluent discharges should be adopted.

### **2.11c. Nonpoint Source Pollution**

The relationships between and relative impacts of point and nonpoint sources differ from one part of the country to another, making it difficult to establish a uniform program. What is needed is a balanced approach to point and nonpoint problems that focuses on the water quality of the watershed in question. The NAM, therefore, supports the following:

- More extensive treatment should not be required of any point source dischargers in lieu of regulating nonpoint sources if such treatment will have no appreciable impact on the quality of the receiving waters; and
- Effective management of nonpoint sources of water pollution should be achieved through state and regionally developed programs, taking into account regional differences. The EPA should provide technical and funding assistance but should not attempt to assume the role of developing a uniform federal nonpoint program.

Congress should stress the need for improving the capability to assess the nation's water quality, to aid in determining the relative impact of point and nonpoint sources on water quality and the ability of waters to meet their designated uses. Conclusions derived from the data can then be used to better allocate the nation's resources in achieving our water quality goals.

#### **2.11d. Clean Water Act Jurisdictional Issues**

The NAM supports the continued use of the term “navigable waters” in the Clean Water Act and opposes overly broad interpretations of that term and the term “waters of the United States.” The term “waters of the United States” should be interpreted to mean waters that are navigable in fact or that have a relatively permanent surface connection to a water that is navigable in fact. The NAM opposes expanded federal jurisdiction over “all intrastate” and “intermittent waters” on the grounds that it raises constitutional concerns and contravenes the intent of the authors of the Clean Water Act. The NAM supports continued federal-state partnerships as an effective means of implementing the goals of the Clean Water Act.

#### **2.11e. U.S. Coastal and Ocean Resources**

The NAM supports multiple uses of the nation’s coastal and ocean resources. Current federal environmental statutes allow the nation’s coastal waters to be used for purposes ranging from resource development to recreation and conservation. An overly prescriptive coastal and ocean resources policy will undermine the careful balancing of diverse interests and uses of this very important resource. In particular, Coastal and Marine Spatial Planning should be an informational tool only. It should not be used to preclude economic uses of oceans, the Great Lakes and coastal areas or to block permits for such uses, while balancing the need to protect these vital natural resources.

#### **2.11f. Total Maximum Daily Loads (TMDLs)**

As part of the development of TMDLs, states should assess the technical feasibility and economic practicability of attaining the water quality standard, based on the social and economic impacts of the costs of compliance. TMDL allocations should be developed for pollutants only where appropriate. Other tools should be considered to achieve compliance with applicable water quality standards

#### **2.11g. Whole Effluent Toxicity (WET)**

The WET program should be based on scientifically sound criteria and implemented in a manner that requires monitoring and follow up actions only when needed. WET program implementation should appropriately account for the variability inherent in WET testing.

#### **2.11h. Spill Prevention, Control and Countermeasure (SPCC); Definition of Oil Clarification**

Further clarification of the term “oil” as it pertains to the SPCC regulations is needed. While the Coast Guard has provided guidance on what constitutes “oil,” the EPA has not. Without a consistent definition or determination process, it is often difficult for industry to comply with the SPCC regulations. Some facilities might rely on the Coast Guard’s guidance, but an EPA inspector may disagree with the Coast Guard guidance and find the company to be in violation of SPCC regulations. Given these conflicts, overly conservative assumptions drive up SPCC compliance costs.

The EPA’s overly broad interpretation of what constitutes a “water of the United States” when determining whether a facility is subject to the SPCC regulations results in uncertainty and increased costs. The EPA should clarify that SPCC regulations apply only to facilities that have a potential to discharge oil to waters that are navigable in fact or that have a relatively permanent surface connection to water that is navigable in fact.

#### **2.12. Groundwater Policy**

State governments should retain the principal control and management responsibility for groundwater. Groundwater protection strategy requires a high degree of flexibility and responsiveness to local conditions. The availability of adequate supplies of groundwater for human consumption as well as industrial, agricultural and municipal uses is critical. Multiple groundwater uses must be protected from the potentially adverse effect of municipal, industrial, agricultural and other nonpoint sources such as septic tanks, surface runoff and antiquated sewage systems. Due to the ubiquity of municipal and nonpoint sources of groundwater contamination and to the impracticality of a zero release standard in most activities, protection strategies should be based on a use classification of aquifers.

Industrial substances, discharges and releases potentially affecting groundwater are subject to comprehensive regulation through provisions of the Safe Drinking Water Act, FIFRA, RCRA and other

state and federal statutes. Federal groundwater initiatives must build upon rather than ignore or duplicate this body of law. In particular, the toxicity, exposure and risk assessments required for listing and standard setting under current law should be preserved. The NAM opposes any attempt to expand the applicability of these or other environmental laws to reach activities with statutory exemptions. Any expansion of EPA authority over statutorily exempt activities must originate in Congress.

The objective of groundwater policy should be to manage this valuable resource for multiple uses. Drinking water standards are relevant criteria only when there is human consumption of the water. Treatment after extraction or conversion to alternative water supplies may be preferable to large scale groundwater aquifer treatment efforts. Natural attenuation also is a viable alternative to pumping and treating remedies. If a groundwater aquifer treatment effort already is underway, the NAM recommends that the EPA review the remedy to determine if alternate, less energy intensive options are available.

When aquifer cleanup is selected, the principle of "the polluter pays" should prevail, whether an individual, agriculture, government or industry is responsible. State and local governments, as representatives of the public, should bear the full costs attributable to their own activities and to nonpoint source contamination.

Government should continue to encourage the development of improved technologies for recycling and/or destruction or safe treatment of hazardous wastes, and thereby help prevent groundwater contamination and avert costly cleanup efforts. Government should also undertake a program of public education on the causes of nonpoint source pollution in order to get public cooperation in reducing these sources.

Land use, transportation planning, regulation of commercial, residential and industrial development, and, in some regions, control over water withdrawal and allocation are essential elements of any nonpoint source pollution abatement program. These matters have traditionally and properly remained largely the domain of state and local governments.

### **2.13. Water Conservation**

Manufacturers have demonstrated leadership not only minimizing environmental impact to water supplies but also helping to ensure adequate water supplies through conservation efforts. The NAM supports voluntary policies that take a multi-sectoral approach and drive the use of technology solutions and innovation toward water conservation efficiency and reuse to reduce potential risks related to water scarcity.

### **2.14. Air Quality Control**

The NAM believes that the objectives of the Clean Air Act to protect public health and welfare are desirable and supportable. The NAM believes the best strategy is to expeditiously identify and adopt technological innovations to continue to improve our environment.

American industry spends billions of dollars annually toward air quality protection and has achieved remarkable improvements in air quality. Increasingly, the Clean Air Act is being implemented in a way inconsistent with the original model of cooperative federalism, leaving states with a diminished role. The costs for individual rules are exponentially increasing, and manufacturers and other regulated sectors are left waiting years for courts to resolve overreaching regulations. Manufacturers are committed to clean air, but we need policies that support a sustainable environment and economy. The decades old Clean Air Act should be reformed and modernized to allow for continued improvements in air quality, while being flexible enough to better account for challenges created by extraneous factors such as foreign emissions, unique geography or topography and technological limitations and cost effectiveness.

Because of the enormity of capital expenditure and operation and maintenance costs associated with compliance with federal air quality programs, the NAM believes that federal policymakers should consider thorough, balanced, sound and objective scientific studies before making regulatory decisions. The NAM also recognizes that manufacturers who make market-based decisions to deploy energy efficient technology also reduce emissions that may fall under the jurisdiction of the Clean Air Act. The NAM recognizes that appropriate

use of market-based mechanisms achieve environmental objectives more effectively and efficiently than command- and-control programs.

As a general policy matter, the NAM supports streamlining air quality control regulations that are focused on the manufacturing sector. U.S. industry and regulators continue to struggle with the complex requirements of the New Source Review (NSR) program. NSR often triggers evaluations that can last for several years when a particular facility attempts to upgrade or install technologies that lead to increased energy efficiency, thus potentially undermining the achievement of appropriate air quality and environmental policy goals. Such obstacles undercut improved air quality by delaying the installation of more efficient technology. The NAM therefore supports ways to streamline and reform NSR requirements, including the development of practical routine repair, replacement and maintenance exemption provisions.

#### **2.14a. National Ambient Air Quality Standards (NAAQS)**

The Clean Air Act requires federal regulators to review the National Ambient Air Quality Standards (NAAQS) for criteria pollutants, including particulate matter and ozone, every five years. With the tremendous air quality progress made over recent decades, the NAM supports reform of the Clean Air Act to better address the current challenges that arise during the NAAQS review and establishment process. The NAAQS process should be modified to incorporate a timeframe more consistent with 1) implementation schedules and 2) the time necessary to adequately review the large volume of material relevant to review and setting standards. Implementation guidance and rules and updates to modeling and permitting tools should be in place when the NAAQS is changed or within a reasonable and defined amount of time. NAAQS should be set in a transparent manner with consideration of the public health and welfare, energy and economic impacts, and the standards should be set taking into account background (non-U.S. manmade sources) in order to provide the necessary flexibility for compliance. Furthermore, the NAM strongly supports review of the NAAQS by diverse and well qualified representatives of the scientific community with relevant expertise, based on sound, peer-reviewed, objective studies. The EPA should not rely on internal re-analyses of published peer-reviewed studies if the EPA's re-analysis has not itself been individually peer reviewed and published. The NAM encourages the EPA to appoint a broad array of members to its independent advisory panels to promote rigorous and thorough study of proposed regulations based on sound science.

#### **2.14b. Emission Offsets and Controls Required in Non-Attainment Areas**

The basic rule in non-attainment areas is that no new major sources of pollution can be constructed without obtaining a permit that imposes stringent control requirements and requires sufficient "offsets" to assure progress toward attainment of the NAAQS. Offsets are enforceable emission reductions by existing sources of pollution that are applied to counterbalance the anticipated emissions from new sources.

Offset requirements should be tied to reasonable and available reduction opportunities. Regulators should consider reasonable cost thresholds when establishing these requirements. In some U.S. locations, the availability of offsets is very limited and thus the cost is tremendous. The NAM believes that air quality goals should be commensurate to the expense associated with implementation of those goals.

Federal regulators must recognize the general market principle of diminishing cost-effectiveness of new control technologies to meet more stringent requirements relative to the potential incremental health and environmental benefits obtained. Control costs increase exponentially to achieve minimal incremental benefits as regulators impose requirements approaching a level of "zero risk."

#### **2.14c. Hazardous Air Pollutants**

The NAM supports regulation of hazardous air pollutants that pose a threat to public health. However, any such regulation must be based upon sound scientific data that clearly demonstrate a need to protect public health and consideration of the welfare, energy and economic impacts. The EPA's inability to meet arbitrary deadlines should not trigger automatic regulation. The NAM supports comprehensive reform of the EPA's listing and delisting process.

#### **2.14d. New Source Performance Standard (NSPS)**

The NAM believes that NSPS should be streamlined and simplified to provide manufacturers with certainty that they are in compliance with the law. In addition, emission standards should be set using criteria that ensure optimal cost effectiveness and do not hinder economic growth and competitiveness. EPA should also allow adequate timing to demonstrate compliance once an NSPS is triggered.

### **2.15. International Environmental Programs**

Varying environmental quality control requirements can affect the competitiveness of a nation's industries in world markets. In order to avoid distortions in international trade, the NAM supports cooperation in international notification and consultation when a nation proposes major changes to its environmental protection programs, as well as in the development of intelligent measures to deal with dislocation or inequities in international trade brought about by differences in environmental standards. Cooperation in gathering and disseminating environmental data and information should also be encouraged.

### **2.16. Environmental Justice**

The NAM fully supports the non-discriminatory administration of environmental programs. Federal, state and local environmental agencies should administer and enforce all environmental statutes and regulations in a non-discriminatory manner. The NAM recognizes the importance of economic prosperity to, and its interrelationship with, health and environmental protection. The NAM encourages its members to develop and maintain clear lines of communication with communities that host industrial facilities. More specifically, the NAM encourages manufacturers to work with local communities, local and state governments and the EPA to achieve an open and informed dialogue on their facilities' environmental performance, in order to assure healthy and safe communities in which they operate. Additionally, we support:

- The federal goal that no person in the United States shall, on the ground of race, color or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance;
- State efforts to increase dialogue among government officials, local communities and facilities in order to recognize and respond to community questions and concerns about facility operations;
- State development of public participation procedures that will respond to community concerns. State environmental justice procedures should include guidance for early and meaningful public participation. The concerns of interested citizens within the community should be addressed early in the regulatory decision-making process. For example, concerns should be addressed concurrently with the technical review of a permit application, rather than being relegated only to comments on proposed decisions or subsequent, wasteful litigation. States should document the public participation process within reasonable timeframes. State procedures also should assure and document appropriate due process and reasonable timeframes for permit applicants to address public participation concerns; and
- An EPA role in developing mechanisms to identify actual exposures to harmful substances using scientifically sound methodologies. The EPA should also assure that permitting under existing environmental statutes continues to be an agency priority.

### **2.17. Facility Security**

As a nation, we have demonstrated firm resolve in protecting our critical infrastructures and key assets from terrorist exploitation. In this effort, government at all levels, the private sector, and concerned citizens across the country are involved in an important partnership and a commitment to action.

The NAM members have a substantial interest and concern regarding requirements and administration of facility site security programs. NAM members prudently engage in risk management planning and invest in security as a necessary component of their business operations and to assure customer confidence. However, manufacturers have great concern about duplicative government security requirements and federal actions that do not take into account voluntary actions companies already implement.

The term "security" means actions carried out to ensure or enhance the protection of manufacturing facilities' security-sensitive assets, including, but not limited to: employee training and background checks; protection of the perimeter of the facility; protection against and prevention of access to controls of the plant; installation and operation of intrusion detection sensors; and the implementation of measures to increase computer or computer network security.

As public policy or legislative proposals to authorize enforcement of security vulnerability assessments and security plans for private facilities are developed, the NAM recommends adherence to the following principles:

- Avoid chemical elimination or reduction schemes disguised as security measures. The NAM has seen legislation at both the state and federal levels that purport to be based on security concerns, yet the effect would be "toxic use reduction." The bills, prompted by misusing phrases such as "inherently safer technology" (IST), ignore the commitment to improving safety at every phase of operations. Decisions about IST involve complex process safety issues that require a holistic approach. These judgments should be made by experts in the field rather than by government mandate. Initiatives that focus on IST distract from the real issue of security.
- Recognize security work that has already been implemented by companies and through safety and security management principles from their respective associations. It would be wasteful (and unfair) to require companies to add an additional governmental layer of bureaucracy onto existing industry programs, which often include requirements of other government regulations that include all the necessary components of security. Manufacturers should be deemed to be in compliance if they have implemented an industry standard that is determined to be substantially equivalent to the requirements of relevant federal security law.
- Consider provisions that would recognize work done under existing state, local and other federal regulations/laws. This would avoid disruption of the ongoing security work being completed by manufacturers under the approval of federal and state authorities. Chemicals should be exempted if they fall under an existing federal or state security regulatory program.
- Foster continued information sharing between manufacturers and federal, state and local officials in order to enhance security. Information submitted to the government must be properly safeguarded to ensure against release to the public. Such releases of information could undermine the very security that any legislation or information sharing would seek to enable.
- Promote and recognize voluntary cooperation and agreement among all parties and encourage voluntary actions. Partnerships are currently providing the foundation for developing and implementing coordinated protection strategies.
- Ensure some limitation of liability from civil lawsuits in the event of a terrorist act. No legislation or rule should be construed to create a private right of action or grant jurisdiction to a court that enables private persons to enforce the law or rule against anyone subject to it. Allow only those parties that are directly subject to a rule to bring a petition for review against a rule, not just "any person."
- Security investment reflects what is reasonable in light of threat and vulnerability conditions, as well as what is economically justifiable and sustainable in a competitive marketplace or in an environment of limited resources.
- Allow for flexibility in achieving standards established by legislation and recognize that the level of risk and the attractiveness of a target vary from facility to facility, even within the same industry. No federal program should take a one-size-fits-all approach to security and should instead recognize the variable nature of risk, allowing companies to achieve compliance in a way best suited to their particular situation.

## **2.18. Recycling**

Recycling continues to be an environmental, economic and societal success story led by manufacturers, many of which utilize recycled materials on a daily basis to make new products that add value to the economy. The private and public sectors have invested billions of dollars in infrastructure enabling citizens and businesses to reduce, reuse and recycle efficiently.

Recycling helps numerous industries reduce their energy use, along with greenhouse gas (GHG) emissions. Recycling conserves non-renewable natural resources and raw material supply, creates jobs, contributes to the economy and offers consumers an efficient method to reduce their environmental footprint.

The NAM supports the collection, processing and subsequent reuse of recyclable materials. The NAM supports the principles of sustainable materials management, consistent with sections 2.0 and 2.05 of the NAM Environmental Quality and Sustainability Policy. The NAM supports life cycle thinking as a key tool for manufacturers making informed decisions and understanding the impacts of products including end of life options.

No one-size-fits all approach works in recycling. Different commodities may require different approaches or solutions when looking at opportunities to initiate and/or increase recycling. The NAM supports initiatives to identify and promote best practices in capturing recyclable materials. Policies should recognize and, when appropriate, credit manufacturers for their use of renewable and recyclable materials in the manufacturing process. The NAM supports additional public education to help raise recycling rates and quality.

Market forces should guide recovery and recycling systems:

- As with other goods and commodities, the NAM supports international free trade and open markets for recycling activities and materials.
- Voluntary actions can and should be part of the solution.
- The NAM supports policies that recognize the value of recyclable materials as economic commodities.

**Adopted Winter 2016 and effective until Winter 2020**

# **Infrastructure, Innovation, and Human Resources Policy**

## **IIHRP-01 Transportation Policy**

### **1.01. Overview**

Transportation is the lifeblood of any economy. Transportation efficiencies, including adequate infrastructure and sound regulatory policies, can contribute greatly to national economic growth and competitiveness. At present, our transportation infrastructure is in a state of disrepair. The safe and efficient movement of freight and people across our country over land, water, or by air requires a renewed commitment to maintenance and expansion of our transportation infrastructure.

### **1.02. National Transportation Policy**

The NAM supports transportation policies that:

- Emphasize safety: The public welfare, including the protection of life, property and productivity, warrants reasonable expenditures and regulations to address identified safety concerns in a cost-beneficial manner

- Ensure U.S. manufacturing competitiveness by providing increased federal, state, and local funding for maintaining, improving, and expanding public infrastructure: Excise taxes and other fees charged directly for transportation-related development should be used for transportation-related infrastructure expenses. And should encourage alternative financing mechanisms including public-private partnerships, where appropriate.
- Recognize that competition in a free marketplace is the best regulator of prices and services. When government regulation is necessary, it should promote, encourage, preserve, and rely upon competition to the extent possible; should be administered fairly and efficiently; and should ensure adequate and reasonable compensation for private investment. State laws and regulations must recognize and concede to the inherent interstate local and international nature of most transportation movements, and refrain from imposing policies that hinder the free flow of goods.
- Promote efficiency, particularly intermodal movements and efforts to facilitate supply chains: To this end, the NAM supports innovative programs and the use of technology to assist in the efficient, economical movement of goods.

**Adopted Winter 2016 and effective until Winter 2020**

## **IIHRP-02 Technology Policy**

### **2.01. Technology Policy Overview**

Manufacturers are the bedrock of America’s economic, political, military and technological strength. Significant investment and technological advances have been largely responsible for the strengthening of manufacturing sectors across the board. The National Association of Manufacturers (NAM) supports national and global technology policies that will continue to drive economic growth, productivity gains and job creation. These policies should be based on the close cooperation, interaction and support of industry, government and academia. These policies should create an overall environment that ensures the leadership of the United States in technology and industrial competitiveness. To this end, the NAM is focused on raising public and government awareness of the importance of sustained technological development and application to the nation’s economic and social well-being.

### **2.02. Broadband Infrastructure**

Broadband data, video and voice services provide increased opportunities for manufacturers to innovate and create jobs. The Internet and connected technology has led to groundbreaking innovations in the products and processes of all manufacturing sectors. Production line activities, plant security safeguards and monitoring, product performance and reliability, customer needs, inventory and raw materials management, and shipping logistics can all be interconnected and managed using technical tools and infrastructure. Accordingly, the NAM supports a legislative and regulatory environment that promotes the deployment, management and use of broadband data transmission and maximizes user choice in the selection of communications and technology solutions—whether private facilities or carrier-supplied, wireless or wireline, terrestrial or satellite—as long as those choices do not harm or compromise the integrity of advanced telecommunications networks or the existing data-agnostic nature of access. The NAM supports increased deployment of broadband Internet services, an Internet that is not subject to unnecessary and burdensome regulations and efficient spectrum management issues.

#### **2.02a. Telecommunications**

Manufacturing in the United States benefits from a competitive telecommunications ecosystem. The NAM recognizes the critical need to promote policies that support a world-class telecommunications system. To promote telecom efficiency, laws, rules and regulations that impede the deployment, management or use of broadband connections should be eliminated.

Fostering an environment where manufacturers can obtain the services and content they want, when they want

it and regardless of medium, is of primary concern. To achieve this goal, policymakers should:

- Remove barriers to entry that prevent service providers from offering broadband information services to homes and businesses.
- Eliminate or limit regulations that have the potential to dampen private industry's incentive to invest in broadband technology.
- Rely on enforceable industry practices that promote transparency and enhance choices in the marketplace for consumers and business.
- Adopt a federal framework and ensure fair, technology-neutral competition for all providers.

### **2.02b. Deployment of Services, Access & Resource Allocation**

Recognizing the continued need to develop technologies that promote broadband data communications and connectivity the NAM generally encourages new developments in these areas and supports their use by appropriate government agencies and suppliers of services and equipment.

Access to broadband provides increased opportunities to our society in advancing technology, innovation, investment and manufacturing sector job creation. Future national economic growth depends upon the ability of businesses and individuals to secure broadband services that are not impeded by burdensome regulations. Market-based solutions should be relied upon to satisfy consumer demand for broadband access. In limited cases where demand for broadband is low or the demonstrated economic/commercial viability of a deployment can be proven, public and private interests should combine resources (including public-private partnerships that include incentive programs and subsidy mechanisms) to raise broadband demand without the imposition of mandates or regulations.

To protect American industry's freedom to choose the type of communications best suited to its needs and growth, policymakers should encourage the broadest development and use of telecommunications systems. Policymakers should allow private telecommunications providers to maintain their networks, allocate resources and determine the optimal performance of their networks, while promoting free-market principles.

### **2.02c. Spectrum Policy**

The NAM encourages the efficient use of electromagnetic spectrum through various technological and regulatory approaches, including the efficient use of spectrum in the industrial/business radio service.

It is essential that additional spectrum be made readily available to meet the specialized communications and connectivity needs of U.S. manufacturers and their customers whether they are a service provider, business user or government. Radio facilities owned and operated by manufacturers themselves (private radio facilities) are best suited to these applications.

These facilities have made, and will continue to make, important contributions to enhanced worker safety, as well as increased productivity of U.S. manufacturers.

The NAM will continue to work with its traditional partner in spectrum policy matters, MRFAC, Inc., to provide the most effective advocacy for the spectrum policy interests of manufacturers as connected technology continues to expand throughout their products and processes.

### **2.03. Information Security**

Security of information and sensitive data is critical to economic and national security. Manufacturers, through their comprehensive and connected relationships with customers, vendors, suppliers and governments, are entrusted with vast amounts of data. To improve the security of the U.S. economy, government must partner with manufacturers—through open channels of communication and targeted incentives—to bolster critical infrastructure and key resources and to adopt best practices.

### **2.03a. Privacy & Data Security**

The NAM recognizes the critical relationship between all manufacturers and those that entrust their data to them, as that trust and goodwill is based in industry's continuing efforts to protect the security, integrity and privacy of that data.

Manufacturers also recognize that respecting and safeguarding privacy builds consumer confidence in new and innovative technologies and services. Because of this, industry's best practices in the proper handling of data are constantly adapting and evolving to address new threats. Government mandates as to specific tools or technologies to be used, on the other hand, can hold back innovation by freezing today's state-of-the-art in place, where it can become quickly outdated. The NAM will work with legislators, regulators and government officials to avoid mandates and to ensure that industry best practices, self-regulation and market-based solutions are used to protect data, that privacy and security will be driven both by the sensitivity of the information handled and the purposes for which it will be used, and that policies hold government agencies and private organizations to appropriate standards.

The flow of information has become global in scope, and the NAM encourages the government to work with industry to establish internationally safe harbors and other mechanisms bilaterally with respect to data sharing and the transfer of information. The government and private sector are gathering more consumer information to provide services, including personally identifiable information. The increase in the collection and use of these data has raised public concern over precisely what information is being collected, how the information is being used and the overall security of that information. As a result, addressing concerns related to the collection and use of consumer information is of paramount importance to legislators at the state and federal levels.

To promote consumer confidence in new technologies in general, the NAM recommends that:

- Lawmakers support strong non-discriminatory legislation to set a uniform national standard that pre-empts conflicting data breach notice state laws to ensure consumer privacy and data security, with enforcement falling under the jurisdiction of one agency of expert authority.
- States should be discouraged from passing laws or regulations that unnecessarily obstruct interstate commerce.
- Current law reflects the connected relationship manufacturers have with their customers, employees, and supply chains around the globe and therefore clarify how governments can access that personal and proprietary data without an undue and unnecessary impact on commerce.
- Businesses, vendors and government recognize the need to respect individual privacy.

### **2.03b. National Security, Cybersecurity & Infrastructure Protection**

The maintenance and protection of our nation's information technology and communications critical infrastructure and key resources are critical to our national security and economic stability, and the federal government must recognize that the Internet is a distinctive, inherent part of our national infrastructure. Due to the interdependence and reliance of the entire economy and government on the Internet for communication, commerce and homeland security, the Internet deserves a continued priority and attention in national homeland security initiatives and preparedness activities. The NAM encourages the federal government to advance homeland security preparedness through increased coordination with the private sector. This includes reliance on industry-driven best practices, and deference to the private sector to continue to develop appropriate general and industry-specific best practices for improved security.

The NAM believes that:

- Identity management solutions and secure communications are critical to infrastructure protection.

- The private sector should continue developing appropriate general and industry-specific best practices in consultation with the federal government for improved security and a prescriptive regulatory framework should not be imposed but instead the government should rely on voluntary, industry-led best practices.
- Government should share timely and actionable threat and vulnerability information with the private sector without creating new liabilities.
- Policies should require all cybersecurity solutions to be technology-neutral, open and interoperable and should leverage industry-based best practices and standards.
- Business incentives can encourage small and medium-sized manufacturers to adopt good cyber maintenance practices.

#### **2.04. Innovation and Emerging Technology**

It is critically important to educate policymakers and the general public on the importance of technology and innovation to our economic competitiveness and the critical role of manufacturing. In particular, we must work together to raise the level of national public awareness of the vital role played by manufacturers in leveraging science, technology, engineering and mathematics (STEM) disciplines to increase U.S. competitiveness and our social and economic well-being.

The government should support this effort by adequately funding and staffing existing institutions responsible for technology, science, intellectual property and research and development (R&D) programs while not unnecessarily increasing the regulatory burden. Federal agencies also need to make the most efficient use of their resources and to coordinate their science and technology programs with industry with a view toward meeting national needs and priorities.

##### **2.04a. Encouragement of Research and Development**

R&D is fundamental to the health and vitality of our nation's industrial and economic progress. Private sector R&D, especially in the applied sciences and process technologies, needs to be strongly supported. The partnership of research at the academic level and application expertise in industry should be encouraged. The federal government's major role in initiating and funding R&D should be to provide support for science, engineering and infrastructure. In general, this support should be directed toward solving national problems beyond the capabilities of the private sector, or when the federal government is the primary beneficiary of such research.

Much of the basic research directed at expanding our science and engineering knowledge base is conducted in universities. This work requires significant government support, which should be continued and regularly reviewed for its adequacy. Furthermore, in the interests of establishing funding stability for longer-term research projects, multi-year authorizations should be established wherever feasible. Support for basic research is integral to our nation's continued competitiveness and the future of our innovation economy.

##### **2.04b. Improved Technology Transfer**

The federal laboratory system of the United States is one of our most prized technology resources, yet its potential has yet to be fully tapped. For too long, the innovations developed in these laboratories were unavailable to, or unused by, industry.

Federally funded R&D should advance the competitive and security needs of the nation, and should be considered on its technical merits. Generic manufacturing R&D efforts, focused on base-building technologies and processes, should be promoted. As noted above, declassification and transfer of government-developed technologies to the private sector should be expedited whenever possible. The federal government should also assist and not control state and local governments in their efforts to

promote local technology development.

Technology transfer programs offer American taxpayers an excellent return on their investment as research facilities funded by taxpayer dollars are beneficial to the U.S. economy. The NAM is highly supportive of programs that provide incentives for U.S. businesses, schools and laboratories to hasten the transfer of technology into the commercial sector, as improved mechanisms for technology transfer and cooperative partnerships between industry, government and academia will benefit all three sectors and the country as a whole.

## **2.05. Intellectual Property**

Intellectual property rights are the lifeblood of our economy, and the protection of those rights assures manufacturers that their inventions will be secure as they create jobs and build industries around them.

### **2.05a. Protection of Intellectual Property Rights**

Innovation is one of our greatest strengths and a major contributor to economic growth and industrial competitiveness. For this reason, it is important for policymakers both to nurture the creation and application of technology and vigorously protect intellectual property, as the creation of technology is the creation of intellectual property. Without strong protection, the incentives for future innovation-directed R&D will be diminished.

The NAM supports a coordinated policy that strengthens the protection of intellectual property rights afforded by both domestic laws and international agreements and includes strong coordination and oversight by the governmental agencies tasked with protecting our nation's intellectual property. U.S. policy should reflect the vital importance of intellectual property rights for U.S. industrial competitiveness.

### **2.05b. Domestic Protection of Intellectual Property**

Policymakers should be strongly committed to supporting the rights of innovators to exploit their own inventions and should continually review the adequacy of our laws in the face of fast-paced scientific and technological change. In particular, the NAM believes public policy should:

- Increase national awareness of the inseparable link between intellectual property rights protection and innovation, improved trade performance, sound economic growth and strengthened national security.
- Strengthen U.S. intellectual property laws through improved mechanisms to safeguard confidential business information and trade secrets and the expansion of federal jurisdiction to enable faster, nationwide enforcement of all intellectual property rights.
- Encourage Congress to support marketplace approaches to technology-related challenges. Policymakers should refrain from banning or restricting technologies that may be used for substantially non-infringing uses. If government intervention is deemed necessary, such efforts should focus on proscribing or regulating the illicit behavior itself.
- Protect the health, safety and welfare of American consumers by recognizing the harmful effect of counterfeit and pirated products on the public and on our economy. Enforcement policies, both public and private, and strong interagency coordination and public education should be strengthened to help eliminate this threat. Industry should be encouraged and incentivized to use advances in technology and manufacturing processes to help curb the dissemination of counterfeit and pirated products.
- Allow federal contractors to retain the commercial domestic and foreign rights to inventions made in the performance of the contract, subject to a royalty-free, non-exclusive license to the government for governmental purposes. Any such license should not convey rights to the government to background inventions and technology or to manufacture or use an invention for the

purpose of providing services or supplies to the general public in competition with the contractor or the contractor's commercial licensees in the licensed fields.

- Ensure the continued improvement of U.S. intellectual property laws, procedures and penalties to increase the effectiveness and efficiency of the system. The centerpiece of an effective intellectual property protection regime is an adequately staffed, efficiently operated and fully funded United States Patent and Trademark Office that will process patent and trademark applications in a high-quality and expeditious fashion.
- Support policies that continue to eliminate unnecessary cost, complexity and uncertainty in the patent system including the restoration of any loss to the term of a patent through delay caused by federal regulatory requirements.

## **2.06. Immigration<sup>3</sup>**

Reform of U.S. immigration law regarding legal immigrants is essential to the nation's competitiveness. Such reform should include fundamental changes in the method of determining the number of employment-based visas, creating a system with an emphasis on market demands. Reforms would improve the employment-based green card system to keep talent within the United States, streamline and simplify the procedures for the temporary or non-immigrant visa, allow for temporary workers and immigrants to meet the needs of employers without displacing American workers and create other changes to enhance flexibility in responding to demands for the skills necessary to grow America's economy.

Employers need a reliable, accurate and efficient employment eligibility verification system that also provides fair enforcement of the laws. The current employment verification system creates undue liability for employers, causes increased administrative burdens and does not deter identity fraud. There is a need for an efficient and reliable process, which should include the following principles:

- A shared responsibility among employers, employees and the federal government;
- Fair enforcement program for those who use the system in good faith with strong safe harbor provisions for employers;
- A system that is accurate, reliable and timely;
- A consistent system that provides a coherent hiring process across all states;
- A verification process that is simple to use and easy to understand; and
- The use of up-to-date technology to make the process as effective, efficient and safe as possible.

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## **IIHRP-03 Health Policy**

### **3.01. Overview**

The cost of providing health coverage to employees is one of the most significant challenges facing manufacturers today. In fact, health insurance expenses represent the fastest growing cost component for employers. Manufacturers seek opportunities to continue to provide health benefits to employees as

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<sup>3</sup> During a policy issue realignment that transitioned Education and Workforce Policy responsibilities to the Manufacturing Institute, Education and Workforce policy language was unanimously voted removed from the NAM Policy Positions document and immigration policy language was placed under Technology Policy by the NAM Board of Directors at the Spring 2019 meeting in Scottsdale, AZ.

they recognize the competitive value it provides in a demanding market where skilled employees are scarce. However, rising health insurance costs hinder our ability to compete globally, drain resources that could be invested in new technologies and facilities, inhibit the creation of new manufacturing jobs and undermine economic growth across the nation. Rapidly rising health care costs are only part of the challenge manufacturers are facing. Manufacturers want to attract and retain skilled, healthy and productive employees. We are committed to sponsoring benefit programs that maintain the appropriate balance of quality care, flexible designs and shared financial responsibility. At the same time, the rising costs associated with a growing uninsured population and federal and state entitlement programs—all of which manufacturers share—are threatening our industry’s competitiveness and ability to provide benefits.

**Overall Value:** The U.S. devotes a much larger share of GDP to health care than other industrialized nations. However, basic quality indicators show that the U.S. does not have the best health outcomes and our medical system is inefficient.

**Access & Affordability:** The number of uninsured citizens is unacceptable to most. Government, employers and consumers recognize the difficulty in sustaining the current level of expenditures and all stakeholders have a role in ensuring access to affordable, quality health care. Accessibility must be considered in the context of affordability. Simply mandating broad coverage of the uninsured may not make health care more affordable, and thus it may remain inaccessible to some individuals.

**Lack of Transparency:** Information related to quality and cost is not readily available in a user- friendly format for many key health care stakeholders—employers, government, insurers, consumers and providers. Additionally, employer and consumer-friendly comparative information for various medical treatments and services is largely unavailable.

**Promoting Quality and Value:** Overly burdensome government intrusion hinders innovation, flexibility and competition based on quality and value. Both federal and state government should promote competition based on quality and value.

**Inefficient Processes:** Process inefficiency adds costs to any business—including health care. Administrative and medical process inefficiencies lead to duplication of basic patient services and tests, preventable medical errors, lost productivity and decreased patient satisfaction.

**Cost Shifting:** Both state and federal governments have responded to growing costs by reducing reimbursements to providers and cost shifting to the private sector—actions that exacerbate affordability and access concerns in the private market and are forcing many employers to reduce or cease offering health benefits.

**Inefficient Medical Liability System:** America’s inefficient medical liability system encourages frivolous lawsuits, unnecessary increases in costs through the use of defensive medicine, higher administrative costs and less access to quality care as physicians relocate or retire.

### **3.01a. Principles of a Strong System**

Achieving affordable, quality health care coverage is a critical priority for our entire nation, not just U.S. manufacturing. An improved health care system—with greater access to more efficient, higher quality and affordable health care—requires the collaboration of public and private stakeholders and individual consumers. The following principles were developed from the perspective of our members—manufacturers from all industries, who voluntarily seek to improve the employer’s role in the availability and affordability of health benefits to their employees. The NAM urges all manufacturers, suppliers and partners to promote health care reform consistent with our health care objectives and principles. These include:

- **Public/Private Partnership:** Health care reform should preserve the public/private partnership in delivering medical coverage to American citizens. The federal government should not be the sole

provider of health care.

- **Private Sector Involvement:** The private sector has a strong role to play in creating a system with multi-stakeholder responsibility, including individual responsibility, and ensuring that the right information is available and understandable. Manufacturers have much to share when it comes to efficiency, effectiveness and the economic impact of rising costs. Private sector innovation, efficiencies and fiscal responsibility can help make quality health care available to all employees. In addition, the NAM supports policies that reflect employer choice for health care options.
- **Product & Process Innovation:** Health care reform should support technological innovation in medical, pharmaceutical and medical device treatments, products and processes and promote competition in the private sector.
- **Tax Policy:** Health care tax policy should continue to promote employer-sponsored health care coverage for employees and their families. The individual tax exemption and employer deduction for employer-sponsored coverage must be maintained.
- **Cost Shifting:** Government should pay the full costs of health services they provide and not underpay or transfer costs to the private sector.

### **3.02. Process Improvement & Health Information Technology (HIT)**

The NAM believes that significant improvements to the quality, access and affordability of health care can be gained through a heightened public policy commitment to process improvement and the implementation of a nationwide interoperable health information system. Such a commitment would transform health care from a disconnected and largely paper-based system to an electronically integrated network of patient care ensuring that all health care stakeholders have access to the right information at the right time.

Manufacturers are well positioned to help the health care industry integrate much-needed process improvement techniques and information technology into their operations. U.S. manufacturers have streamlined their internal processes and operations to reduce costs, eliminate errors and improve quality. This process has been essential to maintaining America's competitive edge. Although the health care sector differs in significant ways from manufacturers, it can and should benefit from process improvement and the application of information technology.

HIT holds the same promise for health care providers as it does for manufacturers in terms of cost savings and quality improvements. However, process improvement initiatives must be coupled with HIT to ensure the full benefits in terms of access, quality and cost containment are realized. In the end, both components—HIT and process improvement—will improve health care access, quality and affordability by better disseminating information in a secure way among the patients, doctors and others empowered to make health-related decisions.

- The NAM supports a rational approach to deploying a nationwide HIT system that combines the creative energies of both the private and public sectors. An individual's privacy must be protected and information shared in a secure manner.
- The manufacturing community can utilize its combined purchasing power and leadership to drive the development of HIT and assist in its implementation. To further this goal, the NAM will support and encourage providers' efforts to streamline administrative processes and comply with a recognized quality management system.
- The federal government can help support the development of standards, remove barriers to HIT implementation and utilize its role as a major purchaser of health care services to help drive the adoption of HIT. The NAM supports policies that establish dates certain for creating interoperable

standards and deploying HIT and provide incentives for HIT adoption.

- The NAM supports physician adoption of electronic prescribing technology to facilitate timely physician prescribing decisions which improve health outcomes, while striving to reduce overall health care costs.

### **3.03. Information Transparency and the Consumer**

An informed consumer is an empowered consumer. When it comes to health care, patients—the ultimate consumers of health care services—face obstacles accessing the right information they need about the cost of health services relative to the quality of care or service provided, or the specific and relative benefits of different health plans. A transparent system is aimed at providing all stakeholders ready access to appropriate and relevant information at the right time. This will help promote individual accountability, informed decisions and most importantly, better care and outcomes.

- A transparent system should include information regarding the quality of performance of providers and cost information of procedures and treatments in an understandable format for consumers, payers and providers in order to achieve better decisions and health outcomes. This information should be understandable and specific to what medical providers, services and treatments are available with related cost-sharing provisions.
- The NAM supports value-based purchasing (a.k.a. “pay for performance”) programs and other incentive programs that encourage evidence-based medicine and the delivery of high-quality integrated care. These programs should also help consumers make better health decisions. Manufacturers can, and should, demand this information from health networks and providers.
- Access to Medicare data has become increasingly important as employers, insurers and researchers seek to combine Medicare claims data with their own data on individual physicians and other providers to improve the quality and cost measurement of health services. The NAM supports making provider-specific Medicare claims data available to researchers or other appropriate entities for the purpose of developing quality measures and performance reporting.

### **3.04. Innovation and Cost Containment Measures**

NAM members have long been at the forefront of innovation and creativity to solve significant business issues and succeed in this highly competitive global market. We believe this same type of thinking should be applied to the problems facing America’s health care system.

#### **3.04a. Protecting ERISA**

The foundation of employer-sponsored health benefits is the Employee Retirement Income Security Act (ERISA). Today, more than 160 million Americans receive health, retirement and other valuable benefits through their employer under the framework established by ERISA. ERISA enables employers to maintain uniform benefit plans that meet the needs of employees on a nationwide basis and is critical to preserve if employers are to continue offering high-quality health coverage to their employees.

Any public policy aimed at improving the quality, cost and reach of health coverage must start by protecting the ERISA framework. Protecting ERISA will give manufacturers the flexibility they need to apply the same innovative thinking to health coverage that has powered America’s job creation and economic growth.

#### **3.04b. Health Management: Wellness and Prevention and Chronic Care Management**

Chronic conditions impact millions of Americans and account for nearly seven of every 10 deaths in the U.S. Treating these chronic diseases is the primary driver of health care costs. Therefore, managing existing chronic conditions and preventing new cases is a key objective for manufacturers.

Studies suggest that an investment in wellness and prevention programs can yield dramatic savings in long-term health costs and improvements in employee satisfaction and productivity. Employers have taken the lead

in implementing workplace wellness programs, and report increased job satisfaction, improved morale, reduced absenteeism, higher productivity and lower overall health care costs among employees.

In an effort to reduce health care costs and improve the well-being of employees, the NAM supports policies that encourage and incent both public and private health plans to implement a comprehensive health management approach. Such an approach would include coordinated care, preventative services, behavioral change tools, disease and case management, better assessment of employee health risks and incentives for employees to achieve better health outcomes. The most effective spending of health care dollars is primary and preventative care.

Public policy should support private sector efforts by encouraging employers to treat wellness and prevention as critical components of their overall health insurance benefits packages. This includes appropriate financial and reimbursement incentives to increase the utilization of chronic disease management tools and services.

### **3.04c. Flexible Benefit Designs**

Flexible financial benefit designs such as Health Savings Accounts (HSAs), Health Reimbursement Arrangements (HRAs) and Flexible Spending Accounts (FSAs) provide additional choices for consumers and empower employees to manage their health expenses while improving access to affordable private health coverage. The NAM supports such designs and other tax-favored funding programs and encourages improvements to enhance flexibility. At the same time, such programs should provide incentives for prevention, wellness and treatment adherence.

The NAM supports end-of-year rollover of unexpended funds or an after-tax payment to employees with Flexible Spending Accounts (FSAs), as well as increasing the annual caps and allowing the use of FSAs for over-the-counter medications. This would reduce the consumption of unnecessary health services and products in order to deplete funds in an individual's account prior to the end of the year.

The NAM supports FSA expansion for individual health insurance coverage, dental coverage and long-term care if the employee does not participate in an employer-sponsored health plan. The NAM supports increasing the annual contribution limits for HSAs, permitting account owners to purchase health insurance using HSA funds, such as the purchase of over-the-counter medications, permitting greater flexibility in the use of HSAs and utilizing HSA funds to cover expenses incurred prior to the establishment of the account.

### **3.04d. Promoting the Availability of Safe and Affordable Medical Innovations**

Medical innovations are important components of modern benefit designs. The NAM supports policies that will help employers provide access to affordable and innovative medical products to their employees and provide significant cost savings for both the public and private sectors through better outcomes.

**Affordability:** The NAM supports increased access to affordable medical innovations via a robust and competitive market. This includes relying on the scientific expertise of the FDA to create a regulatory pathway for follow-on biologics, as well as maintaining transparent and predictable processes for the review or approval of medical devices, drugs or biologics.

**Price Controls:** Efforts to apply price controls to prescription drugs, biologics or devices will result in less medical innovation and the rationing of care. Price controls destroy the ability of manufacturers to fund and conduct research and to innovate. Market forces deliver the best products at the best prices.

**Unauthorized Importation of Medical Products:** The NAM opposes the importation of drugs, biologics and devices outside the current safety system established by the FDA. Consumer safety should be our paramount public policy concern. Importation and re-importation could expose consumers to counterfeit and adulterated therapies. In addition, it could undermine the public health as well as the reputation of those quality drugs, devices and biologics approved by the FDA for marketing in the U.S.

**Innovation:** Health care policy must strike a reasonable balance between the need to promote medical

innovation, ensure patient safety and encourage competition. The NAM recognizes the cost of developing and manufacturing drug, device and biologic products is significant: billions of dollars in capital, research and development costs are required to bring these products to market. Without an adequate return on investment, such innovative new treatments will never reach patients. Therefore, public policy that promotes competition and preserves patient safety must also respect proprietary information and include incentives such as data exclusivity and patent protections for innovative research and development.

**Regulatory Oversight:** The medical innovation community is constantly discovering new drugs and devices and improving upon existing drugs and devices that provide patients with the means to live longer and healthier lives. Review and approval of these new lifesaving, life-enhancing technologies must consider both the potential benefits and risks to patients. No regulation can or should seek or purport to eliminate every possible risk. Sound principles of science and benefit-risk analysis should be applied to circumstances where regulation is warranted. During the research, development and review processes, the benefits and risks of medicines and medical devices must be considered and weighed against the benefits and risks of not treating or not preventing the condition. The NAM believes the FDA should embrace a more predictable and transparent process in determining how efficacy and safety parameters are balanced as part of the FDA's benefit-risk analysis. Such an approach would result in more timely, balanced and higher-quality decisions by the agency to the benefit of patients.

### **3.05. Mandates**

The NAM opposes government mandates that dictate the design of health care plans and reduce employer flexibility of plan design. Individual companies are best suited to assess the appropriate mix of benefits and direct compensation that satisfies employee needs while fulfilling corporate goals for continued employment and profitability. Instead of mandates, federal, state and local governments should work in partnership with employers to address health care coverage needs for Americans.

### **3.06. Tax Policy to Expand Access and Affordability**

The current structure of the U.S. tax code treats employer contributions to employee health insurance as nontaxable benefits that are not considered part of total compensation for income or payroll tax purposes. The NAM fully supports this tax exemption, which has helped make employer-provided health coverage the cornerstone of medical care in this country and provides millions of Americans with health insurance coverage.

To encourage employers to continue providing coverage, the NAM supports public policies that preserve full tax deductibility for employee health coverage.

The NAM promotes tax policies that encourage employers to provide health care benefits and minimizes the burden for doing so.

The NAM supports tax policies that promote use of, and enhance the flexibility of, HSAs and other consumer-driven health care benefits designs.

### **3.07. Cost-Shifting**

Cost-shifting to employers represents a significant obstacle to reducing health care costs and increasing access to affordable health coverage. Uncompensated care delivered by hospitals and physicians and uncollectible hospital debt are passed on to patients and employers who provide coverage. Furthermore, inadequate Medicare and Medicaid reimbursements increase costs to the private sector and private companies. Reform of the Medicare and Medicaid system could better manage these shifts.

Access to health care is a concern and responsibility for both the public and private sectors. Cost shifting from one sector to another undermines the public/private partnership needed to achieve the goal of making coverage available to all Americans.

Eliminating cost shifting should be a critical policy objective. The NAM recommends that health care policies

should be reviewed in light of several factors, including costs in terms of taxes or other economic burdens that may fall disproportionately on one sector, and the impact on efficiency, innovation, quality of care and patient health outcomes. Public programs such as Medicare and Medicaid should be reformed to distribute the cost burden equally between the public and private sectors and among consumers, payers and health care providers.

### **3.08. Retiree Health Care**

Demographic and cultural trends—such as the aging of the Baby Boomer generation and the desire of many employees to retire early – are changing the face of America’s manufacturing workforce. These trends have a significant impact on rising health care costs and access to affordable health insurance. Moreover, older U.S.-based manufacturing companies have large retiree populations, which add significant costs to employer-sponsored health care. Health care legislation and regulatory actions must reflect these dynamics.

Early retirees can boost the ranks of the uninsured as they lose access to their employer- sponsored coverage and cannot yet qualify for Medicare. Many employers are taking steps to address these issues, through phased retirement plans that encourage older employees to remain active employees.

While the NAM will remain at the forefront of private sector efforts to adapt to these changes, we support public policies that provide employers the incentives and necessary flexibility to manage the needs of their aging employees and soon-to-be-retired employees.

We support policies that encourage flexibility for employers with regard to the tax treatment of early retirees, benefits offerings and managing the shortage of skilled employees.

### **3.09. Small Business Support**

Unlike their larger counterparts, many small manufacturers do not enjoy the benefits of greater bargaining power with their health insurance carriers. The NAM advocates greater bargaining power for small businesses to make health insurance more affordable through reduced premiums. Health premiums could be significantly reduced through small-business health plans. These plans will also reduce the administrative cost burden for small employers.

The NAM supports innovative programs that will reduce the administrative and cost burdens for small manufacturers who wish to provide health care benefits for employees.

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