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# Testimony

**of Drew Greenblatt**

President and Owner

Marlin Steel Wire Products, LLC

*on behalf of the* National Association of Manufacturers

*before the* Subcommittee on Regulatory Affairs and Federal Management  
of the Committee on Homeland Security and Governmental Affairs  
U.S. Senate

*on* Examining Federal Rulemaking Challenges and Areas of  
Improvement within the Existing Regulatory Process

March 19, 2015



**COMMENTS OF THE NATIONAL ASSOCIATION OF MANUFACTURERS  
BEFORE THE**

**SUBCOMMITTEE ON REGULATORY AFFAIRS AND FEDERAL MANAGEMENT  
COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS  
U.S. SENATE**

**MARCH 19, 2015**

Chairman Lankford, Ranking Member Heitkamp and members of the Subcommittee on Regulatory Affairs and Federal Management, thank you for the opportunity to testify about federal regulations and how the rulemaking process relates to my business.

My name is Drew Greenblatt, and I am president and owner of Marlin Steel Wire Products, LLC, based in Baltimore, Maryland. Marlin Steel Wire is a leading manufacturer of custom wire baskets, wire forms and precision sheet metal fabrication assemblies—all produced entirely in the United States. The customers for our materials-handling solutions come from pharmaceutical, medical, industrial, aerospace and automotive industries all over the world. We export to 38 countries. Twenty percent of Marlin Steel Wire's employees are mechanical engineers. Like so many other manufacturers in the United States that compete in a global economy, Marlin Steel Wire succeeds through innovation, investment and the hard work of our dedicated employees. The innovative ideas from the engineering team propel success at Marlin Steel Wire. When I bought the company in 1998, we had about \$800,000 in sales with 18 workers. Today, Marlin Steel Wire employs 30 people and has over \$5.5 million in sales. We continue to succeed despite government policies and regulations that make it harder for us to grow, export and create jobs.

I am pleased to testify on behalf of the National Association of Manufacturers (NAM). I serve as a member of the NAM Board of Directors, a member of its Executive Committee and as the vice chairman of the Small and Medium Manufacturers Group. The NAM is the nation's largest industrial trade association and voice for more than 12 million men and women who make things in America. The NAM is committed to achieving a policy agenda that helps manufacturers grow and create jobs. Manufacturers very much appreciate your interest in and support of the manufacturing economy.

**I. State of Manufacturing**

In the most recent data, manufacturers in the United States contributed \$2.09 trillion to the economy (or 12 percent of GDP). For every \$1.00 spent in manufacturing, another \$1.37 is added to the economy, the highest multiplier effect of any economic sector. Importantly, manufacturing supports an estimated 17.6 million jobs in the United States—about one in six private-sector jobs. In 2013, the average manufacturing worker in the United States earned \$77,506 annually, including pay and benefits—24 percent more than the average worker.

Manufacturing in the United States lost 2.3 million jobs in the last recession. Since the end of 2009, we have gained back 826,000 manufacturing jobs. To maintain manufacturing momentum and encourage hiring, the United States needs not only improved economic conditions but also government policies more attuned to the realities of global competition. Because of the significant challenges facing manufacturing in the United States, the NAM advocates federal policies that will ensure a robust and dynamic manufacturing sector that is ready to meet the needs of our economy and workers.

## II. Regulatory Environment

The conversation about regulation too quickly becomes partisan. Democrats and Republicans have much in common on their views on regulation, but the rhetoric often fails to match that consensus. Similarly, the business community is often misunderstood about their views on regulation. Manufacturers believe regulation is critical to the protection of worker safety, public health and our environment. We believe some critical objectives of government can only be achieved through regulation, but that does not mean our regulatory system is not in need of considerable improvement and reform. New regulations are too often poorly designed and analyzed and ineffectively achieve their benefits. They are often unnecessarily complex and duplicative of other mandates. Their critical inputs—scientific and other technical data—are sometimes unreliable and fail to account for significant uncertainties. Regulations are allowed to accumulate with no real incentives to evaluate existing requirements and improve effectiveness. In addition, regulations many times are one-size-fits-all without the needed sensitivity to their impact on small businesses. We can do better.

Unnecessary regulatory burdens weigh heavily on the minds of manufacturers. In the NAM/*IndustryWeek* Survey of Manufacturers released on March 8, 69.1 percent of respondents cited an unfavorable business climate due to government policies, including regulations and taxes, as a primary challenge facing businesses—up from 62.2 percent in March 2012. This percentage of respondents was principally equivalent to those citing rising health care and insurance costs (69.4 percent) as one of their primary business challenges.

The federal government's own data reflects these challenges. According to the annual information collection budget, the paperwork burden imposed by federal agencies excluding the Department of Treasury<sup>1</sup> increased from 1.509 billion hours in fiscal year (FY) 2003 to 2.446 billion hours in FY 2013, an increase of 62.1 percent. To put this number in perspective, federal agencies—not including the Department of Treasury—imposed more than 279,000 years' worth of paperwork burden on the American public in one year. In the past 10 years, federal agencies (excluding the Department of Treasury) added almost 82 million hours in paperwork burden through their own discretion. This is on top of the 1.121 billion hours that non-Treasury agencies estimate was added because of new statutory requirements.

Manufacturers appreciate the need for recordkeeping and paperwork essential to ensuring compliance with important regulatory requirements, but government-imposed regulatory burdens continue to increase despite advancements in technology and both statutory and executive branch directives that federal agencies minimize unnecessary burdens.

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<sup>1</sup> The Department of Treasury's burden has increased from 6.590 billion hours in FY 2003 to 7.007 billion hours (or 6.3 percent) in FY 2013. See Office of Information and Regulatory Affairs (OIRA), "Information Collection Budget of the United States Government 2014" (2014), [https://www.whitehouse.gov/sites/default/files/omb/inforeg/icb/icb\\_2014.pdf](https://www.whitehouse.gov/sites/default/files/omb/inforeg/icb/icb_2014.pdf).

Government policies should support the global competitiveness of manufacturers and other businesses in the United States, not impose increasing burdens. Manufacturers in the United States confront challenges that our global competitors do not have.

The issue of an increasing federal regulatory burden is not unique to a particular presidency or political party. The non-Treasury paperwork burden increased 60 percent<sup>2</sup> during the eight years that President George W. Bush was in office. The NAM has welcomed efforts by President Barack Obama and his Administration to reduce regulatory burdens. The President has signed executive orders, and the Office of Management and Budget has issued memoranda on the principles of sound rulemaking, considering the cumulative effects of regulations, strengthening the retrospective review process and promoting international regulatory cooperation. Unfortunately, these initiatives have yet to provide real cost reductions for manufacturers or other regulated entities.

These directives are well-intentioned, but any benefits realized by these efforts have been subsumed by the unnecessarily burdensome regulations that federal agencies have been and are promulgating. Based on data from the Government Accountability Office, 484 major new regulations—defined as having an annual effect on the economy of at least \$100 million—were issued over the previous six years. These regulations include significant burdens imposed on manufacturers in the United States and represent real compliance costs that affect our ability to expand and hire workers.

### **III. Regulatory Challenges Facing Manufacturers in the United States**

Because manufacturing is such a dynamic process, involving the transformation of raw materials into finished products, it involves more environmental and safety issues than other businesses. The burden of environmental regulation falls disproportionately on manufacturers, and it is heaviest on small manufacturers because their compliance costs often are not affected by economies of scale. In September 2014, the NAM issued a report<sup>3</sup> that shows the economic impact of federal regulations. The study found that manufacturers in 2012 spent on average \$19,464 per employee to comply with regulations, nearly double the amount per employee for all U.S. businesses. Small manufacturers—those with fewer than 50 employees like Marlin Steel Wire—incur regulatory costs of \$34,671 per employee per year. This is more than triple that of the average U.S. business.

In October 2013, the Manufacturers Alliance for Productivity and Innovation (MAPI) released a study that highlighted the regulatory burdens placed on manufacturers. The study found that since 1981, the federal government has issued an average of just under 1.5 manufacturing-related regulations per week for more than 30 years. Individually and cumulatively, these regulations include significant burdens imposed on manufacturers in the United States and represent real compliance costs that affect our ability to expand and hire workers.

As the owner of a small manufacturing company, I know very well the importance of allocating scarce resources effectively to achieve continued success, which includes increased pay and benefits for my employees. Every dollar that my company spends on complying with an

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<sup>2</sup> Government-wide paperwork burden, excluding the Department of Treasury, was 1.205 billion hours in FY 2000 and 1.929 billion hours in FY 2008. See OIRA, “Information Collection Budget of the United States Government 2009” (2009), [https://www.whitehouse.gov/sites/default/files/omb/assets/infocreg/icb\\_2009.pdf](https://www.whitehouse.gov/sites/default/files/omb/assets/infocreg/icb_2009.pdf).

<sup>3</sup> NAM, *The Cost of Federal Regulation to the U.S. Economy, Manufacturing and Small Business* (September 2014), <http://www.nam.org/Data-and-Reports/Cost-of-Federal-Regulations/Federal-Regulation-Full-Study.pdf>.

unnecessary and ineffective regulatory requirement is one less dollar that can be allocated toward new equipment or my employees' health care or tuition benefits. Government-imposed inefficiencies are more than numbers in an annual report. They are manifested in real costs borne by the men and women who work hard to provide for their families. This is something about which I am passionate.

I can attest that poorly designed regulations and duplicative or unnecessary paperwork requirements create real costs that affect manufacturers' bottom lines. In 2010, Marlin Steel Wire received a letter from the Department of Treasury imposing a fine of \$15,000 for inadvertently omitting a third signature on a 20-page form when we created a 401(k) plan for our employees. This simple oversight led to several weeks of unnecessary anxiety and communications unrelated to operating a business. Though we paid a smaller penalty for the missed signature, valuable resources were diverted away from our business activities simply because of a missed signature on a form.

Marlin Steel Wire's success as a manufacturer in the United States relies on our ability to reach the 95 percent of consumers living outside our borders. But unnecessary, burdensome paperwork imposed on us by the federal government harms our productivity. For example, we spend three minutes filling out a form when we ship products to Canada or Mexico. But if we ship products to a non-NAFTA country, we spend 20 minutes filling out forms. The longer form does not seem necessary and only harms our productivity relative to foreign competitors looking to serve the same markets.

My company receives an exceedingly high number of surveys from the Department of Commerce. Failure to comply with an agency's request for information requested can result in stiff penalties, so I'm forced to reallocate resources and staff time, on top of paying third parties for unexpected services, to comply with agency demands. It seems that regulators should more thoughtfully consider their requests for information and coordinate both within their own agencies and among others. Moreover, the estimates provided by an agency for how long forms will take to complete are grossly underestimated.

An example of the indirect costs of regulation that affect my business is compliance with the Securities and Exchange Commission's (SEC) rule on conflict minerals. Although the rule only applies to public companies, I am now faced with complying with a different certification form for every one of my suppliers to prove that no part of my products are made or derived from the regulated minerals coming from the Democratic Republic of the Congo or an adjoining country. This is a costly obligation not directly imposed on me by government, but is a cost imposed because of a government regulation. These indirect effects of rules can be every bit as costly as direct effects and should be considered when an agency is complying with the Regulatory Flexibility Act. In this rule, the SEC lawfully ignored those indirect effects, and the Senate should follow the lead of the House of Representatives, which recently passed legislation to address this issue.

These examples highlight the challenges of enforcement and compliance with current regulatory requirements. Their associated costs are an extra weight holding manufacturers down as we try to move forward, find new markets, grow our businesses and create new jobs. There is a failure within the federal government to truly understand the impact of regulatory requirements, such as paperwork and recordkeeping, on the public. A small manufacturer or any regulated entity in the United States should not have to be on constant guard for the next burdensome and poorly designed requirement issued by an agency. Our regulatory system should be designed to promote coordination within and between agencies, and regulations

should be designed to most effectively meet regulatory objectives to minimize unnecessary burdens.

Manufacturers recognize that regulations are necessary to protect people's health and safety, but we need a regulatory system that effectively meets its objectives while supporting innovation and economic growth. In recent years, the scope and complexity of federal rules have made it harder to do business and compete in an ever-changing global economy. As a result, manufacturers are sensitive to regulatory measures that rely on inadequate benefit and cost justifications.

Agencies are failing in their responsibility to conduct analysis that would better assist them in understanding the true benefits and costs of their rules. Despite existing statutory requirements and clear directives from the President to improve the quality of regulations, manufacturers face an increasingly inefficient and complex myriad of regulations that place unnecessary costs on the public.

#### **IV. Reducing Regulatory Impediments**

Manufacturing in America is making a comeback, but it could be much stronger if federal policies did not impede growth. If we are to succeed in creating a more competitive economy, we must reform our regulatory system so that manufacturers can innovate and make better products instead of spending hours and resources complying with inefficient, duplicative and unnecessary regulations. Manufacturers are committed to commonsense regulatory reforms that protect the environment and public health and safety as well as prioritize economic growth and job creation. The time is now for members of both parties to work together to find ways to improve the regulatory system.

Manufacturers support reform proposals that would fundamentally change the regulatory process with the goal of improving the quality of rules that agencies issue. Leaders in Washington must view regulatory reform as more than just a rule-by-rule process but instead as a system-by-system and objective-by-objective review. The NAM recommends a number of reforms outlined below that would improve the system through which modern rulemaking is conducted.

##### *a. Streamline Regulations through Sunsets and Retrospective Review*

Our regulatory system is broken, unnecessarily complex and inefficient, and the public supports efforts to streamline and simplify regulations by removing outdated and duplicative rules. Through a thoughtful examination of existing regulations, we can improve the effectiveness of both existing and future regulations. Importantly, retrospective reviews could provide agencies an opportunity to analyze, revise and improve techniques and models used for predicting more accurate benefits and costs estimates for future regulations. As Michael Greenstone, former chief economist at the Council of Economic Advisers under President Obama, wrote in 2009, "The single greatest problem with the current system is that most regulations are subject to a cost-benefit analysis only in advance of their implementation. That is the point when the least is known, and any analysis must rest on many unverifiable and potentially controversial assumptions."<sup>4</sup> Retrospective review of existing regulations should

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<sup>4</sup> Michael Greenstone, "Toward a Culture of Persistent Regulatory Experimentation and Evaluation," in David Moss and John Cisternino, eds., *New Perspectives on Regulation*, The Tobin Project, 2009, p. 113, [http://tobinproject.org/sites/tobinproject.org/files/assets/New\\_Perspectives\\_Ch5\\_Greenstone.pdf](http://tobinproject.org/sites/tobinproject.org/files/assets/New_Perspectives_Ch5_Greenstone.pdf).

include a careful and thoughtful analysis of regulatory requirements and their necessity as well as an estimation of their value to intended outcomes.

For an agency to truly understand the effectiveness of a regulation, it must define the problem that the rule seeks to modify and establish a method for measuring its effectiveness after implementation. In manufacturing, best practices include regular reprioritizations and organized abandonment of less useful methods, procedures and practices. The same mentality should apply to regulating agencies: the retrospective review process should be the beginning of a bottom-up analysis of how agencies use their regulations to accomplish their objectives. Agencies should look to the private sector and the concept of “lean manufacturing” as a model for how to improve our regulatory system. Many manufacturers have transformed their operations by adopting a principle called “lean thinking,” where they identify everything in the organization that consumes resources but adds no value to the customer. They then look for a way to eliminate efforts that create no value.

In the government setting, agencies might identify anything that is not absolutely necessary to achieve the regulatory outcome and eliminate it. When considering a new regulation or reviewing existing requirements, agencies must first define the problem, which should include early participation by all stakeholders. They must engage in a bottom-up interagency analysis of how agencies use regulations, guidance and paperwork requirements to accomplish objectives. It is vital to identify all inefficiencies and determine how to eliminate efforts and processes that create no value or assist in meeting objectives. Finally, agencies must institutionalize these best practices, including regular reprioritizations and organized abandonment of less useful methods, procedures and practices.

The Administration strongly promotes the benefits of conducting retrospective reviews. Executive Order 13563 directs agencies to conduct “retrospective analysis of rules that may be outmoded, ineffective, insufficient or excessively burdensome, and to modify, streamline, expand or repeal them in accordance with what has been learned.” Retrospective review of regulations is not a new concept, and there have been similar initiatives over the past 40 years. In 2005, the Office of Management and Budget (OMB), through the Office of Information and Regulatory Affairs (OIRA), issued a report, titled *Regulatory Reform of the U.S. Manufacturing Sector*. That initiative identified 76 specific regulations that federal agencies and OMB determined were in need of reform. In fact, the NAM submitted 26 of the regulations characterized as most in need of reform. Unfortunately, like previous reform initiatives, the 2005 initiative failed to live up to expectations, and despite efforts by federal agencies to cooperate with stakeholders, the promise of a significant burden reduction through the review of existing regulations never materialized.

There is significant bipartisan interest in implementing federal policies that will tackle the problem of regulations that place unnecessary costs on manufacturers and businesses yet are not benefitting society. On March 11, Sen. Angus King (I-ME) introduced the Regulatory Improvement Act of 2015 (S. 708) with Sens. Roy Blunt (R-MO), Jeanne Shaheen (D-NH) and Roger Wicker (R-MS). This bipartisan legislation would establish a bicameral and bipartisan Regulatory Improvement Commission to review outdated regulations and submit regulatory changes to Congress for an up-or-down vote. In the 113th Congress, Sen. Amy Klobuchar (D-MN) introduced the Strengthening Congressional Oversight of Regulatory Actions for Efficiency Act (SCORE Act, S. 1472), which would require a new division within the Congressional Budget Office (CBO) to analyze economically significant regulations that have been in effect for five years to determine if they are meeting the stated goals they were intended to provide.

To truly build a culture of continuous improvement and thoughtful retrospective review of regulations, retrospective reviews must be institutionalized and made law. One of the best incentives for high-quality retrospective reviews of existing regulations is to sunset rules automatically that are not chosen affirmatively to be continued. The NAM has supported past legislation introduced in the past two Congresses by Rep. Randy Hultgren (R-IL), the Regulatory Sunset and Review Act (H.R. 309, 113th Congress), that would implement a mandatory retrospective review of regulations to remove conflicting, outdated and often ineffective regulations that build up over time. If an outdated rule has no defender or continued need for existence or is shown to have decreased in effectiveness over time, it should be sunset.

Adopting lean thinking into the review of existing regulations could produce more robust and significant reductions in regulatory burdens while maximizing the benefits associated with protecting health, safety and the environment. If agencies were conducting this kind of review, we would see requests to Congress to change statutes to allow for greater flexibility in a number of regulatory programs. Rep. Hultgren's bill includes a provision directing agencies to report to Congress on needed legislative changes that would assist them as they implement regulatory changes as a result of their reviews. The necessity of legislative changes should be an opportunity, not a roadblock, to any proposal.

The power of inertia and the status quo is very strong. Without an imperative to review old regulations, it will not be done, and we will end up with the same accumulation of conflicting, outdated and often ineffective regulations that build up over time. These types of systems need to be put in place throughout the government to ensure regulatory programs are thoughtful, intentional and meet the needs of our changing economy.

*b. Strengthen and Codify Sound Regulatory Analysis*

The complexity of rulemaking and its reliance on highly technical scientific information has only increased since the passing of the Administrative Procedure Act (APA) in 1946. Our administrative process has not kept up with those changes, and agency accountability is lacking without meaningful judicial review. Moreover, the process by which the government relies on complex, scientific information as the basis for rules should be improved and subject to judicial review. Efforts to encourage peer review of significant data and to create consistent standards for agency risk assessment should be part of that process. The NAM supports legislative reforms to the APA to incorporate the principles and procedures of Executive Order 12866 into the DNA of how every rule is developed. Manufacturers also support legislation that would improve the quality of information agencies use to support their rulemakings. President Obama reaffirmed the principles of sound rulemaking when he issued Executive Order 13563, stating,

Our regulatory system must protect public health, welfare, safety and our environment while promoting economic growth, innovation, competitiveness and job creation. It must be based on the best available science. It must allow for public participation and an open exchange of ideas. It must promote predictability and reduce uncertainty. It must identify and use the best, most innovative and least burdensome tools for achieving regulatory ends. It must take into account benefits and costs, both quantitative and qualitative. . . . It must measure, and seek to improve, the actual results of regulatory requirements.

Manufacturers and the general public agree with these principles and believe the regulatory system can be improved in a way that protects health and safety without compromising economic growth. Agencies should, among other things, use the best available



science, better calculate the benefits and costs of their rules, improve public participation and transparency, use the least burdensome tools for achieving regulatory ends and specify performance objectives rather than a particular method of compliance to improve the effectiveness of regulatory measures. Members of the subcommittee from both sides of the aisle have expressed support for reform proposals that include many important regulatory requirements designed to improve the quality of an agency's analysis and the effectiveness and efficiency of its rules. Last Congress, Sen. Rob Portman (R-OH) introduced the bipartisan Regulatory Accountability Act (S. 1029), comprehensive reform legislation that would instill sound rulemaking principles into the fabric of our regulatory system. Agencies would be statutorily required to conduct cost-benefit analysis and recognize the true regulatory impacts of their rules. The House passed the Regulatory Accountability Act in January, and the NAM supports Senate consideration of this important reform package.

Manufacturers and other businesses are often asked which regulation is the most burdensome. It is a difficult question to answer because the cumulative costs of federal, state and local regulations are extremely complex. As with the multitude of surveys that agencies require Marlin Steel Wire to complete, agencies must also better consider the cumulative effects of their regulations and requirements. Important reform measures, like Sen. Portman's Regulatory Accountability Act, would require agencies to consider the cumulative costs of regulatory requirements. Executive Order 13563 and OMB guidance for agencies both articulate this principle. Moreover, President Obama also issued Executive Order 13610, which directs agencies to consider "the cumulative effects of their own regulations, including cumulative burdens . . . and give priority to reforms that would make significant progress in reducing those burdens while protecting public health, welfare, safety and our environment." Agency adherence to each of these regulatory principles is vital if we are to implement fundamental change to our regulatory system that improves the effectiveness of rules in protecting health, safety and the environment while minimizing the unnecessary burdens imposed on regulated entities.

*c. Improve Congressional Review and Analysis of Regulations*

Congress is at the heart of the regulatory process and produces the authority for the agencies to issue rules, so it is also responsible, along with the executive branch, for the current state of our regulatory system. While Congress does consider some of its mandates' impacts on the private sector through regulatory authority it grants in law, it has less institutional capability for analysis of those mandates than the executive branch. Congress does not have a group of analysts who develop their own cost estimates of proposed or final regulations. Over the past two decades, members of Congress have proposed to create a congressional office of regulatory analysis. As the Congressional Budget Office parallels the Office of Management and Budget, so too should Congress have a parallel to OIRA.

This institutional change to the regulatory system could encourage more thoughtful analysis of the regulatory authority Congress grants in statutes, provide Congress with better tools in analyzing agency regulations and allow Congress to engage in more holistic reviews of the overlapping and duplicative statutory mandates that have accumulated over the years. The NAM supports legislative proposals like Sen. Klobuchar's SCORE Act, which would provide Congress with an office to analyze the prospective impact of economically significant rules in addition to conducting retrospective reviews. Not only would this office give lawmakers better information about the potential impacts of a proposed regulation, but it would also provide agencies with analysis conducted by an objective third party. This is an important rethinking of the institutional design of our regulatory system and could lead to regulations that more effectively meet policy objectives while reducing unnecessary burdens.

*d. Support Centralized Review of Agencies' Regulatory Activities*

President Clinton's 1993 Executive Order 12866 defines OIRA's regulatory review responsibilities. OIRA reviews significant rules issued by executive branch agencies and the analyses used to support those rules at both their draft and final stages. The office applies a critical screen to the contents of regulation, agencies' analytical rigor, legal requirements affecting the proposal and the President's priorities and philosophy. Nowhere else in the government does this take place. Single-mission agencies are frequently effective in accomplishing their objectives. This intense focus on a relatively narrow set of policies can weaken their peripheral vision, however, including their assessment of duplication between agencies, cumulative impacts of similar rules on the same sector of the economy or other broader considerations. OIRA is the only agency that brings to bear a government- and economy-wide perspective. For that reason, OIRA is a critical institution in our regulatory process for conducting a centralized review of the agencies' regulatory activities, facilitating interagency review, resolving conflicts and eliminating unnecessary duplication.

A key responsibility of OIRA is to ensure that regulating agencies are meeting the requirements of Executive Order 12866 for a significant regulatory action. The executive order states, "Each agency shall assess both the costs and the benefits of the intended regulation and, recognizing that some costs and benefits are difficult to quantify, propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs." Importantly, OIRA facilitates public participation in the regulatory process and helps ensure that agencies' analyses, to the extent possible, are accurate. Without quality analysis, it is difficult to ensure that regulations are meeting health, safety and environmental objectives "while promoting economic growth, innovation, competitiveness and job creation," as stated in Executive Order 13563.

Despite its critical function, even as the size and scope of the government has increased, OIRA has shrunk. As OIRA's staff was reduced from a full-time equivalent ceiling of 90 to fewer than 40 employees today, the staff dedicated to writing, administering and enforcing regulations has increased from 146,000 in 1980 to 290,690 in 2013. OIRA's budget has been reduced by more than 60 percent, or nearly \$11 million in real 2005 dollars, while the agencies' budgets have increased from \$15.2 billion to more than \$50 billion in real 2005 dollars. To ensure that OIRA can fulfill its current mission, additional staff and resources are necessary. Much has been made about the length of OIRA reviews, but additional resources would allow OIRA analysts to do their jobs more quickly.

By expanding OIRA's ability to provide objective analysis, to conduct thoughtful regulatory review and to work with regulating agencies, federal regulations will meet health, safety and environmental objectives more effectively at a much lower cost to businesses. A modest investment in this institution will pay back significant returns to the entire economy.

*e. Hold Independent Regulatory Agencies Accountable*

The President does not exercise similar authority over independent regulatory agencies—such as the National Labor Relations Board, the Securities and Exchange Commission and the Consumer Product Safety Commission—as he does over other agencies within the executive branch. They are not required to comply with the same regulatory principles as executive branch agencies and often fail to conduct any analysis to determine expected

benefits and costs. Therefore, the rules issued by these agencies can impose significant costs on manufacturers.

The President's bipartisan Council on Jobs and Competitiveness made recommendations in its interim and final reports to encourage Congress to require independent regulatory agencies to conduct cost-benefit analyses of their significant rules and subject their analysis to third-party review through OIRA or some other office. Congress should confirm the President's authority over these agencies. If there is consensus that this process makes executive branch rules better, why would we not want to similarly improve the rules issued by independent regulatory agencies? Consistency across the government in regulatory procedures and analysis would only improve certainty and transparency of the process.

Last Congress, Sens. Rob Portman (R-OH) and Mark Warner (D-VA) introduced the bipartisan Independent Agency Regulatory Analysis Act (S. 1173), which would authorize the President to require independent regulatory agencies to conduct cost-benefit analysis for significant rules and submit them to OIRA for third-party review. Comprehensive regulatory reform measures, such as the Regulatory Accountability Act, would codify analytical requirements and sound regulatory processes for independent regulatory agencies. These agencies often dismiss sound regulatory analysis as a hindrance to their abilities to regulate. However, the case for the inclusion of independent regulatory agencies in a centralized review of regulations is clear, and Congress should act to make it certain.

*f. Increase Sensitivity to Small Business*

The Regulatory Flexibility Act of 1980 (RFA) requires agencies to be sensitive to the needs of small businesses when drafting regulations. It has a number of procedural requirements, including that agencies consider less costly alternatives for small businesses and prepare a regulatory flexibility analysis when proposed and final rules are issued. In 1996, Congress passed the Small Business Regulatory Enforcement Fairness Act (SBREFA), which requires the EPA and OSHA to empanel a group of small business representatives to help consider a rule before it is proposed. In recognizing the importance of the SBREFA panel process, the 111th Congress expanded this requirement to include the new Consumer Financial Protection Bureau when it passed the Dodd-Frank Wall Street Reform and Consumer Protection Act.

Lawmakers have universally supported the RFA's provisions, but Congress needs to strengthen the law and close loopholes that agencies use to avoid its requirements. Unfortunately, agencies are able to avoid many important RFA requirements by simply asserting that a rule will not impact small businesses significantly. Only a small number of regulations require a regulatory flexibility analysis because "indirect effects" cannot be considered. As outlined above, the SEC's conflict minerals rule did not have to review its indirect effect on small business suppliers. In addition, despite the success of the small business panel process, it only applies to three agencies. The RFA's requirements are especially important to improving the quality of regulations and have saved billions of dollars in regulatory costs for small businesses. In January 2015, the Small Business Administration's (SBA) Office of Advocacy—an independent office helping federal agencies implement the RFA's provisions—issued its annual report indicating that it helped save small businesses more than \$4.8 billion in FY 2014. The RFA has yielded \$90 billion in savings for small businesses over the past 10 years. Imagine the positive impact on regulations if agencies were not able to avoid the RFA's requirements so easily.

The House has already passed legislation, the Small Business Regulatory Flexibility Improvements Act of 2015 (H.R. 527), which would close many of the loopholes that agencies exploit to avoid the RFA's requirements. The NAM supports H.R. 527 and urges Senate consideration. Agency adherence to the RFA's requirements is important if regulations are to be designed in a way that protects the public, workers and the environment without placing unnecessary burdens on small businesses. Through careful analysis and an understanding of both intended and unintended impacts on stakeholders, agencies can improve their rules for small entities, leading to improved regulations for everyone.

*g. Enhance the Abilities of Institutions to Improve the Quality of Regulations*

As discussed above, the SBA's Office of Advocacy plays an important role in ensuring that agencies thoughtfully consider small entities when promulgating regulations. When Congress created the office in 1976, it recognized the need for an independent body within the federal government to advocate for those regulated entities most disproportionately impacted by federal rules. The office helps agencies write better, smarter and more effective regulations. We urge Congress to support this office and provide it with the resources it needs to carry out its important work.

The Office of Industry Analysis is within the Office of Manufacturing and Services at the Department of Commerce's International Trade Administration and was created to assess the cost competitiveness of American industry and the impact of proposed regulations on economic growth and job creation. The office was created in response to a 2003 executive branch initiative to improve the global competitiveness of the manufacturing sector in the United States and was included as a recommendation in a January 2004 report, titled *Manufacturing in America: A Comprehensive Strategy to Address the Challenges to U.S. Manufacturers*. The report states the office should develop "the analytical tools and expertise . . . to assess the impact of proposed rules and regulations on economic growth and job creation before they are put into effect." This office has developed the analytical tools necessary to perform those functions and to provide the Department of Commerce with a strong, thoughtful voice within the interagency review of proposed regulations. The department must speak for manufacturing when rules are being considered. Unfortunately, the office no longer engages in the type of regulatory analysis for which it was established. The cost of regulatory compliance is an important factor influencing our competitive profile within the global economy. The Office of Industry Analysis was created to reduce the unnecessary regulatory burdens placed on domestic firms, and its role as a provider of objective, third-party analysis to regulators should be restored and strengthened.

*h. Improve and Streamline the Federal Permitting Process*

An often overlooked piece of regulatory reform is the regulatory process we impose at the federal, state and local levels on permitting for infrastructure projects. Our current system is a product of unintentional design with a myriad of overlapping and duplicative processes that lead to extensive delays and higher costs for both private and government-funded projects. The result is structural decay, lost jobs and an inefficient use of resources. Infrastructure is not keeping up with the demands of a growing economy, and manufacturers in the United States are placed at a competitive disadvantage when the infrastructure is not there or is in decline.

This is another opportunity for government to learn from the private sector and use lean manufacturing thinking to eliminate waste in the process. As we seek to invest scarce federal resources in our nation's infrastructure to support our economy, federal agencies should not

overlook the need to improve infrastructure project delivery by eliminating redundant activities, such as duplicative federal reviews and approvals that states are capable of performing.

In January, Sens. Portman and Claire McCaskill (D-MO) introduced the Federal Permitting Improvement Act (S. 280). The bill would greatly improve the permitting process by removing many bureaucratic delays that slow important construction projects. Importantly, S. 280 would establish deadlines and allow contiguous states impacted by an infrastructure project to coordinate and facilitate authorizations. Manufacturers rely on our nation's vast interconnected infrastructure to support and supply every sector of the economy, and we appreciate the leadership of Sens. Portman and McCaskill on this issue. As discussed throughout this testimony, we must do better than the status quo to maintain our global competitiveness. Permitting reform will ensure that infrastructure performs at a pace to keep up with the needs of business.

## **V. Conclusion**

Chairman Lankford, Ranking Member Heitkamp and members of the subcommittee, thank you for your attention to these issues and for holding this hearing. We can reform the regulatory system and improve analysis while enhancing our ability to protect health, safety and the environment. Manufacturers are committed to working toward policies that will restore common sense to our broken and inflexible regulatory system. The best way to meet regulatory objectives while ensuring continued economic growth and employment is by enacting a comprehensive and consistent set of policies that improve regulatory analysis, enhance the quality and transparency of scientific and technical inputs, eliminate waste and duplication and support the institutions and policies that work. These policies must be applied to all agencies, and we must ensure that regulators are sensitive to the needs of small business.