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Testimony

of Jay Timmons
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National Association of Manufacturers

before the Joint Economic Committee

on The First Step to Cutting Red Tape: Better Analysis

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COMMENTS OF THE NATIONAL ASSOCIATION OF MANUFACTURERS

BEFORE THE

JOINT ECONOMIC COMMITTEE

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Chairman Brady, Vice Chair Klobuchar and members of the Joint Economic Committee, thank you for the opportunity to testify about cutting red tape and improving the regulatory system through better analysis.

The National Association of Manufacturers (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

Manufacturing output has increased 18 percent since the end of the recession in 2009. In the fourth quarter of 2013, manufacturers in the United States contributed \$2.14 trillion to the economy (or 12.5 percent of GDP), up from \$2.08 trillion in the third quarter. For every \$1.00 spent in manufacturing, another \$1.32 is added to the economy, the highest multiplier effect of any economic sector. Importantly, manufacturing supports an estimated 17.4 million jobs in the United States—about one in six private-sector jobs. In 2012, the average manufacturing worker in the United States earned \$77,505 annually, including pay and benefits—22 percent more than the rest of the workforce.

Manufacturing in the United States lost 2.3 million jobs in the last recession. Since the end of 2009, we have gained back nearly 602,000 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 that regulation is critical to the protection of worker safety, public health and our environment. We have supported regulations such as the enhanced corporate average fuel economy rules in 2009 and legislation such as the Food Safety Modernization Act of 2011 and its accompanying regulations. 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 or clean up the past. 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 a NAM/*IndustryWeek* Survey of Manufacturers released in March, 79.0 percent of respondents cited an unfavorable business climate due to regulations, taxes and government uncertainties as a primary challenge facing businesses, up from 67.7 percent in the first quarter of 2013 and 62.2 percent in March 2012. The unfavorable business climate due to government policies exceeded rising health care and insurance costs, which ranked second (77.1 percent).

The cost disadvantage confronting manufacturers in the United States is a result of decisions made here in Washington, not by governments outside our borders. Our competitors in Europe, Asia and South America aggressively seek new customers, markets and opportunities. Countries know that a strong manufacturing sector is key to jobs, innovation and prosperity. They are strategizing for success in manufacturing and improving their global competitive positions. Government policies should support our global competitiveness, not impose increasing burdens. Manufacturers in the United States confront challenges that our global competitors do not have.

President Obama consistently discusses the importance of a strong manufacturing economy and “keeping America at the cutting edge of technology and innovation . . . to ensure a steady stream of good jobs into the 21st century.”¹ Manufacturers agree, and the NAM has praised efforts by the Obama Administration to reduce regulatory burdens imposed on businesses. The President has signed executive orders focused on improving the regulatory process, and the Office of Management and Budget (OMB) 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 realize a significantly better regulatory environment for manufacturers and other regulated entities.

In October 2013, the NAM joined the Manufacturers Alliance for Productivity and Innovation (MAPI) in an event that highlighted the regulatory burdens placed on manufacturers. A MAPI study found that since 1981, the federal government has promulgated more than 2,300 regulations that target manufacturers, meaning federal agencies have issued an average of just under 1.5 manufacturing-related regulations per week for more than 30 years, with 270 of these considered major regulations. 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.

III. Regulatory Challenges Facing Manufacturers in the United States

Manufacturers recognize that regulations are necessary to protect people’s health and safety. In recent years, the scope and complexity of rules have made it harder to do business

¹ February announcement of new Manufacturing Innovation Institutes, available at <http://www.whitehouse.gov/the-press-office/2014/02/25/remarks-president-manufacturing-innovation-institutes>.

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. Despite existing statutory requirements placed upon regulating agencies, manufacturers are faced with the challenges of complying with inefficient and complex regulations that place unnecessary costs on the public.

The Environmental Protection Agency (EPA) is a significant contributor to costly and unnecessary burdens placed on the economy. The agency has embarked on a decades-long process to implement the Clean Air Act and its amendments. Regulations on emissions have resulted in enormous benefits, such as improved public health, but the continued ratcheting down of emission limits produces diminishing returns at far higher marginal costs. This means that each new air rule will have a greater impact on job creation than those in the past. Complying with these regulations is capital intensive. In a time of economic recovery where capital is extremely scarce, every dollar diverted from productive use creates additional pressure to reduce labor costs. In this environment, unnecessary or cost-ineffective regulations will dampen economic growth and continue to hold down job creation. For some firms, it will be the final marginal straw from which they cannot recover.

In 2012, the NAM released a study² that examines the EPA's cost-benefit analysis for six major proposed regulations. The study highlights widespread skepticism of the validity of the EPA's estimated costs and benefits.³ In a worst-case scenario, the regulations could mean the annual loss of \$630 billion, 4.2 percent of GDP and between 2 million and 9 million jobs. The EPA's calculations of estimated benefits have been criticized as uncertain, unrealistic and speculative. The agency often assumes compliance with technologically infeasible requirements, assigns the same claimed benefit to more than one regulation and incorrectly assumes a linear relationship between pollution abatement measures and benefits. In reality, as emissions standards are set to near unattainable levels, there are diminishing benefits for each dollar invested in pollution abatement. As a result, the EPA estimates of benefits could be highly inflated.

This year, the EPA will consider tightening the National Ambient Air Quality Standards (NAAQS) for Ozone. The agency abandoned a 2010 reconsideration that would have lowered the NAAQS, but EPA scientists are now recommending levels that would be at or very close to ozone levels that naturally exist in the atmosphere without any industrial activity. The difference between the EPA's suggested cost for the 2011 reconsideration of Ozone NAAQS and the industry's suggested cost was a factor of 10.⁴ Even if the EPA sets the standard at the higher end of the range it is considering, this has the potential to be the costliest environmental regulation ever administered on manufacturers.

The EPA's push to lower Ozone NAAQS is only one part of the agency's highly aggressive regulatory agenda for 2014 and beyond. Over the next two years, the EPA is

² *A Critical Review of the Benefits and Costs of EPA Regulations on the U.S. Economy*, ndp|Consulting, November 2012, available at <http://www.nam.org/~media/423A1826BF0747258F22BB9C68E31F8F.ashx>.

³ According to the EPA's own assessments, the likely annualized compliance cost with the six proposed regulations evaluated would be between \$36 billion and \$111 billion per year. For three of those six rules (Utility MACT, Boiler MACT and Coal Combustion Residuals), the EPA estimated the upfront capital expenditures needed for industry compliance at \$63.1 billion. That significant expense falls far short of the \$142 billion estimate provided by the industry.

⁴ The EPA estimated costs and capital expenditures of the Ozone NAAQS reconsideration at \$19 billion to \$90 billion. A 2010 study by the Manufacturers Alliance/MAPI estimated that the proposal would add \$1 trillion in new regulatory costs per year. The study is available at http://www.nam.org/~media/21F1AC2179154220896445E0C37855B0/MAPI_Study.pdf.

expected to issue a new Cross-State Air Pollution Rule (CSAPR) and a series of major regulations concerning greenhouse gas emissions and domestic energy production. The agency is also seeking to accomplish an unprecedented expansion of its jurisdiction under the Clean Water Act. The economic analysis associated with the EPA's major regulatory proposals has a significant degree of uncertainty. As a result, virtually every major air regulation issued by the EPA in recent years has given rise to a host of economic studies from private-sector groups—both in support and in opposition—attempting to clarify the true impact of the regulation on the economy. Consider, for example, the following:

- When the EPA modeled the Mercury and Air Toxics Standards (MATS), it predicted only 4.7 gigawatts (GW) of coal retirements as a result of the regulation. The Energy Information Administration recently reported that 54 GW of coal-fired capacity will retire as a direct result of MATS by 2016.
- The EPA has never modeled the true economic impact of Prevention of Significant Deterioration permitting for greenhouse gases, which is a barrier to new manufacturing expansions and over time exposes 6 million stationary sources to regulation.
- The EPA suggested its now-overturned CSAPR would cost \$3.6 billion annually; industry analyses placed the annual cost at \$14 billion to \$18 billion.
- The EPA suggested its proposed Coal Combustion Residuals Rule would cost \$1.5 billion annually; industry studies estimated the rule would cost \$7.6 billion annually.
- The EPA suggested its proposed Cooling Water Intake Structures regulation would cost between \$0.3 billion and \$4.6 billion annually; industry studies estimated the rule would cost \$8 billion annually.
- The EPA has not modeled the cumulative impact of its recent regulations, which, by conservative estimates, could cost more than \$100 billion annually and place 2 million jobs in jeopardy.

In much the same way manufacturers are acutely sensitive to environmental regulations, they are also concerned with changing existing and already effective rules focused on worker safety and health. Manufacturers understand that employees are the key resources in our facilities, and all employees deserve a safe and healthful workplace. Agencies should focus on smarter and better regulations that enhance worker safety and avoid rule changes that are unnecessary, have a far-reaching impact and are based on flawed data. In September 2013, the Occupational Safety and Health Administration (OSHA) published its proposed rule on respirable crystalline silica, which would cut the permissible exposure limit in half from its current levels. The rule would mandate certain engineering controls and restricted work areas as well as require additional medical monitoring, training and recordkeeping. Silica is one of the most abundant materials in the world; it is a critical component in many manufacturing, construction, transportation, defense and high-tech industries and is present in thousands of consumer products. The proposed rule would impact 534,000 businesses and 2.2 million workers, including 25,000 hydraulic fracturing employees and 1.85 million construction workers. OSHA's 1,400-page cost estimate states that the rule will cost regulated entities \$656 million (an average of \$1,200 per business), but that figure is based on flawed analysis and outdated information. Estimates by engineering and economic consultants show an impact of closer to \$6 billion in annualized costs.

We find it troubling that OSHA's estimate relies upon data from a Small Business Regulatory Enforcement Fairness Act (SBREFA) panel that examined a draft rule in 2003, more than 11 years ago. Furthermore, OSHA's estimate relies on data points from the 2006-2007 time frame, which is prerecession information and may not properly represent today's economy.

In recent years, significant progress has been made in preventing silica-related diseases under the existing regulations and exposure limit, making proposed changes unnecessary and overly burdensome. During the comment period, the NAM and other industry stakeholders repeatedly asked OSHA to convene a new SBREFA panel so the most current analysis of costs and other impacts may be considered. These requests have gone unanswered. Manufacturers will now be faced with a new regulation that could force some of our members to shut their doors.

The regulations discussed above are simply a small sample of what manufacturers are facing. Agencies are failing in their responsibilities to conduct analysis that would better assist them in understanding the true benefits and costs of their rules. Despite clear directives from the President to improve existing regulations, agencies do not conduct the appropriate and necessary analysis needed to estimate benefits and costs properly, to determine the cumulative effects of their regulations and to make changes that would allow our regulatory system to meet policy objectives more effectively.

IV. Reducing Regulatory Impediments

Manufacturing in America is making a comeback, but this comeback 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 thank you, Chairman Brady and Vice Chair Klobuchar, for your leadership in promoting commonsense reforms that would improve the regulatory system and chip away at the many challenges our nation's job creators and other businesses in the United States face. We need reform proposals, such as those included in your legislation, which will lead to systemic changes. 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. Strengthen and Codify Sound Regulatory Analysis

The complexity of rulemaking and its reliance on highly technical scientific information has only increased since the Administrative Procedure Act (APA) was passed 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. We 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. Chairman Brady and Sen. Dan Coats (R-IN) have introduced the Sound Regulation Act of 2014 (H.R. 3863 and S. 2099), which includes many important regulatory requirements that would improve the quality of an agency's analysis and the effectiveness and efficiency of its rules. 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. The Regulatory Accountability Act of 2013 (H.R. 2122 and S. 1029), introduced by Rep. Bob Goodlatte (R-VA) in the House and Sens. Rob Portman (R-OH) and Mark Pryor (D-AR) in the Senate, is comprehensive reform legislation that would instill sound rulemaking principles into the fabric of our regulatory system. Agencies would be statutorily required to conduct benefit-cost analysis and recognize the true regulatory impacts of their rules. The House passed H.R. 2122 earlier this year as part of a larger regulatory reform package (H.R. 2804).

Both the Sound Regulation Act of 2014 and the Regulatory Accountability Act of 2013 would require agencies to consider the cumulative costs of regulatory requirements, a principle that is also articulated by Executive Order 13563 and OMB guidance for agencies. 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.

b. 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 the impacts of the mandates it may be imposing 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, there have been proposals in Congress to create a congressional office of regulatory analysis. As Congress has a Congressional Budget Office (CBO) that is a parallel institution to the OMB, so too should it have a parallel to the Office of Information and Regulatory Affairs (OIRA) within the OMB.

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 Vice Chair Klobuchar's Strengthening Congressional Oversight of Regulatory Actions for Efficiency Act (S. 1472), which would establish a "Regulatory Analysis Division" within the CBO to conduct analysis of the prospective impact of economically significant rules. 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.

c. 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."⁵ Retrospective review of existing regulations should 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. These types of provisions are included in the Sound Regulation Act of 2014. 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. We are in the midst of a manufacturing renaissance in the United States, and agencies should look to the concept of "lean manufacturing" as a model for how to improve our regulatory system. Over the past two decades, 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. This should be a consistent and systematic process, and it requires a discipline and incentive structure that does not currently exist in our agencies.

The Administration 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 35 years. In 2005, the OMB,

⁵ 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, available at http://tobinproject.org/sites/tobinproject.org/files/assets/New_Perspectives_Ch5_Greenstone.pdf.

through OIRA, issued a report, titled *Regulatory Reform of the U.S. Manufacturing Sector*. That initiative identified 76 specific regulations that federal agencies and the 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 are several legislative proposals in this Congress that seek to improve the retrospective review process. Chairman Brady's bill and Sen. Coats' companion legislation—H.R. 3863 and S. 2099—would require reviews of existing rules to ensure they are meeting regulatory objectives effectively. Vice Chair Klobuchar's bill—S. 1472—would require a new division within the 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. Sen. Angus King (I-ME) has introduced the Regulatory Improvement Act of 2013 (S. 1390), which 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. 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.

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 supports the Regulatory Sunset and Review Act of 2013 (H.R. 309), introduced by Rep. Randy Hultgren (R-IL), 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. H.R. 309 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. If there is no 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.

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, and 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. The rules issued by these agencies can impose significant costs on manufacturers. These agencies 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.

The President's bipartisan Council on Jobs and Competitiveness made recommendations in their 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. 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.

There are several legislative proposals in this Congress that would improve the quality of regulations issued by independent regulatory agencies. The Sound Regulation Act of 2014 would apply the same requirements to all agencies for the analysis of benefits and costs and for the use of performance metrics. Comprehensive regulatory reform measures, such as the Regulatory Accountability Act of 2013, would codify analytical requirements and sound regulatory processes for independent regulatory agencies. Sens. Portman and Mark Warner (D-VA) have introduced the bipartisan Independent Agency Regulatory Analysis Act of 2013 (S. 1173), which would provide the President authority to require independent regulatory agencies to conduct benefit-cost analysis for significant rules and submit them to OIRA for third-party review.

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 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.

The RFA provisions have received universal support from lawmakers, 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. 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 February 2013, 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 \$2.5 billion in new first-year regulatory costs. 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 that would close many of the loopholes that agencies exploit to avoid the RFA's requirements. The House passed the Regulatory Flexibility Improvements Act of 2013 (H.R. 2542) as part of H.R. 2804, and the NAM supports reforms that would strengthen the RFA. 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 whose job it was to be an 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 stated 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.

V. Conclusion

Chairman Brady, Vice Chair Klobuchar and members of the committee, thank you for your leadership on 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 are working. These policies must be applied to all agencies, and we must ensure that regulators are sensitive to the needs of small business.