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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 Reform, Commercial and Antitrust Law
of the Committee on the Judiciary
U.S. House of Representatives

“The Obama Administration's Regulatory War on Jobs, the Economy
and America's Global Competitiveness”

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COMMENTS OF THE NATIONAL ASSOCIATION OF MANUFACTURERS
BEFORE THE
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Chairman Bachus, Ranking Member Cohen and members of the Subcommittee on Regulatory Reform, Commercial and Antitrust Law, thank you for the opportunity to testify before you about the Administration's regulatory agenda and its impact on manufacturing and job creation.

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 36 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. Last year was our most successful one as a business with \$5 million in sales. Today,

Marlin Steel Wire employs 32 people. Our growth has come 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 and as a member of its Executive Committee. The NAM is the nation's largest manufacturing trade association, representing 12,000 member companies consisting of small and large manufacturers in every industrial sector and state. As the voice of the 12 million men and women who work in manufacturing in America, the NAM is committed to achieving a policy agenda that helps manufacturers grow and create jobs.

The United States is the world's largest manufacturing economy, producing 18.2 percent of global manufactured products. Manufacturing in the United States alone makes up 12.2 percent of our nation's GDP. More importantly, manufacturing supports an estimated 17.2 million jobs in the United States—about one in six private-sector jobs. Manufacturing offers high-paying jobs, too. In 2011, the average manufacturing worker in the United States earned \$77,060 annually, including pay and benefits—22 percent more than the rest of the workforce.

For many manufacturers in the United States, the economy is showing definite signs of improvement. Manufacturing has added about 500,000 jobs since the end of 2009, but there is still a long way to go. More than 2 million manufacturing jobs were lost in the past recession, and output remains well below the 2007 peak, indicating how serious the recent recession really was. To compete on a global stage, manufacturing in the United States needs policies that enable companies to thrive and create jobs. Growing manufacturing jobs will strengthen the U.S. middle class and continue to fuel America's economic recovery.

To regain manufacturing momentum and return to net manufacturing job gains, we need both improved economic conditions and government policies. Because of the

significant challenges affecting manufacturing, the NAM developed a strategy to enhance our growth.

The NAM earlier this month released *A Growth Agenda: Four Goals for a Manufacturing Resurgence in America*, a policy blueprint for the Administration and new Congress that sets four goals with bipartisan appeal for enhanced competitiveness and economic growth: (1) The United States will be the best place in the world to manufacture and attract foreign direct investment; (2) Manufacturers in the United States will be the world's leading innovators; (3) The United States will expand access to global markets to enable manufacturers to reach the 95 percent of consumers who live outside our borders; and (4) Manufacturers in the United States will have access to the workforce that the 21st-century economy demands. To achieve these goals, we need sound policies in taxation, energy, labor, trade, health care, education, litigation and, certainly, regulation.

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 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.

Regulatory Burdens: The Cost of Regulations

The focus of today's hearing is on regulatory policies that threaten a manufacturing resurgence in this country. In fact, excessive regulatory burdens weigh heavily on the minds of manufacturers like me. In a NAM/*IndustryWeek* Survey of Manufacturers released in December 2012, 74.7 percent of respondents cited an unfavorable business climate caused by regulations and taxes as a primary challenge facing businesses, up from 62.2 percent in March 2012. Also in the December survey, 76.4 percent of respondents indicated that a pressing priority for the Obama Administration and the 113th Congress should be reducing the regulatory burden on manufacturers. These concerns are further quantified by a 2011 study conducted by the Manufacturing Institute and the Manufacturers Alliance for Productivity and Innovation (MAPI), which found that, excluding the cost of labor, manufacturers in the United States face a 20 percent structural cost burden compared to nine major trading partners because of government-imposed policies, including regulations. This is an increase from their 2008 study, which demonstrated domestic policies added 17.6 percent to the cost of manufacturing in the United States.

Employers across the United States, especially manufacturers, face considerable uncertainty that stifles economic growth and discourages hiring. The cost disadvantage confronting domestic manufacturers is a result of decisions made here in Washington, not by those outside our borders. Our competitors in Europe, Asia and South America aggressively seek new customers, markets and opportunity. Countries know that a strong manufacturing sector is a key to jobs, innovation and prosperity. They are strategizing for success in manufacturing and to improve their global competitive

positions. Government policies should support our global competitiveness, not impose increasing burdens. In the United States, manufacturers are forced to face challenges that our global competitors do not have.

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. A 2010 study commissioned by the U.S. Small Business Administration's Office of Advocacy found that manufacturers in 2008 spent on average \$14,070 per employee to comply with regulations, 75 percent more than all U.S. businesses spend per employee. The study estimated that manufacturers spend \$7,200 per employee to comply with environmental regulations alone. For all regulations, the cost per employee for small firms (fewer than 20 employees) was \$28,316, or more than twice the amount per employee than larger firms.

In his State of the Union address, the President said we should make America a "magnet for new jobs and manufacturing." The NAM welcomed recent efforts by the 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 realize real cost reductions for manufacturers.

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, 330 major new regulations—defined as having an annual effect on

the economy of at least \$100 million—were issued over the previous four years. On average, the Obama Administration has issued 20 more major regulations per year than the previous Administration. 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.

Regulatory Environment: Challenges Facing Manufacturers in the United States

The Environmental Protection Agency (EPA) is a significant contributor to costly and unnecessary burdens placed on the economy. The EPA has embarked on a decades-long process to implement the Clean Air Act and its amendments. There is no doubt that our nation has gained enormous benefits from efforts to improve air quality, 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.

In November 2012, the NAM released a new study, entitled *A Critical Review of the Benefits and Costs of EPA Regulations on the U.S. Economy*,¹ which examined the harmful economic impact of six major EPA regulations on the U.S. economy. The study showed that these burdensome regulations could cost manufacturers hundreds of billions of dollars annually. In a worst-case scenario, the regulations could mean the loss of \$630 billion, 4.2 percent of GDP and between 2 million and 9 million jobs.

The EPA will this year consider tightening the National Ambient Air Quality Standards for Ozone (known as Ozone NAAQS), which is one of the rules included in the NAM's 2012 study. The EPA 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

¹ Available at <http://www.nam.org/~media/423A1826BF0747258F22BB9C68E31F8F.ashx>

activity. A 2010 study² by MAPI estimates that reducing Ozone NAAQS to levels sought by the EPA would result in the loss of 7.3 million jobs by 2020 and add \$1 trillion in new regulatory costs per year between 2020 and 2030.

The EPA's push to lower Ozone NAAQS is only one part of the agency's highly aggressive regulatory agenda for 2013 and beyond. Over the next two years, the EPA is expected to issue a series of major regulations concerning greenhouse gas emissions and domestic energy production. The agency is also seeking to accomplish through guidance—circumventing regulatory procedures—an unprecedented expansion of its jurisdiction under the Clean Water Act.

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. And when commodities and other manufacturing inputs are increasing in costs, even more pressure builds to squeeze labor costs. In this environment, it is very clear that unnecessary or cost-ineffective regulations will dampen economic growth and will continue to hold down job creation. For some firms, it will be the final marginal straw that destroys the whole business.

We must recognize that one of America's great competitive advantages is our dynamic labor market. Companies must move quickly to meet the demands of a rapidly changing marketplace, and the continuing expansion of federal mandates and labor regulations undermines employer flexibility. In addition, increasing costs discourage the hiring of new employees. To encourage competitiveness, the United States should reject new federal regulations that dictate rigid work rules, wages and benefits and that introduce conflict into employer–employee relations.

Over the past few years, the National Labor Relations Board (NLRB) has passed a series of rules that seek to restrict the rights of employers and increase the cost of

² Available at http://www.nam.org/~media/21F1AC2179154220896445E0C37855B0/MAPI_Study.pdf

doing business. The agency exceeded its statutory authority when it issued a 2011 final rule requiring employers to post a notice of employees' rights. The NLRB also issued a final rule in 2011 (the "ambush elections" rule) that drastically shortens the time between when a union election is announced and when it is held. The rule also limits employers' rights prior to the election. This new regulation would pose a considerable burden on employers—particularly smaller-sized manufacturers who lack the legal expertise to navigate complex and detailed labor laws—and could result in numerous NLRB violations for unknowing employers. The NAM and other parties filed multiple suits against the NLRB, and the cases are on appeal.

In 2013, the NLRB is expected to issue a proposed rule that would require employers to provide union officials the e-mail addresses and phone numbers of all employees who would be eligible to vote in a consent election. Such a rule would allow unions to impinge on an employee's privacy outside the workplace to a greater extent than possible. Employer privacy is also under attack. In 2011, the Department of Labor proposed sweeping changes to the rules concerning how an employer works with legal counsel to comply with the complex and nuanced laws governing labor relations. Current law requires employers, law firms and other labor union experts to disclose when employers have sought assistance from consultants who intend to directly persuade employees regarding union members. These proposed changes would make it more difficult for manufacturers, especially smaller-sized manufacturers, to access necessary legal assistance. For decades, the law has included a very important exemption: employers were allowed to obtain legal advice from attorneys to remain compliant with current law. Broadening the definition would violate the tenants of the attorney–client privilege and confidentiality.

In August 2012, the Securities and Exchange Commission (SEC) issued its final rule on conflict minerals, establishing burdensome reporting requirements for companies

whose products contain minerals (tin, tantalum, tungsten and gold) from the Democratic Republic of Congo (DRC) and adjoining countries. Manufacturers support the underlying goal of addressing the problems occurring in the DRC and adjoining countries, and we have long advocated for a reasonable rule that achieves that objective. However, the final rule requires a massive amount of companies' resources to try to uncover information that is oftentimes not readily available, if ever at all, through their supply chains and to conduct due diligence and, in some cases, include outside private audits. The necessary infrastructure is not in place around the world to trace the origin of the minerals or verify that the processing centers located outside of the United States did not use "conflict minerals." Without these two vital pieces of information, it is nearly impossible for companies to know if their products contain conflict minerals from the DRC or adjoining countries. The rule fails to include a *de minimis* exemption, meaning that a manufacturer's use of even a miniscule amount of minerals from the DRC in one input in a lengthy supply chain will trigger disclosure obligations. The NAM and other parties are challenging the rule in court.

Reducing Regulatory Impediments

The cumulative burden of the multitude of new and costly regulations is nearing a tipping point. If we are to be successful in creating a more competitive economy, we must also reform the design of our regulatory system to ensure we never again reach the state we find ourselves in today. To promote growth, 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 cost-benefit analysis.

Hold Independent Regulatory Agencies Accountable—The President does not exercise similar authority over independent regulatory agencies, such as the NLRB, the

SEC and the Consumer Product Safety Commission (CPSC), as he does over other agencies within the executive branch. As discussed above, the rules issued by these agencies can impose significant costs on manufacturers, but these agencies are not required to comply with the same regulatory principles as executive branch agencies. As a result, Congress should confirm the President's authority over these agencies. The same reasons for which a centralized White House review of regulations benefits other single-mission agencies, such as a broader economy-wide perspective on regulatory proposals, would similarly benefit independent agency rules. 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 centralized review of regulations is clear, and Congress should act to make it certain.

Streamline Regulations Through Sunsets—The best incentive for high-quality retrospective reviews of existing regulations is to sunset those rules that are not affirmatively chosen to be continued. The NAM supports the Regulatory Sunset and Review Act of 2013 (H.R. 309), introduced by Rep. Randy Hultgren of Illinois, 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, no continued need for existence or is shown to have decreased in effectiveness over time, it should be sunset.

Increase Sensitivity to Small Business—The Regulatory Flexibility Act (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 in some cases, must empanel a group of small business representatives to help consider a rule before it is proposed. Under the RFA, only a small number of regulations require this analysis because

“indirect effects” cannot be considered, and the small business panel process only applies to three agencies. We believe this process is helpful and has saved billions of dollars in regulatory costs for small businesses. However, agencies are able to avoid many important RFA requirements by simply asserting that a rule will not significantly impact small businesses. The NAM supports legislation that would ensure agencies fully comply with a law intended to reduce burdens on those small businesses.

Strengthen and Codify Sound Regulatory Principles—The complexity of rulemaking and its reliance on highly technical scientific information has only increased since the Administrative Procedure Act (APA) was passed in 1935. 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 as well. 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 used by agencies to support their rulemakings.

Improving Institutions—Offices within the federal government have been established to improve the quality of regulations and reduce the burdens imposed on the public. These offices should be appropriately staffed and resourced to improve agency analysis of the impact of regulations on the economy, industry and small business. In addition, Congress should enhance its own resources to be able to challenge inaccurate agency claims about the costs and benefits of rules.

Conclusion

Chairman Bachus, Ranking Member Cohen and members of the Subcommittee, thank you again for the opportunity to testify today on the regulatory burdens borne by domestic manufacturers. The President stated in his Executive Order 13653 on improving regulation and regulatory review that our regulatory system should promote “economic growth, innovation, competitiveness and job creation.” Manufacturers agree and are committed to working toward policies that will restore commonsense to our regulatory system. We hope the Subcommittee will hold the Administration to its commitment in the Executive Order. The best way to ensure continued economic growth and employment is by enacting a comprehensive and consistent set of policies that allow manufacturers to compete in the global marketplace. Reforming our regulatory system to prevent the continued piling on of unnecessary regulatory costs is an immediate priority.