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Testimony

of Rosario Palmieri

Vice President, Infrastructure, Legal and Regulatory Policy
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before the Subcommittee on Regulatory Reform, Commercial and Antitrust Law
of the Committee on the Judiciary
U.S. House of Representatives

on "H.R. __ the Regulatory Flexibility Improvements Act of 2013"

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COMMENTS OF THE NATIONAL ASSOCIATION OF MANUFACTURERS
BEFORE THE
SUBCOMMITTEE ON REGULATORY REFORM, COMMERCIAL AND ANTITRUST LAW
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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 Regulatory Flexibility Improvements Act of 2013.

My name is Rosario Palmieri, and I am the vice president of infrastructure, legal and regulatory policy for the National Association of Manufacturers (NAM). The nation's largest manufacturing trade association, the NAM represents 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—and offers high-paying jobs. 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 it still has a long way to go. Manufacturing lost more than 2 million jobs during the past recession, and output remains well below the 2007 peak.

Nearly 95 percent of all manufacturers in the United States have fewer than 100 employees, and the Small Business Administration (SBA) defines manufacturers with fewer than 500 employees as small. 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. Manufacturers appreciate the Subcommittee's focus on ways to reduce the regulatory burden imposed on small businesses. Unnecessarily burdensome regulations place manufacturers of all sizes at a competitive disadvantage with our global counterparts.

Because of the significant challenges affecting manufacturing, the NAM developed a strategy to enhance our growth. Earlier this year, the NAM 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.

Regulatory Burdens: The Cost of Regulations

In recent years, the manufacturing economy has seen improvements despite the many government policies and regulations that impede manufacturers' ability to grow, export and create jobs. A 2011 study conducted by the Manufacturing Institute and the Manufacturers Alliance for Productivity and Innovation (MAPI), 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 the 2008 study, which demonstrated domestic policies added 17.6 percent to the cost of manufacturing in the United States.

Excessive regulatory burdens weigh heavily on the minds of manufacturers. In a NAM/*IndustryWeek* Survey of Manufacturers released earlier this month, 67 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. In the December 2012 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.

The Administration recognizes the important role the Regulatory Flexibility Act (RFA) plays in reducing the regulatory burden on small business. In a January 2011 memorandum on regulatory flexibility, small business and job creation, President Obama stated, "The Regulatory Flexibility Act . . . establishes a deep national commitment to achieving statutory goals without imposing unnecessary burdens on the public." He directed executive departments and agencies and requested independent agencies to give "serious consideration" to using increased flexibility to reduce regulatory burdens on small businesses. The NAM has welcomed other efforts by the Administration to encourage agencies to reduce their 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. Though well-intentioned, all of these initiatives have yet to realize significant cost reductions for manufacturers.

Instead, manufacturers—and particularly small manufacturers—continue to be inundated by the unnecessarily burdensome regulations that federal agencies have promulgated. Based on data from the Government Accountability Office, over the past four years, the Obama Administration has issued 331 major new regulations—defined as having an annual effect on the economy of at least \$100 million. On average, the current 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.

Because manufacturing is such a dynamic process, involving the transformation of raw materials into finished products, it encompasses more environmental and safety issues than other businesses. A 2010 study commissioned by the SBA'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, small firms (fewer than 20 employees) spent \$28,316 per employee, or more than twice the amount for larger firms.

The burden of regulation falls disproportionately on manufacturers, and it is heaviest on small manufacturers because their compliance costs often are not affected by economies of scale. We find that when agencies thoughtfully comply with the requirements of the Regulatory Flexibility Act (as the President directed in his January

2011 memorandum), regulatory burdens are reduced. The SBA's Office of Advocacy estimates that it saved small businesses \$3.6 billion in regulatory costs during FY 2012 as a result of helping agencies comply with RFA requirements.

Agency Failures to Conduct a Regulatory Flexibility Analysis

Under the RFA, agencies are required to prepare a regulatory flexibility analysis to determine the impact of a forthcoming proposed or final rule on small entities and to consider any regulatory alternatives that would accomplish the rule's objective while minimizing the burden imposed on those small entities. Unfortunately, agencies can avoid this expanded analysis and other important RFA requirements by simply asserting that the rule will not significantly impact small entities.

An examination of the Fall 2012 Unified Agenda indicates the extent of which agencies are failing to conduct regulatory flexibility analyses to determine the impact of their rules and how to best reduce the small business burden. As a whole, agencies currently have 437 significant rules¹ in the final rule stage. Agencies determined that only 16 percent of these rules require regulatory flexibility analysis. Of the 401 completed rules, agencies determined that only 14 percent required the additional analysis. The Environmental Protection Agency (EPA) conducted a regulatory flexibility analysis for only 3 percent of its 61 proposed or final rules listed in the most recent Agenda.

Under the RFA, only a small number of regulations require expanded analysis because "indirect effects" cannot be considered. The purpose of the law is to ensure that agencies thoughtfully consider the impact of regulations on small entities, but they routinely avoid the requirements that Congress placed upon agencies and that President

¹ As defined by Executive Order 12866 or determined to be a priority by an agency head; Executive Order 12866 defines a "significant regulatory action" as an action that would result in a rule that may have "an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities."

Obama confirmed in January 2011. The Regulatory Flexibility Improvements Act of 2013 would implement needed reforms to the law, greatly improving the quality of regulations and saving small businesses billions of dollars in regulatory costs.

A timely example of this shortcoming is the EPA's National Ambient Air Quality Standards (NAAQS) for Ozone. Because implementation is done through the regulation and approval of state implementation plans, there are said to be no direct effects on small entities. This is clearly contrary to what Congress intended when it passed the RFA. Further, the Obama Administration's consideration of a new ozone standard this year will significantly impact local communities and their small business economies. The most stringent standard under consideration could 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. Those costs should fit any agency's definition of a significant impact on small entities, but they are currently excluded from analysis.

Another important reform is enhanced periodic review of regulations that impact small businesses, often referred to as "Section 610 reviews." There was great hope that this original provision would rationally reduce or eliminate unnecessary burdens that had outlived their usefulness or had not appropriately considered the concerns of small business when they were first promulgated. The Obama Administration has continually highlighted its effort to conduct retrospective reviews of existing regulation to remove conflicting, outdated and often ineffective regulations that have accumulated over time. Those efforts follow similar efforts of the Reagan, Clinton and George W. Bush Administrations to eliminate unnecessary or poorly designed rules. If government is to embrace this cultural shift, it must be made permanent in statute. One way to ensure the continuation of this activity is to make these reforms into law. Manufacturers have long found on the factory floor that the elimination of unnecessary steps leads to productivity

gains and more capital to invest in our plants, equipment and people. Government efforts to remove unnecessary burdens on a continuing basis can have similar effects.

We believe it is very important for the SBA's chief counsel for advocacy to have regulatory authority. Court cases involving the chief counsel's interpretations have failed to provide the proper weight to that office's interpretations of the RFA. Rulemaking authority would provide that certainty. And since more than 80 percent of the government's billions of hours of paperwork burden imposed on the American people comes from the Internal Revenue Service (IRS), efforts to fix the loopholes by which the IRS avoids compliance with the RFA are certainly welcome.

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 Memorandum on Regulatory Flexibility, Small Business and Job Creation that the Administration is "firmly committed to eliminating excessive and unjustified burdens on small businesses and to ensuring that regulations are designed with careful consideration of their effects, including their cumulative effects, on small businesses." Manufacturers believe that reforms to the Regulatory Flexibility Act are necessary to achieve the President's goal. Too many regulations that have significant effects on small businesses escape the current process because of loopholes in the Act and unchallenged traditions. The NAM urges the Subcommittee to move forward with this legislation expeditiously. Jobs and growth for small manufacturers depend upon your efforts.