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Testimony

of Rich Gimmel

President

Atlas Machine & Supply, Inc.

Louisville, Kentucky

on behalf of the National Association of Manufacturers

before the Subcommittee on Courts, Commercial &

Administrative Law

Committee on the Judiciary

U.S. House of Representatives

on the Regulatory Flexibility Improvements Act of 2011
Unleashing Small Businesses to Create Jobs

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

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Chairman Coble, Ranking Member Cohen and members of the Subcommittee on Courts, Commercial and Administrative Law, thank you for the opportunity to testify before you today about reform of the Regulatory Flexibility Act (RFA) and job creation.

My name is Rich Gimmel, and I am president and owner of Atlas Machine and Supply, Inc. Atlas is a 104-year-old industrial machine shop and engineering firm based in Louisville, Kentucky, with additional manufacturing and service facilities in Cincinnati and Columbus, Ohio and Evansville, Indiana. My son is in charge of our engineering operations, which makes us a fourth-generation family business. We have nearly 200-employees; most of them are in skilled trades and have an average tenure of more than 11 years each with our company. We tend to take a long-term view of things, including our relationships with employees, vendors and customers, and our financial investments. We sometimes say we don't operate from quarter to quarter, but from generation to generation

I also serve as a member of the Board of Directors of the National Association of Manufacturers (NAM) and am pleased to testify on their behalf today. The NAM is the nation's largest manufacturing trade association, representing manufacturers in every industrial sector and in all 50 states. Manufacturing has a presence in every single

congressional district providing good, high-paying jobs. The United States is the world's largest manufacturing economy. It produces \$1.6 trillion in value each year, or 11.2 percent of GDP, and employs nearly 12 million Americans working directly in manufacturing.

On behalf of the NAM and the millions of men and women working in manufacturing in the United States, I wish to express my support for your efforts to reform the Regulatory Flexibility Act (RFA) and allow the small manufacturers of this country to do what they do best – make things and create jobs.

Manufacturers have been deeply affected by the most recent recession. The manufacturing sector lost 2.2 million jobs during this period. Our own company suffered its worst downturn since the Great Depression. Fortunately, we were able to maintain stable employment for our skilled workforce of machinists, welders, mechanics and engineers. Last year, there seemed to be some positive signs of job growth in manufacturing, but most of that occurred in the first five months of the year, and then modest job losses started again through November.

Manufacturing finished the year with a net gain of 136,000 manufacturing jobs, only 6.2 percent of our total losses in the recession, and with a significant deceleration in our jobs recovery. But we are competing globally. And despite our current upswing, the numbers show that manufacturing in America is growing more slowly than in countries such as Taiwan, Japan, Ireland and Great Britain — to name just a few. Some of these challenges are self-inflicted. We have seen policies from Washington, D.C. that will not help our economic recovery and will not create jobs. Some are proposed policies that were prevented from being enacted, such as huge increases in the individual income tax rate, the deceptively-named Employee Free Choice Act and so-called cap and trade legislation. And we still face threats from an Environmental Protection Agency (EPA) that

is out of control and a health care mandate that appears to worsen an already onerous health care cost burden on American businesses.

To regain manufacturing momentum and return to net manufacturing job gains, we need improved economic conditions and improved government policies. It is because of the significant challenges affecting manufacturing that the NAM developed a strategy to enhance our growth.

The NAM published its “Manufacturing Strategy for Jobs and a Competitive America” in June of last year. In that strategy, we identified three overarching objectives: 1) to be the best country in the world to headquarter a company; 2) to be the best country in the world to do the bulk of a company’s research and development; and 3) to be a great place to manufacture goods and export products. To achieve those objectives, we need sound policies in taxation, energy, labor, trade, health care, education, reform of the staggering cost of litigation and, certainly, regulation.

The manufacturing community — especially smaller manufacturers — welcomes today’s hearing. As noted in a 2004 White House Office of Management and Budget (OMB) Report to Congress on the Costs and Benefits of Federal Regulations, regulations hit the manufacturing sector especially hard. Because manufacturing is such a dynamic process, involving the transformation of raw materials into finished products, it creates more environmental and safety issues than other businesses. Thus, environmental and workplace health and safety regulations have a disparate impact on manufacturers, especially small manufacturers.

Another report, entitled "The Impact of Regulatory Costs on Small Firms," by Mark Crain and Thomas Hopkins, issued in 2001 and updated by Dr. Crain in 2005 and 2008 for the Office of Advocacy of the Small Business Administration (SBA), makes the same point. The burden of regulation falls disproportionately on small businesses.

In this most recent report, Dr. Crain found that the manufacturing sector shouldered \$193 billion of the \$907 billion onus of environmental, economic, workplace and tax compliance regulation in the year 2008.

Overall, Crain found that the per-employee regulatory costs of businesses with fewer than 20 employees were \$10,585. This is 36 percent more than the \$7,755 cost per worker for firms with more than 500 employees.

In manufacturing, this disparity was even wider. The cost per employee for small firms (meaning fewer than 20 employees) was \$28,316 — 110 percent higher than the \$13,504 cost per employee for medium-sized firms (defined as 20–499 employees). And it was 125 percent higher than the \$12,586 cost per employee for large firms (defined as 500 or more employees).

A decade ago, many of us in manufacturing transformed our operations by adopting a Japanese principle called “lean” thinking. The concept is very simple. You identify everything in the organization that consumes resources but adds no value to the customer. That’s called “*muda*”, or waste. Then you look for a way to eliminate efforts that create no value. My modest proposal is that the government learn something from manufacturing and incorporate “lean” thinking into the development of regulation. A careful and thoughtful analysis of every regulatory requirement and its absolute necessity and an estimation of its value are important when considering regulations that will be imposed on small businesses. Many of the proposals being offered by this Subcommittee — including more detailed statements in the RFA process and requirements to describe duplicative, overlapping or conflicting regulations — will do just that.

But an even more important way to incorporate “lean” thinking, the elimination of waste and continuous improvement is through amendments to the periodic review requirements of Section 610 of the RFA. 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.

A Government Accountability Office (GAO) report from July of 2007 suggested that of the agency retrospective reviews that were mandatory, few changes to the underlying rules occurred. Although their recommendations were not specific to changes to Section 610 reviews, it speaks to the need for change. Making agency action mandatory when it finds these efficiencies is crucial. If agencies were truly purposeful about eliminating every wasteful or unnecessary requirement, the efficiency gains could be tremendous. As we've found on the factory floor, elimination of unnecessary steps leads to productivity gains and more capital to invest in our plants, equipment and people.

In this change in our regulatory culture, we also cannot wear blinders to some challenges over others. The current RFA is unable to review indirect economic effects of regulation. A timely example of this shortcoming is the EPA's National Ambient Air Quality Standards (NAAQS) for Ozone. Because the implementation of NAAQS standards is done through the regulation and approval of state implementation plans, there are said to be no direct effects on small entities because states are not small entities. This is clearly contrary to what Congress intended when it passed the RFA. And the Obama Administration's reconsideration of the Ozone Standard will be very significant to local communities and their small business economies. One estimate is that the most stringent standard under consideration 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. This legislation obviously won't change how this rule is made. But future rules should be judged on both their direct and indirect impacts.

We believe it is very important to give regulatory authority to the chief counsel for Advocacy at the SBA. 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 over 80 percent of the government's billions of hours of paperwork burden imposed on the American people come from the IRS, efforts to fix the loopholes by which the IRS avoids compliance with the RFA are certainly welcome.

Manufacturers hope this proposed legislation is just the beginning of a more thoughtful regulatory system built on common sense with an appreciation of modern manufacturing, a commitment to eliminate wasteful requirements and an understanding of the needs of small business. The NAM and its members stand ready to assist you in these efforts.

Mr. Chairman, thank you for the opportunity to testify today, and I will be happy to respond to any questions.

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