

Testimony

of **Dyke F. Messinger**

Power Curbers, Incorporated

on behalf of the National Association of Manufacturers

before the Committee on Small Business

United States House of Representatives

Hearing on "Legislation to Improve the Regulatory Flexibility Act"

December 6, 2007



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

**COMMITTEE ON SMALL BUSINESS
U.S. HOUSE OF REPRESENTATIVES**

DECEMBER 6, 2007

Chairwoman Velázquez, Ranking Member Chabot and members of the Committee on Small Business, thank you for the opportunity to testify today on behalf of the National Association of Manufacturers (NAM) about the Regulatory Flexibility Act and the work of this committee to improve it.

The NAM is the nation's largest industrial trade association, representing small and large manufacturers in every industrial sector and in all 50 states. Three-quarters of the NAM's membership are small and medium manufacturers. Headquartered in Washington, D.C., the NAM has 10 additional offices across the country. We represent the 14 million men and women who make things in America.

My name is Dyke Messinger and I am the President and CEO of Power Curbers, Inc. We make mechanized construction equipment that turns concrete into curbs and gutters. We employ 104 people in Salisbury, NC; Cedar Falls, IA; and Whitehouse, TN. We sell our equipment in over 80 countries.

The NAM's mission is to enhance the competitiveness of manufacturers by shaping a legislative and regulatory environment conducive to U.S. economic growth, and to increase understanding among policymakers, the media and the general public about the vital role of manufacturing to America's economic future and living standards.

The manufacturing community — especially smaller manufacturers — welcomes today's hearing. As the final 2004 OMB Report to Congress on the Costs and Benefits of Federal Regulations notes, federal 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.

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 for the Office of Advocacy of the Small Business Administration, makes the same point. The burden of regulation falls disproportionately on the manufacturing sector.

In this most recent report, Dr. Crain found that the manufacturing sector shouldered \$162 billion of the \$648 billion onus of environmental, economic, workplace and tax-compliance regulation in the year 2004.

Overall, Crain found that the per employee regulatory costs of businesses with fewer than 20 employees were \$7,647, or 40 percent more than the cost per worker of \$5,282 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 \$21,919 or 118 percent higher than the \$10,042 cost per employee for medium-sized firms (defined as 20–499 employees). And it was 150 percent higher than the \$8,748 cost per employee for large firms (defined as 500 or more employees).

In December 2003, the NAM released a report, “How Structural Costs Imposed on U.S. Manufacturers Harm Workers and Threaten Competitiveness,” which has received considerable attention from media, business and policy experts.

This report, which is available at www.nam.org/costs, examined structural costs borne by manufacturers in the United States compared to our nine largest trading partners: Canada, Mexico, Japan, China, Germany, the United Kingdom, South Korea, Taiwan and France. The principal finding was that structural costs—those imposed domestically “by omission or commission of federal, state and local governments”—were 22.4 percent higher in the U.S. than for any foreign competitor. We subsequently updated that study and found them to be 31.7% higher in 2006.

The structural costs included regulatory compliance, along with excessive corporate taxation, the escalating costs of health and pension benefits, the escalating costs of litigation and rising energy costs.

In order to determine the effect of regulation on domestic manufacturing compared to our main competitors, the NAM Report used pollution-abatement expenditures because they are the only cross-country regulatory compliance cost data available. Thus, the 31.7 percent higher structural costs that U.S. manufacturers face in comparison with our largest trading partners are significantly understated because the regulatory component includes only pollution-abatement expenditures. Even so, just including these specific costs puts the United States at a trade-weighted disadvantage of at least 3.5 percentage points. Only South Korea’s pollution-abatement costs are higher; all other U.S. trading partners, including European nations, have much lower regulatory costs.

As a result, we welcome the leadership of Chairwoman Velázquez in this Congress on making improvements to the Regulatory Flexibility Act (RFA). This committee has long recognized the disproportionate burden of regulatory costs on small businesses and especially small manufacturers. We are anxious to assist you in this effort.

It is our understanding that you intend to introduce legislation to improve federal agency compliance with the regulatory flexibility act and that it would contain provisions to improve periodic review of regulations impacting small business (Section 610), account for indirect effects of those regulations, and that you will codify the Office of Advocacy's relationship with federal agencies. These are all sound improvements and the NAM and its members are supportive of your efforts.

First, let me say that the importance of including indirect economic effects in regulation flexibility analyses is paramount. A timely example of agencies not being able to consider the impact they are truly having on small businesses is the EPA's National Ambient Air Quality Standards 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 a rule, as significant as this one will be to local communities and their small business economies, should be reviewed for its impact. This legislation obviously won't change how this rule is made. But future rules should be judged on both their direct and indirect impacts.

Periodic review often referred to as a Section 610 analysis has always been an underperforming provision. There was great hope that it would rationally reduce or eliminate some burdens on small business that had outlived their usefulness or had not appropriately considered the concerns of small business when they were first promulgated. A Government Accountability Office report from July of this year 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. We are hopeful that your enhanced reporting requirements will create the necessary environment for better retrospective review.

There are also circumstances where an individual rule is not particularly burdensome or a challenge to many small businesses. But the cumulative effect of that rule and many others affecting a particular sector or type of business can be crushing. The total burden of regulation including tax paperwork can cost businesses the use of an employee dedicated solely to compliance, thousands of dollars in outside accountants or environmental consultants, or a loss of focus from critical business needs. They are not always easy to quantify, but the current loophole of providing this analysis “to the extent practicable” gives agencies too large of an opportunity to walk away from this responsibility. Just as “where feasible” as a limitation to the review of the number of small entities affected seriously weakens the requirement. Changes to this limiting language in several parts of the RFA will go a long way to improving agency compliance and analysis.

The NAM was also very supportive of former Chairman Manzullo's H.R. 682, the Regulatory Flexibility Improvements Act introduced in the 109th Congress. We believe there are a few provisions of that bill that would strengthen your legislation. It is worth reviewing the case for giving the Chief Counsel for Advocacy at SBA regulatory authority. Court cases involving the Chief Counsel's interpretations have failed to provide the proper weight to the interpretations of the RFA by that office. Rulemaking authority would provide that certainty. And since over 80% 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 would be welcome.

Again, Madam Chairwoman, thank you for this opportunity to testify. I would be happy to respond to any questions.