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# Testimony

**of Jay Timmons**  
President & CEO

National Association of Manufacturers

*before the* Committee on Oversight & Government Reform  
U.S. House of Representatives

*on* Regulatory Impediments To Job Creation

February 10, 2011



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

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**FEBRUARY 10, 2011**

Chairman Issa, Ranking Member Cummings and members of the Committee on Oversight & Government Reform, thank you for the opportunity to testify before you today about the impact of regulation on job creation and the economy.

My name is Jay Timmons, and I am president and CEO of the National Association of Manufacturers (NAM). 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 of value each year, or 11.2 percent of GDP, and employs nearly 12 million Americans working directly in manufacturing.

This is my first opportunity to testify before a congressional committee since I assumed my duties as president of the NAM in January. Manufacturing is deeply important to me personally as well as professionally. During the Great Depression, my grandfather stood in line for months to get a job at a local manufacturing plant in Chillicothe, Ohio. It was that job, and manufacturing jobs like it, that helped create and strengthen the middle class in this country and made it possible for my own family to succeed. In my current role, it is my honor and privilege to fight for the opportunity for

other families to hold good-paying manufacturing jobs like the one my grandfather was so determined to get decades ago.

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 bring greater oversight to the cumulative burden of regulation the economy now faces and to examine the specific costly proposals coming from this and previous administrations.

Manufacturing has been deeply affected by the most recent recession. This sector lost 2.2 million jobs since the recession began in December 2007. The United States finished the year with a net gain of 136,000 manufacturing jobs – a definitive positive, yet only 6.2 percent of the sector’s total losses in the recession. To regain manufacturing momentum and encourage hiring, the United States needs not just improved economic conditions but also government policies more attuned to the realities of global competition. It is because of the significant challenges affecting manufacturing in the United States 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 and, certainly, regulation.

Unfortunately, over the last two years, we have not seen sensible and cost-beneficial regulation being proposed by government agencies. On the contrary, an aggressive federal bureaucracy has imposed unworkable and excessive regulations with little regard for their impact on job creation and the economy. This hearing is critically

important to help change the dynamic among the regulators and to bring accountability to the Executive Branch.

The NAM welcomed the very clear, new direction on regulation announced by President Obama in his op-ed in *The Wall Street Journal*, through his Executive Order 13563 and his memorandum on small business regulatory flexibility.

With that new direction, a clean-up of sorts is necessary. Congress and the Administration should scrutinize the past two years of regulations and those currently under consideration to determine if they are consistent with a national mission of jobs and economic growth. We must note that some agencies are guilty of an agenda of overreach and insensitivity to costs and small businesses.

One particularly striking example of the overreach is the recent attempt by the Occupational Safety and Health Administration (OSHA) to reinterpret the definition of “feasible administrative or engineering controls” with regard to noise standards. Manufacturing facilities can be noisy places with the shaping and machining of metal, welding, cutting and other processes. The safety of our workers is a critical responsibility of manufacturers, both as a moral duty but also to preserve the effectiveness of those workers. It is in our best interests to take care of our employees, and that includes protecting their hearing.

Since 1983, OSHA has had an enforcement policy that accepted employers’ use of personal protective equipment, such as ear plugs and other ear protection along with a hearing conservation program, when it is less costly than administrative or engineering controls. This reasonable approach means manufacturers did not have to redesign facilities, buy costly new systems or get rid of expensive machines if workers could be protected with personal protective equipment. OSHA set a standard and expected employers to use the most cost-effective approach. This is not radical and, in fact, is

exactly the kind of common-sense approach embodied in the President's new Executive Order 13563.

The new Executive Order suggests that benefits must justify costs, that regulations should be tailored to impose the least burden on society, that the regulatory option chosen should create the most net benefits, and that performance objectives should guide the rules rather than a particular method of compliance. In October, OSHA proposed to do the exact opposite of those principles by reinterpreting the word "feasible" with regard to this standard from cost-beneficial to achievable "if they will not threaten the employer's ability to remain in business." So instead of this being a discussion of whether regulations affect job creation, OSHA demands that a company demonstrate it would go out of business if it had to use more costly methods. There is no indication that the more costly methods would better protect workers, just that the agency feels it has the authority to impose them.

This is an example of bureaucratic inflexibility and excess on the part of OSHA, directly contrasting the principles the President has outlined to be sensitive to the impact of regulations on jobs, the economy and especially small businesses. We have been gathering data from our members on the potential costs of this reinterpretation of the word "feasible", and our preliminary findings are that the range of costs imposed on businesses is from hundreds of thousands of dollars for the smallest of companies, millions of dollars for many medium-sized operations, to one company's estimate of a one billion dollar compliance cost. Now, these costs might not put every one of those companies out of business, but the new demands would divert scarce capital while providing no new benefit to our workers. How could any government agency think this made sense? How could any government agency not appreciate the fragility of the economic recovery and what this would do to job creation?

Thankfully, OSHA withdrew this proposal on January 19 of this year, just one day after publication of the President's new Executive Order. OSHA has decided to suspend work on this proposal while it investigates other options to achieve its objectives, but it has not pledged to eliminate this option from future consideration. Congressional oversight is still crucial to make sure this bad idea does not re-emerge.

In the same press release announcing the withdrawal, OSHA reminds small businesses of its on-site consultation program that offers free and confidential advice to help make workplaces safer. What the release fails to mention is that OSHA is in the process of proposing amendments to that program that would remove the "wall of separation" between the consultation program and the enforcement staff. OSHA's actions here will only serve to discourage small businesses from participating in this successful program by making it more likely that a confidential consultation will turn into a surprise enforcement referral for something that does not present an imminent danger. OSHA is headed in the wrong direction with yet another proposal and needs Congress and other stakeholders to help right the ship.

The Environment Protection Agency (EPA) is also a significant contributor to costly and unnecessary burdens placed on the economy. The burden of environmental regulation falls disproportionately on manufacturers and is heaviest on small manufacturers because the compliance costs are not affected by economies of scale. Even our smallest members require one or two staff dedicated full-time to regulatory compliance, especially for environmental regulations. Often, manufacturers feel compelled to hire additional expensive consultants to help stay abreast of all the new and changing requirements. But this is just one part of the challenge facing manufacturers.

The EPA has been embarked on a decades-long process to implement the Clean Air Act and its amendments. There is no doubt that enormous benefits have been

brought to our nation 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.

Costs of pollution abatement are 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 regulation 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.

That is why it is so shocking that the EPA decided to take a Bush Administration rule that was enormously costly, the National Ambient Air Quality Standard (NAAQS) for Ozone, and propose making it even more stringent and costly. One study by the Manufacturers Alliance/MAPI estimated the most stringent proposal 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. We have a short reprieve from this rule because the EPA has delayed its final proposal until July. But Congress must work with the EPA to stop the agency from making a \$1 trillion mistake.

If the traditional challenges with air quality regulations were not enough to discourage manufacturers from hiring new employees or investing in new equipment, then the decision to regulate carbon dioxide (CO<sub>2</sub>) as a pollutant under the Clean Air Act certainly will. This is unlike any regulation manufacturers have ever experienced. In the past, technology has helped to develop cheaper methods to “scrub” pollutants from our smokestacks. But CO<sub>2</sub> cannot be scrubbed from emissions; it can only be reduced through reductions in output or fuel switching. The easiest way to reduce CO<sub>2</sub> from

stationary sources is to reduce economic output. That is a recipe for job losses. And although these regulations start with the largest facilities, the stage has been set to regulate even the smallest manufacturers. The possibility creates an overhang of uncertainty that casts a dark shadow on the future of manufacturing in this country. Congress must act quickly to eliminate this threat and reclaim its authority to determine how CO<sub>2</sub> will be regulated and stop the EPA from abusing the intent of the Clean Air Act for this purpose.

The cumulative burden of these new and costly regulations is nearing a tipping point. The 112<sup>th</sup> Congress has the ability to recognize the dangerous course we are on and to change it before it is too late for our economy and the American worker. This Committee enjoys a unique jurisdictional mandate to look over the entirety of the federal government and its regulatory programs. Only through a wide focus can the true scope of the impacts on manufacturing and job creation be seen clearly. We welcome your commitment to this effort. And we welcome the President's expressed commitment to be sensitive toward the impact of future regulations. But looking forward is not enough. For the sake of economic vitality, an emphasis on reasonable regulation must also examine recently contemplated, proposed and finalized rules.

Allow me to reiterate manufacturers' concerns with several additional regulatory programs that have not been sufficiently rethought or that are still headed in a troubling direction.

#### EPA Boiler MACT

The EPA has proposed a rule that would establish more stringent emissions standards on industrial and commercial boilers and process heaters (i.e. Boiler MACT). This broad-reaching proposal could cost manufacturers more than \$20 billion in

compliance costs and place hundreds of thousands of jobs in jeopardy. Furthermore, as the NAM has communicated to the EPA, the proposed standards could almost never be achieved by any single, real-world source. In December 2010, the EPA asked the federal District Court for the District of Columbia for an extension to re-propose the rule, take industry comments and then finalize the package by April 2012. The court recently rejected this extension and the final rule is expected to be published by February 21, 2011. Unless Congress intervenes, we are likely to see a rule that neither the Administration nor industry wants finalized or implemented.

#### SEC/CFTC Derivatives Regulation

As end-users of over-the-counter (OTC) derivatives to manage risk, manufacturers in the United States have a strong interest in the implementation of the new rules on OTC derivatives in the Dodd-Frank Act. In drafting these regulations, we urge the Commodity Futures Trading Commission (CFTC) and the Securities and Exchange Commission (SEC) to avoid any new regulations on derivatives that could inadvertently harm economic growth. In particular, it is crucial that new regulations on derivatives include a strong and workable exemption for those end-users, like manufacturers, that use derivatives to hedge commercial risk. Rules that impose margin requirements on manufacturers or that impose financial regulation (such as a swap dealer or major swap participant) on non-financial businesses, could seriously harm the recovery by diverting companies' financial resources from much-needed business investment and job retention and creation. Similarly, regulations that make hedging too expensive will place manufacturers in the uncomfortable position of either having to divert additional money away from production or discontinue hedging business risk, which would require liabilities to reappear on corporate balance sheets, driving up the cost of capital.

### SEC Special Disclosures Section 1502 (Conflict Minerals)

The Manufacturers support the underlying goal of Sec. 1502 to address the atrocities occurring in the Democratic Republic of Congo (DRC) and adjoining countries and are working with other stakeholders to help resolve the problem. We encourage the SEC to implement Sec. 1502 in a manner consistent with the realities of global supply chains and that acknowledges the facts on the ground in the DRC as well as the limited control downstream users have on the refiners/smelters and mines. A successful outcome is one that achieves the goals of the statute without unduly burdening legitimate trade. The NAM acknowledges the challenges involved with achieving this outcome and encourages the SEC to work with all affected industries to understand how the requirements can be realistically implemented across supply chains. The wrong path on this rulemaking could end up costing industries more than \$11 billion to comply.

### OSHA Injury and Illness Protection Program

OSHA is developing a new regulation that would mandate a standard for employers' safety and health programs, referred to as an Injury and Illness Prevention Program (I2P2). Such a concept is expected to be proposed in the spring of 2011 and would have a major impact on all aspects of both workplace safety enforcement and the promulgation of new regulations. We are concerned that this new proposal may not take into account the efforts by employers who already have effective safety and health programs in place or how this new mandate would disrupt safety programs that have achieved measurable successes. Based on preliminary information from OSHA, this proposal may allow OSHA investigators to substitute their judgment of the employer's plan on how to achieve compliance and whether some "injury" in the workplace should

have been addressed in some way, even if these conditions were regulated under a specific standard or did not amount to a “significant risk” as required under the OSH Act.

#### Commerce/State/Defense Export Control Regulations

U.S. export control regulations have not been significantly revised since the Cold War. The result is a system that no longer fully protects our national security, has not kept up with accelerating technological change and does not function with the efficiency and transparency needed to keep the United States competitive in the global marketplace. The current regulations are eroding America’s global technology leadership, harming the defense industrial base and costing U.S. jobs. Recent studies by the National Academies of Science and the Defense Science Board have concluded that the current export control regulations and system pose a threat to national security.

The Milken Institute estimates that if the export control regulations are modernized, U.S. high-tech exports could increase by \$60 billion, resulting in 350,000 new jobs. Modernization will enhance the government’s ability to protect national security interests while removing the burdens and disadvantages placed on U.S. high-technology manufacturers. The government should thoroughly modernize export controls to strengthen the industrial base, enhance national security and improve economic competitiveness. In this area, we applaud the Obama Administration for the steps it has taken thus far to modernize the export control system, but more is needed to improve the system in 2011 to protect manufacturing jobs.

#### DOT Transportation of Lithium Batteries Rulemaking

The Department of Transportation’s (DOT) Pipeline and Hazardous Materials Safety Administration (PHMSA) proposed new shipping and handling requirements for the transportation of lithium ion and lithium metal batteries in January 2010. The rule

mandates changes in the way lithium batteries and cells and products containing these batteries are transported in passenger and cargo aircraft. Of note, the PHMSA rejected all requests for extensions of the comment period and has severely limited industry input and technical discussions in what is an extremely complicated proposal, in the process creating serious inconsistencies between international and U.S. aviation regulations. The proposed rule applies to a variety of products and manufactured goods ranging from everyday consumer items to implantable medical devices. Billions of lithium batteries and products containing them are shipped annually by air without incident. The costs of the current proposal are conservatively estimated at \$1 billion annually. If implemented as currently written, manufacturers will face reductions in existing air freight capacity, new costs associated with massive supply chain redesigns, additional training costs, inefficiencies that could cause confusion with international partners that adhere to alternate standards and lost business to foreign companies not subject to these proposed rules. Manufacturers strongly support a rule that instead achieves harmonization with internationally agreed-upon requirements for lithium battery transport.

#### DOT Hours of Service Rulemaking

The DOT's Federal Motor Carrier Safety Administration (FMCSA) has announced changes to the trucking hours of service rules first implemented in 2004. It has proposed to reduce well-established 11-hour driving and 14-hour on-duty times for truckers and to introduce new rest mandates. Over the past six years, driver and motor carrier safety performance has improved, and truck-involved fatalities and injuries have markedly declined. For manufacturers and those dependent on a healthy manufacturing economy, changes to the rule will have major impacts on distribution patterns, supply chains, just-in-time delivery standards, trucking capacity and ultimately will add operational costs to

be borne by shippers and motor carriers. In 2005, the American Trucking Association estimated that reducing the driving time by one hour and eliminating the 34-hour restart provision would cost affected industries more than \$2 billion. While the DOT is adhering to the terms of a 2009 court negotiated settlement reached with Public Citizen by reviewing and reconsidering the 2008 Final Rule on Hours of Service, the Department is not obligated to alter the rule. The Department's recent public commentary on poor truck driver health and longevity is drawing some concern because the scientific data to justify a change in the current rule is not strong. Approximately 80 percent of the nation's freight by value moves by truck.

#### CPSC Product Safety Information Database

In 2008, Congress passed and the President signed the Consumer Product Safety Improvement Act (CPSIA), which, among other provisions, directed the Consumer Product Safety Commission (CPSC) to produce a product safety database that would provide consumers with a meaningful tool to research product safety information that is accurate and includes first-hand reports from consumers and public safety entities. Significant debate took place in Congress on the appropriate types of reporters to include in the database. The final CPSC rule, however, recognized that Congress provided an exhaustive list of reporters but strains credulity by expanding the definitions of consumers and public safety entities beyond their clear public meaning and the intent of the drafters of the legislation. The rule redefined the terms "consumer" to include trial attorneys and public safety entities to include "consumer advocacy organizations." As a result, the database could be filled with bogus reports inspired by political or financial motives rather than safety.

Congress also struck an appropriate balance between the speed of publication of reports and the desire for accuracy as well as the protection of confidential business

information. The final rule provided for no such balance and creates a default for immediate publication before any meritorious claims regarding trade secrets or material inaccuracy are resolved. Once a trade secret is posted within a report, for example, no remedy is available to undo the damage. These claims as well as claims of inaccuracy, impossibility, or product misidentification must be resolved before the information is made public if the database is to provide helpful information to the public.

### Existing Rules

The President has also promised a “look back” at existing rules to find those that are “outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned.” We welcome an effort to streamline existing regulations and attempt to eliminate some of the accumulated burdens placed on manufacturing. But we fear that without proper oversight from Congress, this effort will be much like its predecessors – ineffective. Presidents since Jimmy Carter have required agencies to review their rules periodically, developed task forces to conduct the efforts, required plans from agencies and called for public nominations of rules for reform. But if the proper incentives do not exist or agencies are not held to account, then no measurable progress will be made. Since this Committee also oversees the federal workforce, perhaps it can consider having appropriate incentives included in federal employee performance appraisals to make these reviews effective. Additionally, future hearings on agency plans and their progress could help to make sure this effort produces results.

Manufacturers hope this is the dawn of a new regulatory era built on common sense with an understanding of the forces of global competition, the cumulative burden of existing rules and the needs of small business. We stand ready to assist in your efforts to help make the necessary improvements to our government.

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

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