

Motor & Equipment Manufacturers Association

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March 31, 2017

Earl Comstock
Director, Office of Policy and Strategic Planning
U.S. Department of Commerce
H.C. Hoover Building, Room 5863
1401 Constitution Avenue, NW
Washington, DC 20230

RE: Request for Information; Impact of Federal Regulations on Domestic Manufacturing [Docket ID No. DOC-2017-0001]

Dear Mr. Comstock:

The Motor & Equipment Manufacturers Association (MEMA) is the leading international trade association representing motor vehicle parts, components, and systems manufacturers. Our members manufacture and remanufacture original equipment and aftermarket components and systems for use in passenger cars and commercial vehicles. MEMA represents over 1,000 members through four divisions: Automotive Aftermarket Suppliers Association (AASA); Heavy Duty Manufacturers Association (HDMA); Motor & Equipment Remanufacturers Association (MERA); and, Original Equipment Suppliers Association (OESA).

MEMA is responding to the Department of Commerce's request for information on the impact of federal regulations on domestic manufacturing.¹ The cost of complying with domestic regulations continues to climb and MEMA applauds the Administration's efforts to evaluate how to restrain unnecessary or burdensome regulations and requirements. MEMA's comments will focus primarily on which regulations present an overall burden on motor vehicle parts manufacturers. MEMA does not address federal permitting in this comment, as we expect that many other stakeholders, experts, associations, and individual manufacturers will address their specific experiences and feedback on the impacts of federal permitting on their ability to grow or create new facilities.

Economic Impact of Vehicle Suppliers

Vehicle suppliers are the largest manufacturing sector in the United States directly employing over 871,000 Americans.² Our industry has seen a 19 percent increase in domestic employment since 2012, representing a growth rate three times that of other major sectors of the economy. These jobs are in all 50 states plus the District of Columbia, with the greatest concentration in Michigan, Ohio, Indiana, Tennessee and Kentucky.

¹ 82 Fed. Reg. at 12786

² ["Driving the Future: The Economic Impact of the Motor Vehicle Parts Manufacturing Industry on the United States,"](#) MEMA and Boston Consulting Group, January, 2017.



Together with indirect and employment-induced jobs, the total employment impact of the motor vehicle parts manufacturing industry is 4.26 million jobs (or 2.9 percent of U.S. labor force), which is an increase of nearly 18 percent from 3.26 million in 2012. Nearly \$435 billion in economic contribution to the U.S. GDP is generated by the motor vehicle parts manufacturing industry and its supported activity, which is 2.4 percent of U.S. Gross Domestic Product.

In 2016, suppliers announced domestic U.S. investments of nearly \$6.5 billion. The supplier industry is dedicated to continuously innovating technological advancements that are aimed at reducing vehicle crashes and environmental impact. Our members lead the way in developing and manufacturing advanced, transformative technologies that enable safer, smarter and more efficient vehicles, all within a rapidly growing global marketplace with increased regulatory and customer demands. In total, motor vehicle parts suppliers contribute more than 77 percent of the value in today's vehicles.

The NAICS codes most of our members fall under are: 3262, 32621, 327215, 3363, 3369, and 424610.³

Onerous Labor Regulations Impact Growth

MEMA recognizes the task set before the Department of Commerce to evaluate the impact of federal regulations on domestic manufacturing is a massive undertaking. As the voice of U.S. business, Commerce is uniquely positioned to conduct a fair assessment of how some regulations can be an impediment to U.S. manufacturing growth. MEMA believes that Commerce can and should play a stronger role with interagency review of how different agencies' regulations impact business. Commerce can also improve the economic analysis needed to assess domestic economic and competitiveness issues.

MEMA members operate in a global industry and in a complex supply chain. The global vehicle industry sector, while getting stronger, has also consolidated over the years and is leaner. Imposing unnecessary regulations impacts the competitiveness of U.S. companies limiting their ability to invest, to grow, and to retain U.S. jobs. MEMA understands and accepts there are regulations that are necessary for not only product safety, but also worker safety. Important safety and environmental regulations are essential to establish minimum performance requirements and other key criteria. For rapidly developing technologies, policy guidelines are also critical in creating common frameworks for industry stakeholders. MEMA has long supported many regulations that impact our products' safety and environmental impact. Whenever promulgating regulations, particularly for global products, as a first step, U.S. agencies should assess if there are opportunities to either harmonize or align with other similar national and/or regional regulatory requirements. MEMA supports a balanced approach to regulations and recognizes the need for strong regulatory frameworks to create performance-based standards and establish a level playing field for stakeholders.

³ Please note, this is a general listing and may not encompass all the codes that may apply to our members.

At the same time, our industry's growth depends upon being less encumbered by onerous or duplicative regulations impacting suppliers' businesses and workforce. There are many regulations that are either impracticable or overly burdensome; that are either redundant or in conflict; that are burdensome or an impediment to growth. This is particularly the case with many of the labor and general industry rules, decisions and requirements that have been promulgated over the past several years by the U.S. Department of Labor (DOL), the National Labor Relations Board (NLRB) and the Securities and Exchange Commission (SEC). MEMA has consistently advocated for the repeal of a wide range of regulations that impair suppliers' ability to grow, be stable and be competitive.

Below are some regulations and how they impact suppliers. MEMA encourages the Department of Commerce to consider including these burdensome labor requirements on the list of regulations that impact domestic manufacturing.

DOL; Interpretation of the "Advice" Exemption in Section 203(c) of the Labor-Management Reporting and Disclosure Act (a.k.a. "The Persuader Rule");⁴ effective April 25, 2016

The rule increased disclosure requirements between companies and their counsel, even in instances when no contact with employees takes place. This rule is contrary to protecting the confidential relationship in discussing employee and workplace matters between a company and their legal counsel.

MEMA members employ tens of thousands of workers; some are represented by unions and many others are not. These employees and the companies they work for have always operated under laws and rules established by the DOL and NLRB. From time to time, the employees of MEMA members file petitions requesting the NLRB to conduct a representation election to determine whether that unit of employees will be represented by a union that has undertaken an organizing campaign. MEMA's members vary widely in size and have a wide range of exposure to unions, union organizing, collective bargaining, and the purpose and procedures of the NLRB. When a MEMA member is served with a representation petition that is often the company's initiation into the arcane administrative procedures and substantive rights and responsibilities enforced by the NLRB.

MEMA opposed this rule primarily because 1) it imposes such an intrusive regulation on the attorney-client relationships of its members and 2) the decision to change the interpretation of the "advice exception" after 50 years, in the absence of any supporting data or evidence, was arbitrary and capricious.

⁴ 29 CFR Parts 405 and 406

DOL; Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales, and Computer Employees (a.k.a. "The Overtime Rule");⁵ effective Dec. 1, 2016.

This rule expanded the definition of eligible employees who can receive overtime pay, increasing the salary threshold for employees who can receive overtime pay. This rule imposes additional financial costs on employers, limiting their ability to hire additional workers and invest in their businesses.

MEMA supported the National Association of Manufacturers' opposition to this rulemaking citing several concerns – primarily because DOL failed to recognize the infeasibility, costs, and real-world impacts of the new overtime rule on employers. More importantly, as NAM noted, "manufacturers of all sizes will bear the burden of this costly regulation that will force many employers to cut critical programming, staffing and services to the public. Many of these employers will lose the ability to effectively manage their workforces and provide flexibility to valued employees ..."⁶

NLRB; Representation–Case Procedures (a.k.a. "Ambush Election Rule");⁷ effective April 14, 2015

This rule shortened the period between the filing of a workplace petition for union representation and when the election is held, changing long-standing workplace practices and providing less time for employers and employees to address differences in a constructive way.

Like many other stakeholders, MEMA supports union elections that are conducted in a fair manner that protects the rights of all parties. However, MEMA believes that this rule denies employers a fair opportunity to participate in NLRB proceedings and to communicate with employees. A wide range of manufacturers, associations, organizations, and coalitions share these sentiments.

Occupational Safety and Health Administration (OSHA); Improve Tracking of Workplace Injuries and Illnesses Reporting Requirements;⁸ effective Jan. 1, 2017

This rule expands the scope and frequency of injury and illness reporting, allows for agency discretion to require more detailed information from employers, and requires the information to be submitted electronically so that the agency can provide public online access to the records. Previously, this kind of information was not generally available to the public, and was available to researchers on a basis consistent with confidential data. The rule will force employers to disclose to the public sensitive information that can easily be manipulated, mischaracterized, and misused for reasons wholly unrelated to safety and will subject employers to illegitimate attacks and employees to violations of their privacy. Also, OSHA

⁵ 29 CFR Part 541

⁶ <http://www.nam.org/Newsroom/Press-Releases/2016/09/Manufacturers-Challenge-Overtime-Rule/>

⁷ 29 CFR Parts 101-103

⁸ 29 CFR Parts 1902 and 1904

abandoned its “no fault” approach to recordkeeping and did not adequately address how it intends to manage and protect these data.

MEMA and its members are concerned that data collected under this rule may be misinterpreted and may compromise employee privacy. Additionally, stakeholders largely argued the costs of this rule were woefully underestimated. The rule failed to adequately account not only for the costs associated with the requirements, but also the unknown costs of adopting a new system to accommodate OSHA’s electronic filing system (that is not yet available to accept submissions) and the implementation costs like training for a new system and, for some businesses, transitioning from paper to electronic systems. This rule will consume large amounts of government and employers’ resources and there is little to demonstrate that these new requirements will, in fact, contribute to the agency’s goal to reduce injuries, illnesses, and fatalities.

OSHA; Crystalline Silica Exposure Limits;⁹ effective June 23, 2016

MEMA believes that the changes to the occupational exposure to respirable crystalline silica (RCS) standard was not necessary and the rule does not provide any additional safety benefit. MEMA previously expressed concerned about several elements of the OSHA rule, including measurability, control hierarchy, exposure assessments, job rotation, training, and compliance costs. There are also a few unintended consequences not considered; for example, the rule’s requirements can impact other occupational exposure mitigation. The required ventilation and wet-assisted tools can conflict with manufacturers’ efforts to manage other hazards. For example, air permitting will need to be changed to account for increases in air ventilation, and ventilation systems will need to be substantially reconfigured to rebalance air distribution patterns. Obtaining air permits also consumes substantial resources (fiscal, personnel, time) and involves a great deal of paperwork and inspections. Furthermore, water used in wet-assisted equipment will need to be properly managed, which could create unnecessary hazards and negatively impact manufacturing processes and equipment.

Also, MEMA disagreed with OSHA’s cost estimates for training and compliance and found them to be significantly underestimated. Costs for equipment, training, monitoring and staffing are simply not realistic. As an example, one of our members – a large foundry – estimated their cost to comply with this proposed regulation would be upwards of \$4 million, and the scope of it would apply to an additional 850 employees. These unnecessary and burdensome costs would be for no added safety benefit. This same company has already invested almost \$2 million in exposure control equipment to meet the previous permissible exposure limit (PEL);

⁹ 29 CFR Part 1910, Subpart Z

equipment that would not meet the new PEL. Passing off these kinds of additional costs on to the customer – for most our members – is not feasible or realistic.

NLRB; “Joint Employer” standard, modified August, 2015.

NLRB’s landmark decision in the *Browning-Ferris Industries of California, Inc., et al.* case¹⁰, changed the joint employer standard. This modified standard designates that two employers, a company and contractor, has control over contract employees, which increases liability for companies and contractors. This 2015 decision changed the joint employer standard that had previously been in place for over 30 years. The DOL subsequently issued an Administrator’s Interpretation No. 2016-1.¹¹

A report from the Competitive Enterprise Institute concluded this decision to modify the joint employer standard will result in reduced business opportunities for employers and hinder job creation. “Such a broad joint employer standard will mean that employers could be held liable for labor violations against employees not under their direct control,” the report said. “The new ambiguous standard established by Browning-Ferris stands in stark contrast to the historically used bright-line test, where one company exercised direct and immediate control over another company’s workforce.”¹²

Equal Opportunity Employment Commission, Revisions to the EEO-1 to Collect Summary Pay Data¹³

This rule forces companies to report additional wage and hourly data for employees. Under the new Employer Information Report EEO-1 form, companies with 100 or more employees will be required to report additional information on employees across 12 different pay bands by gender, race and ethnicity, location, and job categories. The current EEO-1 form requires information entry into 140 boxes. The changes to the form increases information entry to 3,360 boxes. That is a multiplying factor of not one, or two, but of 24 times more entries. Such a drastic increase of information entry will certainly have a corresponding jump in the time and resources it takes to complete the entry.

The EEOC has not yet formally published the final rule to the docket; however, in October 2016 the agency did issue notifications about the new form as well as a Q&A-style document. This direction from the agency was further reinforced by a webinar¹⁴ sanctioned by the EEOC Office of Legal Counsel. The webinar provided instructions and information to employers about the changes to the form and that the due date to submit the new forms with pay data is March 31, 2018.

¹⁰ NLRB Case Number 32-RC-109684

¹¹ Administrator’s Interpretation [No. 2016-1](#), SUBJECT: Joint employment under the Fair Labor Standards Act and Migrant and Seasonal Agricultural Worker Protection Act, Issued by DOL Wage and Hour Division Administrator David Weil, Jan. 20, 2016

¹² [“Redefining Workers out of a Job”](#) by Trey Kovacs, Competitive Enterprise Institute, Aug. 3, 2016

¹³ 29 CFR 1602 Subpart B

¹⁴ [“Revisions to the EEO-1 to Collect Summary Pay Data”](#) EEOC.gov, October, 2016

MEMA and our members fully support pay equity and compliance with federal and state laws prohibiting sex-based wage discrimination. However, these changes to the EEO-1 form are a costly and unnecessary burden resulting in unreliable information about workplace employees and compromising confidential information. Furthermore, this additional information has no discernable benefit and will not yield data that will be reliable for identifying compensation disparities based on discriminatory intent.

SEC; Conflict Minerals Reporting Requirements,¹⁵ under Section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act

While the humanitarian goals of the original legislation requiring Conflict Minerals Reporting are laudable, the implementing rule led to job losses in legitimate mining operations in the region. The rule fails to recognize the complexity of the motor vehicle supply chain, ignoring the challenges the industry faces in both the accuracy and practicality of tracking back through the multifaceted multi-level supply chain. Moreover, the rule places unnecessary onerous cost on business with no benefit to the region the law and rule are attempting to help.

MEMA members include large manufacturers that are issuers under the conflict mineral reporting requirements. Additionally, MEMA also represents small and medium motor vehicle parts manufacturers, many of which are privately owned and not filing reports with the SEC. However, this rule burdens motor vehicle suppliers – large and small alike – including those not mandated to file annual reports with the SEC. Corporate customers, such as vehicle manufacturers or large Tier 1 suppliers, require these privately-owned companies of all sizes to track the source of minerals in the products they sell in the supply chain.

In addition to the challenges of tracing minerals through the supply chain, the rule also places a significant financial cost on motor vehicle parts manufacturers. As an example, a large Tier 1 supplier estimated that their expenditures have totaled about \$3 million since the annual reporting requirements took effect. These costs include tracking the supply chains and processes of over 7,000 lower tier suppliers, evaluating the minerals tracking efforts of all suppliers, and categorizing the likelihood that a supplier's products contain conflict minerals. Additional costs are incurred because all findings from the company's suppliers must be manually entered into a database and categorized so that the information provided may be utilized by the Tier 1 supplier in preparing filings.

Recently, MEMA wrote the SEC Acting Chairman Dr. Michael S. Piwowar urging an immediate repeal of Section 1502 of the Dodd-Frank Act and emphasizing the need for quick action to fully suspend the Conflict Minerals Rule before the next reporting deadline.

¹⁵ 17 CFR Parts 240 and 249b

Conclusion

Motor vehicle parts manufacturers are vital to the vehicle manufacturing industry and are major contributors to domestic manufacturing employment and to the entire U.S. economy. However, continued and escalating labor regulatory compliance and reporting costs siphon away resources from suppliers. In the long term, these compounded costs may impact their ability to remain competitive and to continue innovating the advanced technologies we need to enhance vehicle safety and efficiency and to expedite improved mobility.

MEMA encourages the Department of Commerce to consider including these burdensome labor requirements on the list of regulations that impact domestic manufacturing. These rules add unnecessary costs for very little, if any, gain in achieving the agencies' respective missions.

Respectfully submitted,

A handwritten signature in black ink that reads "Ann Wilson". The signature is written in a cursive, flowing style.

Ann Wilson
Senior Vice President, Government Affairs