

**TESTIMONY OF MICHAEL KAMNIKAR, SENIOR VICE PRESIDENT OF
MARKETING AND BUSINESS DEVELOPMENT, THE ELLWOOD GROUP
VICE PRESIDENT, FORGING INDUSTRY ASSOCIATION**

BEFORE THE

**COMMITTEE ON GOVERNMENT OVERSIGHT AND REFORM, SUBCOMMITTEE ON
REGULATORY AFFAIRS, STIMULUS OVERSIGHT AND GOVERNMENT SPENDING**

U. S. HOUSE OF REPRESENTATIVES

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Chairman Jordan, Ranking Member Kucinich, and Members of the Subcommittee, thank you for the opportunity to testify before you today on the cumulative impact of regulation on U.S. manufacturers.

My name is Mike Kamnikar, and I am Senior Vice President of Marketing and Business Development for the Ellwood Group, headquartered in Ellwood City, Pennsylvania. The Ellwood Group produces engineered, heavy metal sections for capital specialty equipment manufacturers in the United States and around the world. The company's seven operating business units - encompassing multiple plants in Pennsylvania, Michigan, Ohio, Texas and Canada - are dedicated to solving customers' needs for specially engineered forging steels, iron castings, forgings, and other alloy parts. Our customers are in a variety of industries, including oil and gas, mining, metals processing, power generation, aircraft, railroad, automotive, tooling, water transportation, and defense.

I am also the current Vice President and the incoming President of the Forging Industry Association (FIA). Headquartered in Cleveland, Ohio, FIA is the primary trade association representing the bulk of forging capacity in North America. The North American forging industry is comprised of approximately 500 forging operations in 38 states, Canada and Mexico. Forging presence in the United States is concentrated in Ohio, Pennsylvania, Illinois, Michigan, California, Texas, New York, Indiana, and Wisconsin. The modern forging process is capital intensive, and most forging companies are small businesses.

Forging is one of the oldest known metalworking processes, where metal is pressed, pounded or squeezed under great pressure into high-strength parts known as forgings. The process is usually performed by preheating the metal to a desired temperature before it is worked. Forged parts are strong and reliable and therefore, vital in safety-critical applications. Forgings are rarely seen or identified by consumers, because they are normally component parts inside assemblies. For example, forgings are necessary components in the following applications:

- **Automotive** – A single car or truck may contain 250 forgings, and 40% of all truck axle assemblies are comprised of forged components;
- **Aerospace** – structural, engine and landing gear parts of commercial and military aircraft are forged;
- **Defense** – a heavy tank contains over 550 separate forgings, the 120mm gun tube on the M1A2 battle tank is forged, the US Navy's Aegis Class guided missile destroyers are steered by 2 forged rudder stocks approximately 20 feet in length and weighing 35,000 pounds each, Cruise missile warheads and all penetrator bomb cases are forged, and a standard artillery shell usually contains at least 2 forged components;
- **Power Generation** – safe and reliable pressure vessels, generator rotors, pump shafts, valve manifolds, valve bodies, turbine blades and shafts, pipes, and fittings are forged for nuclear (commercial and naval), land, and marine power generation equipment;
- **Wind Energy** – about 20 metric tons of forgings are used in a typical large wind turbine;
- **Oil and Gas Exploration** – hundreds of forgings are used in both an oil rig tension leg platform and land-based drilling rigs;
- **Mining** – forgings up to 70,000 pounds are used in surface and underground mining equipment. In fact, a forged drill bit was used to rescue the trapped Chilean miners;
- **Rail** – The Association of American Railroads requires all axles to be forged for locomotives. The traction gears and the engine crankshaft and camshaft in locomotives are also all forged;
- **Medical** – Quality surgical tools and joint replacements require strong, light-weight forgings;
- **Tools** - Hammers and wrenches are forged; and
- **Sports** – Forged golf clubs allow more efficient transfer of energy from clubs to ball than traditional clubs – that equals more distance without swinging harder.

Let me now turn to the topic of today's hearing. U.S. manufacturers need a regulatory system that works. The Ellwood Group and other FIA member companies pride themselves on providing well-paying jobs in their communities and ensuring that they are in compliance with all necessary health, safety and environmental regulations. Appropriate regulations that improve health, safety and the environment are a necessary part of doing business in the U.S. However, when the regulatory process produces new regulations that do not provide additional benefits for the attendant costs, and the regulated community has little to no opportunity to participate in that process, the system is broken.

There are numerous specific examples of regulations and proposed rules that have a particularly burdensome impact on U.S. manufacturers like forgers, many of them under the jurisdiction of the U.S. Environmental Protection Agency (EPA). But before I provide

specific examples, let me first highlight some overarching problems with the rulemaking process itself.

1. Overall lack of understanding of the manufacturing supply chain and the effects of regulations on that supply chain.

Regardless of the government agency issuing the regulation, there appears to be little to no understanding of the manufacturing process and the unintended consequences of certain actions throughout the supply chain. There also seems to be no recognition of the cumulative, and perhaps even duplicative or contradictory nature of regulation. For example, forged parts are critical components of alternative energy sources such as wind turbines and nuclear power plants. However, natural gas and induction furnaces are required to make forged parts. So when EPA proposes to regulate greenhouse gas (GHG) emissions, forgers have to be concerned about the potential increase in the cost of inputs like steel and natural gas, as well as when EPA will require small and medium sources to comply with new GHG emission limits. When small and medium sources are regulated under EPA's new GHG emission limits, forging operations may be forced to comply with these limits solely because they use natural gas in the making of forged parts. So, while on one hand the Administration and others trumpet the need for increased use of alternative energy sources, agency regulatory proposals would make the very U.S. manufacturers necessary to build those alternative sources less competitive. Similarly, regulations aimed at the oil and gas industry or the automotive or aerospace industries are often proposed without regard to the potentially devastating downstream effects on their suppliers.

To truly support U.S. manufacturing and jobs, we must insist on a full vetting of all the potential consequences, intended and unintended, of proposed regulations.

2. Lack of transparency and sufficient stakeholder involvement in the regulatory process.

There has been an alarming trend over the last 2 years for agencies to issue "interpretations" or "interim final rules", which either require no, or very limited, public comment. In addition, many proposed rules are issued with only a 30 day public comment period. The Administrative Procedures Act (APA), when followed appropriately throughout the rulemaking process, allows for numerous opportunities for stakeholder involvement, as well as for the effects on small businesses and a cost-benefit analysis to be taken into account. The only way that an agency can adequately assess the effects of new regulations or changes to existing regulations is to fully consult with the regulated community and other stakeholders. This means at least 60 days of public comment to allow for businesses of all sizes to adequately assess the potential impacts on the proposed regulation on its business. It also means reasonable outreach to the

potentially regulated community to ensure that they are aware of the proposed rules and have an adequate opportunity to participate in the stakeholder involvement process.

The Ellwood Group has engineers and technical experts at our operations that can analyze proposed regulations in some areas for their impact on our operations. Many members of FIA are small and rely on FIA as their trade association to assess potential impact of government action on their operations, and to weigh in on that action on their behalf. FIA, like many metalworking trade associations, does not have technical experts on all subjects on staff at all times. We must have adequate time to consult with member companies of all sizes on proposed government regulation, including determining when specialized expertise may be needed.

When agencies bypass the normal process in order to limit the ability of those potentially affected to participate, or allow only a 30 day public comment period on complex technical regulatory changes, not only do we get ill-conceived regulations with unintended or unexpected consequences, we also undermine the integrity of and the public's confidence in the rulemaking process in general.

One way to improve credibility in the rulemaking process would be to pass legislation like HR 10, the Regulations from the Executive In Need of Scrutiny (REINS) Act, introduced by Representative Geoff Davis (KY 4). FIA strongly endorses requiring an up-or-down vote in Congress on all major rules, defined as those with an annual economic impact of \$100 million or more, proposed by regulatory agencies.

I will now provide some specific examples of current and proposed regulations that we believe would negatively impact our ability to compete in the U.S.

1. EPA Regulation of GHG Emissions

Most forging work is done at temperatures up to 2300° F, with subsequent heat treating done at up to 1900° F, using natural gas, electric and/or induction furnaces. There are no alternative technologies available. As outlined above, FIA members are making critical parts for not only the energy sector, but for other sectors such as aerospace, defense, medical, and transportation. We cannot build those necessary components without adequate and affordable supplies of natural gas and electricity. While EPA's decision to start with large stationary sources means most forgers only currently have to worry about the potential effect of these regulations on our suppliers in the metals industry, we are very concerned about future regulation of smaller sources. We should not be pushed into a regulatory system merely because we must use natural gas to make critical components. In addition, attempts to address climate change in a domestic manner rather than a global one will only succeed in making U.S. manufacturers less competitive.

2. EPA Proposal for Additional Classes of Facilities Such as Metalworking to be Included in the Development of Financial Responsibility Requirements

On January 6, 2010, EPA issued an advanced notice of proposed rulemaking (APRM) that would require select industries to carry additional financial assurances under the Superfund law if a company handles “hazardous substances.” As part of this APRM, EPA requested additional information on the fabricated metal industry, identified as NAICS code 332, to determine whether or not industries within this classification should be required to establish and maintain evidence of financial responsibility for potential releases of hazardous substances (e.g., insurance policy, surety bond, trust fund, corporate guarantee). These types of financial assurance mechanisms for potential Superfund liability can be very expensive and extremely difficult to obtain for most metalworking companies who pose little risk and already carry insurance. The forging industry is part of NAICS code 332, as are virtually all other metalworking industries and processes, including cold forming, casting, stamping, drawing, and surface finishing/metal plating. Each of these industries, including forging, has unique characteristics that differentiate it from all the others, both in terms of processes used and products produced. No determination can be made on the need for environmental financial assurance regulations without careful analysis of the individual industries and processes/chemicals used. Failure to conduct such analyses will result in unnecessary, overly burdensome regulations on these industries that are made up of small and medium-sized employers with very thin profit margins.

3. EPA Toxics Release Inventory (TRI) Article Exemption Rule

EPA and the Office of Management and Budget (OMB) are in the final stages of considering a “clarification” of the Articles exemption pertaining to the Toxics Release Inventory (TRI). Should this clarification go into effect, virtually every manufacturer will be required to evaluate whether to file a TRI 313 Report, a process which will take significant investment in managerial, technical and clerical training and assessment. The estimated cost of this new assessment and reporting requirement on Fabricated Metals and Machinery Manufacturing companies alone is \$209 million, and 2.5 employee weeks for first-time filers.

Currently, metalworking industries that send solid scrap metals to a scrapyard must report these items as a “release” under TRI, even though that is the first step in the recycling process. Under Community Right to Know regulations, these metallic constituents must be reported to local firefighters and State and Federal environmental agencies, and fines of \$32,000 per day are possible for paperwork violations. Yet the “articles” in question are in solid form, noncombustible and are not “released” in a fire or explosion. Thus a broad interpretation of “release” by EPA has the potential to create unnecessary alarm in the community and to jeopardize manufacturing operations, but with no readily apparent benefit to anyone.

4. OSHA – Proposed “Reinterpretation” of Noise Standard Enforcement

In general, the shift at OSHA from a more collaborative posture to a more adversarial approach toward business is very alarming. Many FIA members participate in federal and state OSHA voluntary programs, which are helpful to both the employer and employees. We believe there is a need for continued cooperation among OSHA and employers, regardless of the specific program or proposal.

On October 19, 2010, OSHA issued a “reinterpretation” proposal to redefine what is deemed “feasible” for employers to reduce overall noise in the workplace, and requiring implementation of all such “feasible” engineering and administrative controls prior to allowing the use of personal protective equipment. OSHA allowed for public input until December 20, 2010, but because the process was not a formal rulemaking, any public input received did not have to be taken into account. OSHA’s announcement stated that all such “feasible” actions must be taken unless an employer can prove that making such changes will put it out of business. Although the agency has withdrawn its notice, it is important to discuss it as a perfect example of an agency issuing what amounts to significant rule changes with enormous consequences outside of the formal rulemaking process and with an unreasonably short time allowed for stakeholder involvement.

Today, OSHA allows employers to provide “personal protective equipment” such as ear plugs and ear muffs as part of an overall hearing protection program. In many cases, employers use a combination of engineering controls like sound-enclosures, noise-dampening equipment and muffling systems; administrative controls, and personal protective equipment. OSHA’s announcement in October potentially meant that the agency intended to enforce this new interpretation of “feasible” by issuing citations to employers without all “feasible” engineering and administrative controls in place, unless employers could prove to OSHA inspection officers that the changes would put their company out of business or would be impossible to make - a task for which there were no clear guidelines or standards. The OSHA notice included no data indicating that additional engineering and administrative controls are necessary to better protect workers’ hearing, only that “feasible” should be defined as “can be done”, regardless of benefit or cost.

Because noise levels at 90 decibels or greater are an inherent part of our operations, the forging industry is well-versed in appropriate hearing conservation programs, including appropriate annual monitoring of our employees to ensure the effectiveness of our programs. But even with the use of state-of-the-art sound-dampening technology and appropriate administrative controls, in some cases, with some equipment, personal protective equipment will be necessary in place of engineering and administration controls or in addition to them. Manufacturing in general and basic building blocks of

manufacturing like forging in particular, are highly competitive global markets. Forgings can be made anywhere in the world. We need a regulatory process that allows for protection of our workers, which we think we currently have, without imposing undue burdens that don't provide additional protection but negatively impact global competitiveness.

Only after pressure from many stakeholders did OSHA agree to extend the public comment period until March 21, 2011, and to hold one stakeholder meeting in Washington, DC - a location that I must point out is not home to U.S. forgers or others in the metalworking industry. However, because the announcement was made outside of the formal rulemaking process, OSHA was not required to take into account the stakeholder comments and could have begun enforcing the new interpretation as soon as March 22, 2011.

Thankfully, after continued and increasing opposition from virtually every sector of the manufacturing economy, concerns being raised by some in Congress, and one day after President Obama issued an Executive Order directing agencies to examine existing and pending regulations for possible overreach, OSHA withdrew this ill-conceived proposal on January 19, 2011. By this time, industries like ours had already spent substantial amounts of time and money trying to gather necessary technical information to respond in a very abbreviated time frame. This kind of regulatory process can only be seen as one that provides no benefit but causing economic harm to U.S. manufacturers.

5. National Labor Relations Board (NLRB) Overreach

In general, the NLRB and its actions would not be found in a discussion on the cumulative impact of regulation on U.S. manufacturers. However, over the last year, the NLRB has issued numerous notices and proposed rules that have the potential to affect U.S. manufacturers and our competitiveness and yet, there appears to be even less stakeholder involvement than with other government agencies rulemaking processes. Therefore, I feel it necessary to raise our concerns here.

The following text is found on the website for the NLRB: *"In its statutory assignment, the NLRB has two principal functions: (1) to determine, through [secret-ballot elections,] the free democratic choice by employees whether they wish to be represented by a union in dealing with their employers and if so, by which union; and (2) to prevent and remedy unlawful acts, called [unfair labor practices,] by either employers or unions. The agency does not act on its own motion in either function. It processes only those charges of unfair labor practices and petitions for employee elections that are filed with the NLRB in one of its 51 Regional, Subregional, or Resident Offices"*

In spite of this clear definition of its role, today's NLRB appears ready to allow union organizers access to private property during working hours in order to

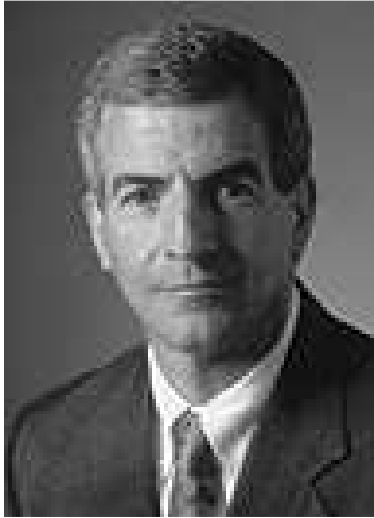
attempt to organize employees; to promulgate regulations requiring private sector employers to notify, in specific ways, employees of their rights to unionize under the National Labor Relations Act; and to constantly look for ways to increase the rights of labor unions over those of private sector employees. If the U.S. Congress believes that the National Labor Relations Act should be amended, then a transparent and deliberative legislative process should take place during which such legislation would pass or fail. Until then, the NLRB is supposed to ensure that secret-ballot elections are conducted freely and fairly in cases where employees are asked whether they wish to be represented by a union, and to rule on cases of alleged unfair labor practices when brought forth by employers or unions. That should be the extent of their activities.

FIA members have both union and non-union operations. Our members believe strongly in the rights of our employees to fair compensation and benefits, regardless of union affiliation. However, as employers, we must be able to operate our businesses without fear of retaliation, boycotts, and unfair actions by non-employee unions. We urge the Committee to remind the NLRB of its statutory role.

In conclusion, I would point out that many current and proposed regulations address real issues and concerns in the workplace, and FIA members understand and support the need for reasonable regulations to protect the environment, worker safety and health, and a host of other workplace issues. But we also recognize, as do many in the Congress and the Administration, that U.S. manufacturers are facing unprecedented pressures in their efforts to remain competitive in the global economy. The trick is to find the balance between ensuring a safe and healthy workplace and allowing that workplace to compete in order to be able to continue to provide employment. That is where the current U.S. regulatory process is lacking. When the economy is booming, it can be tempting to think that the U.S. economy can absorb virtually any level of cost we may choose to impose. But as we have seen all too well in the last several years, economic downturns can force even the most efficient industries and companies to cut costs to remain viable, and unfortunately government-imposed costs cannot be easily cut. That's why it is critically important that we regulate only that which requires regulation, and only after a thorough vetting of potential benefits, impacts and costs of that regulation.

Thank you again for the opportunity to appear before you today to provide information on the forging industry, and our views on the cumulative impact of regulation on U.S. manufacturers. I would be happy to respond to any questions.

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Michael A. Kamnikar

Mike was born and raised in Johnstown, Pennsylvania. He holds a BS in metallurgical engineering and materials science from Lehigh University. After working at Bethlehem Steel, he joined Ellwood City Forge as vice president of sales in 1981.

He served as president of Ellwood Crankshaft and Machine from 1993 to 2005, and was appointed president of Ellwood National Crankshaft in 2003. In 2007, Mike was appointed the Ellwood Group's Senior V.P., marketing and business development.

Mike is presently the Vice President and Incoming President of the Forging Industry Association.

He is the past president of both his local parish council and school board. Mike has been married for 38 years and has four grown children.