

## Regulatory 'Avalanche' Worries Manufacturers

While taxes and spending dominate Washington headlines, manufacturers brace for a slew of costly new regulations.

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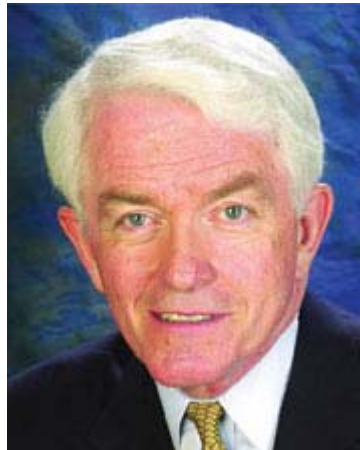
The budget crisis, tax reform and spending cuts will garner most of the attention on Capitol Hill in 2013, with a hope -- but no guarantee -- that anything more than a temporary fix will emerge.

For manufacturers, however, an aggressive regulatory program, particularly at the Environmental Protection Agency, may be the most troublesome item on the agenda in Washington, the nation's financial problems notwithstanding.

"Other than the nation's debt and deficit issues and comprehensive tax reform, manufacturers are most concerned about the regulatory burden," says Larry Sloan, president and CEO of the Society of Chemical Manufacturers and Affiliates. "That is a major issue we are addressing on a regular basis. The biggest threats to our businesses are the crush of regulatory initiatives, regulatory uncertainty and concerns that our taxes are going to go up because of the fiscal cliff."

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How the White House and Congress deal with the federal debt, which currently stands at \$16.4 trillion, and the annual federal deficit -- which has topped \$1 trillion in every year of the Barack Obama presidency -- "will determine what happens the rest of the year," says AnnMarie Treglia, regional manager of government affairs and the environment for Dart Corp., a privately held \$3 billion foodservice packaging manufacturer headquartered in Mason, Mich.



"Taxes and the budget deficit are going to be the dominant issues this year in Congress," she says. "What else gets done depends on how fast they address tax issues," including both the corporate and individual tax rates.

Brad Close, vice president of public policy for the National Federation of Independent Business, agrees.

"Congress is going to spend a lot of time on the debt challenge, spending and tax reform," he says. "It will be the same fights, the same issues and I'm not sure we are going to get an atmosphere where the White House reaches out and looks for a middle ground."

### Focus Will Be on Agencies, Not Congress

How the federal government eventually resolves the nation's fiscal issues will have a huge impact on manufacturers. And changes to the individual tax rates, not just the corporate tax rates changes, are equally as critical to the nearly 4 million S corporations and more than 3 million limited partnerships in the U.S. that together account for 80% of all U.S. businesses.

The reason: most of those companies file taxes as pass-through corporations, so their taxes are based on individual tax rates. As a result of the fiscal cliff deal, small business owners with individual incomes above \$400,000 or family incomes above \$450,000 will pay higher taxes.

Other issues on the federal legislative front in 2013 that could greatly affect manufacturers include:

- Initiatives to make changes to the health care law before additional provisions go into effect.
- A push for greater Congressional review of regulatory activity.
- Legislation that would boost energy-efficiency standards for buildings and appliances.
- Reform of the Toxic Substances Control Act, which is the chemical management system used by the EPA.
- In addition, more free trade agreements could reach Capitol Hill as the White House plans to continue discussions with nine other countries on a Trans-Pacific Partnership, and is currently in discussions with the European Union on whether to set in motion negotiations for a free trade agreement between the U.S. and Europe.

Yet, clearly, regulatory issues are uppermost in the minds of most manufacturers and manufacturing trade associations.

"Our focus is not going to be Congress, it is going to be the agencies," says Mike Lynch, vice president of government affairs at Illinois Tool Works Inc. (IW 500/65), an \$18 billion diversified global manufacturer based in Glenview, Ill., that makes industrial packaging, commercial food equipment and a variety of other products.

"I expect the White House to use the agencies to move forward policies that they are not able to push through Congress," says Lynch. "President Obama will use his agencies to achieve his environmental objectives and get his agenda adopted."

## Among the concerns at Illinois Tool Works:

- Potential initiatives by the National Labor Relations Board to make it easier for unions to organize and more difficult for small businesses to hire counsel during union organizing campaigns.
- The EPA's plans to issue new regulations to control greenhouse gas emissions in the aftermath of the Supreme Court decision this past summer upholding that authority.
- EPA efforts to incorporate the "precautionary principle" into its regulations, which puts the burden of proof on manufacturers to prove a substance is not harmful if there is a suspected risk.

"A lot of our trading partners are increasingly adopting the precautionary principle" for regulations, says Lynch.

"If we acquiesce to that, it becomes problematic for U.S. manufacturers," he says. "There would then be a challenge in court and the EPA would fight tooth-and-nail to make that the basis of rule-making in the U.S. That is even more of a concern to us than the EPA's regulation of greenhouse gas emissions" or its extensive agenda for 2013.

And that agenda is clearly extensive.

"The EPA currently has 98 environmental regulations that it is preparing for implementation," notes Rae Ann Johnson, associate general counsel for the Manufacturers Alliance for Productivity and Innovation (MAPI). That includes new rules for greenhouse gas emissions from new power plants that are expected to be written in a way to eliminate coal as an option.

"If the EPA continues on its current trajectory of what it is planning to do, it will have a major impact financially on manufacturers," she says. "Companies need to expect that the EPA is going to be more assertive in 2013 and that it is not going to back down from implementing regulations."

From the EPA, the six forthcoming regulations expected to have the most impact on manufacturers are the Utility Maximum Achievable Control Technology rule, the Boiler MACT rule, the Coal Combustion Residuals rule, the Cooling Water Intake Structures rule, the Cross-State Air Pollution rule, and new National Ambient Air Quality Standards for Ozone, as those ozone rules are scheduled for their annual five-year review in 2013.

The EPA has estimated that the annual compliance costs from just those six will be between \$36 billion and \$111 billion annually, and that the capital expenditures for compliance would be somewhere between \$174 billion to \$539 billion. However, the National Association of Manufacturers pegs annual compliance costs for those six rules at \$138 billion and capital expenditures to comply at between \$404 billion and \$884 billion.

"All those rules will probably be facing a legal challenge as anything that has the potential to cost that much money is going to get a court challenge," says Johnson. "But I don't see industry stopping EPA efforts through legal proceedings, and I don't see legal proceedings stopping the EPA from pursuing its agenda."

Large manufacturers of heavy industrial equipment, heavy construction equipment and industrial-sized dump trucks, along with manufacturers that generate heat to melt a significant amount of metal, will be impacted most severely by the Boiler MACT rule, she says. "There is a limited opportunity for retrofitting existing equipment, and manufacturers will be forced to purchase a very expensive new piece of equipment," she says. "It is a significant financial impact."

"The Obama EPA will have a very busy next four years, moving full speed ahead to implement numerous major rules and regulations that he has delayed," warned Sen. James Inhofe, R-Okla., in a report issued by the minority members of the Senate Committee on Environment and Public Works in late October. "Americans [will] be grappling with a regulatory onslaught from the Obama EPA that will strangle economic growth, destroy millions of jobs, and dramatically raise the price of goods, the cost of electricity and the price of gas at the pump."

## Facing an "Avalanche of Regulations"

The EPA isn't the only federal agency that will be active on the regulatory front.

There are 14 federal agencies working to develop regulations related to hydraulic fracking, including a Bureau of Land Management proposal expected this spring that will regulate fracking on public lands.

In addition, the U.S. Department of Labor also has more than 100 rulemakings in the pipeline and the nearly three-year-old Dodd-Frank financial reform act has 259 mandated rulemakings and 188 suggested rulemakings -- with only one-third of them finalized, says the U.S. Chamber of Commerce. And the new health care law establishes 159 new agencies, panels, commissions and regulatory bodies, with the Department of Health and Human Services in charge of rulemakings.

"If we continue to weigh down our small and large businesses with layer upon layer of regulation and red tape, it will have a negative effect on growth and a bad impact on jobs," said Thomas Donohue, president and CEO of the U.S. Chamber in a speech to the Chamber's board of directors last month. "This avalanche of regulations -- and the vast power of the regulators -- are matters we must address in a thoughtful way if we hope to remain a productive, innovative and free economy."

What makes that aggressive regulatory agenda even more troubling is that the consensus among lobbyists and the business community is that President Obama is likely to compromise less in his second term as president than he did in his first four years.

"Nothing I have seen so far suggests President Obama will be more willing to compromise," says Lynch of ITW. "I expect him to be as adamant as ever in pushing forward what he wants. I wouldn't anticipate any change."

Washington observers also expect manufacturers to continue to face considerable uncertainty over various tax and regulatory issues.



"There is so much uncertainty about what our costs are going to be over the next one to two years," says **Jeff Somple, president of the northern operations of Mack Molding Co.**, a custom plastic injection molder based in Arlington, Vt., that also does sheet metal fabrication and machining. "We don't know what our corporate tax rates will be, what our energy policy will be, and there is uncertainty over how the health care system will work and what our health care costs will be."

Mack, which has all of its manufacturing plants in the U.S., has experienced double-digit growth the past three years, and increased its workforce from 450 to 500 in the past year.

But Somple says the constant uncertainty is "causing paralysis in manufacturing."

"Employment is lagging behind because manufacturers want to have certainty as to what their costs will be before they add jobs or make that capital investment," says Somple.

"Congress and the White House need to understand that there needs to be a solution," says Somple, adding, "We can't go on the way we have been going."



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