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ON BEHALF OF



BEFORE A JOINT HEARING ON

WHAT IS THE ADMINISTRATION'S RECORD IN RELIEVING BURDEN ON SMALL BUSINESS?
PART II

BY THE SUBCOMMITTEE ON ENERGY POLICY, NATURAL RESOURCES AND REGULATORY
AFFAIRS
OF THE HOUSE GOVERNMENT REFORM COMMITTEE

AND

THE SUBCOMMITTEE ON REGULATORY REFORM AND OVERSIGHT
OF THE HOUSE SMALL BUSINESS COMMITTEE

JULY 20, 2004

Good afternoon, Chairmen, Ranking Members, and members of the Subcommittees. I welcome the opportunity to testify on behalf of the Consumer Specialty Products Association (CSPA), now in our 90th year representing formulators, packagers, and marketers of household and commercial consumer-specialty products. Our 240 member companies -- one-third of which are small businesses -- are organized into seven divisions: aerosol products; air care products; antimicrobial products; automotive and industrial products; cleaning products; pest management products; and polishes and floor maintenance products.

Though we interact frequently with several federal agencies and an increasing number of state agencies, most of our dealings are with the United States Environmental Protection Agency (EPA) and the United States Consumer Product Safety Commission (CPSC), the primary regulators of our members' products. I would like to discuss briefly some of our interactions with them after I present our thoughts on the *Report of the Small Business Paperwork Relief Act Task Force (Report)* issued June 28 and related documents.

SBPRA Task Force Final Report

CSPA generally approves of and supports the primary findings described in the executive summary:

- improving the organization and classification of information and establishing a partnership between agencies and the small business community
- providing a single web point of access for relevant regulatory information on all federal forms and harmonizing industry-specific information collection requirements.

Clearly, the 20 thousand separate federal-government homepages and 40 million federal-government web pages (as of four years ago) present a formidable burden for businesses to process and function efficiently or effectively. We certainly agree with the following issues identified by the SBA's Office of Advocacy earlier this year and cited in the *Report* (p. 7):

- Federal agency web sites need to be customer-centric and organized by topic area
- There needs to be a single source for federal information
- Federal-government information must be made search-engine friendly
- There needs to be a contact person or hotline to assist in obtaining information
- Web-site information should indicate date of preparation or posting

The *Report's* vision of a Business Gateway is logical and feasible (p. 16). Building the infrastructure to provide useful regulatory information and compliance-assistance tools in one place while eliminating redundant data collection is an ambitious but worthwhile and ultimately achievable task. To allow small businesses to submit information common to multiple forms one time and have it reused many times will increase productivity meaningfully. We await the results this fall of the pilot programs with

hopeful anticipation. We trust, however, that these efforts will be closely managed and adequately funded.

The *Report* properly notes the greater role that trade associations can play in assisting with classification of federal information to improve its accessibility (p. 12). Along those lines, CSPA strongly supports the cross-agency approach to outreach discussed in the *Report* (p. 13), as well as the determination of ways that associations can become viable and trusted collection and dissemination points (p. 15).

Unfortunately, the *Report* misses the opportunity to facilitate the growth in association membership and thus expedite those processes. CSPA posts important information on both the public and members-only sections of our web site. We email biweekly an electronic newsletter to all of our members. We have maintained minimum dues for our smallest members at the same level for several years. CSPA provides insurance through a risk-retention group, in which many of our smaller member companies participate. Through our product stewardship efforts, we have developed a voluntary code of management practice entitled Product Caresm that provides our member companies, including our smaller ones, a framework of guidelines for developing, manufacturing, distributing and marketing products. A few years ago we reinvigorated our Small Business Resource Council, a committee required under our bylaws, and have had two small-business champions -- the EPA Small Business Ombudsman (SBO) and counsel from the SBA Office of Advocacy -- among others, address that group on critical issues. Thus, an addendum to this *Report* addressing the specific topic of promoting association growth certainly would be appropriate and productive.

Further, the *Report* focuses on only a portion of the problem: how to get information efficiently from the federal government. It fails to ask the fundamental question: does each federal agency really need to collect all the information that it does? Will a significant number of citizens be disadvantaged in any meaningful way if each agency collected half the data it currently does?

To that end, we recommend that your committees investigate ways of putting each federal regulatory agency on notice to reduce unnecessary paperwork and instead to foster productivity.

Previous Testimony

CSPA takes note of especially pertinent testimony at your previous hearings on this matter. A year ago Senator Voinovich cited the staggering costs of federal paperwork requirements -- more than 7 billion hours and nearly \$200 billion annually -- in urging expeditious consolidation of all reporting into a single format using a single electronic reporting system. We agree with the Committees' Chairmen that OMB's notion to place the burden on each individual small business to self-identify applicable criteria that profile their business and to self-identify a comprehensive list of applicable requirements is not in the best interests of such firms.

Earlier this year Dr. Graham noted that the Small Business Paperwork Relief Act (the Act) required agencies to make efforts to further reduce the information collection burden for small businesses with fewer than 25 employees. Though OMB did send a bulletin to agencies last December merely requesting information on such initiatives, a more aggressive posture is needed. CSPA recommends that OMB initiate a one-year suspension of all federal-agency reporting requirements, excluding tax-related items, for businesses with fewer than 25 employees, unless such reporting is required by law. Concurrently, we would ask Congress to legislate that change where necessary.

CSPA concurs with the NFIB testimony of last January in its emphasis on simplicity in instructions and requirements and reduction in the amount of paperwork and completion time. We also agree that unnecessary federal regulation and paperwork burdens discriminate against small businesses, as the NSBA asserted in January. One of NSBA's solutions -- additional staff in OIRA dedicated to facilitating agencies' reduction of paperwork burden on small businesses -- is a small but meaningful and immediate step that can be taken.

EPA's Toxics Release Inventory

EPA's well-meaning but fundamentally flawed implementation of the Toxics Release Inventory (TRI) is a prime example of unnecessary burden. CSPA is aware that several of those who have testified previously -- especially NFIB -- have addressed this program, but we feel compelled to make some additional points as evidence of federal failures in burden reduction.

CSPA has been working to alleviate unnecessary TRI-reporting and related burdens since 1992, when we co-founded a 24-association small-business coalition in support of an SBA petition to EPA for a low-release exemption from TRI reporting. Though we achieved a modicum of success with promulgation of the Form A in 1994, the concomitant doubling of the list of TRI chemicals and subsequent facility expansion served to nearly double the overall TRI-reporting burden --from 4.9 million hours in 1992 to 9.5 million hours in 2000 -- according to EPA's own estimates four years ago. The agency has since backed away from its own numbers. Compounding the predicament are the numerous state and local "piggyback" requirements -- taxes, fees, pollution-prevention plans, and the like -- imposed on Form R submissions, no matter how insubstantial the releases, in all or part of 37 states at last report, which neither EPA nor OMB take into account when determining the financial impact of TRI reporting.

CSPA has filed comments with both EPA and OMB on each of the five subsequent TRI Information Collection Requests (ICRs) and watched as OMB established meaningful terms of clearance, only to have them ignored by EPA and unenforced by OMB. Despite 10 public-comment periods on the five ICRs in the past eight years, EPA chose to create two on-line dialogues over the past two years on possible burden-reduction scenarios. We are not expecting a proposed regulation on TRI burden reduction until next year and have been advised by EPA staff that it will likely be 18 months from proposal until a final rule is promulgated, despite the fact that it took EPA only half that

time from proposal to promulgation in 1994. Thus, under the present scenario, the regulated community -- including the small businesses that desperately need relief -- would see no burden reduction until reporting in 2007.

In addition, we have absolutely no assurance that any burden reduction will be meaningful. Unless the threshold for the annual reportable amount (ARA) is raised from 500 to 5,000 pounds and serious consideration is given to excluding amounts dedicated to recycling and/or energy recovery, CSPA member companies will derive little benefit. Such a change would significantly reduce burden while also maintaining data integrity. As we have advised EPA, based on the agency's data, current Form A use still results in TRI reporting of 99.995 percent of total waste generated and 99.94 percent of releases. Increasing the ARA from 500 to 5,000 pounds would capture about 99.9 percent of total waste generated and 99.7 percent of releases. Increasing the ARA to 5,000 pounds and excluding data elements related to recycling and energy recovery from its calculation, which would provide additional incentive for those environmentally beneficial practices, still would require reporting of more than 90 percent of total waste generated and 99.5 percent of releases

Furthermore, EPA's current enforcement practice of finding a violation when a Form A was filed in good faith although, upon further review, a Form R should have been submitted has discouraged use of the Form A. According to EPA figures, utilization of the Form A has decreased in each of the last four years for which data are available. Ending this enforcement practice would reverse that trend.

Consumer Product Safety Commission

Under its current chairman, CPSC has been proactive in personally addressing our committees, our Board, and our general membership on issues of importance to our companies and their customers. CPSC is publicly supportive of Product Care, as one non-regulatory means of assuring continual improvement in our members' products and procedures. CPSC has established a centralized web site for recalls -- www.recalls.gov -- which CSPA supports and links to, as a service to consumers. Although it operates under a different legislative structure, CPSC has been cognizant of our member companies' resources and responsibilities.

Conclusion

CSPA commends your leadership in tackling these matters that too often go unrecognized by those with the authority to remedy them. We support your efforts to remove unnecessary barriers to improving productivity and growing the economy, while maintaining corporate accountability and data integrity.