



A Voice for Small Business

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***Testimony of
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***U.S. House of Representatives
Committee on Government Reform
Subcommittee on Regulatory Affairs***

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Spotlight on the Environmental Protection Agency”

Created by Congress in 1976, the Office of Advocacy of the U.S. Small Business Administration (SBA) is an independent voice for small business within the federal government. The Chief Counsel for Advocacy, who is appointed by the President and confirmed by the U.S. Senate, directs the office. The Chief Counsel advances the views, concerns, and interests of small business before Congress, the White House, federal agencies, federal courts, and state policy makers. Issues are identified through economic research, policy analyses, and small business outreach. The Chief Counsel's efforts are supported by offices in Washington, D.C., and by Regional Advocates. For more information about the Office of Advocacy, visit <http://www.sba.gov/advo>, or call (202) 205-6533.

Chairman Miller and Members of the Subcommittee, good morning and thank you for giving me the opportunity to appear before you today. My name is Thomas M. Sullivan and I am the Chief Counsel for Advocacy at the U.S. Small Business Administration (SBA). Congress established the Office of Advocacy under Pub. L. No. 94-305 to advocate the views of small business before Federal agencies and Congress. Because Advocacy is an independent entity within the U.S. Small Business Administration (SBA), the views expressed by Advocacy do not necessarily reflect the position of the Administration or the SBA.

In 2004, the Office of Management and Budget (OMB) and Federal agencies undertook a process designed to reduce the regulatory burden on U.S. manufacturers through 76 targeted regulatory reforms, including several reforms recommended by the Office of Advocacy (*see* Attachment A for a list of the proposed reforms). More than half of these reforms involved rules issued by the U.S. Environmental Protection Agency (EPA).¹

The Subcommittee has requested Advocacy's view of the overall progress made by the EPA in reforming these regulations. Based on our experience in working with EPA to implement three of the specific reforms we recommended, we believe EPA is making good progress in some areas, but I would be remiss if I did not point out the frustration of small business at the length of time associated with meaningful relief. If all of the recommended reforms are implemented by EPA, they will yield reduced regulatory burden without sacrificing environmental protection.

How Important Is the Relationship Between Small Business and Manufacturing?

Small businesses are important to U.S. manufacturing. Economic data from 2002 indicate that nearly 99 percent (98.6%) of all manufacturing firms are small businesses.² Put another way, these small businesses employ over 42% of the more than 14 million Americans who are manufacturing employees.³ Additionally, small firms tend to

¹ The 2004 initiative to improve manufacturing rules is the most recent in a series of regulatory reform efforts initiated by this Administration since 2001. OMB called for public nominations of rule reforms in the May 2001 and March 2002 Draft Reports to Congress. OMB received 71 and 316 nominations from the public, respectively. OMB did not issue a public call for nominations in 2003.

² See Office of Advocacy economic statistics, available at http://www.sba.gov/advo/stats/us_tot_mi_n.pdf.

³ *Id.*

innovate more than large ones do, producing 13 to 14 times more patents per employee than larger firms do.⁴ Small firm patents are more likely to be driven by leading edge technology than large firm patents.⁵ Finally, small manufacturing firms are more likely than large companies to produce specialty goods and custom-demand items. For these reasons, small business manufacturing is very important to the U.S. economy.

How Important Are the Costs of Environmental Regulation to Small Manufacturers?

The 2005 Advocacy-funded study by W. Mark Crain, *The Impact of Regulatory Costs on Small Firms*,⁶ found that, in general, small businesses are disproportionately impacted by the total Federal regulatory burden. This overall regulatory burden was estimated by Crain to exceed \$1.1 trillion in 2004. For manufacturing firms employing fewer than 20 employees, the annual regulatory burden in 2004 was estimated to be \$21,919 per employee – nearly 2½ times greater than the \$8,748 burden estimated for firms with 500 or more employees.⁷ Looking specifically at environmental costs, the difference between small and large manufacturing firms is even more dramatic. Small manufacturing firms spend 4½ times more per employee for environmental compliance than large businesses do. Environmental regulations comprise the largest share of small manufacturers’ regulatory burden, adding up to 72% of their total regulatory costs.⁸ This large discrepancy between large and small manufacturers for environmental costs is largely attributable to the fact that many environmental rules require significant fixed capital investments (e.g., pollution control equipment) and other costs that small firms cannot spread over high-volume operations in the way that large firms can.

The 2005 Crain study is the most timely and comprehensive measure of the total cost of regulations on the U.S. economy, reflecting the state of the economy in 2004 and covering virtually every category of regulations impacting small business. The report

⁴ *Small Serial Innovators: The Small Firm Contribution to Technical Change* (February 2003) available at <http://www.sba.gov/advo/research/rs225tot.pdf>.

⁵ *Id.*

⁶ *The Impact of Regulatory Costs on Small Firms* (September 2005) available at <http://www.sba.gov/advo/research/rs264tot.pdf>.

⁷ *Id.* at page 55, Table 18.

⁸ Environmental regulations account for about 40% of large manufacturers’ (500 or more employees) regulatory costs. The distribution of environmental compliance costs across industries and firm sizes in the Crain study is derived directly from firm-level data from the Pollution Abatement Control Expenditures (PACE) survey from 1994, the last year for which data were available when the Crain study was written.

uses data gathered from numerous sources, including the Office of Management and Budget (OMB), the Organization for Economic Cooperation and Development (OECD), the Council of Economic Advisors, the Census Bureau, and various resource organizations.

The 2005 Crain report improves upon the earlier Crain-Hopkins study⁹ in several ways. First, the report estimates the cost of economic regulation with a new methodology that accounts more accurately for current economic conditions. Second, the report contains a more in-depth discussion of the methodology and data underlying the cost estimates than its predecessor did. Finally, the Crain report was updated to conform to the Office of Management and Budget's 2004 Final Information Quality Guidelines.¹⁰ Accordingly, the 2005 Crain study has been peer-reviewed by external experts in the field of regulatory analysis.¹¹

The Crain study's findings are important because they underscore the significance of small business to manufacturing and the overall American economy. Despite the disproportionate regulatory burdens borne by small firms, the small business sector is the primary engine of job creation, growth and innovation.¹²

What Progress Has the EPA Made In Reducing Regulatory Burdens On Small Manufacturers?

At present, EPA is pursuing some 42 suggestions for reform of environmental rules affecting manufacturers (*see* Attachment A). Advocacy has worked particularly closely with EPA on three of these reforms: "Reporting and Paperwork Burden in the Toxic Release Inventory Program," "Spill Prevention Control and Countermeasure (SPCC) Rule," and "Lead Reporting Burdens under the Toxic Release Inventory

⁹ W. Mark Crain and Thomas D. Hopkins, *The Impact of Regulatory Costs on Small Firms* (October 2001) available at <http://www.sba.gov/advo/research/rs207tot.pdf>.

¹⁰ See Office of Management and Budget, Final Information Quality Guidelines (October 1, 2002), available at <http://whitehouse.gov/omb/inforeg/iqg-Oct2002.pdf>.

¹¹ Peer review was performed under the Office of Management and Budget's directive for peer review, available at http://www.whitehouse.gov/omb/fedreg/2005/011405_peer.pdf.

¹² See Office of Advocacy, *Small Business Frequently Asked Questions* available at <http://www.sba.gov/advo/stats/sbfaq.pdf> and *Small Serial Innovators: The Small Firm Contribution to Technical Change* (February 2003) available at <http://www.sba.gov/advo/research/rs225tot.pdf>.

Program.” We believe our experience with these three EPA reforms illustrates the overall situation with EPA’s manufacturing reform efforts.

- ***Reporting and Paperwork Burden in the Toxic Release Inventory Program***

On September 21, 2005, EPA proposed revisions to the Toxic Release Inventory (TRI) program to allow additional TRI reporters to use the “short” Form A instead of the longer Form R.¹³ Advocacy originally became involved in this issue in August 1991, when we submitted a rulemaking petition to EPA to reduce unnecessary TRI reporting burdens on small business. We got involved because the cost for small businesses to calculate often tiny amounts of chemicals in their raw materials/products and prepare lengthy Form R reports is often substantial, yet produces very little real environmental benefit, since these chemicals are not actually released into the environment. Accordingly, based on comments from Advocacy and other small business representatives, EPA developed the original Form A in 1994 as a less burdensome way to report insignificant annual chemical management activities. Unfortunately, many of the businesses that would benefit the most from Form A were later declared ineligible by EPA to use the short form. For example, Form A was not available to facilities that used “persistent, bioaccumulative, and toxic” materials (PBTs) in their operations, or those that used more than 500 pounds of a non-PBT material in a year.

EPA’s proposed revision to the TRI rule addresses this problem. The proposal would allow Form A to be used for the first time by businesses that handle PBTs, but that release no PBTs to the environment. The proposal also allows facilities that use 5,000 pounds or less of non-PBT materials in a year to use Form A. In total, it is estimated that the proposal would provide a measure of regulatory relief for about 33% of all TRI reporters, and is anticipated to save about 165,000 hours of filing burden each year. At the same time, the proposal ensures that the toxic materials management activities of concern to the public will continue to be reported through Form R.¹⁴ If implemented as proposed, EPA’s reform would provide paperwork relief to some 8,000 businesses, most of whom are small. This is an example of a regulatory reform that brings meaningful

¹³ The formal proposal is expected to appear in the *Federal Register* within a few days.

¹⁴ EPA estimates that over 99% of toxic materials handling at facilities will be reported through Form Rs.

burden reduction to small business, while maintaining the same degree of community information and environmental protection.

- ***Spill Prevention Control and Countermeasure (SPCC) Rule***

Advocacy has worked with EPA for several years to implement improvements to the Spill Prevention, Control and Countermeasure (SPCC) program, which protects our waters against oil spills from industrial facilities. At present, because of the complexity and cost of the current SPCC program, Advocacy believes that many small businesses are unable to comply fully with the new requirements adopted in 2002. For example, facilities are currently required to prepare spill prevention plans that are certified by a professional engineer. This is a costly and unnecessary expense for firms with a small-capacity storage tank. Small volume tanks do not generally pose the same environmental risks that larger volume tanks do.¹⁵

Advocacy suggested reforms to the SPCC requirements in June 2004, including allowing facilities with an oil storage capacity below a certain threshold to use streamlined, less expensive requirements. We believe that overall SPCC compliance will improve with a simpler, less expensive program that is tailored to small facilities. EPA's objective of environmental protection will be met, and in some cases enhanced, while many small manufacturers will not be required to incur needless cost. On September 17, 2004, EPA issued a Notice of Data Availability requesting public comments on Advocacy's suggested approach for facilities that handle oil below a certain threshold amount.¹⁶ We anticipate an EPA proposal to provide relief to small facilities and other regulatory improvements in the near future, with a final rule scheduled for February 2006. Again, this reform would bring substantial burden relief to small businesses while maintaining the current high level of environmental protection.

- ***Lead Reporting Burdens Under the Toxic Release Inventory Program***

¹⁵ According to a 1995 EPA survey, facilities with total storage capacities of 5,000 gallons or less account for an estimated 48 percent of all facilities, but only 0.2 percent of oil discharged. In its own analysis of the 1995 survey, EPA noted that "facilities with larger storage capacity are likely to have a greater number of oil spills, larger volumes of oil spilled, and greater cleanup costs." U.S. EPA, *Analysis of the Relationship Between Facility Characteristics and Oil Spill Risk* (1996).

¹⁶ See 69 Fed. Reg. 56,182 (September 17, 2004).

As much as the TRI reporting and paperwork burden reform effort appears likely to be a success story for EPA, parallel efforts to reform EPA's 2001 TRI lead reporting rule have not shown as much promise. EPA imposed substantial new TRI paperwork burdens on small business in early 2001, when it lowered the TRI reporting threshold for lead to 100 pounds from the previous 10,000/25,000 pound threshold.¹⁷ As a result of EPA's action, over four times as many companies had to file lead TRI reports.¹⁸ The first-time recordkeeping burden of filing these reports was estimated to exceed 100 hours per firm, and Advocacy estimates that as much as 500,000 staff hours were required to create these reports in 2001.¹⁹ The data from the 2001 reporting revealed that the majority of the filers had zero or near zero onsite releases of lead. Specifically, 38% of all reports documented zero releases to the environment, while an additional 25% of all reports were for 10 pounds or less released to the environment. Thus, some 63% of all TRI reports for lead and lead compounds likely would have no discernable effect on the environment. Moreover, while the burden of complying with TRI reporting for lead falls most heavily on manufacturing firms – comprising 84% of all such reports in 2001 – most manufacturers contribute little or no lead to the environment.²⁰

It is worth noting that small businesses informed EPA that the lowered lead reporting threshold would impose significant new reporting burdens with little or no corresponding benefit to the environment. The Office of Advocacy also argued strongly that EPA should convene a small business review panel under the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).²¹ No such review panel was convened. Despite assurances beginning as early as 2001 that the TRI lead reporting rule would be reformed to address unnecessary filing requirements on small businesses, these small businesses are frustrated that seemingly little has been done to implement reform.²²

¹⁷ See 66 Fed. Reg. 4,500 (January 17, 2001).

¹⁸ 8,560 lead and lead compound TRI reports were filed in 2001, 2,025 were filed in 2000.

¹⁹ 66 Fed. Reg. 4,538 (January 17, 2001).

²⁰ In 2001, the primary metals industry accounted for 83% of all manufacturing releases of lead.

²¹ Letter from Jere Glover, Chief Counsel for Advocacy, Office of Advocacy, to John Spotila, Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget (October 5, 2000), available at http://www.sba.gov/advo/laws/comments/omb00_1005.html.

²² EPA's scientific review of the metals framework which allows lead to be categorized as a PBT chemical was scheduled to be completed more than two years ago. The review has still not been completed.

Advocacy is Committed to Achieving Regulatory Reforms

The Office of Advocacy has worked closely with EPA and other entities to implement needed regulatory reforms. Advocacy activities have included holding public outreach meetings to receive suggestions on needed reforms, working with small business representatives to hear their views, and helping OMB prioritize the regulatory reforms of particular concern to small entities. Advocacy is committed to the regulatory reform process because the process can really only work if the interests of small business are included. Congress realized the importance of small business when the Regulatory Flexibility Act (RFA) and the Small Business Regulatory Enforcement Fairness Act (SBREFA)²³ were enacted into law. When planned rules are evaluated by Advocacy under the RFA and SBREFA, we look for ways to reduce small business burdens without compromising the regulatory objectives intended by the regulating agency. We believe that EPA's regulatory reform efforts can achieve the same result, which will be extremely beneficial for small manufacturing firms.

Thank you for allowing me to present these views. I would be happy to answer any questions.

²³ Codified at 5 U.S.C. §§ 601-612.

ATTACHMENT A

Summary of 76 Regulatory Reform Nominations (Office of Advocacy Reform Nominees Indicated in Bold)

OMB No(s).	Rule Nominated for Reform	Agency
4	Coastal Zone Management Act Federal Consistency	National Oceanic and Atmospheric Admin.
6	NAFTA Certificates of Origin	Dept. of Homeland Security
7	Maritime Security	Dept. of Homeland Security
12	Motor Vehicle Brakes	Dept. of Transportation/ FMCSA
14	Hours of Service	Dept. of Transportation/ FMCSA
16	Lighting and Reflective Devices	Dept. of Transportation/ NHTSA
18	Occupant Ejection Safety Standard	Dept. of Transportation/ NHTSA
22	Vehicle Compatibility Standard	Dept. of Transportation/ NHTSA
26	Employer Information Report (EEO-1)	Equal Employment Opportunity Commission
28	“Coke Production” Emission Factors (AP-42)	EPA
30	Document AP-42: Science and Site-Specific Conditions	EPA
33	Clean Up Standards for Polychlorinated Biphenyls	EPA
34	Common Company ID Number in EPA Databases	EPA
35	Enforcement and Compliance History Online (ECHO) Website	EPA
36	Electronic Formats for Agency Forms	EPA
38	Expand Comparable Fuels Exclusion under RCRA	EPA
39	Export Notification Requirements	EPA
42	Hazardous Waste Rules Should Be Amended to Encourage Recycling	EPA
43	Lead Reporting Burdens Under the Toxic Release Inventory Program	EPA
44	Maximum Achievable Control Technology Standard for Chromium	EPA
45	Polychlorinated Biphenyl Remediation Wastes	EPA
46	Permit Use of New Technology to Monitor Leaks of Volatile Air Pollutants	EPA
47	Water Pretreatment Streamlining Rule	EPA

48	Provide More Flexibility In Managing F006 Wastewater Sludge to Encourage Recycling	EPA
51	Remove Disincentives to Recycling Spent Hydrotreating and Hydrorefining Catalysts	EPA
52	Reporting and Paperwork Burden in the Toxic Release Inventory Program	EPA
54,55 56,57 58	Spill Prevention Control and Countermeasure (SPCC) Rule	EPA
59	Water Permit Rules	EPA
61	Annual Reporting of Pesticide Information	EPA
68	Cooling Water Intake Structures, Phase III	EPA
75	Electronic Filing by Manufacturing Firms	EPA
83	Leak-Detection and Repair Programs	EPA
86	Method of Detection Limit/Minimum Level Procedure under the Clean Water Act	EPA
87	Operating Permits under the Clean Air Act	EPA
88	Potential to Emit Test	EPA
90	Prohibit Use of Mercury in Auto Manufacturing	EPA
92	Reduce Inspection Frequency from Weekly to Monthly for Selected RCRA Facilities	EPA
97	Reportable Quantity Threshold for NOx at Combustion Sources	EPA
101	Sulfur and Nitrogen Monitoring at Gas Turbines	EPA
103	Program for Developing and Validating Analytic Methods	EPA
108	Deferral of Duplicative Federal Permitting	EPA
110	Superfund Amendments and Reauthorization Act	EPA
112	Vapor Recovery at Gasoline Stations	EPA
116	Publicly Owned Treatment Works removal credits	EPA
117	Categorical Wastewater Sampling and Testing	EPA
118	Definition of Volatile Organic Compound	EPA
119	Thermal Treatment of Hazardous Waste Guidance	EPA
121	“Do Not Fax” Rule	Federal Communications Commission
122	Broadband	Federal Communications Commission
125	Health Insurance Portability and Accountability Act of 1996	Department of Health and Human Services
134- 137 141- 144	Reform of Family and Medical Leave Act (FMLA)	Department of Labor, Employment Standards Administration
139	Reform of FMLA	Dept. of Labor/ESA
145	Permanent Labor Certification	Dept. of Labor

151	Annual Training for Separate Standards	Dept. of Labor/OSHA
152	Coke Oven Emissions	Dept. of Labor/OSHA
153	Flammable Liquids	Dept. of Labor/OSHA
155	Hazard Communication Training	Dept. of Labor/OSHA
156	Hazard Communication/Material Safety Data Sheets (MSDS)	Dept. of Labor/OSHA
157	Hexavalent Chromium	Dept. of Labor/OSHA
159	Sling Standard	Dept. of Labor/OSHA
160	Guardrails Around Stacks of Steel	Dept. of Labor/OSHA
169	Walking and Working Surfaces	Dept. of Labor/OSHA
175	Duty Drawback	Dept. of the Treasury/Dept. of Homeland Security
178	Election to Expense Certain Depreciable Business Assets	Dept. of the Treasury/ Internal Revenue Service
188	Ready to Eat Meat Establishments to Control for <i>Listeria Monocytogenes</i>	Dept. of Agriculture/Food Safety and Inspection Service