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**Testimony of**  
**The Consumer Specialty Products Association**

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**Before**  
**The U.S House of Representatives**  
**Subcommittee on Environment and the Economy**  
**Of the Committee on Energy and Commerce**

**“Testing of Chemicals and Reporting and Retention of Information  
under TSCA Section 4 and 8”**

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## CSPA Testimony: Summary of Key Points

- There is broad consensus that changes are needed in order to modernize TSCA's chemical assessment programs. As we look to those areas where the statute needs to be updated, a key goal is to determine how to (1) ensure the Agency has the tools and information it needs to review and assess chemical safety; and (2) better focus priority reviews by using the best available information to identify those chemicals of highest priority for further review and safety assessment.
- One key to implementing an efficient and effective chemical assessment program should start with a screening level process to identify chemicals requiring further review and possible safety assessment. As we have stated previously, any screening level priority setting must be risk-based, taking into consideration a chemical's hazards and the nature of extent of its uses and potential exposures.
- Industry, including CSPA, strongly supports a risk-based approach to chemical management. In order to ensure that EPA has the information required to make sound, scientific-based decisions on prioritization, CSPA recognizes first, that EPA needs use information, and second, that much of that information is in the hands of downstream processors. Accordingly, in order to properly prioritize chemicals and ultimately to conduct safety assessments, a revised TSCA should expressly allow the Agency to collect necessary use information from downstream processors to better inform their review of exposure potential.
- Support for reporting use information must be seen in tandem with support for rigorous and effective CBI protections. Reporting under Section 8 of TSCA must allow for companies to assert substantiated CBI claims to protect innovation, minor and specialty uses for chemicals, and proprietary product formulations and mixtures. Most information, except company name and CBI chemical names, would be public in the form of aggregated reporting by EPA, provided such aggregation can protect CBI interests of the submitter.

Chairman Shimkus, Ranking Member Tonko, and members of the Subcommittee, my name is Bob Matthews, and it is my privilege to appear before this Subcommittee on behalf of the Consumer Specialty Products Association (CSPA). I am an environmental attorney with the law firm of McKenna Long & Aldridge L.L.P with over forty years' experience representing clients in counseling and litigation matters across a broad spectrum of international environmental laws and regulations. Our firm has provided legal counsel to the CSPA on chemicals management issues since 1939.

The Consumer Specialty Products Association greatly appreciates the opportunity to present its views on the need to modernize the Toxic Substances Control Act (TSCA) and specifically on the role of downstream formulators under Sections 4 and 8 of the statute.

CSPA is a national trade association representing the interests of approximately 235 "consumer facing" companies engaged in the manufacture, formulation, distribution and sale of more than \$100 billion annually in the U.S. of familiar consumer products for household and institutional customers. In 2014, CSPA is proud to celebrate 100 years representing the interests of the household and institutional products industry. CSPA members are committed to manufacturing and marketing safe, innovative and sustainable products that provide essential benefits to consumers while protecting human health and the environment.

As a threshold matter, CSPA and its member companies remain committed to the goal of modernizing TSCA. We want to emphasize, first, that TSCA is a *chemical* management statute that primarily regulates the activities of manufacturers of chemicals that are then placed into commerce for use or processing by an expansive universe of companies, many of which formulate and market other goods and services. CSPA represents one segment of that universe—which is the formulated household and institutional products industry. CSPA's role and interest in TSCA is to ensure the process is working in a way that protects public health and the environment; allows

companies to continue to operate effectively and efficiently in commerce; and maximizes consumer confidence in chemical safety, and by extension, the branded consumer products in which chemicals are formulated.

CSPA believes that a modern TSCA should reflect the nearly four decades of scientific and technological advancements that have emerged since the statute was enacted in 1976. Building on those advancements, a modernized TSCA must be designed to achieve the dual goals of protecting the health and safety of consumers, workers and the environment, including vulnerable subpopulations, while promoting and supporting the flow of interstate commerce through chemical innovation, jobs and economic growth.

Like others represented at this table, CSPA has developed and shared principles for TSCA modernization. Several of these elements are the focus of today's hearing:

- Chemicals management under TSCA must be risk-based; which means the EPA should consider both hazard and exposure of chemicals in commerce as part of a safety determination.
- A first step in this process should be prioritization directing the Agency to screen chemicals using existing and available information to quickly identify those chemicals of highest concern for further Agency review and assessment.
- To better information prioritization and safety assessment under a risk-based approach to chemical management, the Agency must have the means by which it can obtain the necessary information on both the hazard properties of chemicals and how those chemicals are used.
- The system must protect public health and the environment while also protecting

confidential business information (CBI), thereby preserving the ability of U.S. companies to drive innovation, grow jobs and compete in the global marketplace.

### **Motivators for Downstream Support**

CSPA's consistent and continuing support for TSCA reform is rooted in three factors: consumer confidence in chemical safety, preservation of interstate commerce resulting from consistent federal and state regulation, and U.S. global leadership toward risk-based chemicals management.

Enhancing consumer confidence on chemical safety: Developing reasonable and necessary revisions to update the TSCA statute is vitally important for CSPA member companies. Downstream formulated product companies are, in many respects, the public face of the U.S. chemical industry. The products manufactured by CSPA member companies are in virtually every home and institution around the country. The company name is on every one of their products. Therefore, maintaining a high level of consumer confidence in the safety of the chemicals used in their products is a responsibility that all CSPA member companies take very seriously.

Consistent Regulation of Commerce in All 50 States: In the absence of a modernized TSCA, companies in the chemical industry face a multitude of regulation at the state level, as legislative and regulatory entities seek to develop and implement their own chemical management programs. An amended TSCA should create a more predictable environment in which companies can engage in interstate commerce.

Supporting Global Leadership for a Risk-based Approach to Chemical Review and Assessment: Chemical regulation is changing rapidly and significantly around the globe. Many of CSPA's member companies operate in the international marketplace—and face costly and burdensome requirements to comply with the onerous hazard-based approach taken under Europe's Registration, Evaluation and Authorization of Chemicals (REACH) regulation. It is essential that the

U.S. chemical management system keep pace with global developments and that our government resumes its role as a global leader in chemical regulatory policy. The U.S. chemical industry is unified in its support for the adoption of a risk-based system under TSCA—which means the EPA will consider **both** hazard and exposure in the Agency’s determination that a chemical is safe for its intended uses.

#### **Examining Current TSCA Section(s) 4 and 8**

There is broad consensus that changes are needed to modernize TSCA's chemical assessment programs. As we look to those areas where the statute needs to be updated, a key goal is to determine how (1) to ensure the Agency has the tools and information needed for the review and assessment of chemical safety; and (2) to better focus priority reviews by using the best available information to identify those chemicals of highest priority for further review and safety assessment.

**Sec. 4.** CSPA therefore agrees that a key to implementing an efficient and effective chemical assessment program should start with a screening level process to identify chemicals requiring further review and possible safety assessment. As CSPA has stated previously, any screening level priority setting must be risk-based, taking into consideration a chemical’s hazards and the nature and extent of its uses and potential exposures. Chemicals identified as high priorities for assessment should be those with the highest hazards and the highest potential exposures. EPA has identified a number of available data sources from which to obtain information on chemical hazards and indicators of exposure to swiftly identify the subset of chemicals that need priority assessment. One of those sources is periodic reporting under Section 8 of TSCA.

However, as EPA’s recent experience with the Work Plan chemicals has demonstrated, very little information is readily available to the Agency on how chemicals are used in U.S. commerce in order to fully inform prioritization and to assess the human health and environmental risk of these

chemicals.

**Sec. 8.** Although current TSCA authorizes the Agency under Section 8 to obtain information from “processors” on chemicals regulated under TSCA, the Agency has not regularly exercised this authority. Instead, EPA has utilized Section 8(a) of TSCA to require reporting of chemical information from manufacturers and importers, who may have limited information on some uses. Where the information is sufficient, the EPA can move forward. Where it is not, the Agency needs to obtain additional information. CSPA views prioritization as an ongoing process; as the EPA obtains more refined information, it should act to raise or lower a priority level, as appropriate.

A risk-based approach to chemical prioritization evaluates information on the uses of chemicals in commerce in order to identify potential exposures. Much of the information on chemical uses is in the hands of downstream processors. CSPA supports the position that in order to better inform EPA’s understanding of exposure potential during prioritization and subsequent safety assessments of high priority chemicals, a modernized TSCA should expressly allow the Agency to collect necessary use-related information from downstream formulators of consumer and commercial products. Most downstream formulators have not been subject to such EPA information requests, and therefore these new provisions would represent a significant change under TSCA. Carefully defining the applicable scope of these new reporting provisions in statute will properly align the frequency and content of formulator use reporting with the Agency’s actual need for such information as part of priority decision making and screening level review.

CSPA’s support for the inclusion of formulator use reporting provisions in Section 8 of a modernized TSCA was developed through dialogue among our member companies, with some of our “sister” trade associations, key representatives from the NGO community, and EPA. CSPA’s Board-approved use reporting proposal is meant to reflect a level of reporting that is practical and

not unduly burdensome from member companies' perspective, while offering EPA useful information with which to better inform prioritization decision making. We recognize and emphasize that this level of reporting may not be appropriate for other industry sectors, or for processors as a whole. Importantly, any level of processor use reporting should be targeted and implemented by EPA on an as needed basis as part of prioritization and safety assessment.

**CSPA's Recommendations for Statutory Amendments:** First, TSCA's information reporting provisions in Section 8 would need to specifically authorize EPA to collect specific chemical use information from formulators necessary to assist the Agency in prioritization decision making. Second, the scope of EPA's authority to collect use information during prioritization would be targeted to the following exposure-related elements: intentionally-added substances; an indication of use in children's products; the concentration range of the chemical in the formulation/mixture; and the number of commercial workers potentially exposed at the formulating facility. For purposes of conducting a safety assessment on high priority chemicals, EPA would have the authority to determine whether and to what extent additional use or other information is required from processors.

### **Confidential Business Information**

Finally, when formulators provide use information to the Agency, this may include confidential business information (CBI) and trade secrets. Intellectual property is a company's most valuable intangible asset, creating the opportunity for more sustainable and innovative products to enter the market. Therefore, support for reporting use-related information must be viewed in tandem with support for rigorous and effective CBI protections. Reporting under this section must allow for companies to assert substantiated CBI claims to protect innovative technologies, minor and specialty uses for chemicals, and proprietary product formulations and mixtures. Most information provided to EPA as part of formulator use reporting, except company name and CBI



chemical names, would become public in the form of aggregated reporting by EPA, provided such aggregation can protect CBI interests of the submitter.

### **Goal to Minimize Animal Testing**

The consumer products industry applauds the efforts to ensure minimal animal testing under any chemical management reform measures. To minimize animal testing, EPA could be required, where practicable, to use existing data, to reduce reliance on animal testing methods, and to use non-animal testing methods to conduct safety assessments. Our industry is committed to mandatory measures that minimize unnecessary animal testing. We believe that the development, governmental acceptance and use of alternative test methods validated by internationally recognized principles that protect human health and the environment while reducing, refining and replacing animal tests should be encouraged under any chemical management program. EPA should also encourage, where practicable, the grouping of similar chemicals to limit testing to representative substances and the formation of industry consortia to conduct joint data development. The household and institutional products industry would support such consortia as long as there are parameters to adequately protect confidential business information in its operation.

### ***About CSPA***

*The Consumer Specialty Products Association (CSPA) is the premier trade association representing the interests of companies engaged in the manufacture, formulation, distribution and sale of more than \$100 billion annually in the U.S. of familiar consumer products that help household and institutional customers create cleaner and healthier environments. CSPA member companies employ hundreds of thousands of people globally. Products CSPA represents include disinfectants that kill germs in homes, hospitals and restaurants; candles, and fragrances and air fresheners that*

*eliminate odors; pest management products for home, garden and pets; cleaning products and polishes for use throughout the home and institutions; products used to protect and improve the performance and appearance of automobiles; aerosol products and a host of other products used every day. Through its product stewardship program, Product Care®, and scientific and business-to-business endeavors, CSPA provides its members a platform to effectively address issues regarding the health, safety and sustainability of their products. For more information, please visit [www.cspa.org](http://www.cspa.org).*