

September 2, 2003

The Honorable Kimberly T. Nelson
Assistant Administrator for Environmental Information
U.S. Environmental Protection Agency
Ariel Rios Building, 2810A
1200 Pennsylvania Avenue, N.W.
Washington, DC 10460

Re: Toxic Chemical Release Reporting; Alternate Threshold for Low Annual Reportable Amounts; Request for Comment on Renewal Information Collection; Docket OEI-2003-0026; 68 Fed. Reg. 39071 (July 1, 2003).

Dear Assistant Administrator Nelson:

The Office of Advocacy of the U.S. Small Business Administration is submitting these comments on the Environmental Protection Agency's (EPA) above referenced continuing Information Collection Request (ICR) for the Toxic Release Inventory (TRI) Form A, the alternate threshold form provided as a substitute for the longer Form R. Advocacy encourages the EPA to take this opportunity to achieve significant paperwork burden reductions for small business reporters, and we offer specific recommendations to assist the EPA in accomplishing this important objective through Form A revision.

In 1991, the Office of Advocacy (Advocacy), by petition, initiated the rulemaking process that resulted in the promulgation of the Form A. We are pleased that EPA created this form in 1994, which the agency estimated would result in several hundred thousand hours in annual paperwork savings. However, the current Form A is only available to a very narrow proportion of the reports that could utilize the "short form," and Advocacy recommends that EPA pursue regulatory revisions to permit significant additional paperwork savings. Further, Form A is currently unavailable to the thousands of reporters of persistent bioaccumulative toxic (PBT) chemicals.

Advocacy was established pursuant to Pub. L. 94-305 to represent the views of small business before Federal agencies and Congress. Advocacy is an independent office within the U.S. Small Business Administration (SBA), so the views expressed by Advocacy do not necessarily reflect the views of the SBA or the Administration. The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), gives small entities a voice in the rulemaking process. The RFA requires Federal agencies, such as the EPA, to consider alternatives to avoid overly burdensome regulation of small

entities.¹ Advocacy is also required by Section 612 of the RFA to monitor agency compliance with the RFA.²

On August 13, 2002, President George W. Bush signed Executive Order 13272, requiring Federal agencies to implement policies protecting small businesses when writing new rules and regulations.³ Executive Order 13272 instructs Advocacy to provide comment on draft rules to the agency that has proposed a rule, as well as to the Office of Information and Regulatory Affairs (OIRA) of the Office of Management and Budget.⁴ Executive Order 13272 also requires agencies to give every appropriate consideration to any comments provided by Advocacy. Under the Executive Order, the agency must include, in any explanation or discussion accompanying publication in the *Federal Register* of a final rule, the agency's response to any written comments submitted by Advocacy on the proposed rule, unless the agency certifies that the public interest is not served by doing so.⁵

Additionally, Advocacy and OIRA signed a Memorandum of Understanding to reduce unnecessary regulatory burdens for small entities. One component of the MOU is that OIRA may discuss and resolve with an agency Advocacy's concerns about an information collection requirement in a rule that OIRA is reviewing under the Paperwork Reduction Act.

I. Paperwork Regulations Require EPA To Minimize Paperwork Burdens for All Reporting Entities, Especially Small Business Reporters.

Under the Federal paperwork regulations administered by the Office of Management and Budget (OMB), EPA is directed to develop the least burdensome reporting form to achieve its statutory and regulatory purposes. Each Federal agency is required to take "all practicable steps to develop separate and simplified requirements for small businesses and other small entities."⁶ In addressing this requirement, the EPA guidance instructs EPA staff to describe in the ICR justification "alternative collection procedures or other actions (e.g. a reporting exemption) that [EPA] will institute to minimize the burden for small entities." Further, OMB regulations require that the paperwork have "practical utility" to the agency.⁷ In our view, reports of zero and minimal releases do not satisfy this legal requirement. OMB may disapprove, in whole or in part, any ICR if the agency has failed to initiate procedures to revise the ICR, or failed to publish a final rule, in accordance with the above paperwork requirements. In sum, EPA is required to explore all reasonable steps, including streamlined reporting requirements, particularly for small businesses, as a means to reduce paperwork burdens and ensure that the required paperwork has "practical utility."

¹ Pub. L. No. 96-354, 94 Stat. 1164 (1981) (codified as amended at 5 U.S.C. §§ 601-612).

² 5 U.S.C. § 612.

³ Exec. Order No. 13,272 § 1, 67 *Fed. Reg.* 53,461 (Aug. 13, 2002) ("E.O. 13272").

⁴ E.O. 13272, at § 2(c), 67 *Fed. Reg.* at 53,461.

⁵ *Id.* at § 3(c), 67 *Fed. Reg.* at 53,461.

⁶ 5 C.F.R. §1320.6(h).

⁷ 5 CFR § 1320.5(d)(1).

II. EPA Must Permit Streamlined Reporting Under TRI for All Small Sources in Order to Comply with the Requirements of the Paperwork Reduction Act.

EPA must implement streamlined reporting for all small sources, not merely a small subset, to comply fully with the above described regulations and fulfill its responsibility under the Paperwork Reduction Act. First, as explained below, streamlined reporting for all small sources is a "practicable step" under §§1320.4(b)(1) and 1320.6(h) which minimizes paperwork burdens to all reporting entities, particularly to small businesses, while achieving the statutory purposes of right-to-know. Second, the current inclusion of full Form R reports from any small sources violates the requirement of §1320.4(b) that the provided data have "practical utility" to the agency because, by definition, small source reports have little environmental or health significance. Thus, streamlined reporting for small sources is not only an appropriate approach, but also a necessary approach for minimizing the reporting burden on both small and large businesses that release small quantities of TRI chemicals.

III. The Universe of Current Form A Reports is Too Narrow.

Form A currently provides the right-to-know information for only a very small universe of TRI reporters. A facility may use the Form A (certification form) only if the total wastes do not exceed 500 pounds in a single year (less than two pounds/day). In other words, the facility must count all releases, all transfers for treatment, disposal, and amounts recycled on or off-site and amounts used for energy recovery. In Advocacy's view, this is too restrictive for about 30% of the additional TRI reports, which also reflect small releases, and do not qualify for the Form A. Over one hundred similar comments are found in the earlier rulemaking record which led to the adoption of the Form A in 1994. In addition, Form A is unavailable to facilities that report PBT chemicals, as noted above.

Advocacy is offering a number of revisions to Form A program to expand the universe of Form A reports, reduce paperwork burdens significantly for small entities, and maintain the integrity of TRI data for right-to-know purposes. First, an expansion of the current 500 pound total reportable amount threshold for Form A eligibility to 5,000 pounds would reduce the reporting burden on small releasers. Second, EPA should institute an "Enhanced Form A" to replace the existing Form A that includes information about release and waste management amounts reported in broad ranges for small releasers. The Expanded Form A should also be made available for PBT chemicals. Advocacy believes that expanding the number of Form As and introducing the Enhanced Form A will provide burden relief to small entities and preserve all of the significant information currently collected via Form Rs. Additionally, Advocacy is presenting an alternative program of "No Substantial Revision Certification" (Form NS) that could work in conjunction with Form A revisions to offer more choices for burden reduction to different industries. Finally, Advocacy is suggesting burden relief targeted directly at reporters who would report zero releases.

IV. EPA Should Consider a Variety of Approaches to Minimize TRI Paperwork Burdens, Including Expansion of Form A Eligibility and a New Form for Nonsubstantial Revisions.

A. EPA Committed to Pursuing Paperwork Reduction Efforts in 1997.

When EPA promulgated the final rule adding seven reporting industries in April 1997, it committed to achieve meaningful paperwork reduction for all affected reporters. Indeed, it is our understanding that EPA promised to effectuate a net reduction in paperwork to offset the increased paperwork hours generated by the industry expansion rule. Since 1997, EPA has expanded paperwork burdens on a number of predominantly small business industries, particularly chemical and petroleum wholesalers from the 1997 industry expansions, whose releases are almost entirely below 1,000 pounds per year, and a wide range of industries who became first-time reporters when the threshold for lead and lead compounds reporting was dropped to 100 pounds in 2001. EPA's economic analyses showed that these industries were potentially facing significant reporting costs using Form R. With an expanded version of Form A, thousands of new reporters would achieve substantial paperwork reduction. Institution of a Form NS certification would potentially be more inclusive and bring burden relief to an even larger universe of reporters.

EPA, OMB and the Office of Advocacy produced a report for the National Advisory Council for Environmental Policy and Technology (NACEPT) Toxics Data Reporting Committee (TDRC) in 1998 that described, in detail, various alternatives for modifying Form A eligibility.⁸ Unfortunately, EPA has not acted upon any of these alternatives, citing in part NACEPT's supposed rejection of the Form A alternatives. However, as discussed below, the NACEPT TDRC did *not* reject these alternatives. Advocacy also encourages the agency to reconsider some misconceptions about the TRI program as it considers burden reduction options, which we also address below.

B. EPA Failed to Address Issues Raised in January 2003 and Needs to Reconsider the Legal and Factual Issues Underlying the Burden of TRI Reporting.

TRI reporters filed comments in the winter of 2002/2003 during the public comment period for the prior ICR. EPA failed to respond in a substantive manner to many of the specific comments, relying primarily on its responses to the previous round's Response to Comments for Form A.⁹ Although the January 2003 Response to the Office of Management and Budget's Terms of Clearance document covers much of the same ground, EPA did not respond to some critical issues, thereby impeding OMB's review.¹⁰ For example, EPA's notation of concern about "data loss" if the Form A eligibility is expanded in any fashion does not provide

⁸ "Analysis of Changes to the Alternate Threshold Provisions," presented to The National Advisory Council for Environmental Policy and Technology, Toxics Data Reporting Committee, May 18, 1998, prepared by representatives from the Environmental Protection Agency, Office of Management and Budget, and Small Business Administration.

⁹ Response to Comments Received on the Request for Comment on Renewal Information Collection for Toxic Chemical Release Reporting for the Form A Certification Statement (EPA ICR No. 1704.06, OMB No. 2070-0143, 67 FR 44197).

¹⁰ EPA's Response to OMB's January, 2003 Terms of Clearance notice for the ICR renewal of Form A. EPA 1704.06, OMB 2070-01143.

a substantive response, and is inconsistent with its 1994 discussion of this issue when the Form A was originally issued. EPA should carefully review its previous analyses and determinations, in light of the comments presented here and by other commenters, so that it can design lawful and meaningful relief for TRI reporters.

During the prior ICR review, EPA did not adequately address the issue of raising the total reportable amount threshold from 500 to 5,000 pounds (alternatively to 1,000 or 2,000 pounds) or the alternate threshold from 1 million to 10 million pounds. The agency stated that any expansion of the Form A eligibility could be inconsistent with the legal requirement that any revised reporting scheme must address the “substantial majority” of releases subject to the original reporting requirements. The agency appears to have overlooked the EPA’s 1994 legal interpretation that certifications in Form A automatically ensure that the substantial majority requirement is being met, because the certification itself provides the information through range reporting (also allowed in Form R itself):¹¹

[The] certification statementserves to satisfy the statutory requirement of section 313(f)(2) for reporting to be obtained on a substantial majority of releases of a chemical.¹² ...a certification statement is necessary in order to maintain public right-to-know and to meet the statutory ‘substantial majority’ of releases requirement. The certification statement relates to a range volume for a given chemical contained in total waste that can have multiple connections to quantitative line items as reported on Form R.... EPA believes that the category and level established in this final rule are such that replacement of full Form Rs, for these eligible reports, with certification statements provides the public with an adequate level of information.¹³

Thus, Advocacy believes EPA can meet the “substantial majority” requirement through any certification statement, as long as it retains a certification requirement which serves as a form of range reporting, as explained above. Therefore, there is no legal obstacle to changing the future eligibility requirements for Form A.

In addition, contrary to EPA’s statement in the January 2003 response to Terms of Clearance, the December 1998 NACEPT report does not contain any consensus that the loss of TRI information was too great or that Form A eligibility should not be revised. It appears that some individuals favored increased eligibility for the Form A, and others opposed it. However, the report notes that the Committee did not have adequate time to reach consensus opinions. “Since time did not permit the development of recommendations by the committee on this topic [Form A options], the following paper is intended to capture the committee’s discussion for use by the federal agencies.”¹⁴ Large businesses, states, and environmental interests were represented on the Committee, but no small business representatives were appointed, despite requests by those trade groups to participate. Based on our experience working with small business trade associations, we find that small businesses are the largest users of Form A.

¹¹ Range reporting means that the reporter is permitted to report figures in broad ranges, such as 1-10 pounds, rather than as a point estimate, for very small release numbers (under 1000 pounds in the case of the Form R for non-PBT chemicals).

¹² November 1994 EPA Response to Comments Document, Establishment of Alternate Threshold, at page 52.

¹³ *Ibid.*, at page 54.

¹⁴ NACEPT report, at page 22.

Additional small business representation very likely would have lent additional support for an increase in Form A eligibility.

In addressing the issue of raising the reportable amount threshold or excluding certain waste categories from consideration in the January 2003 Response to Terms of Clearance, EPA argued that either scenario was inapplicable because the “data loss” would be too great.¹⁵ Table 6 in that document presents summations of data that would not be reported on Form Rs under various threshold and reportable waste category revisions.¹⁶ EPA, however, never defines *quantitatively* what constitutes a significant loss of data, allowing the data loss argument to hinge solely upon the summary figures in Table 6 outside of a meaningful contextual framework in which to analyze the significance of non-reported data under various reporting regimes. In fact, the data that would no longer be reported on Form R from raising the reportable amount threshold from the current 500 pounds to 5,000 would be a mere 0.1% of total wastes for reporting year 2000. Under the status quo, 99.99% of all wastes are reported on Form R, and this would decline to 99.92% under a 5,000 pound threshold while over 23,000 additional reports qualified for burden relief.

EPA must recognize that data reported on Form A rather than Form R is not “lost,” because Form A is a form of range reporting (as EPA explained in 1994).¹⁷ To further the discussion of burden relief through an expansion of Form A eligibility, EPA must establish a measure for determining whether there is significant “data loss.” Advocacy suggests that EPA examine the TRI environmental indicators developed by EPA over many years as one potential method for deciding which data addresses a risk to the local community as to warrant full Form R reporting. Without this type of quantitative assessment, EPA’s claim of “data loss” inhibits serious consideration of meaningful burden relief for small businesses.

C. Advocacy’s Suggested Revisions and Comments.

Advocacy offers five specific recommendations for burden reduction to small entities through Form A revision, which are addressed below:

1. Expansion of total reportable amount and alternate thresholds.

Advocacy urges serious consideration of the three most easily justifiable revisions to the Form A eligibility: (1) raising the level of the total reportable amount threshold from 500 to 5,000 pounds; (2) raising the alternate threshold amount from 1 million to 10 million pounds, and (3) revising the calculation of the reportable amount to remove energy recovery and recycling from consideration.

Raising the total reportable amount threshold will provide significant burden reduction for small entities. Raising the total reportable amount threshold from 500 to 5,000 pounds generates a significant amount of paperwork burden reduction by expanding eligibility from

¹⁵ January 2003 EPA’s Response to OMB’s January, 2001 Terms of Clearance notice for the ICR renewal of Form A (EPA 1704.06, OMB 2070-01143).

¹⁶ *Ibid.*, at page 7.

¹⁷ In its 1994 response to comments, EPA stated that the certification statements themselves, at least for the current Form A, provided the public with “an adequate level of information.” This statement cannot be reconciled with EPA’s current view that any revision of the Form A eligibility could jeopardize the appropriate level of information.

26% to 40% of all non-PBT reports.¹⁸ The amount of data "loss" is 0.1% of production-related wastes, compared to 0.01% for the current Form A. Furthermore, as discussed above, the data is not actually lost when reported on a Form A rather than Form R.¹⁹ Advocacy is, however, proposing the expansion of the eligibility thresholds in conjunction with the use of an Enhanced Form A certification. The Enhanced Form A, discussed in more detail below, would institute range reporting for the waste amounts, further increasing the utility of data from Form A reporters.

Expanding the alternate threshold from 1 million to 10 million pounds would provide additional burden relief to small businesses and others who release small amounts. Many reporters that would otherwise be eligible for Form A based on waste amounts are ineligible because they use more than 1 million pounds of the chemical. Advocacy's review of Massachusetts data in 1995 revealed that about 5% additional facilities would have qualified for Form A based on a 10 million pound threshold. These facilities had total reportable amounts that met the current threshold, and could have filed Form A if not for their high use of the reported chemical. In effect, prohibiting otherwise qualified filers from using the less costly Form A sets up perverse incentives that punish the most efficient chemical users: those that use larger quantities but engage in more efficient practices to reduce releases and the need for treatment, disposal, or recycling.

Further, Advocacy recommends that EPA explore elimination of energy recovery and recycling from the calculation of the reportable amount. As explained below, there is no risk to the community that arises from this offsite activity. Also, exclusion of this activity would provide further incentives for sound environmental management as those facilities would be rewarded for increased activity in these areas. Information about this activity could be captured, alternatively, in the Enhanced Form A, as discussed below.

2. Enhanced Form A.

As an alternative to a simple expansion of Form A eligibility, Advocacy proposes consideration of an Enhanced Form A that incorporates range reporting for waste information. By implementing the Enhanced Form A alongside an upward revision of the eligibility thresholds, EPA can accomplish significant burden reduction while increasing data quality over the Form A approach. Advocacy recommends that the Enhanced Form A be available for reporters of PBT chemicals with fewer than 50 pounds of total wastes. We describe below two alternative methods for establishing eligibility for the Enhanced Form A (based on either the current reportable amount, or total onsite release).

The Enhanced Form A has the benefit of carrying burden reduction while substantially preserving the information currently reported by small reporters on Form R. The Enhanced Form A would preserve the practical utility of all reported data by allowing right-to-know users to easily assess the size of releases and waste activities without placing further undue burden on reporters that release insignificant amounts of chemical waste. Reporters would simply check the appropriate range box for each category of on- and offsite releases and each

¹⁸ Based on reporting year 2000 data.

¹⁹ As discussed above, EPA's position in the 1994 response to comments upon introduction of the Form A was that Form A captured an "adequate level of information."

recycling, energy recovery, or transfer activity undertaken. Because those reports that qualify capture by definition small releases, the ranges provide sufficient information for data users. Furthermore, as noted above, range reporting is allowed on Form Rs under appropriate circumstances, thus range reporting in and of itself is not an impairment to data quality.

The Enhanced Form A should also be available for PBT reporters with less than 50 pounds of total annual reportable amount. As with other chemicals, many PBT reporters have total releases of either zero or an insignificant amount. While PBT chemicals may present greater risks to human health than other listed chemicals, it does not follow that an Enhanced Form A reporting option would not provide data users all of the information needed for right-to-know uses while offering burden reduction for the reporter. For example, in 2001, 47% of the nearly 8,600 reports for lead and lead compounds showed on-site releases less than 1 pound, with 37.5% of all reports containing zero on-site releases. Furthermore, 31.5% of all reports had less than 50 pounds of total waste quantities. The introduction of an enhanced Form A would provide burden reduction while maintaining all of the relevant data from these small releasers of PBTs.

A potentially more practical alternative would be to change the threshold calculation to total on-site releases (section 8.1 and 8.8 of Form R). Under this option, thresholds would be revised downward to 100 pounds for non-PBT chemicals and 10 pounds for PBT chemicals. This would offer greater burden relief by extending significantly the number of reports eligible under an Enhanced Form A. Additionally, an onsite release-only threshold actually captures more data significant to communities and right-to-know users. Under the current system, a reporter could qualify for Form A by virtue of having only 500 pounds of total wastes, even though all 500 pounds are onsite releases. Under the onsite release-only system, this reporter would be forced to file a Form R due to high onsite releases, while currently ineligible reporters with zero releases and 1,000 pounds of offsite recycling would file the Enhanced Form A.

Because the threshold determination for eligibility to file the Enhanced Form A could be based on releases rather than total production-related wastes, the primary data removed from Form R reporting is non-release data, including recycling, energy recovery, and treatment. These data, however, are not lost but rather reported over ranges on the Enhanced Form A. The data is thus preserved, and its utility left intact for all required uses. Importantly, the amount of data moved from Form R reporting to range reporting on the Enhanced Form A would be negligible under a reporting threshold of 100 pounds of on-site releases for non-PBT chemicals and 10 pounds for PBT chemicals. For instance, if an Enhanced Form A were available for lead and lead compounds reporters in 2001 who reported less than 10 pounds of on-site releases, 63% of all reports would qualify for the Enhanced Form A burden relief, with just 0.001% of on-site releases and 7% of all other wastes reported on the Enhanced Form A. Virtually all of the significant right-to-know data is preserved on Form R, releases to the environment of the local community, while data on off-site transfers and recycling related to the small releasers is largely preserved through range reporting.

3. No Substantial Change (Form NS).

An alternative to expanding Form A eligibility, or modifying the Form A, is to allow TRI reporters to file a certification of No Substantial Revision (Form NS) from a baseline Form R filing. This option would be open to both PBT and non-PBT reporters who qualify.

Advocacy estimates that the Form NS would provide burden relief for at least 50% of all reports in a given year, without any significant diminution of the right-to-know information, versus 26% of non-PBT reports currently eligible for Form A reporting. Even expanding the Form A eligibility threshold to 5000 pounds of reportable waste would only offer relief to 40% of non-PBT reporters. This option would provide relief to a wide range of PBT and non-PBT reporters over and above the relief provided by Form A since use of Form NS would relieve reporters from reportable amount calculations (addition of Form R Sections 8.1 through 8.7) required for Form A.

Under Form NS, a facility would file a Form R in the baseline year then file a Form NS for the next consecutive four years. The following year the facility would once again be required to file Form R to re-establish the proper baseline. We anticipate that EPA would utilize the baseline Form R as the placeholder for the Form NS in the TRI database until the next Form R is provided by the facility, so that the TRI data is preserved each year the Form NS is filed, with an indicator that the Form NS was filed in that reporting year, preserving the full right-to-know data for the public.

Form NS could be used by any facility that does not modify its annual production by more than 10% AND does not change any production/treatment/disposal processes at the facility.²⁰ For these facilities, the baseline Form R would reasonably represent all the activities that would have been reported on a new Form R.

Because the 10% change requirement would be inappropriate for very small releases, Form NS could also be used by any facility for which the total onsite releases (Form R Section 8.1 plus 8.8) are less than 100 pounds for non-PBT chemicals and 10 pounds for PBT chemicals (except dioxins) in both the base year and the new reporting year. This would also be limited to facilities that do not change any production/treatment/disposal processes at the facility.

The small releaser stipulation has the advantages of eliminating the additional work needed to calculate the reportable amount quantities of the Form A (Form R Sections 8.1-8.7), while still retaining the Form A option for those qualified to use it, and providing burden reduction for facilities with insignificant changes from the baseline Form R. These reports are considered insubstantial revisions because the total releases fall into ranges of between 0-10 or under 100 pounds. This *de minimis* approach is modeled on the structure of the current range reporting available in the Form R, where releases under 1,000 pounds can be reported in ranges. Consistent with the current range reporting for Form R, the Form NS reporting range of 0-10 or under 100 would reflect the reduced need for accurate estimates in making small quantity estimates, in comparison to releases of over 1,000 pounds, where EPA requests two-digit

²⁰ In other words, a facility has no changes in whether or not the facility engaged in the practices reported in the elements 8.1 through 8.8 on Form R. For example, if a facility reported data only for onsite releases and offsite recycling in the baseline year Form R, it could file Form NS the following year only if its production changed by less than 10% and it again would report only onsite releases and offsite recycling. No limitation would be placed on the variation of the amounts of onsite releases and offsite recycling, but all other fields would need to remain zero to qualify for Form NS.

accuracy (where feasible) on Form R. For example, in the range of 1-10 pounds on the Form R, EPA permits the report of a single range which constitutes an entire order of magnitude (less than single-digit accuracy).

Form NS targets significant burden reductions for small reporters, and there is a large overlap between small reporters and small businesses. Small businesses face higher per form reporting costs than large firms, so the use of a simpler Form NS would save each small firm proportionally more than a large firm. Furthermore, since this option is designed to produce small business burden relief while preserving the integrity of important information, Form NS would not apply to the largest releases: onsite releases (Form R Sections 8.1 and 8.8) over 10,000 pounds annually. A 10% change in production for a large quantity releaser could be a significant change to the local community.

4. Relief for Zero Reporters.

Advocacy recommends that EPA eliminate the requirement to file either Form R or Form A for reporters that would report zero onsite releases in Sections 8.1 and 8.8 on Form R. The rationale for removing the reporting requirement is that reports of zero releases provide no practical utility to data users. If data from this class of reporters is desired for purposes other than community right-to-know, a separate data collection request should be submitted to OMB for clearance.

A good illustration of the severe justification for burden relief is the situation faced by the petroleum wholesalers in the 2001 reports. One major petroleum firm with 35 terminals filed 213 Form Rs, with 78 zero release reports (37% of the total), including 16 zero lead release reports. These were not simply zero releases onsite, but represented zero releases and zero total wastes. This example alone makes a good case for total relief for zero reporters and the use of Form A for PBT filers and the Form NS.

5. Range Reporting.

As EPA found in 1991, the option to report in ranges, rather than in point estimates provides considerable burden savings to the reporter. It estimated a 9.5 hour reduction in 1991 when it was proposing to promulgate the range reporting option.²¹ Range reporting will save time if the needed precision in reporting is reduced, for example from two digit precision to one digit (as discussed above). Advocacy urges EPA to return range reporting to the pollution prevention section (section 8), so that the savings previously permitted in sections 5 and 6, the releases sections, can be captured. Currently, entries in sections 5, 6 and 8 cover the same releases, and facilities are no longer able to capture these cost savings. Advocacy also recommends that EPA restore the range reporting footnote in section 5.

In addition, Advocacy urges EPA to reconsider the elimination of range reporting relief for the PBT reporters. The PBT reporters are subject to considerable burden for reporting releases that equal or approach zero. For these reasons, we believe that the range reporting option is suitable for such reports.

²¹ 56 Fed. Reg. 1154, January 11, 1991.

V. Conclusion

Advocacy looks forward to working with EPA to identify appropriate avenues for burden reduction for small firms, while maintaining the integrity of the TRI reporting system. Given the many thousands of zero release reports, and many more thousands of minimal release reports, we believe that it is imperative that EPA promulgate appropriate relief in time for the July 2004 reports.

Thank you for your consideration in these matters, and please do not hesitate to contact me or Kevin Bromberg (kevin.bromberg@sba.gov or 202-205-6964) of my staff.

Sincerely,

Thomas M. Sullivan
Chief Counsel for Advocacy

Kevin Bromberg
Assistant Chief Counsel for Advocacy

Cc: EPA Docket Center, EPA West, Room B102, Environmental Protection Agency, 1301 Constitution Avenue, N.W., Washington, DC 20460

Dr. John D. Graham, Administrator, Office of Information and Regulatory Affairs
Office of Management and Budget