



May 17, 2006

BY ELECTRONIC MAIL AND HAND DELIVERY

The Honorable Charles H. Taylor, Chairman
The Honorable Norman D. Dicks, Ranking Member
Subcommittee on Interior, Environment and Related Agencies
Committee on Appropriations
U.S. House of Representatives
B-308 Rayburn House Office Building
Washington, DC 20515

**Re: Title VI of FY 2007 Interior, Environment and Related Agencies
Appropriations Bill**

Dear Chairman Taylor and Congressman Dicks:

The Office of Advocacy (Advocacy) of the U.S. Small Business Administration (SBA) respectfully submits the following comments concerning potential revisions to HR 5386, which could affect the U.S. Environmental Protection Agency's (EPA) implementation of reforms to the Toxic Release Inventory's (TRI) annual reporting requirements. Congress established the Office of Advocacy (Advocacy) in 1980 under Pub. L. No. 94-305 to advocate the views of small entities, including small businesses, before Federal agencies and Congress. Because Advocacy is an independent entity within the SBA, the views expressed in this letter may not reflect the position of the Administration or the SBA.

Advocacy opposes amendments to HR 5386 that would restrict EPA's ability to provide eligible small businesses with less burdensome annual reporting options under the TRI program. Reducing TRI paperwork burden has been a priority for small business for almost twenty years. This important goal will be thwarted by the Amendment offered by Representative Frank Pallone.

TRI Reform Is A High Priority for Small Business. Small businesses have long been concerned that the TRI annual reporting requirements impose substantial burdens with little corresponding environmental benefit, particularly with respect to thousands of filers with zero discharges or emissions. These small firms must devote scarce time and resources to completing lengthy, detailed Form R reports each year, even when they have no discharges or emissions to the environment. For that reason, small businesses have been asking for a reduction in the annual TRI reporting burden since at least 1988. Small business representatives have also consistently nominated the TRI annual reporting

requirements for reform when the Office of Management and Budget has called for public reform nominations.¹

Advocacy Has Been Working With EPA to Reduce the TRI Reporting Burden On Small Business for Nearly Twenty Years. Responding to the concerns of small business, the Office of Advocacy made TRI reform a priority after the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) was enacted.² Section 313 of EPCRA required the first Form R report to be filed by July 1988.³ Advocacy began working with EPA at that time to find less burdensome alternative reporting methods that could be used by eligible small businesses, and this effort has continued through three Administrations. As Advocacy's Chief Counsel Jere Glover testified in 1997:

The Office of Advocacy has had the same position about small sources and the Toxic Release Inventory since 1988. In 1988, we supported exempting certain facilities with less than 50 employees for TRI reporting. In 1991, we supported exempting reports from facilities that emitted less than 5000 pounds per year of listed toxic chemicals, and in 1994, EPA enacted this exemption. Recently, with the proposal of TRI Phase II, this office also supported eliminating from reporting industry sectors with small releases. Thus, the Office of Advocacy adheres to a standard that maximizes the impact of regulations on a problem while minimiz[ing] the impact on small firms that contribute little to the problem.⁴

In 1991, Advocacy was able to persuade EPA to develop the Form A, a shorter alternative to the Form R. EPA estimated at the time that the Form A would result in several hundred thousand hours of annual paperwork savings. Unfortunately, the majority of the small business filers that Form A was designed to benefit were never able to use it. This was because EPA subsequently determined that businesses that use more than 500 pounds of a listed chemical in a single year, or that use any amount of chemicals deemed to be "persistent, bioaccumulative, or toxic" (such as lead), are ineligible to use Form A. Advocacy has submitted testimony to Congress supporting TRI reform on at least three occasions; and we have furnished EPA with several reports demonstrating that targeted burden reductions will not have an adverse effect on environmental protection or the quality of information about annual releases.

¹ See, e.g., Office of Management and Budget, Draft Report to Congress, 67 Fed. Reg. 15014, 15015 (March 28, 2002).

² Pub. L. 99-499, 100 Stat. 1730, codified as 42 U.S.C. §§ 11001 – 110050.

³ 42 U.S.C. § 11023.

⁴ Testimony of Jere W. Glover, Chief Counsel for Advocacy, before the House Committee on Small Business, Subcommittee on Government Programs and Subcommittee on Regulatory Reform and Paperwork Reduction, "Small Business Involvement in the Regulatory Process and Federal Agencies' Compliance with the Regulatory Flexibility Act" (April 17, 1997).

TRI Reporting Burdens, Like Other Regulatory Mandates, Have A Disproportionate Impact On Small Businesses. A 2005 Advocacy-funded study by W. Mark Crain, *The Impact of Regulatory Costs on Small Firms*,⁵ found that, in general, small businesses are disproportionately impacted by the total Federal regulatory burden. The 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.⁶ Looking specifically at environmental regulatory 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.⁷ Likewise, the TRI paperwork burden falls heavily on small firms.

The Process EPA Used to Develop the TRI Reforms Was Transparent and Well-Considered. In response to continuing calls for TRI reform by Advocacy and small businesses, EPA conducted stakeholder outreach meetings in 2003, as and took public comment in 2003 and 2004 on possible reporting reforms. EPA subsequently proposed the revised Form A and took additional public comment on the proposal. EPA has carefully considered the proposed revisions to the Form A over several years, taking into account comments received by the public.

EPA’s Reform Maintains Environmental Protection While Reducing Needless Burdens on Small Business. EPA’s proposal would alleviate paperwork burdens for small businesses while continuing to require detailed annual reporting of chemical releases for most filers. An estimated 99% of current chemical release information would continue to be reported to EPA on Form R. This has the potential to ease the paperwork burden for thousands of companies with a savings of at least \$800 - \$1000 per reporting form. EPA’s proposal also enhances environmental protection because Form A provides an incentive for small firms to reduce their emissions and discharges to the environment in order to become eligible for the streamlined reporting form.

For all of these reasons, the Office of Advocacy opposes the amendment offered by Representative Pallone. We strongly support EPA’s reform of the TRI reporting requirement and revisions to Form A. Any language that prevents EPA from moving forward with that reform effort will be viewed by small business as a major setback in their effort to obtain long-awaited TRI burden relief.

⁵ *The Impact of Regulatory Costs on Small Firms* (September 2005) available at <http://www.sba.gov/advo/research/rs264tot.pdf>.

⁶ *Id.* at page 55, Table 18.

⁷ By contrast, 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.

For additional information or assistance relating to these comments, please do not hesitate to call me at (202) 205-6539.

Sincerely,

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Thomas M. Sullivan
Chief Counsel for Advocacy