



Advocacy: the voice of small business in government

***Testimony of
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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 Boxer and Members of the Committee, 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 to represent the views of small entities before Congress and the Federal agencies. The Office of Advocacy (Advocacy) is an independent office within the SBA, and therefore the comments expressed in this statement do not necessarily reflect the position of the Administration or the SBA.

This Committee is reviewing several recent regulatory actions of the U.S. Environmental Protection Agency (EPA), including a December 2006 rule designed to reduce paperwork burdens under the Toxics Release Inventory (TRI) program.¹ The Office of Advocacy strongly supports EPA's TRI Burden Reduction rule. Advocacy has worked with the EPA since 1988 on TRI issues, and we have developed substantial expertise with TRI and other right-to-know programs. In our view, the TRI Burden Reduction rule will yield needed reductions in small business paperwork burdens while preserving the integrity of the TRI program and strengthening protection of the environment.

Background

The public right-to-know provisions set forth by the Emergency Planning and Community Right to Know Act of 1986 (EPCRA)² created the Toxics Release Inventory (TRI), which requires companies to make a yearly report to EPA of their handling, management, recycling, disposal, and allowable emissions and discharges of chemicals.

¹ U.S. Environmental Protection Agency, Final Rule, "Toxics Release Inventory Burden Reduction," 71 Fed. Reg. 76,932 (December 22, 2006).

² Pub. L. 99-499, Title III, codified at 42 U.S.C. §§ 11001-11050.

Following EPCRA's passage, American businesses have taken unprecedented action to reduce the amount of toxic chemicals used in their plants. Some companies followed the initial publication of TRI data in 1989 by pledging to reduce eighty to ninety percent of their chemical releases. The American Chemistry Council member companies implemented a "Responsible Care" initiative which has reduced environmental releases by seventy-eight percent over the past nineteen years.

Small Businesses Have Been Asking for TRI Paperwork Burden Relief Since 1990

Soon after the initial reporting years, small business discovered that TRI's requirement to track, estimate, and report chemical use was complex and time-consuming. Beginning in 1990, these small businesses began asking for simpler alternatives. The Office of Advocacy petitioned EPA in 1991 to develop streamlined reporting for small-volume chemical users. In 1994, EPA responded to the petition by adopting "Form A," the short form for TRI reporting. Adopted as a less burdensome alternative to the long form "Form R," the original Form A allowed companies to report their releases as a range, instead of a specific number. Form A enabled the public to know that a facility handles less than a small threshold quantity of the reported chemical. Significant chemical management activities were still required to be reported on the longer, more detailed Form R.

Unfortunately, the Form A developed in 1994 was never utilized to its potential, owing to restrictive eligibility requirements subsequently imposed on the short form. Small businesses have consistently voiced their concerns to Advocacy that the TRI program imposes substantial paperwork burdens with little corresponding environmental

benefit, especially for thousands of businesses that have zero discharges or emissions to the environment. These businesses must devote scarce time and resources to completing lengthy, complex Form R reports each year, despite the fact that they have zero discharges. In 1997, Advocacy's Chief Counsel Jere Glover testified that:

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.³

In this decade, small businesses have continued to identify TRI paperwork relief as a priority. In 2001, 2002, and 2004, for example, TRI burden reduction was named as a high-priority candidate for regulatory reform in response to the Office of Management and Budget's public call for reform nominations.⁴

Why Is TRI Paperwork Burden Reduction Important to Small Business?

The annual burden of completing TRI paperwork is substantial. EPA has estimated that first-time Form R filers need to spend an average of 50 hours, and as many

³ Testimony of Jere W. Glover, Chief Counsel for Advocacy, before the House Committee on Small Business, Subcommittee on Government Programs and Subcommittee on Regulatory Reforms and Paperwork Reduction, "Small Business Involvement in the Regulatory Process and Federal Agencies' Compliance with the Regulatory Flexibility Act" (April 17, 1997).

⁴ See, e.g., Office of Management and Budget, Draft Report to Congress, 67 Fed. Reg. 15014, 15015 (March 28, 2002).

as 110, to properly complete the forms.⁵ For small businesses, the burden is even heavier.

The 2005 Advocacy-funded study by W. Mark Crain, *The Impact of Regulatory Costs on Small Firms*, found that, in general, small businesses are disproportionately impacted by the total Federal regulatory burden.⁶ This overall regulatory burden was estimated by Crain to exceed \$1.1 trillion in 2004. For firms employing fewer than 20 employees, the annual regulatory burden in 2004 was estimated to be \$7,647 per employee – nearly 1.5 times greater than the \$5,282 burden estimated for firms with 500 or more employees.⁷ Looking specifically at compliance with federal environmental rules, the difference between small and large firms is even more dramatic. Small firms generally have to spend 4½ times more per employee for environmental compliance than large businesses do. Environmental requirements, including TRI paperwork requirements, can comprise up to 72% of small manufacturers’ total regulatory costs.⁸

As an illustration of the impact of TRI on small business, I recently spoke with manufacturers and environmental engineers who work with small companies in Southeast Michigan’s “Automobile Alley.” These companies use aluminum alloys to build automatic transmissions and other car parts that must be heavily machined. Some of the alloys contain lead, which helps its machinability. Without lead, the alloys would be gummy, preventing a smooth machining process. The process generates scrap metal, which is recycled. Because the scrap metal contains lead, Form R reports have been

⁵ See, e.g., 66 Fed. Reg. 4,500, 4538 (January 17, 2001) (EPA estimated that first-time filers of TRI annual reports of lead and lead compounds would need an average of 50 hours, and as many as 110 hours, to prepare their Form R’s.).

⁶ W. Mark Crain, *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 *Id.*

required each year, despite that fact that no lead is ever released to the environment.

EPA's TRI Burden Reduction rule will allow these companies to use Form A.

EPA Has Long Recognized That TRI Burden Relief Is Necessary

EPA's efforts at TRI burden reduction, started in 1991, have spanned both Republican and Democratic Administrations. In 1994, EPA Administrator Browner approved the adoption of the original Form A. In 1997, when EPA expanded the scope of TRI reporting requirements, EPA promised that it would seek additional reductions in the TRI paperwork burden.⁹ EPA Administrators have spent over 15 years working with the public to develop a new TRI paperwork reduction approach. This effort has included forming a Federal Advisory Committee, conducting an online dialogue with interested parties, holding stakeholder meetings, and going through the notice and comment rulemaking process. The TRI Burden Reduction rule signed in December 2006 is the result of this process.

The Paperwork Burden Reduction Rule Does Not Weaken the TRI Program

Some observers have expressed concerns that the TRI Burden Reduction rule would result in less detailed information about chemicals being communicated to EPA, the States, and the public. Specifically, concerns have been voiced about the future

⁹ U.S. Environmental Protection Agency, Final Rule, "Addition of Facilities of Certain Industry Sectors; Revised Interpretation of Otherwise Use; Toxic Release Inventory Reporting, Community Right-to-Know" 62 Fed. Reg. 23,834, 23,887 (May 1, 1997) ("EPA believes that [Form R and Form A] can be revised to make it simpler and less costly for businesses to meet their recordkeeping and reporting obligations . . . EPA is initiating an intensive stakeholder process – involving citizens groups, industry, small businesses and states – to conduct comprehensive evaluation of the current TRI reporting forms and reporting practices with the explicit goal of identifying opportunities, consistent with community right-to-know and the relevant law, to simplify and/or reduce the cost of TRI reporting.").

ability to perform trend analyses, monitor the performance of individual facilities, and satisfy the public right-to-know. To respond to these concerns, EPA placed a 2,000-pound limit on releases of chemicals that can be considered for Form A reporting. Under the TRI Burden Reduction rule, each Form A will be a range report, telling the public that total releases from a facility is in the range of zero to 2,000 pounds. Facilities that have any emissions or discharges of highly toxic materials (defined as Persistent, Bioaccumulative and Toxic (PBT) chemicals) still cannot use Form A.

The expanded Form A continues to obtain reporting on a substantial majority of total releases of every TRI-listed chemical at all facilities required to submit TRI reports. Form A provides much of the important information that Form R does. TRI data users are currently able to gain access to Form A facility information via Envirofacts¹⁰ and TRI Explorer¹¹ in the same way that they can access Form R facility information. Form A tells the user whether a facility is a potential source of releases and other waste management activities.

EPA's TRI Burden Reduction rule continues to require firms to report all of the chemicals they have been reporting each year on the Form R. Following the same principles that governed the 1994 TRI paperwork reform, more firms will now be able to use the short form (Form A) to report a range of use, rather than detailed amounts on the longer, more complex Form R.

Advocacy agrees with EPA that the rule's approach to expanded Form A eligibility for chemical use reporting strikes an appropriate balance by allowing

¹⁰ (<http://www.epa.gov/envirofacts>). Using EZ Query in Envirofacts, data users are able to access individual chemical Form As along with the TRI Facility Identification Numbers (TRIFIDs) and the names of facilities submitting Form A's.

¹¹ (<http://www.epa.gov/triexplorer>).

meaningful burden relief while at the same time continuing to provide valuable information to the public.

The TRI Burden Reduction Rule Will Strengthen Overall Environmental Compliance

Under the TRI Burden Reduction Rule, top environmental performers within industry will benefit by being able to use the short form (Form A). In order to qualify to use Form A, firms must minimize their use of all chemicals and sharply curtail their use of PBT chemicals. Most importantly, in order to use Form A, firms may not emit or discharge any PBT chemicals into the environment. In the same way that the initial Form R reports in 1989 provided an incentive for large companies to dramatically reduce their subsequent chemical releases, the expanded Form A will provide an incentive for business to reduce their overall chemical usage to be able to use the short reporting form.

As an example of this, I spoke last week with a TRI expert who runs Advanced Environmental Management Group, a consulting firm that works with small businesses on environmental management issues. He was proud of his work helping a paper mill recycle small amounts of mercury generated when switches and other process control circuits undergo maintenance in the mill's powerhouse. Amerjit "Sid" Sidhu explained to me that EPA's TRI reform will allow a number of industrial operations such as tool and die shops and metal stamping plants to file a Form A for the first time. It will also provide an incentive for other companies to recycle their TRI chemicals rather than disposing of them.

Advocacy Supports EPA's TRI Burden Reduction Rule

While small businesses and the Office of Advocacy asked EPA to deliver a greater measure of burden reduction and make Form A available to a larger number of filers, EPA ultimately chose a more modest alternative. Some manufacturers who deal with metal alloys that contain extremely small percentages of lead to assist in their machinability would have preferred a de minimis exemption. Their argument, which I agree with, is that the burdens of data collection and calculations to track miniscule percentages of lead contained within metal alloys is essentially a waste of resources when we know the scrap metal is recycled and there are no releases to the environment. When I visited a wheel manufacturer in Tennessee, I was amazed to see that the small facility produced 35,000 aluminum road wheels per week. The facility was spotless. Nevertheless, because of the aluminum dust in floor sweepings – with an estimated total of 1/10 of a pound of lead per year – that ends up in their garbage, the company is still required to submit Form R reports to EPA each year.

Although it does not go as far as some small businesses would prefer, Advocacy supports the TRI Burden Reduction rule. The rule demonstrates that EPA is listening to the concerns of small business. EPA's TRI reform should be a model for other agencies to reform their existing regulations to reduce costs while preserving or strengthening the original regulatory objectives.

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