



Advocacy: the voice of small business in government

Testimony of
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U.S. House of Representatives
Committee on Energy and Commerce
Subcommittee on Environment and Hazardous Materials

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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 Wynn and Members of the Subcommittee, 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 Subcommittee is meeting today to examine H.R. 1055, a bill which essentially revokes the December 2006 rule of the U.S. Environmental Protection Agency (EPA), 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. I testified last February before the Senate Committee on Environment and Public Works on Senate legislation (S. 595), which mirrors H.R.1055. Advocacy has worked with the EPA since 1988 on TRI issues. 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.

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

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 listed chemicals. Over the years following EPCRA's passage, American businesses have taken unprecedented action to reduce the amount of toxic chemicals used in their plants. Many observers credit the public TRI reporting as the impetus behind these pollution reduction efforts.

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 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 handled 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.

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

Unfortunately, the Form A that was 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.

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.³

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 as 110, to complete the forms properly.⁴ 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

³ See, e.g., Office of Management and Budget, Draft Report to Congress, 67 Fed. Reg. 15014, 15015 (March 28, 2002).

⁴ See, e.g., 66 Fed. Reg. 4,500, 4538 (January 17, 2001).

impacted by the total Federal regulatory burden.⁵ 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.⁶ 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.⁷

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. 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 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.

⁵ W. Mark Crain, *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 *Id.*

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.⁸ 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 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 ability to perform trend analyses, monitor the performance of individual facilities, and satisfy the public right-to-know. My office asked an independent contractor, E.H. Pechan & Associates to review this issue. Pechan reviewed over 2,000 comments on the proposed rule and identified 17 specific uses of TRI data for examination, addressing

⁸ 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.").

national, state and local concerns. Based on this analysis, the June 2007 report⁹ found that EPA's final rule will not have significant impacts on data uses identified by the commenters.

Advocacy agrees with EPA that the rule strikes an appropriate balance by allowing 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.

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

⁹ *Review and Analysis of EPA's Toxics Release Inventory (TRI) Phase III Burden Reduction Proposal on TRI Data Uses*, E. H. Pechan & Assocs., Durham, NC, June 2007.

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 that ends up in their garbage containing an estimated total of 1/10 of a pound of lead per year, 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. H.R. 1055 would prevent EPA from moving forward on reforms to the TRI program that were called for by small business. For that reason, the Office of Advocacy opposes this legislation.

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