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Report Summary

Proposed Reforms to the Toxics Release Inventory Program: Streamlining Reporting and Preserving Data Integrity

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Full report available at <http://www.sba.gov/advo/laws/comments/tri2004.pdf>

The Toxic Chemical (or “Toxics”) Release Inventory (TRI) is a federal government program that collects and disseminates information about toxic chemicals introduced into the environment or otherwise managed (treated or stored) in the United States. TRI reporting is required in Section 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA or Title III of the Superfund Amendments and Reauthorization Act of 1986, Public Law 99-499). It was initially required of facilities in the manufacturing sector—Standard Industrial Classification (SIC) codes 20-39—that have 10 or more full-time employee equivalents and manufacture (including import), process, or otherwise use any TRI chemical in calendar year quantities greater than the established thresholds.

TRI reports have been estimated to cost businesses hundreds of millions of dollars annually, and additional costs are incurred from state and federal “piggyback” requirements. Data analysis by the Environmental Protection Agency (EPA) costs millions more dollars. Industry has expressed great concern about the cost in time and resources of preparing these reports, particularly reports involving no or minimal releases to the environment.

In 1988, the original reporting thresholds for manufacturing and processing were 25,000 pounds and the “otherwise use” threshold was 10,000 pounds. These thresholds were later modified for persistent, bioaccumulative, and toxic (PBT) chemicals. To reduce the burden of reporting small quantities up to 1,000 pounds, the original rule provided for range reporting instead of point estimates for certain sections of the Form R report.

In 1994, EPA amended TRI regulations to permit facilities with low levels of waste to report using a shorter Form A Certification Statement beginning in 1995. The Form A allows facilities that generate small quantities of chemical waste to file abbreviated annual reports, saving businesses millions of dollars every year. All other facilities continued to use the standard Form R.

Based on 2001 filings, Form A applies to only about 13 percent of current TRI reporting forms. A facility may use the Form A only if the total wastes do not exceed 500 pounds in a single year (less than two pounds per day). The facility must count all releases, all transfers for treatment, disposal, and amounts recycled on- or off-site, and amounts used for energy recovery. To file the Form A, the facility must also process, manufacture, or otherwise use less than one million pounds, the alternate reporting threshold amount that applies to the Form A universe of reporters. In the final rule, EPA considered alternate methods of calculating the annual reportable amount (ARA), alternate ARA amounts (for example, 1,000 and 2,000 pounds), and alternate reporting thresholds. The Form A provides the name of the chemical and

some facility identification information, but no information on the chemical's disposition (for example, air or water release).

The TRI program places a significant burden on small businesses in the covered industries. While the addition of Form A created a feasible option for some filers, it did not extend relief far enough. The 500-pound threshold for total production-related wastes excluded many filers with extremely small releases from using the simplified form. Moreover, by extending the reach of TRI with an expansion of covered industries and chemicals in 1997 and the designation of lead and lead compounds as PBT chemicals in 2001, the government dramatically increased the numbers of reports filed and of facilities required to report. Most filers under these program expansions reported significantly lower than average chemical releases, and most of the costs associated with the increased reporting fell on small businesses. Simple reforms to the TRI program would result in substantial cost savings to many filers with negligible effects on data quality.

A report by Jack Faucett Associates (JFA) in April 2004 identified simple but practical means to minimize the burden of TRI reporting on small businesses while maintaining the quality and utility of data that the program provides to the public. A significant number of reports show zero or minimal releases. The proposed options seek not only to maintain to the largest extent possible the percentage of aggregate data reported on Form R, but also to ensure that the public interest is served by seeking burden relief only for filers that release minimal amounts of chemical wastes. To balance cost reductions with maintaining data quality, this report looks at specific thresholds under various reporting change scenarios that simultaneously reduce costs and maintain the quality, utility, and integrity of TRI data to public users. Four simple reforms would result in substantial cost savings to filers with minimal effects on data quality:

- Eligibility for Form A could be expanded by increasing the existing annual reportable amount (sum of elements 8.1 through 8.7 on Form R) to 1,000, 2,000, or 5,000 pounds. As an alternative, the ARA could be redefined as a facility's routine releases (element 8.1 only) or its releases and transfers (the sum of elements 8.1, 8.6, and 8.7), and the redefined ARA set at 500, 1,000, 2,000, or 5,000 pounds. Millions of dollars and thousands of hours of reporting burden could be saved as facilities switch from Form R to Form A.
- Form A could be modified to provide range estimates of selected release and waste data now reported on Form R. This Enhanced Form A would decrease the reduction of information from the potential substitution of thousands of the longer Form Rs with the simpler Form As. Therefore, communities would continue to receive regular information about routine chemical releases and waste management practices at these facilities. Since range estimates are currently allowed on Form R, TRI filers and data users are accustomed to the practice. With the enhanced Form A, EPA should reinstate Form A for PBT reporters. In addition, EPA should reconsider allowing the *de minimis* concentration provision to apply to PBT reporters.
- A new Form NS could be created to allow facilities a cost-effective means to report no significant change in year-to-year activities that pertain to the TRI. A *de minimis* threshold would permit facilities with small on-site releases to file Form NS and avoid detailed annual reporting for sites that are of little public interest. All facilities affected by the TRI program, including those handling PBT chemicals, would benefit from Form NS. Facilities would be limited to four consecutive Form NSs for a particular chemical; they would need to file a Form R at least once every five years. Range reporting would be allowed in section 8, as well as sections 5 and 6 of Form R.

- Petroleum wholesalers (SIC 5171) and chemical wholesalers (SIC 5169) could be subject to a special small business reporting threshold based on the number of employees. This would eliminate a large number of TRI reports with insignificant chemical releases.

These reforms, if adopted, would merely alter the forms filed by facilities. They would not eliminate facilities from the TRI database. The proposals would allow the TRI program to operate more efficiently as it continues to provide a high-quality public service to the public, regulators, and industry.

The opinions and recommendations of the authors of this study do not necessarily reflect official policies of the SBA, the Office of Advocacy, or other agencies of the U.S. government. For more information, contact Kevin Bromberg at 202-205-6964 or at kevin.bromberg@sba.gov.