

COMMENTS

**on TOXICS RELEASE INVENTORY
BURDEN REDUCTION – PROPOSED RULE
(Docket Number TRI-2005-0073)**

By the National Association of Manufacturers

Submitted to the Environmental Protection Agency on
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**COMMENTS OF THE
NATIONAL ASSOCIATION OF MANUFACTURERS
to the
ENVIRONMENTAL PROTECTION AGENCY
regarding
DOCKET NUMBER TRI-2005-0073**

PROPOSED RULE – TOXICS RELEASE INVENTORY BURDEN REDUCTION

The National Association of Manufacturers (NAM) submits these comments in response to the Environmental Protection Agency's (EPA) proposed rule to streamline the Toxics Release Inventory (TRI) program. The agency published the proposed rule in the October 4, 2005 issue of the Federal Register at *70 Fed. Reg. 57822 et seq.* The NAM is the nation's largest industrial trade association representing small and large manufacturers in every industrial sector and in all 50 states. The TRI program affects a broad spectrum of the NAM membership.

The NAM's mission is to enhance the competitiveness of manufacturers and improve American living standards by shaping a legislative and regulatory environment conducive to U.S. economic growth. As a general matter, the NAM is supportive of EPA regulations that are designed to provide real net benefits to the public health, including the health of manufacturing workers, retirees and their families. Conversely, the NAM opposes regulations that add to the cost of doing business with nominal environmental and health benefits. When the EPA imposes regulations that actually add to the cost of doing business while demonstrating minimal gains pursuant to its mandates, the NAM believes that the EPA actually undermines its own mandate to promote environmental quality and public health. When the private sector is unnecessarily burdened with compliance costs, then there are fewer resources available to develop more and more sophisticated technology, which is necessary to meet environmental challenges. The NAM has been concerned that the EPA's Toxics Release Inventory program has imposed substantial compliance costs while gathering minimal or redundant data to inform the public of environmental risks. As a general matter, the NAM applauds the EPA's proposed Burden Reduction rule to streamline the program.

I. Background

The manufacturing sector is disproportionately impacted by compliance costs associated with pollution abatement. According to a 2003 study conducted by the Manufacturing Institute, external overhead costs related to pollution abatement compliance add approximately 7 percent to U.S. manufacturers' unit labor costs relative to their major foreign competitors. More specifically, as a percentage of output, American manufacturers spend considerably more on pollution abatement than do their competitors in Germany, Japan, France, Great Britain, Canada,

Mexico, China, South Korea and Taiwan. Accordingly, the NAM has a vested interest in the EPA's development of rules that address pollution abatement in a cost-effective manner. The TRI program is no exception to this fundamental principle of federal regulatory policy.

The NAM believes that the value of the TRI program is best preserved through the collection of necessary information at a minimal burden to reporting industries. While the NAM recognizes the importance of the TRI program in generating information for the public, we believe that the EPA can and should seek to continually improve the efficiency of the TRI program. The NAM appreciates the EPA's efforts to provide much needed burden relief to facilities reporting under TRI. We support the current proposal to expand the use of Form A, an abbreviated and streamlined reporting form for the release of toxics.

II. PBT Form A Eligibility Expansion

Expanded eligibility for Form A will provide relief to facilities with virtually insignificant releases of TRI chemicals and a subset of facilities with no releases of PBT substances.

NAM supports EPA's efforts to provide burden reduction to facilities that are currently required to file TRI Form R despite having zero releases of Persistent Bioaccumulative and Toxic (PBT) substances to the environment. EPA's proposal to expand Form A eligibility to facilities that process or use a PBT substance but do not release it to the environment will provide those facilities much needed burden relief. Clearly, facilities reporting zero releases are managing TRI chemicals such that there is no release, and therefore risk, to the environment or the public. These facilities are good environmental stewards that have been able to eliminate releases of PBT substances through recycling and other pollution prevention activities. By providing relief to facilities with no releases, this proposal is an effective burden reduction measure that will not only enhance the utility of the TRI program but reward facilities with high level environmental performance.

NAM supports EPA's efforts to provide burden relief through the use of Form A to PBT reporters. In the electronics and electrical equipment manufacturing sector (SIC 36), 1,171 Form Rs were filed for lead and lead compounds in reporting year 2003. Of those reports, 31% reported no release to the environment. Expanding Form A eligibility for zero PBT releases will help provide much needed burden relief to this group of facilities.

The very existence of a significant number of TRI reports for zero releases is indicative of the extent the TRI program fails to achieve its goals in an efficient and effective manor. TRI reporting is a significant burden. It is difficult to understand the reasons for continuing to impose the burden of filing Form R reports on facilities with no releases. NAM believes that facilities with zero releases should not be required to report under TRI since they have no releases to report. Understanding that may not be a currently viable option, NAM supports EPA's efforts to provide these facilities burden relief through use of Form A.

Allowing these zero release facilities to report using the less burdensome Form A does not present a significant loss of information. NAM is perplexed that certain stakeholders have stated that allowing facilities to report PBTs on Form A reduces the public's information about this class of chemicals. Under the current proposal, a facility only qualifies for Form A if it has no releases to the environment. Even then, the facility must submit the Form A including information on the facility location, the TRI chemical manufactured or used, the fact that it has zero releases, and a quantity range for the amount that is being recycled.

The NAM looks forward to the agency's second phase of burden reduction for alternative year reporting, which will further streamline the program and enhance its effectiveness. Alternate year reporting will not only provide relief to TRI reporters across the board, but it will also free up limited EPA resources enabling them to provide data users with a high quality public data in a more timely fashion.

Further, NAM disagrees with the comment that allowing facilities to use Form A somehow reduces the incentives to minimize waste generation. Form A eligibility for zero releasers would serve to encourage facility pollution prevention by rewarding facilities that eliminate the release of PBT substances.

PBT Reportable Amount

EPA's proposed definition for the PBT Reportable Amount (PRA) represents a commendable effort to balance the interests of zero release reporters who need burden relief with those who seek to retain information on waste management activities. However, NAM believes the current definition does not go far enough to provide burden relief to facilities that release nothing to the environment. Analysis of SIC 36 reports for lead and lead compounds for RY2003 indicate that under the proposed PRA, only 50% of facilities reporting zero releases would be eligible to use Form A. Further analysis shows that if the PRA were increased to 3,000 lbs, 89% would qualify for Form A burden relief. A 5000 lb PRA would provide relief to 92% of facilities with zero releases. NAM urges EPA to increase the PRA so that more zero release facilities would be eligible for Form A burden relief. Raising the PRA also serves to promote pollution prevention by rewarding facilities that minimize their waste through increased recycling.

Increase the PRA would have an insignificant effect on the amount of useful data collected. Analysis of the 2002 PBT TRI data performed by the Small Business Administration Office of Advocacy shows that raising the PRA threshold from 500 lbs to 5000 lbs would retain approximately 99.9% of the waste data currently reported. Therefore, raising the PRA is within EPA's regulatory authority under the Emergency Planning and Community Right to Know Act Section 313 (EPCRA) Section 313, which allows the agency to adjust reporting thresholds as long as they "obtain reporting on a substantial majority of total releases of the chemical at all facilities." NAM urges EPA to increase the PRA as it would provide relief to a significant number of facilities with no environmental releases while maintaining the integrity of the information being collected.

Non-PBT Form A Eligibility Expansion

NAM supports EPA's proposal to expand Form A eligibility by raising the Annual Reportable Amount (ARA) from 500 lbs to 5000 lbs for non-PBT substances. NAM believes this option has

significant potential for reducing the reporting burdens for a number of facilities which must undergo the annual burden of TRI reporting despite having very low releases of TRI chemicals to the environment. This type of focused relief would meet EPA's stated goals "to reduce burden associated with TRI reporting while at the same time continuing to provide valuable information to the public consistent with the goals and statutory requirements of the TRI program." Additionally, allowing facilities reporting minimal releases to utilize Form A could improve the quality of the TRI database by focusing on releases that represent a potential risk to the public.

According to EPA analysis detailed in the proposal, increasing the Form A threshold to 5,000 lbs would result in minimal reduction of TRI release data. In fact, 99.9% of the TRI information would still be collected. TRI data users would still have information on the facility location, type of chemical used and reporting facility's total releases and waste management quantities in that it does not exceed 5000 lbs. As demonstrated by EPA's analysis, a higher reporting threshold, as proposed, would meet the statutory requirement that EPA may revise thresholds only to the extent that the revised threshold obtains reporting on a substantial majority of total releases of the chemical at all facilities subject to the EPCRA Section 313.

While NAM supports EPA's efforts to expand Form A eligibility, we continue to urge EPA to revise its ARA criterion to reflect only reported releases to the environment and not waste management activities such as recycling and energy recovery. EPA's current proposal to increase the Form A reportable amount to 5000 lbs will help some facilities with small releases and recycling quantities below the proposed ARA but it does not address the larger issue that these materials which are recycled and not released to the environment should not be included in TRI reporting thresholds for Form A. Even with the higher proposed threshold, inclusion of these recycled materials in the Form A reportable amount results in unnecessarily barring many facilities from burden relief offered by Form A reporting. The original Congressional intent for TRI was to provide communities with information on toxic releases. The inclusion of recycling data in TRI reporting was added later under the Pollution Prevention Act (PPA). While the collection of waste management data may be informative, including it in the ARA, which was not required under the PPA, has had the negative effect of punishing facilities that recycle by not allowing them to take advantage of Form A burden reductions. Changing the definition of "annual reportable amount" to exclude materials that are reclaimed and recycled would provide incentive for pollution prevention activities.

Form A Usage and Needed Enforcement Statement

NAM continues to urge EPA to address issues related to the enforcement of facilities who, in good faith, incorrectly file a Form A instead of a Form R. As discussed by NAM and other commenters during the online stakeholder dialog, facilities believe that use of Form A leaves them open to EPA enforcement for failure to file if it is later determined that they were not eligible to report under Form A. EPA's failure to provide clear indication of the agency's enforcement policy only serves to limit the number of facilities taking advantage of burden reduction through the Form A option. EPA's current policy statement is confusing and not readily available to TRI reporting facilities. To encourage broader use of Form A, EPA should clearly state in the preamble to the final rule that facilities who in good faith incorrectly file Form A will face enforcement for incorrect filing, not failure to report.

Conclusions

NAM appreciates EPA's proposed expansion of Form A eligibility, particularly to PBT substances such as lead and lead compounds. The PBT provision will provide burden relief to facilities that process or use PBT substances but do not release anything to the environment. Furthermore, NAM is supportive of EPA's alternative year reporting option as it would provide significant relief to TRI reporters and enhance the use of the collected data. We look forward to working with the agency during its stakeholder process.

NAM urges EPA to address the Form A enforcement issue and increase the PBT reportable amount so that many more TRI reporters with little or no releases to environment could receive Form A burden relief.

Once again, NAM appreciates the opportunity to comment on the agency's TRI Burden Reduction Proposed Rule and looks forward to working with the EPA to implement these improvements to the TRI Program.

Sincerely,

VI. Conclusion

In summary, the NAM strongly urges the EPA initiate no changes to the final CAMR based on points raised by petitioners within the Reconsideration Notice. The current rule is based on the best available science. For more information related to the NAM's position on the CAMR and the regulation of mercury in general, please contact Bryan Brendle at (202) 637-3176 or bbrendle@nam.org.