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Office of the General Counsel

B-276901

May 15, 1997

The Honorable John H. Chafee  
Chairman  
The Honorable Max Baucus  
Ranking Minority Member  
Committee on Environment and Public Works  
United States Senate

The Honorable Thomas J. Bliley, Jr.  
Chairman  
The Honorable John D. Dingell  
Ranking Minority Member  
Committee on Commerce  
House of Representatives

Subject: Environmental Protection Agency: Addition of Facilities in Certain Industry Sectors; Revised Interpretation of Otherwise Use; Toxic Release Inventory; Community Right-to-Know

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Environmental Protection Agency (EPA), entitled "Addition of Facilities in Certain Industry Sectors; Revised Interpretation of Otherwise Use; Toxic Release Inventory; Community Right-to-Know" (RIN: 2070-AC71). We received the rule on April 29, 1997. It was published in the Federal Register as a final rule on May 1, 1997. 62 Fed. Reg. 23834.

The final rule adds seven industry groups subject to the reporting requirements of section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), 42 U.S.C. §11023, and section 6607 of the Pollution Prevention Act of 1990 (PPA), 42 U.S.C. § 13106, and in addition revises the interpretation of the phrase "otherwise use" which is undefined in the acts but is one of three activities

requiring reporting.<sup>1</sup> The information obtained from these reports becomes part of the publically available data base known as the Toxic Release Inventory or TRI. The TRI's basic purpose is to inform the public of chemical hazards in their areas which in turn permits communities to respond to chemical spills and other emergencies.<sup>2</sup>

Enclosed is our assessment of the EPA's compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. Our review indicates that the EPA complied with the applicable requirements.

We are also enclosing a copy of materials which were forwarded to our Office from an industry association regarding the rule.

If you have any questions about this report, please contact Alan Zuckerman, Assistant General Counsel, at (202) 512-4586. The official responsible for GAO evaluation work relating to the Environmental Protection Agency is Peter Guerrero, Director, Environmental Protection Issues. Mr. Guerrero can be reached at (202) 512-6111.

Robert P. Murphy  
General Counsel

Enclosures - 2

cc: Thomas E. Kelly  
Director, Office of Regulatory  
Management and Information  
Environmental Protection Agency

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<sup>1</sup>42 U.S.C § 11023(a) provides that "(t)he owner or operator of a facility subject to the requirements of this section shall complete a toxic chemical release form . . . for each toxic chemical listed . . . that was manufactured, processed, *or otherwise used* in quantities exceeding the toxic chemical threshold quantity established . . . ." Likewise, 42 U.S.C. § 11023(b)(2) provides that the "Administrator on his own motion or at the request of a Governor of a State . . . may apply the requirements of this section to . . . any particular facility that manufactures, processes, *or otherwise uses*" a listed toxic chemical under the conditions stated in the statute.

<sup>2</sup>A detailed discussion of TRI is available at EPA's internet site--  
<http://www.epa.gov/opptintr/tri/>.

ANALYSIS UNDER 5 U.S.C. § 801(a)(1)(B)(i)-(iv) OF A MAJOR RULE  
ISSUED BY  
THE ENVIRONMENTAL PROTECTION AGENCY  
ENTITLED  
"ADDITION OF FACILITIES IN CERTAIN INDUSTRY SECTORS; REVISED  
INTERPRETATION OF OTHERWISE USE; TOXIC RELEASE INVENTORY;  
COMMUNITY RIGHT-TO-KNOW"  
(RIN: 2070-AC71)

(i) Cost-benefit analysis

The EPA has included a detailed economic analysis in its submission to GAO, setting forth and assessing the costs, benefits, and associated impacts of the rule. The preamble to the rule contains summaries of the aforementioned assessments. Included in the analysis is what can best be described as the social impact and costs of toxic chemical releases and other waste management activities and the value of the information to society that will be available from the reports from the industries added by the rule.

EPA also has concluded that although there is some overlap between other reporting requirements for environmental releases and other management activities mandated by EPCRA, PPA, and other statutes, the reporting requirements of this rule do not conflict because of the differences in information collected, entities covered, reporting frequencies, how the data are reported, and so forth.

The analysis indicates that 6,300 firms submitting 42,500 reports annually will be added by the rule to the 360 facilities in the existing manufacturing sector submitting 3,600 reports for a total compliance cost of \$226 million for the first year, declining to \$143 million in subsequent years. The difference in cost for the first and subsequent years appears to be based on EPA's estimate that each task required including compliance determinations for the new facilities covered, the overall affect of the modified interpretation of "otherwise use," rule familiarization, and report preparation will be substantially higher during the first year.

Benefits are not monetarily quantified because of the lack of any existing methodology to do so. EPA notes that the benefits to be derived are basically those to be achieved directly through the knowledge about the use and disposition of toxic chemicals and the changes in behavior that may result from the information reported to the TRI.

(ii) Agency actions relevant to the Regulatory Flexibility Act, 5 U.S.C. §§ 603-605, 607 and 609

Section 603 - Initial Regulatory Flexibility Analysis

EPA published the Initial Regulatory Flexibility Analysis (IRFA) as required by § 603. 61 Fed. Reg. 33612, June 27, 1996. The IRFA explained that it defined small business as any firm having 10-49 employees rather than the under 500 employee criteria used by the SBA. Using this criteria the agency estimated that 4,600 of the 6,400 firms affected by the rule would be small businesses and that approximately 15,000 small entities in the industry groups affected by the proposed rule would not be affected as they employed less than 10 persons. The IRFA also considered various alternatives to the proposed rule, including different reporting requirements and reporting thresholds.

Section 604 - Final Regulatory Flexibility Analysis

EPA analyzed the potential impact on small entities by the Standard Industrial Classification (SIC) code and concluded that there would not be a significant economic impact on a substantial number of small entities. Nonetheless, the agency prepared an extensive analysis of the impact on small entities. This assessment is based on an estimate of 4,800 businesses that will be affected, 3,600 of which can be categorized as small by SBA SIC code. EPA's analysis indicates that the first year, 60 percent (2,895) of the small entities will expend less than 1 percent of their annual revenue for the rule's compliance costs, 12 percent (569) will expend between 1 percent and 3 percent, and 119 or 2 percent will expend 3 percent or more of their annual revenues for compliance. These figures drop significantly during the second and ensuing years, e.g., 70 percent (3,353) less than 1 percent, 4 percent (171) between 1 percent and 3 percent, and only 59 or 1 percent with an economic impact of 3 percent or greater. EPA also estimates that 49 public utilities owned by 41 municipalities will be affected by the rule, and of that total, the 18 small governmental entities (populations under 50,000) affected will expend less than 1 percent of their annual revenues for compliance.

(iii) Agency actions relevant to sections 202-205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532-1535

The EPA has included an Unfunded Mandates Reform Act Statement with its report to this Office. That statement declares that the rule will not result in expenditure to state, local, or tribal governments<sup>3</sup> in the aggregate of \$100 million or more in

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<sup>3</sup>The entities affected are 49 publically owned electric utilities with combined annual expenditures estimated by EPA to be \$2,065,000 the first year and \$1,342,000 thereafter.

any year, but that the rule "may" result in private sector expenditures of \$100 million or more annually (\$226 million the first year and \$143 million thereafter). The EPA avers that it has not identified any sources of federal financial assistance to defray the state, local, or tribal expenditures under the rule or other federal resources available to carry out the intergovernmental mandate included in the rule. EPA claims that because the expenditures by publically owned electric utilities are so modest the rule does not impose a "significant" federal intergovernmental mandate. In any event, EPA claims to have "engaged in a number of efforts to consult with other units of government" as described in the proposed rule, 61 Fed. Reg. 33587 at 33615, and that it received and considered comments on the issue as discussed in the preamble to the final rule, 62 Fed. Reg. 23834 at 23864.

(iv) Other relevant information or requirements under acts and executive orders

Administrative Procedure Act, 5 U.S.C. §§ 551 et seq.

The rules were promulgated using the notice and comment procedures of 5 U.S.C. § 553. A notice of proposed rulemaking was published on June 27, 1996, 61 Fed. Reg. 33587, and comments were requested. EPA initially provided for a 60-day comment period but then granted an additional 30 days for comments from interested parties. EPA received 2,715 comments<sup>4</sup> at the close of the public comment period on September 25, 1996. Comments were considered and discussed in the preamble.

Paperwork Reduction Act, 44 U.S.C. §§ 3501-3520

The rule contains information collection requirements which are subject to the Paperwork Reduction Act. EPA submitted the requirements to OMB which approved them as an extension of the currently approved information requirements. OMB approved the requirements as an addendum to the ICR approved under OMB Control No. 2070-0093. The OMB control number for this action is 2070-0157.

Statutory authorization for the rule

The EPA cites sections 313(b) and 328 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), 42 U.S.C. §§11023(b) and 11048 as the statutory authority for the issuance of this rule.

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<sup>4</sup>Industry provided 470 comments, 86 were received from trade associations, 60 from environmental groups, 1,875 from private citizens, 5 from other federal agencies, 60 from state agencies, 108 from public interest groups, 18 from labor groups, 14 from universities, and 36 from associations.

Executive Order No. 12866

The OMB reviewed the rule under Executive Order No. 12866 as a "significant regulatory action." The agency reports that any substantive comments or changes made during the review have been incorporated into the final rule.