United States Government Accountability Office

GAO

Report to Congressional Requesters

November 2007

TOXIC CHEMICAL RELEASES

EPA Actions Could Reduce Environmental Information Available to Many Communities

GAO-08-128

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EPA Actions Could Reduce Environmental Information Available to Many Communities

GAO Accountability · Integrity · Reliability

Highlights

Highlights of GAO-08-128, a report to congressional requesters

Why GAO Did This Study

Federal law requires certain facilities that manufacture, process, or use any of 581 toxic chemicals to report annually to EPA and their state on the amount of those chemicals released into the air, water, or soil. It also requires EPA to make this information publicly available through the Toxics Release Inventory (TRI) database.

Facilities must either (1) submit a detailed TRI Form R for each designated chemical used in excess of certain thresholds or (2) file a simpler Form A certifying that they need not do so. To reduce companies' burden, EPA issued a December 2006 rule to expand Form A eligibility for certain facilities and chemicals. GAO analyzed (1) how EPA and others use TRI data, (2) whether EPA followed internal guidelines in developing its rule, (3) the rule's impact on information available to the public, and (4) the burden reduction from EPA's changes.

What GAO Recommends

GAO provided the draft report to EPA and excerpts to the Office of Management and Budget (OMB), for comment. EPA rejected a recommendation in the draft report that it more fully and adequately evaluate the costs and benefits from increased Form A use, and so GAO now states that Congress should consider legislation to reverse EPA's expansion of Form A eligibility. OMB questioned GAO's characterization of its role in approving TRI data collections and in reviewing EPA's TRI rule.

To view the full product, including the scope and methodology, click on GAO-08-128. To view the survey results, click on GAO-08-129SP. For more information, contact John Stephenson at (202) 512-3841 or stephensonj@gao.gov.

What GAO Found

TRI data are used widely by nearly all Environmental Protection Agency (EPA) program offices in carrying out their missions, and by other federal agencies, the states, and the public at large. The Internal Revenue Service, for example, uses the data to identify companies that release chlorofluorocarbons (chemicals that deplete the earth's ozone layer) to enforce a tax to help phase out their use. States use TRI data, among other things, to design pollution prevention initiatives, to calculate fees on emitting facilities, and to assist in emergency planning. Key users among the public include researchers, who use TRI data to assess environmental policies and strategies for pollution reduction, and individual citizens and local advocacy groups, who use it to learn about the type and quantity of toxic chemicals released in their communities.

EPA did not follow key steps in agency guidelines designed to ensure that it conducts appropriate scientific, economic, and policy analyses and receives adequate input from relevant program offices before finalizing a major rule. This occurred, in part, because EPA expedited the rule-making process in an effort to meet a commitment to the Office of Management & Budget (OMB) to provide burden reduction by the end of 2006. The schedule did not allow it to meet the guideline's provisions to complete economic analyses; evaluate the costs and benefits of the changes; or seek adequate input from EPA program offices that rely heavily on TRI data. For example, although EPA held a Final Agency Review for program offices to state their position on the proposed rule, the review package did not include the burden reduction option, and supporting analysis, that was proposed and adopted.

GAO concluded that, while EPA estimated that its rule would affect reporting on less than 1 percent of the total release pounds nationwide, this aggregate national estimate masked the disproportionately large impact the rule would have on individual communities across the country. GAO's analysis indicated that EPA's rule would allow more than 3,500 facilities to no longer report detailed information about their toxic chemical releases and waste management practices. As a result, more than 22,000 of the nearly 90,000 TRI reports could no longer be available to hundreds of communities in states throughout the country. In addition, many commenters including the attorneys general of 12 states and EPA's Science Advisory Board stated that the changes will significantly reduce the amount of useful TRI information.

EPA's estimated savings from the reduced reporting burden associated with the TRI rule—3 percent of total annual burden hours, worth about $6 million annually—are likely overstated. EPA's projected savings are based on OMB-approved estimates of burden hours associated with completing Form R and Form A, but these estimates are based on outdated data. EPA's more recent engineering estimates—developed from a systematic examination of the amount of time needed to collect and report the data on Form R and Form A—suggest a lower overall burden associated with current TRI reporting and, consequently, 25 percent lower burden savings from the new rule.

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Abbreviations

ADP	Action Development Process
CAS	Chemical Abstracts Service
e-FDR	Electronic Facility Data Release
EPA	Environmental Protection Agency
EPCRA	Emergency Planning and Community Right-to-Know Act of 1986
Form A	Form A Certification Statement
Form R	Form R report
GIS	geographic information system
ICR	Information Collection Request
IRIS	Integrated Risk Information System
IRS	Internal Revenue Service
NAICS	North American Industry Classification System
NGO	non-governmental organization
NSC	No Significant Change
OEI	Office of Environmental Information
OMB	Office of Management and Budget
OPEI	Office of Policy, Economics, and Innovation
PBT	Persistent Bioaccumulative Toxic
POTW	Publicly Owned Treatment Works
PPA	Pollution Prevention Act of 1990
PRA	Paperwork Reduction Act
RCRA	Resource Conservation and Recovery Act
RSEI	Risk-Screening Environmental Indicators
RTK Net	Right-to-Know Network
SAB	Science Advisory Board
TRI	Toxics Release Inventory
TRI-ME	Toxics Release Inventory–Made Easy

GAO
Accountability * Integrity * Reliability

United States Government Accountability Office
Washington, DC 20548

November 30, 2007

The Honorable Barbara Boxer
Chairman, Committee on Environment and Public Works
United States Senate

The Honorable Frank R. Lautenberg
United States Senate

The Honorable Olympia J. Snowe
United States Senate

Each year, U.S. industry uses billions of pounds of toxic chemicals to produce the nation's goods and services. The release of these chemicals during transport, storage, use, or disposal as waste, can potentially harm human health and the environment. In 1984, a catastrophic accident caused the release of methyl isocyanate—a toxic chemical used to make pesticides—at a Union Carbide plant in Bhopal, India, killing thousands of people, injuring many others, and displacing many more from their homes and businesses. One month later, it was disclosed that the same chemical had leaked at least 28 times from a similar Union Carbide facility in Institute, West Virginia. Eight months later, 3,800 pounds of chemicals again leaked from the West Virginia facility, sending dozens of injured people to local hospitals. In the wake of these events, the Congress passed the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) to inform citizens about releases of toxic chemicals to the environment in their communities.

Certain facilities that manufacture, process, or otherwise use any of 581 individual chemicals and 30 chemical categories must report annually to the Environmental Protection Agency (EPA) and their respective state, the amount of those chemicals that they released to air, soil, or water. EPCRA further requires EPA to make this information available to the public, which the agency does electronically through the Toxics Release Inventory (TRI) database. The Pollution Prevention Act of 1990 requires facilities that report to the TRI to also provide certain information about their waste management practices, including amounts of chemicals recycled or treated. The purpose of making this information available is to inform citizens about releases of toxic chemicals to the environment; to assist governmental agencies, researchers, and other persons in the conduct of research and data gathering; and to aid in the development of

appropriate regulations, guidelines, and standards. Using EPA's Web site, the public and others can search the TRI for information by state, county, zip code, chemical, and type of facility, among other options.

Facilities must submit a detailed Form R report (Form R) for each designated chemical that they manufactured, processed, and/or otherwise used in excess of certain thresholds, or certify that they are not subject to the reporting requirement by submitting a brief Form A Certification Statement (Form A). Form A captures general information about the facility, such as address, parent company, industry type, and basic information about the chemical or chemicals it released. Form R includes the same information, but also requires facilities to provide details about the quantity of the chemical they disposed or released on-site to the air, water, land, and injected underground, or transferred for disposal or release off-site. Since 1995, EPA has allowed certain facilities to submit a Form A in lieu of Form R if they release or manage no more than 500 pounds of any chemical that is not considered to be a persistent bioaccumulative toxic (PBT) chemical. PBTs are toxic chemicals such as lead, mercury, and dioxins that remain in the environment for long periods of time, are not readily destroyed, and accumulate in body tissue.

During the past several years, the Office of Management and Budget (OMB) has encouraged EPA to engage in a multiphased effort to reduce the reporting burden on industry, particularly small business, by revising TRI reporting regulations to eliminate redundant items on Form A and Form R and to expand Form A eligibility. On December 22, 2006, EPA issued the TRI Burden Reduction Final Rule, an action that expanded Form A eligibility for certain facilities by raising the release threshold from 500 pounds to 2,000 pounds for any non-PBT chemical.[1] The rule also allows, for the first time, certain facilities to use Form A to report nondioxin PBT chemicals, provided that the facilities do not release the

[1]Specifically, the rule expanded non-PBT chemical eligibility for Form A by raising the eligibility threshold to 5,000 pounds of total annual waste management (i.e., releases, recycling, energy recovery, and treatment for destruction) provided total annual releases of the non-PBT chemical comprise no more than 2,000 pounds of the 5,000-pound total waste management limit and provided the facility does not exceed a one-million-pound manufacture, process, or otherwise use activity threshold for the specific non-PBT chemical.

chemicals into the environment.[2] The burden reduction rule goes into effect for reporting 2006 releases.

EPA's Action Development Process is internal guidance that outlines a series of steps that the agency is to follow when it develops actions such as policy statements, risk assessments, and regulations—including the TRI Burden Reduction Rule. The purpose of the process is to ensure that scientific, economic, and policy issues are adequately addressed at the appropriate stages of action development and to ensure adequate stakeholder participation across EPA's offices (e.g., Office of Air, Office of Water) until the final action is completed. Steps in the process include, among others, (1) chartering a workgroup comprised of representatives from various EPA headquarters and regional offices to develop the action; (2) preparing and executing an analytic blueprint, which identified the analyses needed to support the action; and (3) conducting final agency review by senior EPA management.

In February 2007, we testified on our preliminary assessment of the process EPA followed in developing the TRI Burden Reduction Rule and its impact on TRI data.[3] As you requested, this report provides the final results of our work on (1) how EPA and other federal agencies, the states, and the public use the TRI; (2) the extent to which EPA followed its action development guidelines in developing the burden reduction rule; (3) the impact of the changed reporting requirements on the amount of environmental information available to the public; and (4) the burden reduction that is likely to result from EPA's changes.

To address these four objectives, we analyzed documents pertaining to the development of the TRI Burden Reduction Rule (including stakeholder comments in the public docket for the proposed rule), EPA's report on uses of TRI data, annual TRI public data release reports, and EPA guidance for facilities reporting to TRI. For the first objective, we reviewed documentation from EPA, other federal agencies, the states,

[2]Specifically, this rule allows the use of Form A for PBT chemicals, except dioxin and dioxin-like compounds, when total annual releases of a PBT chemical are zero and the total annual amount of the PBT chemical recycled, combusted for energy, and treated for destruction does not exceed 500 pounds provided the facility does not exceed a 1-million-pound manufacture, process, or otherwise use activity threshold for the specific PBT chemical.

[3]GAO, *Environmental Information: EPA Actions Could Reduce the Availability of Environmental Information to the Public*, GAO-07-464T (Washington, D.C.: Feb. 6, 2007).

nongovernmental organizations, and businesses about their uses of TRI data. We obtained further information from states through a Web-based survey of state TRI coordinators that achieved 100 percent response from the 50 states and the District of Columbia. This report does not contain all the results from the survey. The survey and a more complete tabulation of the results can be viewed at GAO-08-129SP. For the second objective, we interviewed EPA officials who served on the TRI workgroup that developed the TRI rule and reviewed internal EPA documents that detailed the workgroup's process and EPA's decisions. For the third objective, we used 2005 TRI data to estimate the impact of changes to the TRI reporting requirements on the information provided by facilities about their chemical releases. We performed a reliability assessment of the data we analyzed and determined that the data were sufficiently reliable for the purposes of this report. For the fourth objective, we reviewed EPA's economic analysis of the costs and impacts of expanding eligibility for Form A and other relevant documents, and we interviewed EPA officials about their burden reduction analyses. A more detailed discussion of our scope and methodology is included in appendix I. We conducted our work from August 2006 to September 2007 in accordance with generally accepted government auditing standards.

Results in Brief

The TRI is used widely by EPA and other federal agencies, the states, and the public for a variety of purposes. Nearly all of EPA's program offices depend on TRI data to inform their decision making about toxic releases. For example, EPA's Office of Prevention, Pesticides and Toxic Substances used TRI data to develop its Risk-Screening Environmental Indicators (RSEI) model, which incorporates detailed facility data from the TRI, toxicity information from EPA's Integrated Risk Information System (also known as IRIS), population data from the U.S. Census, and other EPA data to develop human health hazard and risk-related perspectives on long-term (chronic) exposures to TRI chemicals. Many other federal agencies also use the TRI. For example, the Internal Revenue Service (IRS) uses TRI data to identify companies that release chlorofluorocarbons (chemicals that deplete the earth's ozone layer) to enforce a tax to help phase out their use. In addition, state TRI coordinators reported that their states use the TRI to carry out a variety of pollution prevention initiatives, assess fees on facilities, and assist with emergency preparedness functions, among other uses. The public also uses the TRI for a variety of activities. For example, researchers use TRI data to assess environmental policies and strategies for pollution reduction, and investment companies use the data to determine socially-responsible investment options. Individual citizens and local advocacy organizations also use TRI data to learn about

the type and quantity of toxic chemicals used and released in their communities.

When developing the TRI Burden Reduction Rule, EPA did not follow several important steps from its Action Development Process—guidelines designed to ensure that the agency conducts appropriate analyses and receives adequate input before the rule is finalized. According to EPA documents that we reviewed and program officials who we interviewed, in mid-2006, senior EPA management directed inclusion of a burden reduction option—a 10-fold increase in eligibility for reporting non-PBT chemicals on Form A—in response to direction from OMB. The TRI workgroup that was charged with developing the rule had previously dropped the non-PBT option from consideration because of its impact on the TRI and, consequently, had not conducted an economic analysis to assess its costs and benefits. Those documents also showed that the EPA Administrator expedited the process in order to meet a commitment to OMB to provide burden reduction by the end of December 2006. The expedited schedule did not provide time for EPA to complete the economic analyses necessary to evaluate the costs and benefits of the option or request input from the EPA program offices that rely on the TRI data for decision making. Specifically, although EPA held a Final Agency Review for program offices to state their position on the proposed rule, the review package that we viewed did not include the non-PBT option for their review and comment. These deviations from EPA's rule-development process resulted in inadequate justification for the proposed rule. As a result, a substantial majority of public comments expressed opposition to EPA's rule, whereas few commenters supported the rule. EPA finalized the rule in December 2006 with a fourfold increase in Form A eligibility threshold—allowing facilities to use it for releases up to 2,000 pounds of a non-PBT toxic chemical.

Our analysis of the latest TRI data shows that, by increasing the number of facilities that may use Form A, the TRI Burden Reduction Rule could significantly reduce environmental information available to the public on dozens of toxic chemicals released from thousands of facilities across the country. EPA estimated that expanding Form A eligibility would eliminate detailed reports for less than 1 percent of the total release pounds reported annually to the TRI. Therefore, the agency concluded that the changes will not compromise the usefulness of the TRI to the public. However, EPA's estimate of the impact in terms of national-level aggregate pounds masks the impact on important toxic chemical information available to many individual communities and states. We analyzed the impact of EPA's new Form A thresholds at the local level and found they

would allow more than 3,500 facilities currently submitting Form R to submit Form A instead. As a result, detailed information about toxic chemical releases and waste management practices from more than 22,000 of the nearly 79,000 Form Rs could no longer be available to communities throughout the country. We found that Alaska, California, Connecticut, Hawaii, Massachusetts, New Jersey, and Rhode Island could receive up to one-third fewer detailed reports if eligible facilities opt to begin using Form A instead of Form R. As a result, those states and others may no longer receive detailed information for a number of chemicals, ranging from 3 chemicals in South Dakota to 60 in Georgia. Finally, we estimated that as many as 3,565 facilities would no longer have to report any specific quantitative information about their chemical releases and other waste management practices to the TRI.

EPA's estimated savings from the reduced reporting burden associated with the TRI rule—3 percent of total annual burden hours, worth about $6 million annually—are likely overstated. EPA's estimated savings from the new rule are based on OMB-approved estimates of total burden hours associated with completing Form R and Form A that are based on outdated and unreliable data. EPA's more recent engineering estimates—developed from a systematic examination of the amount of time needed to collect and report each data element on Form R and Form A—suggest a significantly lower overall burden associated with current TRI reporting and, consequently, about 25 percent lower burden savings from the new rule. In addition, the OMB-approved burden estimates do not give EPA credit for burden reduction efforts already completed or under way—efforts that, taken together, go further to reduce reporting burden than the TRI Burden Reduction Rule, and which do not reduce toxic release information to the public. For example, EPA estimated that its Toxics Release Inventory–Made Easy (TRI-ME) software, which helps facilities determine TRI requirements and submit forms electronically, has reduced the burden associated with reporting by 15 percent without reducing the amount of information available to the public. Similarly, EPA's Central Data Exchange, a computer system that receives electronic submissions from facilities and disseminates them to participating states automatically, virtually eliminates time-consuming handling, coding, and reconciling of TRI forms at the federal and state levels, and thereby reduces the number of errors that facilities later have to correct.

In a draft of this report, we recommended that EPA thoroughly evaluate the costs and benefits anticipated to communities and reporting industries from increased use of TRI Form A and report the agency's findings to relevant congressional committees within 30 days, along with its

determination as to whether it will reconsider the TRI rulemaking. In commenting on the draft, EPA's Assistant Administrator for Environmental Information and Chief Information Officer disagreed with our recommendation regarding the need for such an analysis and determination, noting that EPA believes that all appropriate and necessary analyses were conducted in the rulemaking process. Because EPA did not agree to implement the recommendation, and in light of the significant problems with the TRI rule that we identified in this report, we believe the Congress should consider legislation specifically addressing EPA's expansion of Form A eligibility. EPA's letter and our detailed response to it are contained in appendix IV. EPA also provided technical comments, which we have incorporated into this report, as appropriate.

We also provided excerpts of the draft report that discuss OMB's role in EPA's development of the TRI Burden Reduction Rule. In commenting on the excerpts, OMB's Deputy Administrator of Information and Regulatory Affairs raised concerns related to our characterization of OMB's role in reviewing EPA's burden estimates for the TRI information collections and OMB's role in EPA's decision to include a burden reduction option to raise the Form A eligibility threshold in the rule. We acknowledge OMB's concerns, and have made minor clarifications in the report as appropriate. However, no new information was provided by OMB that changes the findings, conclusions, or recommendations. OMB's letter and our detailed response to it are contained in appendix V.

Background

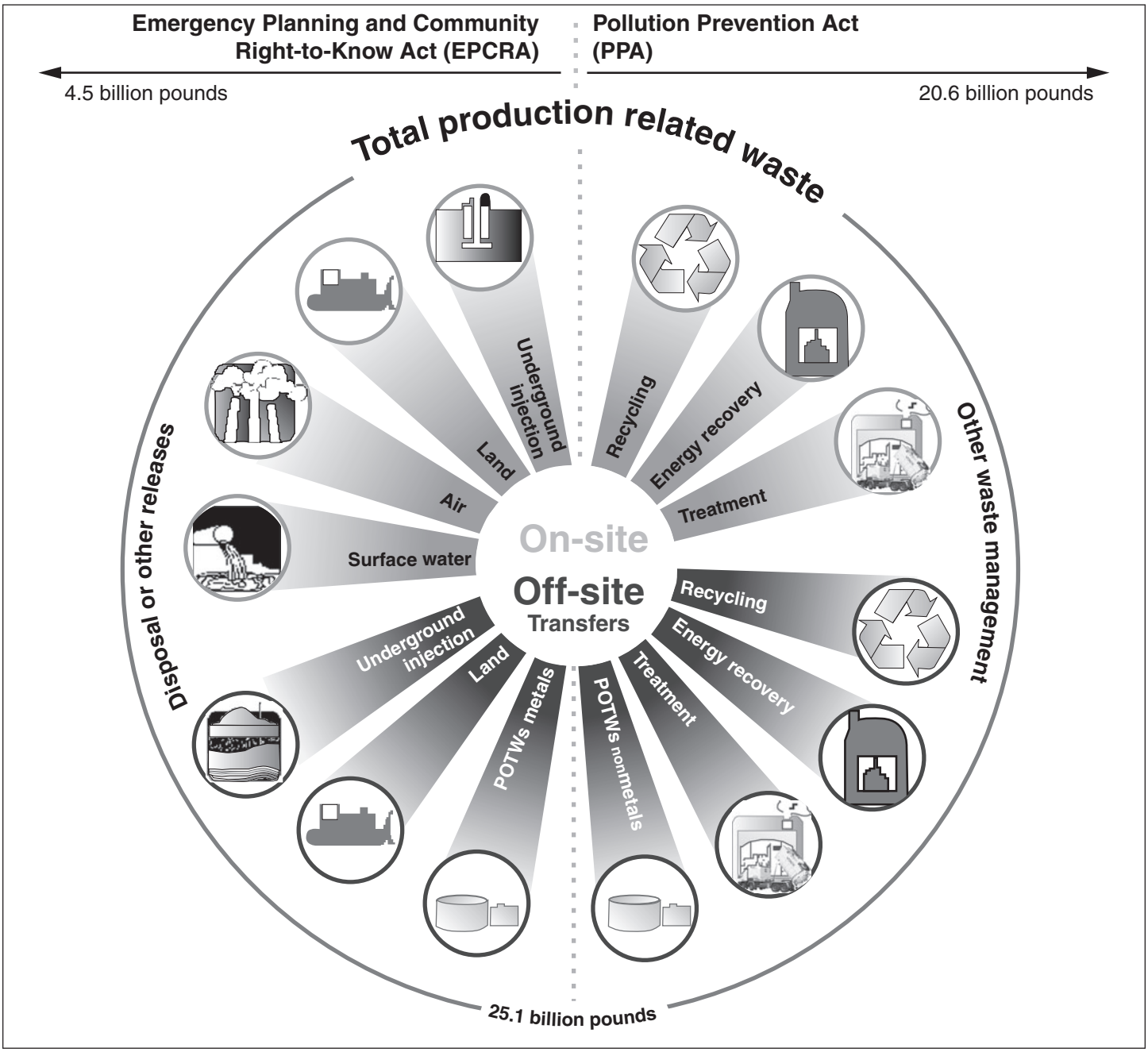
In 1984, a catastrophic accident caused the release of methyl isocyanate—a toxic chemical used to make pesticides—at a Union Carbide plant in Bhopal, India, killing approximately 4,000 people, injuring thousands of others, and displacing many more from their homes and businesses. One month later, it was disclosed that the same chemical had leaked at least 28 times from a similar Union Carbide facility in Institute, West Virginia. Eight months later, 3,800 pounds of chemicals again leaked from the West Virginia facility, sending dozens of injured people to local hospitals. In the wake of these events, the Congress passed EPCRA.

Among other things, EPCRA provides individuals and communities with access to information regarding chemical releases in their communities. Specifically, Section 313 generally requires certain facilities that manufacture, process, or otherwise use any of 581 individual chemicals, and 30 additional chemical categories, to report annually the amount of those chemicals that they released to the environment and whether they were released into the air, water, or soil.

Owners of facilities that are subject to EPCRA comply with its reporting requirements by submitting an annual Form R to EPA and the state in which they are located for each TRI-listed chemical that they manufactured, processed, and/or otherwise used in excess of certain thresholds during the previous calendar year. These reports must be submitted on or before July 1 of the following year. Form R captures information about facility identity, such as address, parent company, industry type, and detailed information about the toxic chemical, such as quantity of the chemical disposed or released on-site to air, water, and land or injected underground, or transferred off-site for release or disposal. This information is labeled as "Disposal or Other Releases" on the left half of figure 1. In 2005, facilities reported a total of 4.5 billion pounds of disposal or other releases on Form R.

In the Pollution Prevention Act of 1990 (PPA), the Congress declared that (1) pollution should be prevented or reduced at the source whenever feasible, (2) pollution that cannot be prevented should be recycled in an environmentally safe manner whenever feasible, (3) pollution that cannot be prevented or recycled should be treated in an environmentally safe manner whenever feasible, and (4) disposal or other release into the environment should be employed only as a last resort and should be conducted in an environmentally safe manner. Consequently, beginning with reports for calendar year 1991, EPA expanded TRI to require facilities to report about their efforts to reduce pollution at its source, including the quantities of TRI chemicals they manage through other waste management activities such as recycling, energy recovery, or treatment. In 2005, facilities reported 20.1 billion pounds of "Other Waste Management," as shown on the right half of figure 1.

Figure 1: Summary of Information Reported on TRI Form R



Sources: GAO based on 2005 EPA TRI data and Art Explosion (clip art).

Beginning in 1995, EPA allowed facilities to use a two-page Form A Certification Statement (Form A) to certify that they are not subject to Form R reporting for a given chemical provided that they (1) did not release more than 500 total pounds that year and (2) did not manufacture, process, or otherwise use more than 1 million total pounds of the chemical.[4] Form A includes general information identifying the facility and the chemical(s) being reported but does not contain details about the specific quantities of chemicals released or otherwise managed as waste. EPA considers Form A to be a range report, indicating that a facility's chemical release was between 0 pounds and the maximum allowable amount. For the purpose of representing range report amounts in the TRI database, EPA uses the midpoint of the allowable range. Therefore, until reporting year 2006, the midpoint of the Form A range was 250 pounds. Under EPA's TRI Burden Reduction Rule, the midpoint became 1,000 pounds for non-PBT chemicals.

EPCRA requires EPA to make toxic chemical release information available to the public, and EPA compiles the reports and stores them in a national database that can be accessed on the agency's Web site.[5] In addition, about 3 months after facility TRI reports are due, EPA publishes individual facility submissions in its publicly available Electronic Facility Data Release (e-FDR). In spring of the following year, after EPA has completed its data quality checks and analysis, the agency issues the official Public Data Release. The public may access TRI data on EPA's Web site and aggregate it by zip code, county, state, industry, and chemical. EPA also publishes an annual report that summarizes national, state, and industry data. In 2005, the latest year for which data are publicly available, 23,461 facilities filed a total of nearly 90,000 forms, including nearly 11,000 Form As.

In September 2002, EPA initiated a stakeholder dialog process to identify improvements to the TRI and to develop opportunities to reduce the burden on reporting facilities. As part of the process, EPA issued a white paper with five specific options and one general category of other burden reduction options. At the time, EPA stated that it was looking to more fully explore these broadly outlined options with the intention of identifying a

[4]EPA reporting guidance states that the information contained in the Form R constitutes a "report," and the submission of a report to the appropriate authorities constitutes "reporting."

[5]http://www.epa.gov/tri.

specific burden reduction initiative that effectively lessens the burden on facilities but at the same time ensures that TRI continues to provide communities with the same high level of significant chemical release and other waste management information. Each option included in the white paper was, according to EPA "intended to encourage thoughtful comment to help the agency develop a meaningful burden reduction initiative that is technically, practically, and legally feasible."

At OMB's urging, EPA embarked on a three-phase regulatory effort to streamline TRI reporting requirements and reduce the reporting burden on industry. During the first phase, EPA removed some data elements from the Form R and Form A that could be obtained from other EPA information collection databases, streamlined other TRI data elements, and eliminated a few data elements from the Form R. As part of the second phase—and the focus of this report—EPA proposed a rule that would have allowed a reporting facility to use Form A for (1) non-PBT chemicals, so long as its total annual waste management (i.e., releases, recycling, energy recovery, and treatment for destruction) was not greater than 5,000 pounds, and (2) for PBT chemicals if there were no releases or other disposal of the chemical and the annual reportable amount was not greater than 500 pounds.[6] The phase III changes that EPA had considered proposing would have allowed alternate-year reporting, rather than yearly reporting.

The phase II and III proposals generated considerable public concern about the negative impact the changes would have on federal and state governments' and the public's access to important public health information. EPA received well over 100,000 commenters, representing about 5,000 distinct comments. The vast majority expressed opposition to EPA's proposed changes, whereas about 30 commenters expressed support for the proposals. EPA decided not to pursue phase III in the wake of overwhelmingly negative reaction from stakeholders—including members of Congress, various state attorneys general, and researchers—but the agency continued to pursue the phase II burden reduction rule.[7] On

[6]The annual reportable amount is the combined total quantity released at the facility, treated at the facility, recovered at the facility as a result of recycling operations, combusted for the purpose of energy recovery at the facility, and amounts transferred from the facility to off-site locations for the purpose of recycling, energy recovery, treatment, and/or disposal.

[7]In a November 28, 2006, letter to Senator Lautenberg, the EPA Administrator announced that the agency had decided against moving forward with any changes to TRI reporting frequency. The letter did not specify EPA's reasons for abandoning the phase III initiative.

December 2006, EPA finalized the rule, extending Form A to PBT chemicals as it had proposed. However, in the final rule, the agency moderated its proposed increase in the Form A non-PBT threshold from 500 to 5,000 pounds, thereby allowing Form A for a non-PBT chemical provided the release comprises no more than 2,000 pounds of the overall 5,000 pound total waste management limit.

EPA's Action Development Process is a 70-page guidance document designed to improve how the agency develops actions such as the TRI Burden Reduction Rule.[8] According to EPA, the process contains the following five goals:

- planning sound scientific and economic analysis to support the action;
- developing and selecting regulatory and nonregulatory options based on relevant scientific, economic, and policy analysis;
- involving affected headquarters and regional managers early in development and until the final action is completed;
- ensuring active and appropriate cross-agency participation; and
- encouraging appropriate and meaningful consultation with stakeholders through substantive consultative procedures.

To accomplish these goals, the Action Development Process outlines five major stages, each with multiple steps that are to be followed. A critical step early in the process is chartering a workgroup comprised of representatives from interested EPA headquarters offices and regions to develop the action. The various steps provided in the Action Development Process are directed to the workgroup and their managers who provide policy direction and ensure the integrity of the process. Throughout the rule development process, senior EPA management generally has the discretion to depart from the guidelines, including by accelerating the development of the proposed regulations.

Under the Paperwork Reduction Act (PRA), a federal agency may not conduct or sponsor the collection of information unless OMB has

[8]Other types of actions that are covered by the guidance include policy statements, risk assessments, guidance documents, or models that may be used in future rulemakings.

approved the agency's information collection request.[9] Information collection requests lacking current OMB approval are invalid under the PRA.[10] Accordingly, EPA submits an information collection request for the TRI program to OMB every 1 to 2 years. Before approving information collections, OMB is required to determine that the agency's collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.[11] As part of EPA's information collection requests for the TRI, OMB approves the agency's estimates of the burden associated with completing the Form R and Form A.

The TRI Is Widely Used by Federal Agencies, States, and the Public

Numerous EPA offices, other federal agencies, the states, and the public use the TRI for a wide range of activities, from assessing fees on regulated facilities to identifying the location of toxic releases in local communities. One of the TRI's most notable attributes is the applicability of its data across air, water, solid waste, and other media, making it useful to a wide range of federal and state agencies and the public.

EPA Offices and Other Federal Agencies Use the TRI for Multiple Purposes

EPA and other federal agencies use TRI data for a variety of purposes, including developing guidelines, standards, and programs for controlling pollution from regulated entities, assessing the effectiveness of environmental regulations, and planning office priorities. Some agencies may rely solely on TRI data while others, particularly the agency's media program offices, have used its data to supplement their own data for a variety of purposes.

EPA's Office of Prevention, Pesticides, and Toxic Substances, for example, used TRI data to create its RSEI model that estimates the impacts associated with air and water releases from TRI facilities, taking into account the human health hazard and risk associated with different

[9] 44 U.S.C. § 3507(a).

[10] The Paperwork Reduction Act provides that no person shall be subject to any penalty for failing to maintain or provide information to any agency if the information collection request is invalid. 44 U.S.C. § 3512. However, this provision is inapplicable to information explicitly required by statute, and accordingly does not relieve a facility of its reporting duty under EPCRA even in the absence of a valid TRI information collection request. Gossner Foods, Inc. v. Environmental Protection Agency, 918 F.Supp. 359, 362-63 (D. Utah 1996).

[11] 44 U.S.C. § 3508.

chemical substances. RSEI's models use TRI data on the location and amount of chemical releases, adjusting for key factors such as the toxicity of the chemicals, their destination and transport through the environment, the route and potential extent of human exposure, and the number of people potentially affected. RSEI then creates numerical values that can be added and compared in different ways to assess the human health hazards and related risks of chemicals, facilities, regions, industries, and other parameters.

Similarly, EPA's Office of Policy, Economics, and Innovation (OPEI) uses the TRI to, among other things, measure trends in the environmental performance of industries participating in its Sector Strategies program, an industry-EPA partnership administered by OPEI's Office of Business and Community Innovation that seeks innovative ways to improve environmental performance among participating industry sectors. That office then includes the data in its Sector Strategies Performance Report, which informs the public about changes in environmental performance of these sectors.

In addition, EPA's key media programs, including its Office of Air and Radiation, Office of Water, and Office of Solid Waste and Emergency Response, use TRI data to supplement their own data to fulfill key core responsibilities. Specifically:

- Office of Air and Radiation uses TRI data as a quality assurance tool when filling in missing data in its triennial National Emissions Inventory, which provides data on air emissions from about 85,000 sources and is used to assess risks from hazardous air pollutants at the local, regional, and national levels. The program has also used TRI data to assist in the development of emission standards required by the Clean Air Act.

- Office of Water compares TRI facilities with those in its Permit Compliance System, a database that tracks facilities permitted to discharge releases into water. Among other things, the office also uses TRI data as an input in its watershed analysis software, allowing it and other stakeholders to analyze water quality at a select stream site or throughout an entire watershed.

- Office of Solid Waste and Emergency Response uses TRI data in its National Priority Chemicals Trends Report, which analyzes and evaluates 24 highly toxic chemicals found in industrial wastes in the United States. This report tracks progress toward achieving EPA's national goal to reduce the amount of highly toxic chemicals in waste and to identify these

chemicals through a variety of methods.

- Other key EPA offices making wide use of the TRI include the Office of Enforcement and Compliance Assurance, which has used TRI data to locate pollution sources that may be out of compliance (among other purposes) and the agency's regional offices, which use the data extensively in their interactions with both their regulated entities and the public at large.

  Finally, other federal agencies that make use of the TRI include (1) the IRS, which has used TRI data to identify companies that release chlorofluorocarbons (known to deplete the earth's ozone layer), and to enforce a tax on those releases as part of a plan to phase out these environmentally hazardous chemicals; (2) the Census Bureau's Center for Economic Studies, which has included TRI data in reports that highlight changes in the U.S. economy; (3) the Centers for Disease Control and Prevention's Agency for Toxic Substances and Disease Registry, which has used TRI data on air and water releases in its local-level health consultations and assessments; and (4) the Small Business Administration, which uses TRI data for evaluating other environmental regulations.

Most States Have TRI Programs and Use TRI Data for a Range of Activities

EPCRA requires that facilities submit their TRI forms to EPA and their state. We surveyed TRI coordinators in the 50 states and the District of Columbia to better understand how states use the TRI data they receive.[12] We found that the states have TRI programs that carry out a range of TRI-related activities. The state programs vary on several key parameters, including whether they have statutory requirements for chemical release reporting, how they fund TRI-related activities, how much they spend annually on TRI-related activities, and whether they assess fees on facilities that report to the TRI. Table 1 shows these key characteristics for each state. We provide a complete tabulation of the results of our survey in an electronic supplement.[13]

[12]Throughout the remainder of our report, we refer to our survey of state TRI coordinators simply as the survey of states. Unless otherwise specified, our discussion includes responses from 51 coordinators from the states and the District of Columbia.

[13]GAO, *Toxic Chemical Releases: Survey of State Toxics Release Inventory Coordinators*, GAO-08-129SP (Washington, D.C.: Oct. 26, 2007).

Table 1: Key Characteristics of State TRI Programs

State	Statute	Source of funds	Annual expenditures[a]	Assess fees
Alabama		general	$$$	
Alaska		dedicated	$	
Arizona	•	general	$	
Arkansas		general	$$$	•
California		dedicated	$	
Colorado			$	•
Connecticut	•	general	n/a	
Delaware	•	general	$$$	
District of Columbia		general	$	
Florida			$$	•
Georgia		dedicated	$	•
Hawaii	•		$	
Idaho			n/a	
Illinois	•	dedicated	$$	
Indiana		general	$$	
Iowa		general	$	
Kansas		general	$$	•
Kentucky		general	$	
Louisiana			n/a	
Maine	•		$	•
Maryland		general	$	•
Massachusetts	•[b]	general	$$$$$	•
Michigan		dedicated	n/a	
Minnesota	•[b]	general	$$$	•
Mississippi		general	$$$	
Missouri	•		$	
Montana			$	
Nebraska		general	$$	
Nevada		general	$	•
New Hampshire		general	n/a	
New Jersey	•[b]		$$	
New Mexico			$	
New York	•[b]		n/a	
North Carolina			n/a	

State	Statute	Source of funds	Annual expenditures[a]	Assess fees
North Dakota		general	n/a	
Ohio	•	dedicated	$$$$	•
Oklahoma			$$$	
Oregon		dedicated	$	
Pennsylvania	•	general	$$$	•
Rhode Island			n/a	
South Carolina			$	
South Dakota			n/a	•
Tennessee		general	$$$	
Texas	•	general	$	•
Utah		general	$$$	
Vermont		general	$	
Virginia		general	$$	
Washington		dedicated	$$$	
West Virginia	•		$	
Wisconsin	•		$	
Wyoming		general	$	

Source: GAO survey of state TRI coordinators.

[a]$=Less than $25,000; $$=$25,000-$50,000; $$$=$50,001-$150,000; $$$$=$150,001-$250,000; $$$$$=more than $250,000; n/a=no answer provided.

[b]State has statute that requires facilities to report additional chemicals or provide information not required by EPCRA.

As table 1 also shows, officials in 17 states reported that their states have statutes that have similar requirements to EPCRA for toxic release reporting elements. Of note are four states with statutes that require facilities to report additional chemicals or provide information not required by EPCRA—Massachusetts, Minnesota, New Jersey, and New York. For example, Massachusetts officials stated that facilities must report information, such as the risk of chemicals used at the facility or present in products, and the number of employees at the facility. In addition, New Jersey officials stated that facilities must report on their chemical use, including information about how chemicals travel through the facility's processes. The states also vary in how they fund TRI programs, with 25 states using general funds and 8 states using dedicated funds for TRI. With regard to total amount spent on TRI-related activities, most states (29) reported spending $50,000 or less in fiscal year 2006, and 12 states spent more than $50,000. Fourteen states reported assessing fees on facilities that submit to the TRI, 11 of which dedicated those funds to

their TRI programs. States base their fees on one or more of the following criteria: which TRI form is submitted (Form R or Form A); the number of employees at the facility; the amount of a chemical reported; the type of chemical reported; and when the form is submitted. As a consequence, changes to federal TRI reporting requirements that affect any of those criteria may consequently impact a source of state funding for TRI-related activities.

We also asked the TRI coordinators to describe how their state uses the information from the TRI forms that it receives. Although a few states reported doing little or nothing with the reports, many states make wide use of the data contained therein. Figure 2 provides their responses, which fall into one of three categories: (1) chemical identification or pollution prevention, (2) compliance assistance or program enforcement, and (3) public information or other data services.

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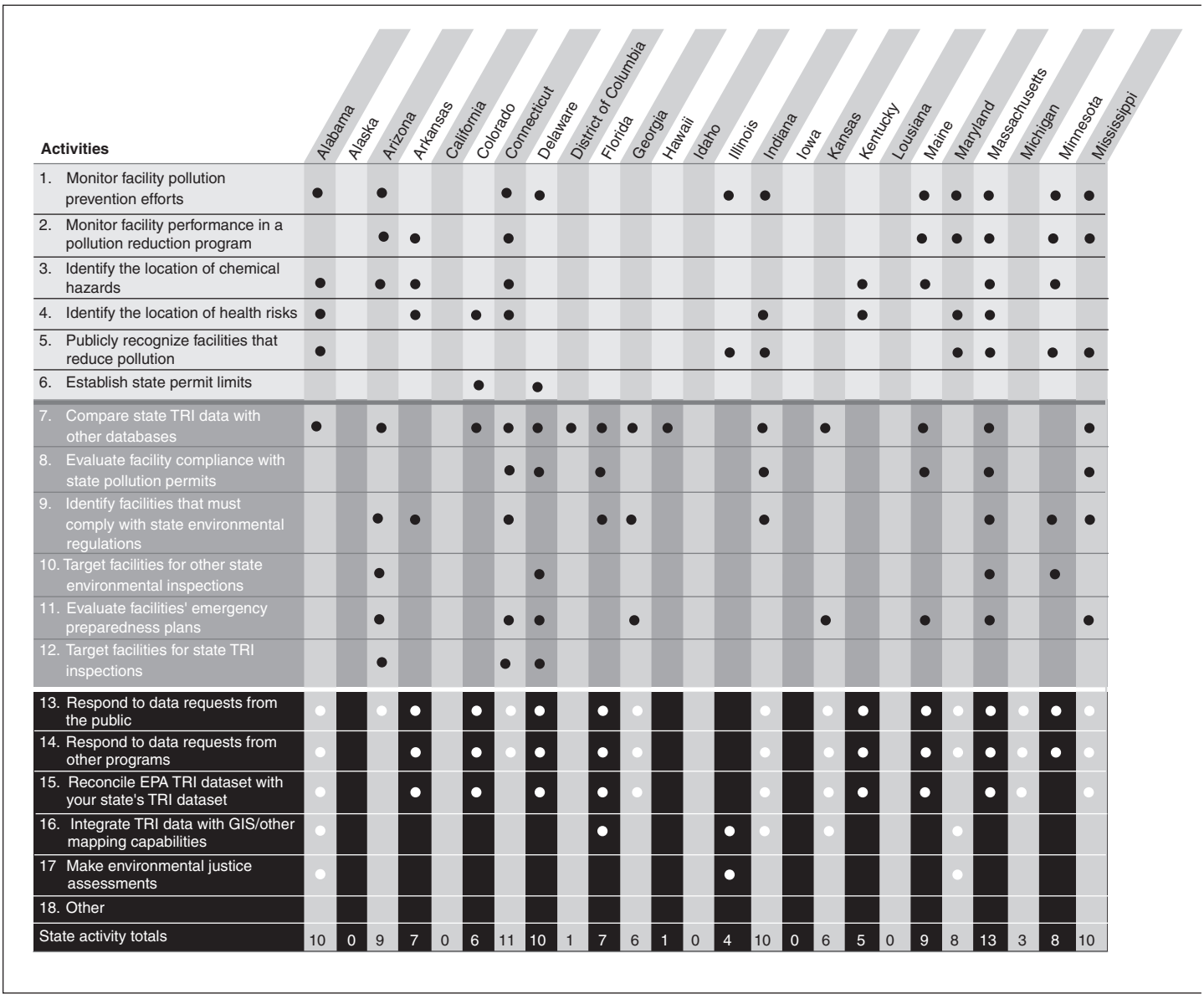
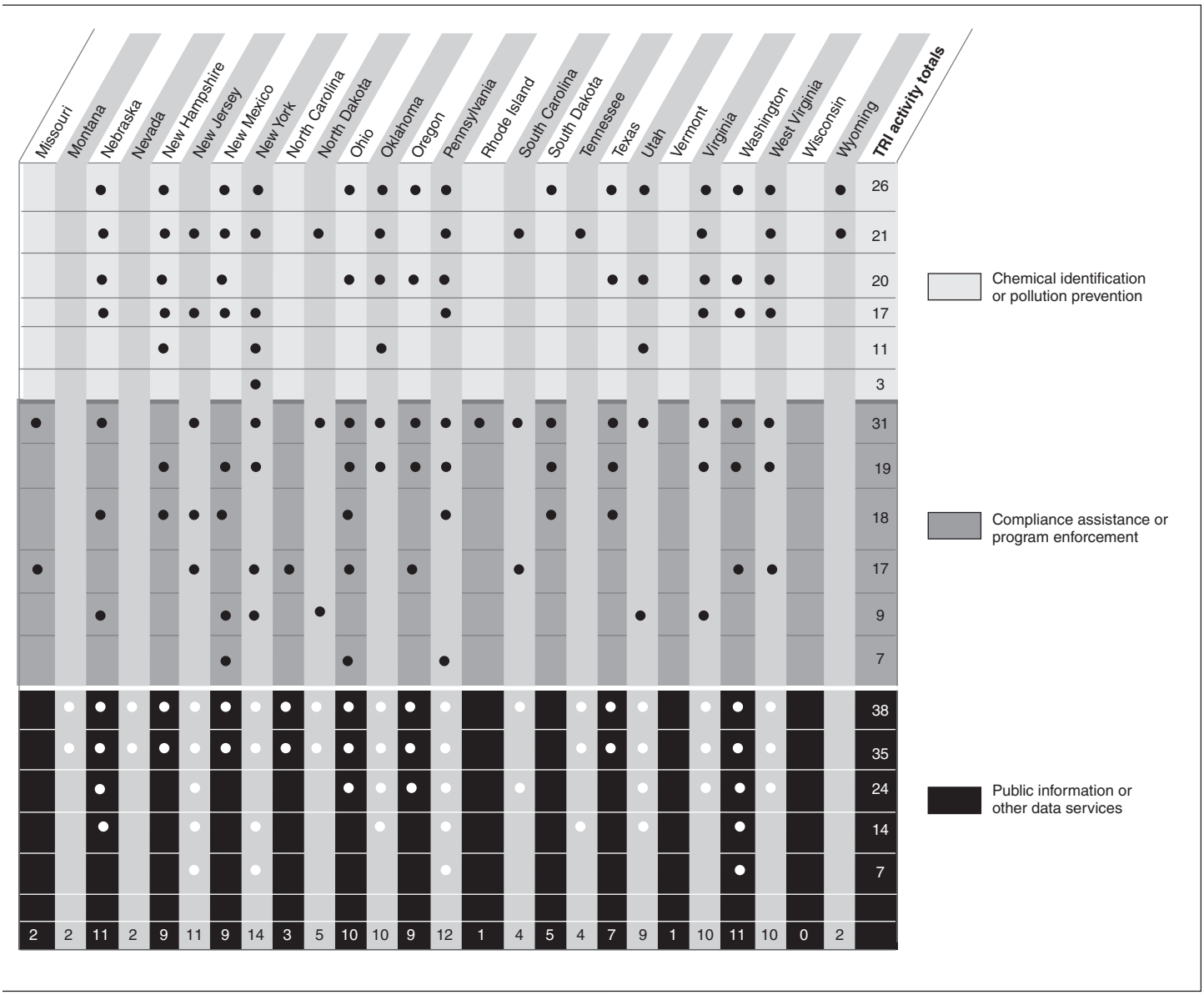
Figure 2: TRI Activities Reported by States




Missouri
Montana
Nebraska
Nevada
New Hampshire
New Jersey
New Mexico
New York
North Carolina
North Dakota
Ohio
Oklahoma
Oregon
Pennsylvania
Rhode Island
South Carolina
South Dakota
Tennessee
Texas
Utah
Vermont
Virginia
Washington
West Virginia
Wisconsin
Wyoming
TRI activity totals
26
21
20
17
11
3
31
19
18
17
9
7
38
35
24
14
7
2 2 11 2 9 11 9 14 3 5 10 10 9 12 1 4 5 4 7 9 1 10 11 10 0 2
Chemical identification or pollution prevention
Compliance assistance or program enforcement
Public information or other data services

Source: GAO.

Chemical Identification or Pollution Prevention Activities

States reported using TRI data for chemical identification or pollution prevention activities such as identifying which facilities release large volumes of chemicals or the location of chemical releases posing the greatest risk to public health. States also reported using TRI data to monitor facility pollution prevention efforts, establish state permit limits, monitor facility performance in a pollution reduction program, and publicly recognize facilities that reduce pollution. State coordinators provided us with specific examples of pollution prevention programs that used TRI data. Following are examples:

- Oklahoma used TRI data to identify companies that used hazardous chemicals as inputs in their manufacturing processes and work with them to substitute less hazardous chemicals.
- New Jersey used TRI data to identify facilities that reported releasing high volumes of reproductive toxics (i.e., chemicals that can damage human reproductive systems) for participation in a pollution reduction program.
- Colorado used TRI data to identify the state's 40 largest toxic chemical releasers to participate in the Governor's Pollution Reduction Challenge. The program encourages facilities to optimize their production processes to reduce emissions, improve their recycling capabilities, and add pollution control technology, and it has resulted in reductions in overall emissions.

Compliance Assistance or Program Enforcement

The second most common category of state TRI-related activities relates to compliance assistance and program enforcement. Most states helped facilities comply with TRI reporting requirements in some way, including answering facilities' questions via phone or e-mail (48 states) or referring facilities to EPA for assistance (46 states). Over half the states informed facilities about reporting requirements (37 states), distributed TRI forms or materials (31 states), or participated in EPA-sponsored information or training sessions (30 states). About one-third of states conducted state-sponsored information or training sessions (16 states) or visited reporting facilities (14 states). In addition to compliance assistance for TRI reporting, states used TRI data to assist with enforcement of other state environmental regulations by, for example, comparing TRI data with other databases and identifying facilities that must comply with state environmental regulations. For example, Ohio has cross-checked facilities' TRI submissions with their Resource Conservation and Recovery Act (RCRA) reports, National Pollutant Discharge Elimination System permits, and air permits to check for possible noncompliance violations and to

target facilities for inspection. Forty-one states reported using TRI data for at least one of the enforcement activities listed in figure 2.

Public Information or Other Data Services

States most commonly reported using TRI data to provide information about toxic chemical releases to the general public and for providing data services to other state programs. Forty-one states reported providing TRI-related information or referrals to the public through annual TRI reports, TRI Web pages, state TRI data files, data analyses conducted upon request, copies of Form Rs from individual facilities, public reading rooms with TRI information, EPA TRI documents, referrals to EPA regional TRI contacts, and other means (not listed as a response option on the survey) such as printed fact sheets, audio for radio interviews, and TRI-related CDs. For example, Ohio prepares a report listing the facilities with the greatest releases, the most common TRI chemicals, and the counties with the largest releases. Indiana correlates TRI releases and waste management practices with its gross state product, a measure of the state's economic output, to provide better context for the public to understand TRI data. The state TRI coordinator for Colorado reported using the TRI as part of a state mercury program that sought, in part, to increase public awareness of mercury releases to inform the public about possible health hazards of mercury, a PBT. In addition, more than two-thirds of states reported responding to data requests from other state programs (36 states) or comparing state TRI data with other databases (31 states). States also integrated TRI data with a geographic information system (GIS) or other state mapping capabilities (14 states), or used TRI data to make environmental justice assessments (7 states).

The Public Uses the TRI for a Variety of Purposes

Academic researchers, environmental groups, educational organizations, businesses, and public interest groups use the TRI for a variety of purposes. The public can generally access TRI data from EPA's Web site, as well as from nonprofit organizations' Web sites. EPA officials told us that the public accessed the TRI database through its Web site 829,682 times during the 12-month period ending March 2007.

Academic researchers. According to an EPA summary of TRI users, universities and research institutions used TRI data as a means for "examining environmental policies and strategies, and clarifying risks associated with toxic chemicals at the state and local level." Through an EPA program called Science to Achieve Results that awards grants to scientific researchers, 25 grantees have used the TRI to study

environmental performance. For example, one grantee used TRI data to study areas with cancer risks and found that high-risk areas are concentrated around certain aluminum and cement industries. In addition, a public policy researcher used TRI data to study the accuracy of self-reported regulatory programs. This researcher found a strong correlation between estimated cancer cases in a region, rates of voter turnout, and the likelihood that facilities in that region reduce emissions.

Educational organizations. According to EPA, various education institutions have integrated the TRI into curricula so students can use it in the classroom. For example, the National Science Teachers Association included the TRI in an instructional resource guide for high school teachers as an example of how science can be used in an everyday context. In addition, the Delaware Department of Natural Resources designed lessons for high school and middle school students to learn about the effects of emissions on air quality and how to locate facilities that report air emissions to the TRI.

Private business. Businesses also use the TRI to assist with decision making and chemical release monitoring. Businesses within the regulated community that report to the TRI have used their own reports to achieve gains in cost reduction and performance management. For example, Dupont lists its TRI data on its Web site and uses its progress in emissions reductions as a marketing tool. Boeing also tracks its progress at reducing TRI emissions and invests in pollution prevention technology that has resulted in more than 81 percent reductions in emissions since 1991. For some managers and operators at these businesses, TRI reporting has increased their awareness of the quantity of chemicals released from their facilities, and they have used TRI to set goals for reducing their chemical releases, sometimes resulting in increased efficiency, greater profits, identification of pollution prevention opportunities, and evidence of a public commitment to reduce those releases. Labor unions that represent employees who work at TRI facilities have used TRI data to support demands for safer working conditions and have trained their members to access and interpret TRI data. Outside of the regulated community, investment companies have used TRI data to advise clients who want to invest in companies with a record of reducing environmental releases. An adviser at one investment firm told us that TRI data have been useful in measuring companies' overall environmental performance, which includes their compliance with regulations and their overall emissions.

Public interest groups. Many organizations use the TRI to educate citizens about toxic releases in their communities and to empower citizens to take

actions that can reduce those releases. At the local and state levels, for example, the Citizen's Environmental Coalition in New York maintains a Web site with an interactive mapping tool for citizens to view areas that may be cause for environmental concern, including the location of TRI facilities. In Wisconsin, the Oneida Environmental Resources Board used TRI data to convince leaders in the Oneida tribe to find cleaner ways to manufacture pulp and paper. At the national level, Environmental Defense uses TRI data in its Web-based "pollution locator," which allows users to compare states and communities by criteria such as the presence of lead concentrations, chemicals known to cause birth defects, and chemicals known to cause cancer. OMB Watch, an organization that seeks to increase government transparency, maintains the Right-to-Know Network (RTK Net), a Web site that provides links to 11 environmental databases, including the TRI. The National Environmental Trust, an organization that seeks to inform citizens about environmental problems and the effects of those problems on human health, conducts TRI data analyses and tracks TRI program developments, information it makes publicly available on its Web site. Physicians for Social Responsibility, a nonprofit health and environmental advocacy organization, has used TRI data in reports that describe the threats that children face from different types of pollution.

EPA Did Not Follow Key Steps for Developing the TRI Burden Reduction Rule

EPA did not follow key steps from its Action Development Process (ADP) when developing the proposed TRI Burden Reduction Rule. This process guides the internal development of proposed EPA regulations through a series of milestones to ensure that the agency uses sound information to support its actions, and that it adequately addresses scientific, economic, and policy issues. Throughout the rule development process, senior EPA management generally has the discretion to depart from the guidelines, including by accelerating the development of the proposed regulations. However, in reviewing the process EPA followed when developing the rule, we found several significant differences that resulted in inadequate input from internal stakeholders and insufficient analytical support for the proposed rule's burden reduction options.

Internal Stakeholders Had No Opportunity to Comment on Effects of Selected Rulemaking Option

As part of the first stage in ADP, the agency assigns an action to one of three tiers that determine the process the agency uses when developing the rule. On March 30, 2004, EPA approved the TRI rule as a tier 2 action—targeting it for extensive cross media or cross-agency involvement and resting primary decision authority with the Assistant Administrator for Environmental Information. Next, EPA charters a workgroup to develop the specific action. The workgroup that was assembled to shepherd the

TRI Burden Reduction Rule through the ADP was chartered in late May 2004 and led by a representative of EPA's Office of Environmental Information (OEI), which manages the TRI program. Other workgroup members included at least one representative from EPA's Office of Solid Waste and Emergency Response, 3 of the 10 Regional Offices, the Office of General Counsel, and several additional representatives from OEI.

In December 2004, pursuant to ADP, the TRI workgroup completed a Preliminary Analytic Blueprint, a document that outlined the five burden reduction options they planned to consider. These options were the following:

- a higher reporting threshold for small businesses;
- a higher reporting threshold for categories of facilities or classes of chemicals with small reportable amounts;
- expanded eligibility for Form A (by raising the maximum release threshold for non-PBTs from 500 to 5,000 pounds);
- a new No Significant Change (NSC) Certification Statement for facilities with releases that changed less than a specified amount; and
- use of range reporting on Form R for releases and waste management practices (e.g., indicating that releases were between 100 and 499 pounds).

In April 2005, pursuant to the ADP, workgroup members submitted a Detailed Analytic Blueprint, which narrowed the list to three options for which they would prepare further analyses, seek internal stakeholder input, and forward to senior management for final consideration. Importantly, none of these three options would have expanded Form A eligibility for non-PBT chemicals.

The first two options would have allowed facilities to use Form A in lieu of Form R for PBT chemicals, provided the facility had no releases to the environment. The only difference between the two options was whether the facility could have a limited quantity of other waste management activities (e.g., recycling). Specifically, these two options were to allow facilities to

- report PBT chemicals using Form A if they have zero releases and zero total other waste management activities, or

- report PBT chemicals using Form A if they have zero releases and no more than 500 pounds of other waste management activities.

These PBT options received general approval from the EPA offices involved in the workgroup because they would have little effect on the TRI. That is, the public would not have less information about releases because neither option allowed facilities to use Form A if they released any of the chemical. However, the PBT options did not provide the bulk of the anticipated burden reduction.

The third option—which provided significantly more burden reduction—would have created a new NSC Certification Statement, in lieu of Form R, for facilities whose releases changed little from the previous year. Facilities eligible to file the NSC Certification Statement could do so during alternate years if their releases and waste management practices did not change by more than 10 percent or if less than 40 percent of their combined releases and waste management practices were releases. According to EPA officials on the TRI workgroup, NSC was the most discussed option, and the one that the workgroup had the highest expectations for significant burden reduction.

In accordance with the ADP, the TRI workgroup presented their three options to the EPA Administrator during an "Options Selection Briefing." However, based on internal documents that we reviewed, senior EPA management not involved with the workgroup or its analyses had begun considering a different option than the ones the workgroup had presented. Specifically, the briefing slides for the Administrator stated that OMB's preferred burden reduction option was to increase the Form A eligibility threshold for non-PBT chemicals from 500 to 5,000 pounds. The TRI workgroup had dropped that option from consideration, at an earlier step in the ADP, because of its impact on the TRI. An internal memorandum that we reviewed stated that OMB preferred a 10-fold increase in the non-PBT threshold to show a "demonstrable threshold increase" as a way of achieving a "sizable reduction" in reporting burden beyond expansion of Form A reporting for PBT chemicals. Those documents also showed that, after the Options Selection Briefing, the Administrator directed that the process be expedited through Final Agency Review in order to meet EPA's commitment to OMB to provide burden reduction by the end of December 2006.

The next milestone in EPA's ADP is Final Agency Review, a meeting for internal and regional EPA offices and senior management (i.e., representatives of EPA's Assistant Administrators) to review the draft

proposed rule and discuss whether they concur, concur with comment, or do not concur with it. To meet the EPA Administrator's deadline, the final agency review package—including the draft text of the proposed rule—was distributed to internal stakeholders to obtain their comments on June 17, 2005. At the June 29, 2005, Final Agency Review meeting, all Assistant Administrators (or their representatives) concurred with EPA's proposed rule. However, the proposed rule that was circulated in the final agency review package contained only the options that the workgroup had developed and advanced. Consequently, the Final Agency Review discussion and concurrence pertained to the PBT and NSC options that the TRI workgroup had developed, rather than the increased non-PBT threshold option that OMB favored.

By the time EPA held the Final Agency Review meeting, the TRI workgroup was working to create the NSC form and establish eligibility criteria to determine which facilities could use it. This option was based on the premise that the information on many facilities' Form Rs does not change much from year to year, especially as a percentage of reported releases. However, the workgroup's internal analysis also showed that Form Rs do change from year to year, especially for facilities with large releases and large quantities of managed waste. That analysis showed that, for facilities with large quantities of releases or other waste management practices, a 5 or 10 percent increase would represent a significant change in the absolute quantity of release or other waste management. Moreover, Form R captures the location of facilities' off-site transfers for disposal or recycling to a different location. Therefore, changes in waste management practices during the "no significant change year" would no longer be available to the public. The workgroup also was considering incentives to allow facilities participating in EPA's pollution prevention/reduction program to file two consecutive NSC Certification Statements before having to file a new Form R.

At the senior management level, discussions about increasing the Form A threshold from 500 to 5,000 pounds continued through July with little, if any, input from the TRI workgroup, according to internal documents we reviewed and interviews with staff from EPA's Office of Environmental Information. Consequently, the economic analysis that the workgroup finalized in late July 2005 did not examine burden reduction option to raise the non-PBT threshold to 5,000 pounds. In early August, the final package for the proposed rule was circulated to the workgroup, but the rule did not include the non-PBT option or an analysis of the option. As a result, TRI workgroup members, and other internal stakeholders from the program offices, did not have the opportunity for input because the senior EPA

management had already decided which options would and would not be in the proposed rule that went to OMB for review on August 26, 2005.

EPA program staff ultimately revised the economic analysis so as to consider the impact of raising the Form A reporting threshold. However, their analysis was neither completed before EPA sent the proposed rule to OMB for review nor was it circulated for review. Instead, the analysis was completed just prior to the September 21, 2005, date when the EPA Administrator signed the proposed rule for increasing Form A reporting eligibility from 500 to 5,000 pounds. EPA published this proposal in the *Federal Register* for public comment on October 4, 2005. The accompanying economic analysis did not adequately support EPA's stated benefits or costs. Specifically, although EPA stated in the proposed rule that it provided significant incentives for facilities to reduce or eliminate releases (of PBT chemicals, especially), the agency's economic analysis did not attempt to estimate those incentives quantitatively, citing lack of data. Moreover, EPA's analysis did not estimate the value of the information that would no longer be reported to the TRI.

Public Comments on EPA's Proposed Rule Were Overwhelmingly Negative

The agency received well over 100,000 comments in response to the proposed rule, most of which were overwhelmingly negative. Some commenters supported EPA's proposed option to extend Form A to PBT chemicals because it would provide burden relief, but no actual release data would be lost. Some commenters also stated that the proposal would not compromise public health or reduce the ability to plan for emergency responses and that most people are interested solely in releases to the environment. Other commenters suggested that EPA's proposal would encourage pollution prevention, as facilities would work to eliminate releases and minimize waste generation of PBT chemicals in order to quality for Form A. However, as EPA pointed out in its summary of the comments, many more commenters expressed opposition to the proposed option for allowing Form A for PBT chemicals because the proposal provided minimal burden reduction while losing important publicly available data. As an example, EPA highlighted a commenter that estimated that the average cost savings per facility would be only $1,035, which the commenter argued does not justify the expected loss of information from the rule. Another commenter estimated that 77 percent of facilities eligible to use Form A for PBTs currently report zero for both releases and other waste management and, therefore, would not save burden by switching to Form A. Other comments disagreed and asked that EPA instead expand Form A for reporting small, nonzero releases of PBT chemicals. In the final rule, EPA responded to these comments by

reiterating its belief that the rule would still result in significant burden reduction without losing crucial information.

Commenters who supported EPA's proposed expansion of Form A eligibility for non-PBT chemicals asserted that the proposed rule would provide significant burden relief from TRI reporting—especially for small facilities. These proponents argue that this relief would be significant despite the need to calculate releases and other waste management amounts to determine if they quality for Form A. However, many more commenters expressed opposition to the proposed option to expand Form A eligibility for non-PBT chemicals by raising the threshold from 500 to 5,000 pounds. These commenters, including 12 state attorneys general, focused on the local-level impacts from the detailed chemical release and waste management information that would no longer be reported on Form R. These and other commenters recognized that the potential nonreporting represented less than 1 percent of total release and waste management quantities reported nationwide on Form R but argued that a 5,000-pound Form A would adversely affect the ability of data users to perform local trend analyses, monitor the performance of individual facilities and, more generally, meet the intended purpose of the data collection to inform the public, government, and other data users about releases of toxic chemicals to the environment.[14] Many commenters gave specific examples of the local data use that could be affected by the proposed rule, such as identifying pollution-prevention opportunities, conducting risk analyses, identifying trends in toxic exposure, conducting spatial analyses of toxic hazards, setting environmental and public health policy, and evaluating trends in the performance of individual companies.

In response to these public commenters, EPA conducted an additional analysis of the impact of its changes at the local level and made several modifications before finalizing the TRI Burden Reduction Rule in December 2006. Specifically, EPA finalized the rule to raising the Form A eligibility threshold for non-PBT chemicals to 5,000 pounds of total annual waste management (i.e., releases, recycling, energy recovery, and treatment for destruction) provided total annual releases of the non-PBT chemical comprise no more than 2,000 pounds of the 5,000-pound total waste management limit. The agency also included its proposed option to allow use of Form A for PBT chemicals when total annual releases of a

[14]Form A essentially serves as a range report, revealing to the public that the facility released between 0 and 5,000 pounds of a non-PBT chemical.

PBT chemical are zero, and the total annual amount of the PBT chemical recycled, combusted for energy, and treated for destruction does not exceed 500 pounds.

EPA Changes Could Significantly Limit the TRI Data Available to Many Communities

Our analysis shows that EPA's TRI Burden Reduction Rule could, by increasing the number of facilities that may use Form A, significantly reduce the amount of information currently available to many communities about toxic chemicals used, transported, or released in their environment. EPA estimated that the impact of its change to TRI reporting requirements would be minimal; amounting to 5.7 million pounds of releases (0.14% of total release pounds) and 10.5 million pounds of waste management activities (0.06% of total waste management pounds) not being reported to the TRI if all eligible facilities switch from Form R to Form A. However, our analysis shows that EPA's changes could have far more significant impacts on information available to communities than EPA's national aggregate totals would appear to indicate. In addition, our survey of state TRI coordinators indicates that EPA's changes will have, on balance, a negative impact on state TRI programs and other users of the TRI. We acknowledge that not all eligible facilities will take advantage of the ability to file Form A, based on historical rates of Form A filing. However, because of the many assumptions necessary to calculate a "likely" impact, we present the total possible impact on the TRI under EPA's new Form A eligibility rules.

Thousands of Detailed Form R Reports May No Longer Be Submitted to the TRI

We estimated that 22,200 Form R reports (28 percent) could convert to Form A under EPA's new Form A thresholds.[15] EPA has observed that facilities used Form A for only 54 percent of the Form R reports potentially eligible under the previous threshold. According to EPA, eligible facilities may choose not to submit a Form A for a number of reasons. First, an unknown number of facilities may exceed the 1 million pound alternative threshold (e.g., facilities that use large quantities of feedstock chemicals to produce pesticides or pharmaceuticals) and, therefore, are ineligible for Form A.[16] EPA does not know how many

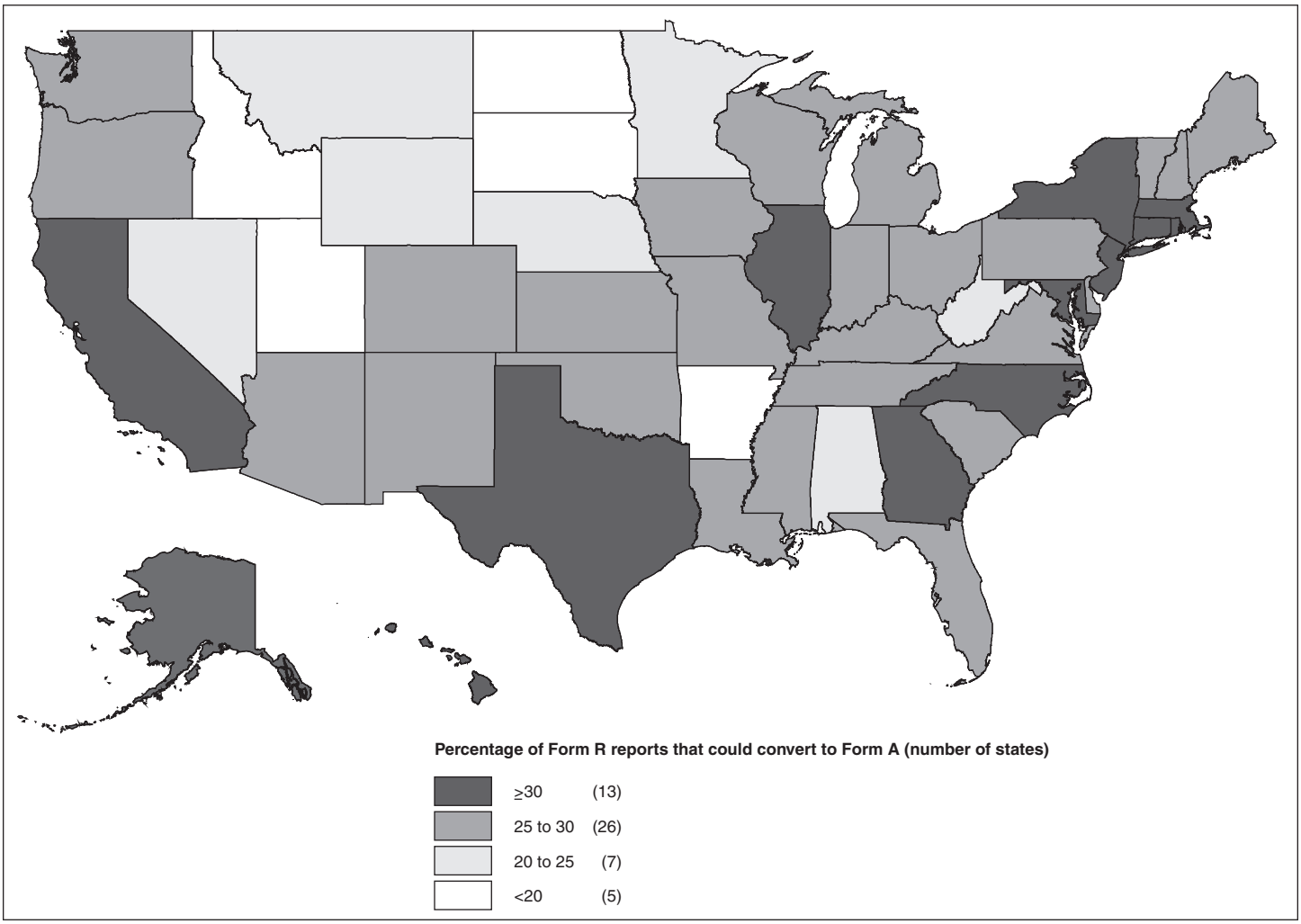
[15]We estimated that approximately 11,700 new and 10,500 formerly-eligible Form R reports could convert to Form A under EPA's increased Form A thresholds.

[16]EPA cannot determine with certainty whether a facility exceeded the 1 million pound threshold, because facilities are not required to report quantities of a chemical that they manufactured, processed, or otherwise used.

facilities exceed the alternative threshold because that information is not reported on current TRI forms. For this reason, EPA's utilization rate is likely an underestimate. Second, some facilities report on Form R out of a desire to showcase their pollution prevention efforts. Third, a facility, having collected all this information, may also submit a Form R to demonstrate good environmental stewardship. Fourth, some facilities find the Form R to be an efficient mechanism for tracking their material balances. Last, EPA and industry officials also told us that facilities are less likely to submit a Form A in lieu of a Form R for a given chemical if they must also submit Form Rs for other chemicals. We understand that not all eligible facilities will take advantage of EPA's new thresholds for one or more of these reasons. Although the agency stated that the utilization rate will not likely be significantly higher under the new threshold, additional facilities that were formerly eligible to file Form A may choose to file Form R now that they are eligible to do so for more of the reports. Given the uncertainties in projecting a "likely" utilization rate, we present our results in terms of the total number of Form R reports that are currently eligible to be filed on a Form A under the thresholds provided for in EPA's TRI rule.

According to our analysis, the number of Form Rs that may no longer be submitted ranges by state from 25 forms in Vermont (27.2 percent of Form Rs in state) to 2,196 forms in Texas (30.6 percent of Form Rs in state). As figure 3 shows, Arkansas, Idaho, and Nevada, North Dakota, and South Dakota could have up to 20 percent fewer of the detailed forms, while Alaska, California, Connecticut, Georgia, Hawaii, Illinois, Maryland, Massachusetts, New Jersey, New York, North Carolina, Rhode Island, and Texas could have at least 30 percent fewer Form Rs. We provide estimates of these impacts, by state, in appendix II.

Figure 3: Estimate of Impact Allowed by EPA's Changes on Number of Form Rs, by State



Sources: GAO based on 2005 EPA TRI data and Map Info (map).

For each facility that chooses to file a Form A instead of Form R, the public would no longer have available quantitative information about a facility's releases and waste management practices for a specific chemical manufactured, processed, or otherwise used at the facility.[17] Form R and

[17]According to EPA, Form A serves as a range report, informing the public that a facility filing a Form A for a specific non-PBT chemical has total annual releases of that chemical in the range of zero to 2,000 pounds and total waste management (which includes releases) in the range of zero to 5,000 pounds.

Form A both capture information about a facility's identity, such as mailing address, parent company, and basic information about a chemical's identity, such its generic name. However, only Form R provides detailed information about the chemical, such as quantity disposed or released on-site to air, water, and land, or injected underground, or transferred for disposal or release off-site. Form R also provides information about the facility's efforts to reduce pollution at its source, including the quantities managed in waste, both on- and off-site, such as amounts recycled, burned for energy recovery, or treated. We provide a detailed comparison of the data captured on Form R versus Form A in appendix III.

Data about Toxic Chemicals May Be Reduced or Eliminated for Many Communities

One way to capture the impact of Form Rs converting to Form A is to examine what currently available public data could no longer be reported about specific chemicals at the state level. The number of chemicals for which only Form A information could be reported under the new rule ranges from 3 chemicals in South Dakota to 60 chemicals in Georgia. That means that the specific quantitative information currently reported about those chemicals on Form R may no longer be included in the TRI. Figure 4 shows that 13 states—Delaware, Georgia, Hawaii, Iowa, Maryland, Massachusetts, Missouri, North Carolina, Oklahoma, Tennessee, Vermont, Wisconsin, and West Virginia—may no longer receive specific quantitative information about at least 20 percent of TRI-reported chemicals in the state.

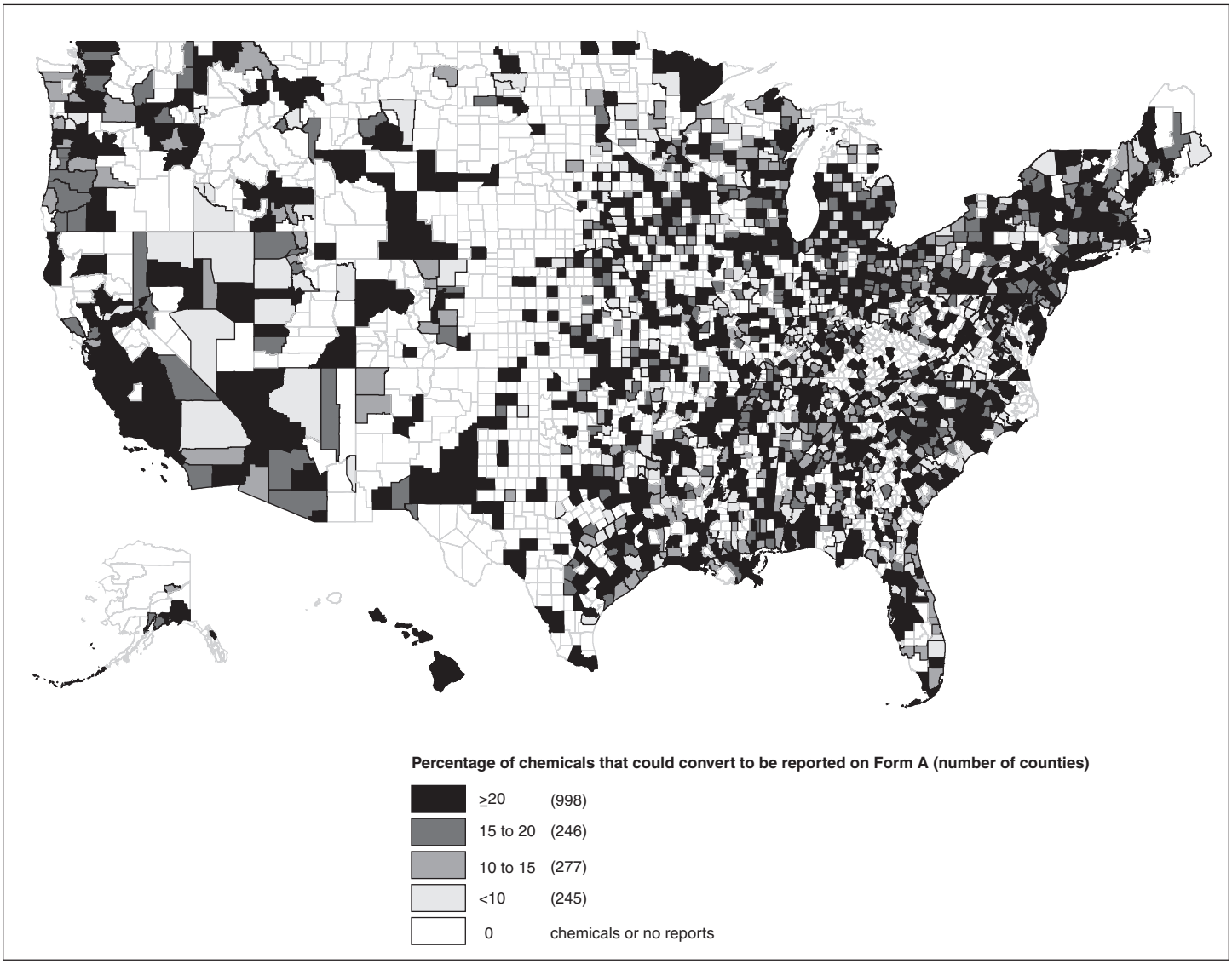
Figure 4: Estimate of Percentage of Chemicals for Which Facilities Could Report on Form A, by State

Sources: GAO based on 2005 EPA TRI data and Map Info (map).

The impact of EPA's change on toxic chemical information available to many local communities may be more significant than indicated by national or state estimates. As figure 5 shows, citizens in more than 1,700 counties may no longer receive detailed information about at least one toxic chemical currently reported on Form R in their county. We estimated that, as a result of the allowable reduction in number of reports, citizens in 64 counties across 28 states—Texas (10); Virginia (7); Colorado, Kentucky, and Mississippi (4 each); California, Georgia, and Missouri (3 each); Florida, Iowa, Illinois, Louisiana, North Carolina, New Mexico (2 each);

and Alaska, Kansas, Maryland, Montana, Nebraska, Nevada, New York, Oklahoma, Oregon, South Dakota, Tennessee, Utah, Vermont, and West Virginia (1 each)—may no longer receive detailed information about any toxic chemical releases from facilities in their county.

Figure 5: Estimate of Percentage of Chemicals for Which Facilities Could Report on Form A, by County



Sources: GAO based on 2005 EPA TRI data and Map Info (map).

Some Facilities Will No Longer Have to Report Detailed Information to the TRI

Another way to present the impact of EPA's changes to TRI reporting requirements is to examine how many facilities would no longer be required to submit a Form R. We estimated that 6,620 facilities nationwide could choose to convert at least one Form R to a Form A, and about 54 percent of those are eligible to convert *all* their Form Rs to Form A. That means 3,565 facilities would no longer have to report any specific quantitative information about their chemical releases and other waste management practices to the TRI, according to our estimates. The number of facilities ranges from 5 in Alaska to 302 in California.[18] For example, ATSC Marine Terminal—a bulk petroleum storage facility in Los Angeles County, California—reported releasing 13 different chemicals to the air, including xylenes, toluene, and highly toxic benzene. Because the facility released less than 2,000 pounds of each chemical, it could use Form A to report each chemical it released. As figure 6 shows, more than 10 percent of facilities in every state except Idaho would no longer have to report any quantitative information to the TRI. The most affected states are Colorado, Connecticut, Hawaii, Massachusetts, and Rhode Island, where more than 20 percent of facilities could choose to not disclose the details of their chemical releases and other waste management practices.

[18]Appendix II provides the number of affected facilities for each state.

Figure 6: Estimate of Percentage of Facilities That Could Convert All Form Rs to Form A, by State

Sources: GAO based on 2005 EPA TRI data and Map Info (map).

Many Commenters Have Stated That EPA's Changes Will Significantly Limit TRI Data

Many commenters, including attorneys general of 12 States, EPA's Science Advisory Board, and state TRI coordinators, have expressed concern about EPA's changes to the TRI reporting requirements will significantly reduce the amount of useful information reported to the TRI. In commenting on the rule in a jointly signed January 12, 2006, letter, the Attorneys General from of New York, California, Connecticut, Illinois, Iowa, Maryland, Massachusetts, New Hampshire, New Jersey, New Mexico, Vermont, and Wisconsin stated that, rather than repairing any problems with the TRI program, EPA's changes will harm it by raising the

reporting thresholds for nearly all chemicals current subject to TRI requirements. The Attorneys General added that the changes would significantly reduce the amount of information about releases of toxic chemicals available to the public and, as a result, would impair efforts by federal, state, and local governments; workers; firefighters; and citizens to protect Americans and their environment from the harm caused by discharges of toxic chemicals to the air, water, and land. They added that "because the changes work contrary to the purpose of the TRI—providing comprehensive information about toxic releases across the United States—[they are arbitrary and capricious, an abuse of discretion, and otherwise contrary to law." For those, and other reasons, the states' Attorneys General concluded that "in addition to being contrary to the public interest and sound policy, the proposed changes would violate EPCRA,[19] PPA,[20] and the Administrative Procedure Act."[21] However, EPA contends that the rule complies with all applicable laws.

EPA's Science Advisory Board's (SAB) Environmental Economics Advisory Committee also expressed concerns about the proposal in a July 12, 2006, letter to the EPA Administrator. Noting that TRI data are widely used to evaluate changes in facility and firm environmental performance and for other purposes, and that TRI data often provide the only reliable source of longitudinal data for this type of research, the committee said that its primary concern was that increased eligibility for Form A reporting will obscure the extent of facilities' releases of toxic chemicals. According to the committee, the changes in reported toxic chemical release levels will make the data incomparable over time and across facilities. It further stated that they will impair researchers' ability to use TRI data to assess spatial health impacts of toxic chemical releases and may also reduce variation in the data that are useful in identifying epidemiological and other relationships. The committee suggested that these impairments on research could significantly limit the national picture of the effect of toxic chemicals in the environment.

In addition, we surveyed the TRI coordinators in the 50 states and the District of Columbia about their states' views on the two changes to Form A eligibility that EPA finalized in December 2006—(1) raising the non-PBT

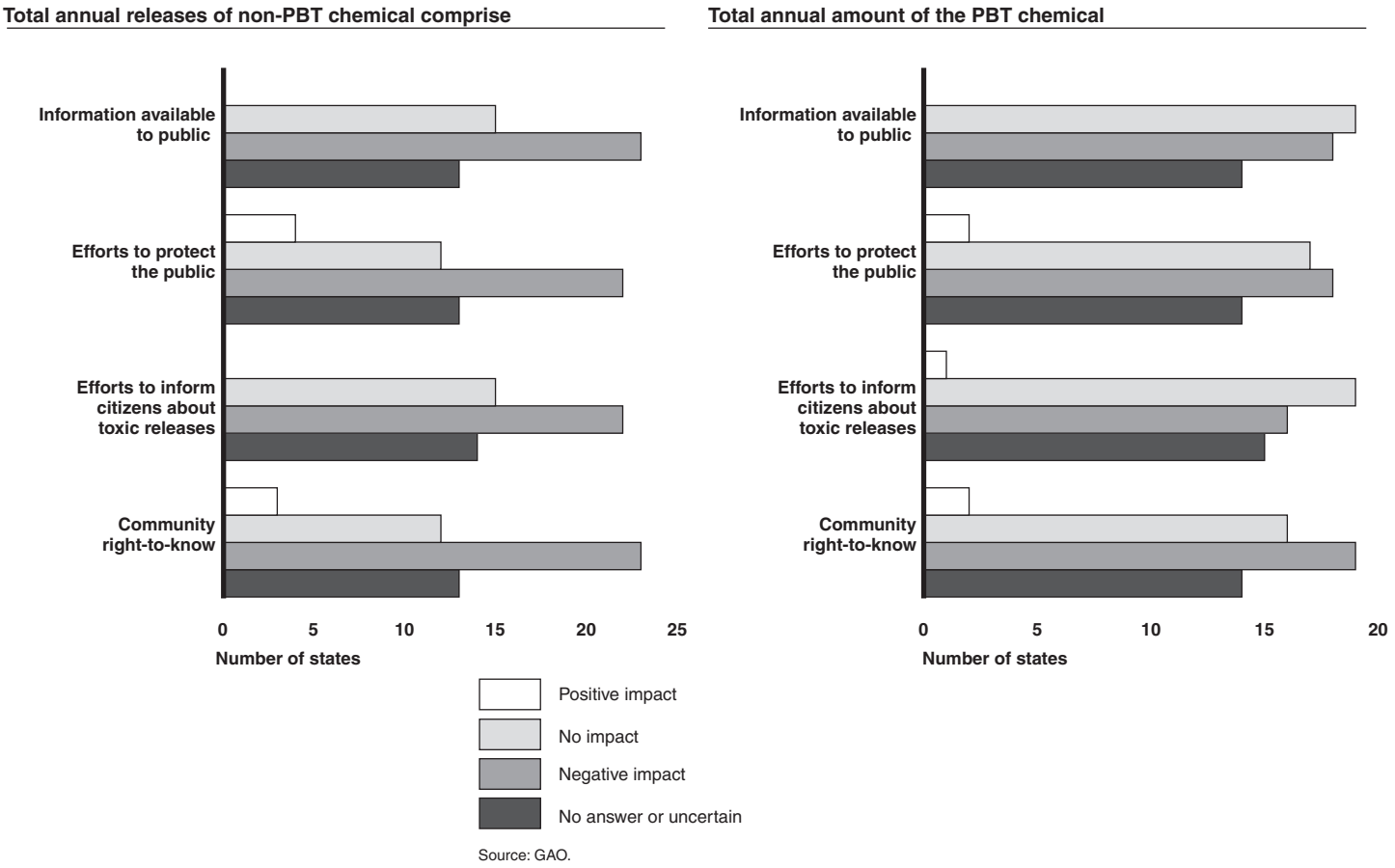
[19]42 U.S.C. §§ 11001-11050.

[20]42 U.S.C. §§ 13101-13109.

[21]5 U.S.C. § 706.

eligibility threshold from 500 pounds to 2,000 pounds and (2) allowing PBT chemical reporting on Form A. Most states reported that EPA's changes would have either a negative impact on various aspects of TRI. States most frequently reported that the first change would have a negative impact on information available to the public, efforts to protect the environment, efforts to inform citizens about toxic releases, and community right-to-know. For example, 23 of the 51 states responded that the non-PBT change would have a negative impact on information available to the public, while 15 indicated that the change would have no impact, as shown in figure 7. Fewer states reported a negative impact as a result of the PBT change, and more states reported no impact, most likely because the change is limited to facilities that do not release any of the PBT chemical. States most commonly reported that the PBT change would have a negative impact on efforts to community right-to-know. Specifically, 19 of the states said that the change would negatively impact community right-to-know, while 2 said that it would have a positive impact. Although as many as one-third of the states responded that they were uncertain about the impact of these changes, few states reported that the changes would have a positive impact on any aspect of TRI.

Figure 7: Result of GAO Survey of State TRI Coordinators' Views about Impact of EPA's Changes on Various State Activities



Source: GAO.

Note: We provide complete wording of the survey questions and the responses we received in a related electronic supplement (GAO-08-129SP).

Changes to the TRI Will Likely Do Little to Reduce Industry's Reporting Burden

EPA's rule is intended to reduce the burden on reporting facilities by allowing more facilities to use Form A, but the agency's estimated savings are likely overstated. EPA's projected savings are based on calculations that use OMB-approved estimates of burden hours associated with completing Form R and Form A, but these estimates are based on outdated data. EPA's more recent "engineering estimates" suggest a lower overall burden associated with current TRI reporting and, consequently, lower burden savings from the new rule.

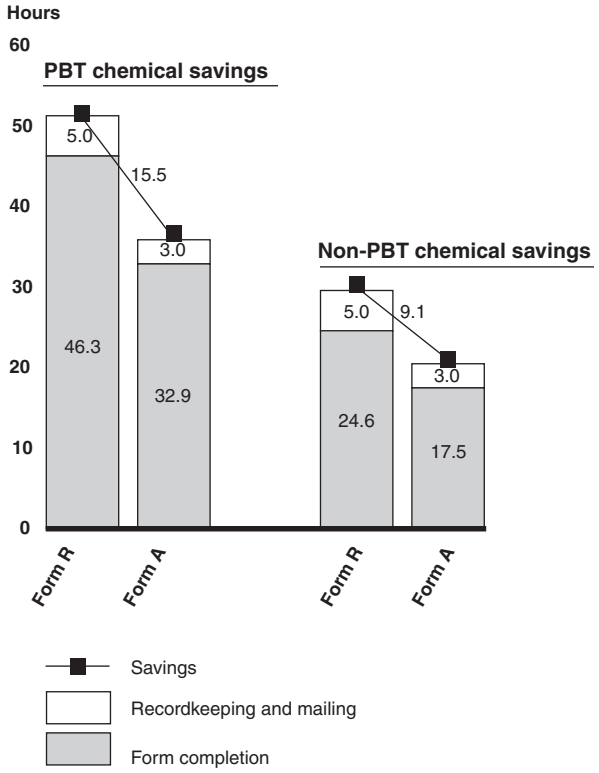
EPA Relied on Outdated Data and Questionable Assumptions to Calculate Reporting Burden and Cost Savings

In order to estimate the reduction in burden resulting from EPA's changes to TRI reporting requirements, we started with the baseline burden associated with current TRI reporting—that is, the amount of time that facilities need to complete Form R and Form A. Using these baseline estimates, cost savings are calculated by multiplying three factors: (1) the difference in time needed to complete the two forms, (2) the number of potentially eligible forms, and (3) the cost of labor. However, EPA's baseline estimates rely on outdated, incomplete, or uncertain data concerning the amount of time facilities need to complete the forms. Therefore, the agency's derivative estimates of burden reduction and cost savings are also unreliable.

Under the Paperwork Reduction Act, EPA must submit its Form R and Form A to OMB for review and approval as part of an Information Collection Request (ICR). As part of the review process, EPA provided OMB with its re-estimates of the amount of time that facilities need to complete the two forms, including reductions in the estimated number of reports that would be filed and the amount of time needed to complete each report. Those estimates also reflected differences in the amount of time facilities need to report PBT chemicals versus non-PBT chemicals and differences in time needed for first-time filers versus subsequent-year filers. The agency used these baseline burden estimates from its current ICRs to determine cost savings from the TRI Burden Reduction Rule.[22] As shown in figure 8, EPA calculated that facilities would save 15.5 hours for each PBT chemical submitted on Form A in lieu of Form R and 9.1 hours for each non-PBT chemical.

[22]*Toxic Chemical Release Inventory Toxic Chemical Release Reporting Information Collection Request Supporting Statement*; OMB Control No. 2070-0093; EPA ICR #1363.14; October 2005 and *Toxic Chemical Release Inventory Alternative Threshold For Low Annual Reportable Amounts; Toxic Chemical Release Reporting Information Collection Request Supporting Statement*; OMB Control No. 2070-0143; EPA ICR #1704.08; October 2005.

Figure 8: Burden Savings for Each PBT Chemical and Non-PBT Chemical Report



Source: GAO analysis of EPA data.

Note: PBT chemical savings does not equal the difference between Form R and Form A burden savings because of rounding in the constituent estimates for recordkeeping and mailing or form completion.

During OMB's review of EPA's ICR, it revised three of EPA's original estimates without conducting an independent analysis of reporting burdens. These revisions had the effect of significantly increasing EPA's proposed re-estimated burden associated with TRI reporting, and thus increasing the estimated burden reduction and cost savings from the new rule. OMB revisions to EPA's re-estimates were the following:

- increasing the non-PBT chemical, Form R burden from 14.5 hours to 25.2 hours for subsequent-year filers,
- increasing the PBT chemical Form R burden from 14.5 hours to 47.1 hours for subsequent year filers, and

- increasing Form A burden from 9.3 hours to 16.2 hours for subsequent-year filers.

Taken together, OMB's revisions resulted in the estimated burden savings being about 97,000 hours more than what they would have been if the EPA re-estimates had been used.[23] OMB's revisions to these three estimates constituted approximately 78 percent of total burden reduction from the new rule. In an agency memorandum, EPA raised concerns prior to accepting the revisions and stated that EPA had only agreed to them to obtain ICR clearance, which is required before the agency can request facilities to complete their TRI forms.[24] OMB's revisions appeared to favor the use of older data, and assumptions based on older data, despite the fact that more recent data were available.

For the first revision, OMB increased EPA's proposed burden re-estimate of the time needed to calculate and complete a Form R non-PBT chemical for subsequent year filing from 14.5 hours to 25.2 hours. This revision was based on a 1998 facility survey of 18 respondents that OMB believed was the most recent data. However, EPA pointed out that more recent data were available, including 17 observations from 2000 and 2001 and 99 additional observations from 2001. Furthermore, EPA advised OMB that if the burden estimate had been based on all observations from 1998 onward, the average per form burden would decrease to 12.5 hours.[25] Notwithstanding, the EPA memorandum stated, "OMB did not like this result. Apparently, as with other recent initiatives, OMB is outcome-oriented."

For the second revision, OMB increased EPA's proposed re-estimate of the time needed to calculate and complete a Form R PBT chemical for subsequent-year filing from 14.5 hours to 47.1 hours. According to internal memorandum, EPA had requested approval for a lower burden on the basis that PBT and non-PBT reporting are similar enough that the same

[23]The original EPA burden amounts submitted to OMB for approval were expected to reduce total burden by approximately 62,000 hours, and the OMB-approved revisions increased burden reduction by about 97,000 hours to approximately 158,000 hours.

[24]USEPA/OEI, Terms of Clearance for TRI ICR Renewal, January 20, 2004.

[25]Research Triangle Institute surveyed 18 facilities and collected 1998 reporting year data indicating an average burden of 25.2 hours per form. The American Petroleum Institute survey 99 facilities and collected 2001 reporting year data, and EPA surveyed a total of 17 facilities and collected 2000 and 2001 reporting year data from TRI-ME users.

burden estimate should be used for both. OMB disagreed, according to the memorandum, citing comments from trade associations that special conditions of PBT reporting, namely not having an exemption for reporting de minimis (very small or insignificant) amounts and not being able to use range reporting, created a higher burden for PBT reporting. EPA agreed to leave this estimate unchanged because available data on reporting burdens was incomplete, (i.e., the data did not specifically address whether reporting was for PBT or non-PBT chemicals). Nevertheless, EPA expressed concern that using the OMB-approved burden estimates would create the appearance of a rather large relative difference in the reporting burden of a PBT chemical versus a non-PBT chemical (47.1 hours vs. 25.2 hours), which the agency said was not supported by the data. In addition, a team of experts disagreed with OMB's position and stated that if overall differences do exist in the reporting burden for PBT and non-PBT forms, the difference would stem largely from compliance determination activities and not from form completion.[26]

For the third revision, OMB increased EPA's proposed re-estimate of the time needed to complete a Form A for subsequent year filing from 9.3 hours to 16.2 hours. The OMB revision was based on the historical assumption used since the form was created in 1994 that Form A calculations take approximately 64 percent of the time of Form R calculations. EPA accepted this change even though the agency stated in its memorandum that the change was not supported by more recent data from a 2002 survey of nine facilities that showed a much lower Form A burden.[27]

Other Analyses Indicate Actual Savings Could Be Much Less Than EPA Estimated

During the last TRI ICR renewal, EPA cited industry data indicating the burden of current TRI reporting was lower than previously estimated. Furthermore, while the total time for each major form-completion activity was estimated in the ICR, it was not broken down by the individual tasks (i.e., data elements) that comprise each activity. To help develop more

[26]TRI Reporting Burden Estimates, Memorandum, from Abt Associates, dated July 16, 2004.

[27]In April 2002, EPA contacted nine facilities that file Form As to request information on the typical facility level burden associated with using the Form A. EPA found that the average facility level burden per chemical certification ranged from 11.2 to 15.5 hours depending on whether the midpoint or maximum range was used. However, one facility reported a much higher per chemical burden than the other eight facilities. Without this outlier, the average of facility-level burden hours per chemical certification would be 3.8 to 4.9 hours per chemical certified.

reliable baseline estimates of TRI burden, EPA contracted for an engineering analysis of the time required to complete a Form R, and the agency requested public comments on the results of this analysis as part of the TRI Burden Reduction Proposed Rule.[28]

To get at the burden associated with each activity, the engineering analysis divided the Form R into item-specific tasks. Then, the analysis calculated the total realistic burden for the specific activity under consideration by adjusting the total time for each activity by combining the time required to complete each task with the percentage of time individual tasks are typically completed.[29] As shown in table 2, the burden estimates from the engineering analyses are substantially lower than the current OMB-approved estimates.

Table 2: Comparison of Average Annual TRI Burden Estimates by Activity: OMB-approved Versus Engineering Analysis

Category	Activity	OMB-approved (hours)	EPA engineering analysis (hours)	Difference (percentage)
Facility level	Compliance determination—all facilities	4	2.5	-37.5
	Rule familiarization—first-time filers	34.5	23.5	-31.9
	Rule familiarization—subsequent-year filers	n/a	5.6	n/a
	Supplier notification	24	24	0
Per Form R	Calculations and report completion—first-time filers—PBTs	66.8	7.5	-88.8
	Calculations and report completion—first–time filers—non-PBTs	67.6	9.5	-85.9
	Calculations and report completion—subsequent year filers—PBTs	46.3	5.9	-87.3
	Calculations and report completion—subsequent year filers—non-PBTs	24.6	7.0	-71.5
	Recordkeeping/submission—all filers	5	5	0.0

Source: GAO analysis of EPA & Abt Associates, Inc. Burden Estimates.

Note: Both sets of estimates have been adjusted to account for burden savings associated with the TRI Reporting Forms Modification Rule.

[28]*TRI Reporting Burden Estimates*, Memorandum from Hilary Eustace, David Cooper, and Susan Day of Abt Associates to Paul Borst, EPA dated July 16, 2004.

[29]The engineering analysis derived estimates are based on the TRI reporting experiences of a typical facility. The Abt team of experts defined a typical facility as, among other things, (1) reasonably modern and well-organized; (2) having Internet access with reasonable connection speed; (3) normally, having no difference in completing a data element for a non-PBT versus PBT chemicals; and (4) having no significant changes to facility operations or waste management practices for subsequent-year reports.

For example, the OMB-approved Form R burden for calculations and report completion of subsequent year PBT and non-PBT chemicals are 46.3 and 24.6 hours, respectively. Under the engineering estimates, Form R estimates for PBT chemicals are reduced to 5.9 hours (a reduction of about 87 percent) and for non-PBT chemicals to 7.0 hours (a reduction of about 72 percent). According to the proposed rule, if these estimates had been used, burden reduction would have been about three-fourths (75 percent) of what was estimated using the OMB-approved reporting burden estimates.

In addition to its engineering analysis, EPA also sought public comments on purported burden savings. Overall, EPA received thousands of public comments on the TRI Burden Reduction Proposed Rule, some of which commented on burden reduction or cost savings estimates.[30] In general, comments were quite diverse: some stated that the savings were meaningful, while others said that they were either too high or not needed. Some expressed concern with the accuracy of the savings estimate or said that it did not take into account other burden reduction actions while others mentioned that the new rule offered little or no savings. For example, eight commenters supported EPA's decision to extend Form A reporting for PBT chemicals because of the helpful burden reduction for facilities that have zero chemical releases, but five expressed general opposition to it because it provided minimum burden reduction and did not justify the loss in publicly available data. An official from the South Carolina Department of Health and Environmental Control, for example, pointed out that increases in the number of electronic filings are achieving real burden reduction and that EPA's burden reduction estimates do not take this into account. Four commenters stated that the burden reduction cost savings estimates were too high. Fifteen commented that the current requirements to complete a Form R in lieu of a Form A were not a significant burden on industry. Three commenters stated that they work for, or had worked for, facilities that submit Form Rs; did not find the current requirements burdensome; and found that reporting helped facilities keep track of plant operations. Others commented that the reporting burden is insignificant if compared with the value of the TRI data to a wide range of stakeholders, and the pollution reductions that

[30]*Response To Comments Toxics Release Inventory Phase 2 Burden Reduction Rule* Office of Information Analysis and Access, Office of Environmental Information, U.S. Environmental Protection Agency, December 18, 2006.

have resulted. However, the National Mining Association,[31] whose members have consistently reported the largest numbers of TRI releases, commented that the proposed rule affords little or no benefit for the metal and coal mining sectors, which tend to release chemicals in excess of the Form A thresholds.

In response to these comments, EPA agreed that savings may not represent a significant amount for all eligible facilities but disagreed that expanded Form A eligibility would not provide burden relief. The agency believes that the proposed rule might provide meaningful burden relief for some reporters, such as small facilities. EPA also agreed that increases in electronic filing are achieving burden reduction and that the agency's burden reduction estimates do not take these savings into account and thus the agency's estimates of the cost savings associated with the rule could be overstated.

Other EPA Efforts Have Provided More Burden Relief without Affecting the TRI

While the wide range of comments submitted to EPA suggests that there may be some uncertainty about the precise extent of burden reduction offered by EPA's changes, there is considerably more certainty that the burden reduction benefits of the changes are relatively small compared with other initiatives. Throughout the history of the TRI program, EPA has implemented measures to reduce the regulated community's reporting burden and still maintain the public's access to information consistent with the purpose of the TRI program. Through a range of compliance assistance activities, such as the Toxic Chemical Release Inventory Reporting Forms and Instructions (which is updated every year), industry training workshops, chemical-specific and industry-specific guidance documents, and the TRI Information Center (with a telephone hotline), we believe the agency has shown a commitment to enhancing the quality and consistency of reporting and assisting those facilities that must comply with EPCRA section 313. In addition, EPA has made considerable progress in reducing the TRI reporting burden through technology-based processes.

Beginning with Reporting Year 2001, EPA provided TRI-ME to help facilities determine their TRI obligations and complete their TRI forms.

[31]The National Mining Association is the industry association representing the producers of most of the nation's coal, metals, and industrial and agricultural minerals; the manufacturers of mining and mineral processing machinery, equipment and supplies; and the engineering and consulting firms, financial institutions and other firms serving the coal and hardrock mining industry.

TRI-ME leads prospective reporters interactively through a series of questions that eliminate a good portion of the analysis required to determine whether a facility must comply with the TRI reporting requirements, and it includes threshold calculations needed to determine Form A eligibility. If TRI-ME determines that a facility is required to report, the software provides guidance for each of the data elements on the reporting forms. The software also provides an integrated assistance library with detailed guidance for each step. Prior to submission, TRI-ME performs a series of validation checks before the facility prints the forms for mailing, transfers the data to CD-ROM, or submits the information electronically over the Internet. According to EPA, since the release of TRI-ME, there has been an estimated 15 percent reduction in burden-hours for facilities certain activities associated with completing TRI forms[32]—approximately twice the annual cost savings resulting from the new Burden Reduction Rule.[33]

Moreover, TRI-ME has no adverse impact on the amount of information submitted to the TRI and has likely improved the overall quality and timeliness of the data, according to TRI program officials. Similarly, other technology-based processes, including (1) EPA's Central Data Exchange for form submission and (2) the population of data fields with data submitted through other EPA programs have reduced the time, cost, and complexity of existing environmental reporting requirements, while enhancing reporting effectiveness and efficiency and continuing to provide useful information to the public that fulfills the purposes of the TRI program. At the same time, these efficiencies were not accounted for in EPA's official estimates of TRI reporting burden as approved by OMB. EPA has stated that the availability of TRI-ME reporting software is likely to assist and streamline the reporting process—which could mean that the estimated burden of current Form R reporting that EPA used in developing the new rule were overstated. If this is the case, then the agency's estimated cost savings associated with the rule would likewise be overstated.

[32]These activities are (1) Form R calculations and report completion, (2) Form R recordkeeping/submission, (3) Form A calculations/certification, and (4) Form A recordkeeping/submission.

[33]Based on EPA's estimated TRI-ME savings of $11,737,699 from EPA's October 2003 ICR supporting statements.

Congressional Interest and Actions to Reverse EPA's Changes

Members of Congress have expressed interest in EPA's changes to the TRI by writing letters to the EPA Administrator, holding hearings, and introducing legislation. In November 2005, a bipartisan group of Senators wrote to the Administrator with serious concerns about EPA's actions and analyses and to request additional data analysis from the agency. In January 2006, the same day that public comments closed for the rule, members of the House of Representatives wrote to the Administrator expressing similar, serious concerns that EPA's changes would undermine the ability of local communities to take actions to protect themselves from exposure to toxic chemicals. Meanwhile, EPA continued to develop its final TRI Burden Reduction Rule.

Responding to these congressional concerns, on December 22, 2006, the Administrator announced the decision to maintain annual reporting for the TRI and not pursue any changes in reporting frequency. However, EPA also finalized the TRI Burden Reduction Rule the same day. The first reports using the revised reporting requirements were due on or before July 1, 2007, for reporting year (i.e., calendar year) 2006.

The Senate Committee on Environment and Public Works subsequently held a hearing to consider, among other things, the impact of the TRI Burden Reduction Rule and other EPA decisions affecting public right-to-know.[34] Soon thereafter, the Toxic Right-To-Know Protection Act was introduced to effectively repeal EPA's Burden Reduction Rule and prevent future consideration of alternate year reporting.[35] Specifically, the bill would amend EPCRA (1) requiring the Administrator of EPA to establish the eligibility threshold for use of Form A at not greater than 500 pounds for non-PBT chemicals, (2) prohibit use of Form A for PBT chemicals,[36] and (3) release provisions allowing the Administrator of EPA to modify the frequency of toxic chemical release reporting. Similar legislation has been introduced in the House of Representatives,[37] which recently held a

[34]*Oversight of Recent EPA Decisions, Hearing Before the Senate Committee on Environment and Public Works*, 110th Cong. (2007).

[35]S. 595, introduced February 14, 2007.

[36]The bill specifically prohibits the use of Form A with respect to any chemical identified by the Administrator as a chemical of special concern under 40 C.F.R. section 372.28 (or a successor regulation).

[37]H.R. 1055.

hearing to consider it.[38] At that hearing, we testified that based on our analysis, EPA's recent changes to TRI reporting requirements will reduce the amount and specificity of toxic chemical information that facilities have to report to the TRI and that would, in turn, impact communities' ability to assess environmental justice and other issues.[39]

Conclusions

To improve the prospects for successful regulations, EPA's Action Development Process seeks to ensure that scientific, economic, and policy issues are adequately addressed at the appropriate stages of regulations development and to ensure adequate stakeholder participation across EPA's offices. However, EPA did not follow the process in key respects when developing the TRI Burden Reduction Rule, leading to a proposed rule whose projected costs and benefits were not adequately analyzed or reviewed in accordance with that process. EPA deviated from its process, in part, because of pressure from OMB to provide significant burden reduction by the end of 2006. In response to overwhelmingly negative public comments, EPA modified the proposed expansion of Form A eligibility by capping allowable releases of non-PBT chemicals at 2,000 pounds.

However, we believe that EPA did not adequately address the analytical concerns we raised with its proposed rule in the supporting analyses the agency completed for the final rule. In particular, despite the TRI rule's stated purpose—"to reduce burden while continuing to provide valuable information to the public"—EPA did not adequately weigh the benefits provided to facilities against the reduction in information available about toxic chemical releases to affected communities. As a result, the final rule has been widely criticized by TRI users for curtailing key information about the release of toxic chemicals, and by the regulated community as providing insufficient burden relief. Hence, the rule provides neither meaningful burden reduction nor sufficient information to the public. This outcome contrasts sharply with previous, openly conceived TRI burden

[38]*Environmental Justice and the Toxics Release Inventory Reporting Program: Communities Have a Right to Know*, Hearing Before the Subcommittee on Environment and Hazardous Materials, Committee on Energy and Commerce, House of Representatives, 110th Cong. (2007).

[39]GAO, *Environmental Right-to-Know: EPA's Recent Rule Could Reduce Availability of Toxic Chemical Information Used to Assess Environmental Justice*, GAO-08-115T (Washington, D.C.: Oct. 4, 2007).

reduction efforts that have achieved substantial burden reduction without reducing information to TRI users.

Accordingly, we believe reexamination of the benefits and costs to ensure that the changes to TRI fully reflect the considered judgment of EPA staff as provided for in the Action Development Process could help to avoid similarly problematic outcomes in the future, while ensuring the credibility and effectiveness of future TRI rulemakings. In addition, congressional committees of jurisdiction currently have pending bills that would effectively repeal EPA's rule by capping the eligibility threshold for Form A at 500 pounds for non-PBT chemicals and prohibiting use of Form A for PBT chemicals.

Agency Comments and Our Evaluation

In commenting on a draft of this report, EPA's Assistant Administrator for Environmental Information and Chief Information Officer disagreed with our recommendation that EPA perform sufficient analyses to support the rule. Specifically, we had recommended that the Administrator of EPA thoroughly evaluate the costs and benefits anticipated to communities and reporting industries from increased use of TRI Form A and, based on this evaluation, make a determination as to whether it would reconsider the TRI rulemaking. We further recommended that EPA submit a report of its findings and determination to relevant congressional committees within 30 days so as to inform congressional deliberation on proposed legislation.

EPA's letter stated that the agency "believes fully that all appropriate and necessary analyses were conducted … in the context of the full rulemaking process." EPA also noted that the December 2006 TRI rule put into place important incentives to reduce chemical releases by permitting additional facilities to use Form A. However, we continue to believe that EPA did not adequately substantiate its assertion that the rule provides such incentives, among other assertions that the agency made in the proposed and final rules. Moreover, if TRI is, as EPA noted, the cornerstone of its environmental information programs—allowing local citizens and governments to hold facilities accountable for how they manage toxic chemicals—then reducing the amount of information that those facilities must disclose would provide less accountability for facilities to reduce emissions resulting from manufacturing, processing, and using toxic chemicals. Hence, it is unclear how EPA's course of action would improve, rather than hinder, facilities' overall environmental performance. Because EPA did not agree with the need to implement our recommendations, and given ongoing congressional interest and pending actions to address EPA's TRI Burden Reduction Rule, we have included a

matter for consideration by the Congress. EPA's letter and our detailed response to it are contained in appendix IV. EPA also provided technical comments, which we have incorporated into this report as appropriate.

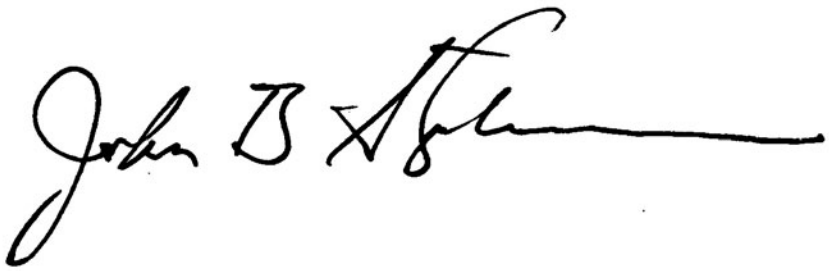
In commenting on excerpts from a draft of this report, OMB's Deputy Administrator of Information and Regulatory Affairs raised three concerns regarding our characterization of OMB's activities under the Paperwork Reduction Act (PRA) and Executive Order 12866. The first two, closely-related concerns pertained to OMB's activities in reviewing the burden estimates for the TRI information collection (i.e., Form R and Form A) under the PRA. Specifically OMB felt that the excerpts did not provide the necessary context, or a complete and balanced presentation, that would enable the reader to understand OMB's successive interactions with EPA on its approval of EPA's collection of information for the TRI. The OMB-related excerpts that we provided to OMB were taken from the draft report, as a whole. Given that we did not evaluate an OMB program or make a recommendation to OMB, we believe that our report provides the necessary context for the reader to understand EPA's actions, and OMB's related role, with regard to recent changes to the TRI reporting requirements. In its third concern, OMB states that the excerpts do not provide a complete and balanced presentation of the facts with regard to EPA's decision to include an option for raising the Form A eligibility threshold in the TRI Burden Reduction Rule. Specifically, OMB provided additional details about the development of the TRI Burden Reduction Rule not included in the OMB-related excerpts that we provided for its review. We acknowledge OMB's concerns and have made minor changes in the report as appropriate; however, OMB did not provide new information that changes our findings, conclusions, or recommendations. We believe that the report, taken in its entirety, provides a fair, balanced, and complete understanding of EPA's development of the TRI rule. OMB's letter and our detailed response to it are contained in appendix V.

Matter for Congressional Consideration

Because EPA did not agree to our recommendation that it sufficiently analyze the costs and benefits of increased use of TRI Form A, we suggest that the Congress consider taking appropriate actions to address concerns about reduced environmental information available to many communities. Specifically, unless EPA provides the Congress with such an analysis within 30 days of the public release of this report, the Congress may wish to consider enacting legislation, including bills already introduced, that would reverse EPA's expansion of TRI Form A eligibility for certain facilities and chemicals.

As agreed with your offices, unless you publicly announce the contents of this report earlier, we plan no further distribution until 30 days from the report date. At that time, we will send copies of this report to the appropriate congressional committees. We are also sending this report to the Administrator of the Environmental Protection Agency. We will also make copies available to others on request. In addition, this report will be available at no charge on the GAO Web site at http://www.gao.gov.

If you or your staffs have any questions about this report, please contact me at (202) 512-3841 or stephensonj@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made major contributions to this report are listed in appendix VI.



John B. Stephenson
Director, Natural Resources
and Environment

Appendix I: Scope and Methodology

We assessed (1) how federal users, the states, and the public use Toxics Release Inventory (TRI) data, (2) the extent to which the U.S. Environmental Protection Agency (EPA) considered the views of internal and external stakeholders in developing its burden reduction proposal, (3) the impact of reporting changes on information available to the public, and (4) the likely burden reduction that reporting facilities could receive from the reporting changes.

To address the four main objectives, we analyzed documents, including stakeholder comments in the Federal Register about the proposed rule change, those pertaining to the development of rule change, EPA's report on stakeholder uses of the TRI, annual TRI reports, and EPA guidance for facilities reporting to the TRI. In addition, we interviewed EPA officials, industry representatives, officials from nongovernmental organizations (NGO), and state TRI contacts. We also attended the annual TRI Data Users' Conference in February 2007.

To respond to the first objective, how federal users, the states, and the public use the TRI, we reviewed documentation from EPA, states, nongovernmental agencies, and industries/businesses about their uses of TRI data. We also interviewed EPA officials from program offices that use TRI data, and officials from certain NGOs, industries, and states. We selected officials from the NGOs and industries based on their previous involvement with conducting TRI data analyses, attending EPA-sponsored TRI stakeholder meetings, and comments they submitted to the Federal Register regarding the TRI. We selected state officials from New Jersey and Massachusetts for interviews because those states have laws that require facilities to submit additional data about their toxic chemical usage.

We obtained further information from states through our state survey that we administered to TRI contacts in all states and the District of Columbia. While developing the survey, we conducted pretests over the phone with state contacts from five states. Based on these pretests, we made revisions to the survey and found that not all individuals listed by EPA as TRI contacts had sufficient expertise to complete each survey section. We sent an introductory presurvey to all respondents so that they could indicate whether they were the most knowledgeable person in their state to answer the main survey sections. In 10 states, two or more individuals were identified as most knowledgeable for a given survey section. We administered this survey with a self-administered electronic questionnaire sent in e-mails on January 4, 2006.

The survey asked respondents to indicate, in the first section, the types of activities for which the state uses the TRI, whether facilities are required to pay fees when submitting TRI reports and, if so, factors used to calculate those fees. In the second section, the survey asked respondents to indicate specific actions the state took to help facilities comply with TRI reporting requirements and actions they took to enforce reporting requirements. In the third section, the survey asked respondents to indicate information about number of state employees who work on TRI-related activities, the amount of the state TRI program budget, and sources of funding for the budget. In the fourth section, the survey asked respondents to indicate whether the state requires facilities to submit additional data not required under national TRI reporting requirements, the status of the state's involvement with EPA's Central Data Exchange, and ways that the state makes TRI data available to the public. And in the fifth, and final, section, the survey asked respondents to indicate the likely impact of the proposed rule, their satisfaction with TRI-related communication, and actions EPA could take to improve the TRI. In some cases, we asked survey respondents additional questions via e-mail and telephone. For the 10 states that had multiple contacts, we sent a follow-up e-mail with a copy of their surveys to ensure that they concurred with each other's answers. We closed the survey on February 12, 2007, after the 51st state responded, thus making our response rate 100 percent. This report does not contain all the results from the survey. The survey and a more complete tabulation of the results can be viewed at GAO-08-129SP.

To respond to the second objective, the extent to which EPA considered the views of internal and external stakeholders in developing its burden reduction proposal, we reviewed documents related to the stakeholder process EPA used to help identify possible burden reduction options. We also interviewed EPA officials who were on the TRI workgroup that developed the final rule and reviewed internal EPA documents that detailed the workgroup's processes and decisions. In addition, we interviewed knowledgeable Office of Management and Budget (OMB) officials about their office's role in the TRI rule-making process and Information Collection Request proposals. Finally, we reviewed the public comments submitted in response to EPA's proposed rule.

To respond to the third objective, the impact of reporting changes on information available to the public, we conducted our analyses using 2005 TRI data, the most current available data. We performed a reliability assessment of the data we obtained from EPA and determined that the data were sufficiently reliable for the purposes of this report. To understand the potential impact of EPA's changes to TRI reporting

requirements at the local level, we used 2005 TRI data to estimate the number of Form Rs that would no longer have to be submitted in each state and the impact this would have on data about specific chemicals and facilities. We provide estimates of these impacts, by state, in appendix III.

To respond to the fourth objective, the likely burden reduction that reporting facilities could receive from reporting changes, we reviewed the proposed and final TRI Burden Reduction Rules that expanded eligibility for using Form A Certification Statement in lieu of the more detailed Form R by TRI facilities submitting required annual reports on releases and other waste management. We also reviewed EPA's economic analysis of the costs and impacts of the expanded eligibility for Form A, as well as other relevant documents, and interviewed EPA officials about the burden reduction savings analysis.

We conducted our work from August 2006 to September 2007 in accordance with generally accepted government auditing standards.

Appendix II: GAO Estimates of the Impact of Reporting Changes on the TRI

We analyzed 2005 TRI data provided by EPA to estimate the number of Form Rs that could no longer be reported in each state and determine the possible impacts that this could have on data about specific chemicals and facilities. Table 3 provides our estimates of the total number of Form Rs eligible to convert to Form A, including the percentage of total Form Rs submitted by facilities in each state.[1] The table also provides our estimates of the number of unique chemicals for which no quantitative information would have to be reported in each state, including the percentage of total chemicals reported in each state. The last two columns provide our estimates for the number of facilities that would no longer have to provide quantitative information about their chemical releases and waste management practices, including the percentage of total facilities reporting in each state.

Table 3: Estimated Impact of TRI Reporting Changes on Number of Form Rs, Chemicals, and Facilities, by State

	Form Rs		Chemicals		Facilities	
State	Number	Percentage of total	Number	Percentage of total	Number	Percentage of total
AK	59	36.6	8	17.0	5	15.6
AL	456	22.0	34	17.1	69	12.9
AR	247	17.7	18	5.8	39	11.0
AZ	221	27.7	12	10.8	50	15.0
CA	1,533	37.5	36	18.2	302	19.9
CO	162	25.8	11	11.1	51	21.8
CT	299	33.5	16	15.4	73	20.6
DC	4	28.6	2	18.2	2	28.6
DE	80	27.7	24	23.3	10	14.1
FL	479	27.4	19	13.2	119	17.2
GA	678	30.9	60	29.1	132	16.7
HI	67	37.9	12	26.1	9	23.1
IA	371	27.7	34	22.2	46	10.6
ID	41	14.4	8	10.4	8	7.3
IL	1,155	30.0	37	16.4	171	14.3
IN	900	25.6	29	14.6	143	14.4
KS	291	28.3	23	16.0	41	14.0
KY	490	25.7	28	15.3	63	13.4

[1]We estimated that approximately 11,700 new and 10,500 formerly-eligible Form R reports could convert to Form A under EPA's increased Form A thresholds.

	Form Rs		Chemicals		Facilities	
State	Number	Percentage of total	Number	Percentage of total	Number	Percentage of total
LA	665	25.6	34	13.1	46	12.4
MA	574	38.0	23	20.4	119	20.1
MD	221	32.6	24	22.6	34	16.6
ME	105	26.1	8	11.3	14	13.7
MI	965	29.7	36	19.0	145	16.1
MN	263	21.0	20	15.4	55	11.5
MO	498	27.3	43	21.7	80	14.2
MS	265	25.0	29	18.7	37	11.8
MT	61	21.8	10	13.5	7	15.2
NC	705	30.1	43	24.9	148	17.8
ND	29	13.8	7	11.5	6	12.5
NE	116	20.3	11	7.9	24	12.9
NH	98	29.1	13	17.3	23	16.1
NJ	582	35.1	34	16.0	101	19.3
NM	96	29.2	11	15.3	15	19.2
NV	96	21.2	14	18.9	19	14.3
NY	663	31.8	33	19.1	122	17.2
OH	1,557	28.5	38	12.6	218	13.8
OK	273	26.1	30	23.3	50	15.2
OR	236	28.6	16	15.5	47	15.5
PA	1,253	29.9	30	15.2	192	14.9
RI	112	39.3	12	17.4	30	23.4
SC	596	29.0	36	17.6	78	15.0
SD	44	19.6	3	5.8	10	10.5
TN	569	27.6	40	20.9	105	16.2
TX	2196	30.6	29	9.3	210	14.1
UT	146	19.9	11	9.9	25	12.6
VA	401	25.2	23	14.8	70	14.3
VT	25	27.2	9	23.7	6	14.6
WA	276	26.4	22	19.8	43	12.5
WI	692	25.4	31	21.2	113	12.5
WV	222	22.8	40	24.1	35	17.4
WY	60	23.6	9	14.5	5	10.9
Total	**22,193**				**3,565**	

Source: GAO analysis of EPA 2005 TRI data.

Appendix III: Comparison of Information Collected on the Form R and the Form A Certification Statement

Facilities must submit a detailed Form R report for each designated chemical that they manufactured, processed, and/or otherwise used in excess of certain thresholds, or certify that they are not subject to the reporting requirement by submitting a brief Form A certification statement. Form A captures general information about the facility, such as address, parent company, industry type, and basic information about the chemical or chemicals it released. Form R includes the same information but also requires facilities to provide details about the quantity of the chemical they disposed or released on-site to the air, water, land, and injected underground, or transferred for disposal or release off-site. According to EPA, Form A can be used by the public as a "range report" because it indicates that the facility managed between 0 and 500 pounds of a PBT chemical as waste and had no releases or other disposal quantities. For a non-PBT chemical, the Form A indicates that a facility managed between 0 and 5,000 pounds of a chemical as waste, of which no more than 2,000 pounds was released or otherwise disposed. Table 4 provides details about the specific information that facilities provide on the Form R and Form A.

Table 4: Information Collected on the TRI Form R and Form A Certification Statement

Form R	Form A
Facility Identification Information	**Facility Identification Information**
• TRI Facility ID Number	• TRI Facility ID Number
• Reporting year	• Reporting year
• Trade secret information (if claiming that toxic chemical is trade secret)	• Trade secret information (if claiming that toxic chemical is trade secret)
• Certification by facility owner/operator or senior management official	• Certification by facility owner/operator or senior management official
• Facility name, mailing address	• Facility name, mailing address
• Whether form is for entire facility, part of facility, federal facility, or contractor at federal facility	• Whether form is for entire facility, part of facility, federal facility, or contractor at federal facility
• Technical contact name, telephone number, Email address	• Technical contact name, telephone number, Email address
• Public contact name, telephone number	
• North American Industry Classification System (NAICS) codes	• North American Industry Classification System (NAICS) codes
• Dun & Bradstreet number	• Dun & Bradstreet number
• Parent company information (name, Dun & Bradstreet number)	• Parent company information (name, Dun & Bradstreet number)

Form R	Form A

Chemical Specific Information
• Chemical Abstracts Service (CAS) registry number
• EPCRA Section 313 chemical or chemical category name
• Generic name
• Distribution of each member of the dioxin or dioxin-like compound category
• Generic name provided by supplier if chemical is component of a mixture
• Activities and uses of the chemical at facility, whether chemical is:
  • produced or imported for on-site use/processing, for sale/distribution, as a byproduct, or as an impurity
  • processed as a reactant, a formation component, article component, repackaging, or as an impurity
  • otherwise used as a chemical processing aid, manufacturing aid, or as an ancillary or other use
• Maximum amount onsite at any time during the year
	Chemical Specific Information
	• Chemical Abstracts Service (CAS) registry number
	• EPCRA Section 313 chemical or chemical category name
	• Generic name

On-site Chemical Release Data
• Quantities released on-site to:
  • air as fugitive or non-point emissions
  • air as stack or point emissions
  • surface water as discharges to receiving streams or water bodies (including names of streams or water bodies)
  • underground injection
  • land, including RCRA Subtitle C landfills, other landfills, land treatment/application farming, RCRA Subtitle C surface impoundments, other surface impoundments, other land disposal
• Basis for estimates of releases (i.e., monitoring data or measurements, mass balance calculations, emissions factors, other approaches)
• Quantity released as a result of remedial actions, catastrophic events, or one-time events not associated with production processes
	On-site Chemical Release Data
	Not reported on Form A

Form R	Form A

On-site Chemical Waste Management Data
• Quantities managed on-site through:
  • recycling
  • energy recovery
  • treatment
• Recycling processes (e.g., metal recovery by smelting, solvent recovery by distillation)
• Energy recovery methods (e.g., kiln, furnace, boiler)
• Waste treatment methods (e.g., scrubber, electrostatic precipitator) for each waste stream (e.g., gaseous, aqueous, liquid non-aqueous, solids)
• On-site waste treatment efficiency
	On-site Chemical Waste Management Data
	Not reported on Form A

Off-site Transfers for Release or Other Waste Management
• Quantities transferred to any Publicly Owned Treatment Works (POTW)
  • POTW name(s), address(es)
• Quantities transferred to other location for disposal or other release
  • underground injection
  • other land release
• Quantities transferred to other location for waste management
  • treatment
  • recycling
  • energy recovery
• Quantity transferred off-site for release, treatment, recycling, or energy recovery that resulted from remedial actions, catastrophic events, or one-time events not associated with production processes
• Off-site location(s) name and address
• Basis for estimates for amounts transferred
• Whether receiving location(s) is/are under control of reporting facility/parent company
	Off-site Transfers for Release or Other Waste Management
	Not reported on Form A

Form R	Form A
Source Reduction and Recycling Activities	**Source Reduction and Recycling Activities**

• Total quantities, for (1) the prior and (2) current reporting years and estimated totals for (3) the following and (4) second following years for:
  • on-site disposal to underground injection wells, RCRA Subtitle C landfills, and other landfills
  • other on-site disposal or other releases
  • off-site transfer to underground injection wells, RCRA Subtitle C landfills, and other landfills
  • other off-site disposal or other releases
  • on-site treatment
  • on-site recycling
  • on-site energy recovery
  • off-site treatment
  • off-site recycling
  • off-site energy recovery
• Production ratio or activity index
• Source reduction activities the facility engaged in during the reporting year (e.g., inventory control, spill/leak prevention, product modifications)
• Option to submit additional information on source reduction, recycling, or pollution control activities
	Not reported on Form A

Sources: EPA TRI Form R and Form A Certification Statement.

Appendix IV: Comments from the Environmental Protection Agency

Note: GAO comments supplementing those in the report text appear at the end of this appendix.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OCT - 4 2007

OFFICE OF
ENVIRONMENTAL INFORMATION

Mr. John B. Stephenson
Director
Natural Resources and Environment
United States Government Accountability Office
Washington, DC 20548

RE: EPA Comments on the Government Accountability Office's (GAO) draft report to Congress entitled *Toxic Chemical Releases: EPA Actions Could Reduce Environmental Information Available to Many Communities (GAO-07-880)*

Dear Mr. Stephenson:

This letter provides the United States (U.S.) Environmental Protection Agency's (EPA) comments on GAO's draft report entitled *Toxic Chemical Releases: EPA Actions Could Reduce Environmental Information Available to Many Communities (GAO-07-880)*. EPA appreciates the thorough and thoughtful review GAO conducted as well as the opportunity to provide comments on this draft report to Congress. EPA disagrees, however, with a number of conclusions reached by GAO as well as with GAO's recommendation that EPA report to Congress, within 30 days of the final GAO report, providing a new evaluation of the costs and benefits anticipated to communities and reporting industries from increased use of Toxics Release Inventory (TRI) Form A and advising whether EPA will revisit the rule.

See comment 1.

Before addressing GAO's concerns about process, however, we emphasize that the December 22, 2006 TRI rule put into place important incentives to reduce chemical emissions and increase recycling and treatment as alternatives to disposal and other releases. This rule does not excuse any facilities from reporting to TRI. The only change in requirements is that facilities are permitted to use the short form (Form A) if they maintain releases and total wastes below levels set in the rule. With these incentives the rule is an important part of EPA's strategy to minimize releases of toxic chemicals across the United States.

See comment 2.

As far as the rulemaking process is concerned, EPA disagrees with GAO's conclusion that failure to follow internal guidelines for rulemaking resulted in an inadequate consideration of the costs and benefits associated with expanded Form A eligibility. EPA exercised discretion provided within the Agency's Action Development Process (ADP) while developing the proposed rule and the draft GAO report acknowledges that senior EPA management has discretion to accelerate regulatory

development (p.12). Before EPA finalized expanded Form A eligibility for both Persistent, Bioaccumulative, and Toxic (PBT) chemicals and non-PBT chemicals, EPA entertained extensive stakeholder participation and completed a thorough evaluation of the uses of TRI data and associated economic and policy issues. Consideration of expanding Form A eligibility began in 2004, well before even the proposed rulemaking commenced, with the posting of a white paper on the Internet and consideration of hundreds of stakeholder comments on this as well as other burden reduction options.

See comment 3.

We further note that expanded Form A eligibility under the December 2006 rule was based on all the analyses completed and considered as part of the final rulemaking record. It is the full rulemaking record, consisting of input received before proposal and during the public comment period, as well as analyses by the Agency undertaken in response to comments that is best reviewed to determine whether adequate analyses were conducted before EPA issued the final rule.

See comment 4.

EPA believes fully that all appropriate and necessary analyses were conducted and would be happy to discuss this further with GAO in the context of the full rulemaking process (proposal and final rule). Please note, however, that the entire economic analysis, prepared based on OMB-approved burden estimates for completing Form R and Form A, is in the publicly-accessible docket for the final rule. It includes analyses at the state, local, and facility levels (e.g., zip code and facility analyses identifying areas/facilities which might receive/file fewer or no Form Rs, and for which chemicals). These analyses enabled EPA to more fully consider comments submitted on the proposed rule. In fact, these analyses are similar to those undertaken by GAO for this draft report, though GAO used 2005 TRI data, which were not available at the time EPA conducted its analyses. (EPA used 2004 data for the final rule analyses.) Between January 2006 and December 2006, EPA carefully considered and evaluated with workgroup input the more than 100,000 comments submitted in response to the proposed rule and some of these analyses were prepared during that process.

See comment 5.

Consideration of the final rulemaking supporting analyses and decision-making is important when evaluating this EPA initiative. EPA in fact modified provisions from the proposed rule after thoughtful consideration of the thousands of comments received, most of them voicing concern about the impacts to local communities from the loss of detailed Form R information, especially detailed release information. Specifically, EPA decided to modify the proposed expansion of Form A eligibility for non-PBT chemicals to include a 2,000-pound cap on releases.

See comment 6.

Another important consideration is that Form A provides useful information. Aside from a brief footnote on page 31, GAO fails to make clear in its report that in addition to providing information about the facility and identifying the toxic chemical being submitted on Form A, Form A also can be used by the public as a "range report," *i.e.*, an indication that the facility manages as waste between 0 and 500 pounds of a PBT chemical and has no releases or other disposal, and for a non-PBT chemical, the facility manages between 0 and 5,000 pounds of the chemical as waste, of which no more than 2,000 pounds is released or otherwise disposed.

See comment 7.

EPA issued a final rule to promote improvements in environmental performance by providing incentives to reduce chemical emissions and to increase recycling and treatment of chemicals, while minimizing the loss of information to communities about toxic releases and pollution prevention. As proposed and finalized, the TRI rule rewards facilities that completely eliminate releases of the worst environmental substances, PBT chemicals, by permitting such facilities to use the shorter Form A, provided they do not exceed 500 pounds total for recycling, energy recovery, and treatment. In response to commenters concerns about 5,000 pounds of non-PBT releases being eligible for Form A, EPA decided to limit expanded Form A eligibility for non-PBT chemicals to those facilities that reduce or maintain releases to 2,000 pounds or less, provided their total waste does not exceed 5,000 pounds. The rule's limits on total waste quantities encourage pollution prevention thereby promoting national policy under the Pollution Prevention Act that pollution should be prevented or reduced at the source whenever feasible.

See comment 8.

The final rule's potential for promoting improvements in environmental performance is another reason EPA disagrees with GAO's recommendation for a cost-benefit analysis within 30 days of the final report. EPA has already performed analyses focused on the potential impacts of the rule as finalized. These analyses have been placed in the publicly-accessible docket for the rule. Another set of analyses focused on potential impacts would be redundant with what EPA has already undertaken. An analysis of actual results of the rule (i.e., information lost compared to environmental performance improvements resulting from the final rule) would be meaningful but at this point in time, premature. The rule was finalized in December 2006. Therefore, we would not expect the effects of the new incentives to be reflected in 2006 reports (received by July 1, 2007). However, beginning with 2007 reports (due to EPA by July 1, 2008), EPA will evaluate the effectiveness of expanded Form A eligibility in reducing releases and promoting pollution prevention. As part of our evaluation of the effectiveness of the rule's incentives to reduce releases and promote pollution prevention EPA will continue to explore other ways to reduce toxic chemical releases and encourage better waste management practices.

See comment 9.

EPA values TRI as the cornerstone of successful environmental information programs. The Agency will continue to demonstrate its commitment to this information program through a range of compliance-assistance activities (*e.g.*, training workshops, guidance documents) and technology-based enhancements (*e.g.*, electronic reporting software and Internet-based form submission) which improve the quality, utility, and the timeliness of the TRI data. The TRI rule expanding Form A eligibility represents yet another innovative approach by the Agency to use TRI information to encourage facilities to reduce their emissions and improve their environmental performance.

If you would like to discuss these matters further, please contact me at 202-564-6665 or your staff may contact Michael Petruska, Director of the TRI Program Division at (202) 566-1686.

Sincerely,

Molly A. O'Neill
Assistant Administrator
and Chief Information Officer

The following are GAO's comments on the Environmental Protection Agency's letter dated October 4, 2007.

GAO Comments

1. We disagree with EPA's assertion that the TRI rule put into place important incentives to reduce chemical emissions and increase the use of alternatives to disposal and other releases. To the contrary, we concluded that the rule may actually reduce the incentives for a facility to prevent pollution by allowing up to 2,000 pounds of releases for those chemicals—a quadrupling of the threshold. Furthermore, as we show in appendix III, Form A provides no details about a facility's efforts to increase use of alternatives such as source reduction, recycling, or treatment of chemicals. We agree with EPA's assertion that the only change in requirements is that facilities are permitted to use the short form (Form A) if they maintain releases and total wastes below levels set in the rule. Indeed, we described the old and new Form A requirements in the first pages of this report. However, we did not state or imply that any facilities would be excused from submitting a TRI Form R or Form A under EPA's rule. Instead, our analysis showed that thousands of facilities that previously filed Form R may file Form A under the new levels. Given differences in the amount and specificity of information on Form R and Form A, which we presented in appendix III, we concluded that EPA's change could result in significantly less information about toxic chemicals being reported to communities around the country. For example, our analysis shows that EPA's levels do not maintain any Form R reporting for certain chemicals. Also, as we recently testified, the change appears likely to disproportionately impact minority and low-income communities.[1] Consequently, we believe that EPA's assertion about the change in requirements, while technically correct, misrepresents the impact of that change on the intended recipients of toxic chemical information provided by the TRI.

2. We disagree with EPA's contention that it completed a thorough evaluation of the uses of TRI data and the associated economic and policy issues. Although EPA does have discretion to accelerate regulatory development, we continue to believe that, in this instance, the agency's acceleration of the rule relatively late in the development process, coupled with pressure from OMB to provide burden reduction at levels advocated by the Small Business Administration (e.g., a 5,000

[1] GAO-08-115T.

pound Form A threshold), resulted in a poorly analyzed proposed rule that drew criticism from thousands of commenters. In response to EPA's comment, however, we have added a sentence to clarify that we considered in our review the results of EPA's stakeholder process, which started well before the proposed rulemaking commenced. In fact, that process began in November 2003 and concluded in February 2004, even earlier than EPA indicated in its letter. We also added a sentence to make clear that EPA officially began its rule-making process by approving the Action Initiation Form on March 30, 2004.

3. We agree with EPA's statement that the full rulemaking record is best reviewed to determine whether adequate analyses were conducted before EPA issued the final rule. Indeed, we reviewed all relevant documentation in the record, and none of that material—including the studies that EPA inserted into the record between the proposed and final rules—addresses the shortcomings that we have identified in our report. For example, EPA did not fully consider the impacts of the rule on users and recipients of TRI data, including the states, which under the law, receive TRI data directly from facilities. It is for this reason that many commenters, including states and EPA's own Science Advisory Board, objected to any increase in the Form A threshold provided for in the proposed or final rules. EPA also did not substantiate its assertion that the final TRI rule puts into place important incentives to reduce chemical emissions and increase recycling and treatment as alternatives to disposal and other releases. If that claim is true, as EPA contends, then some analysis is warranted to support it. Prior to the rule, a facility could use Form A if its total waste management did not exceed 500 pounds. For example, a facility could use Form A if it released 100 pounds of a non-PBT chemical and treated an additional 400 pounds of the chemical for disposal (i.e., a total annual reportable amount of no more than 500 pounds). Now, instead of treating the 400 pounds of chemical, that same facility could simply release all 500 pounds and qualify for Form A. EPA has not demonstrated in any analysis that the incentives to decrease releases outweigh the incentives to increase releases of chemicals.

4. We disagree that all appropriate and necessary analyses were conducted for either the proposed or final rule. Contrary to EPA's assertion, we considered the entire economic analysis that EPA included in the publicly accessible docket for the final rule—in addition to reviewing extensive internal documentation that is not publicly available and conducting interviews with knowledgeable EPA staff to clarify our understanding—regarding the rulemaking process. We do not believe that any further discussion is necessary without

analyses or comments from its program offices that were not available in the publicly-accessible docket or made available for our review. We also considered the 122,000 public comments—99 percent of which did not support the TRI rule—and EPA's analysis of them. GAO continues to believe that EPA has not demonstrated that the costs of the TRI rule exceed its benefits.

5. We considered the supporting analyses of the final rulemaking in our evaluation. We clearly stated in our draft report that EPA decided to modify the proposed expansion of Form A eligibility from 500 to 5,000 pounds of releases so that the final rule only allowed a fourfold increase in releases (from 500 to 2,000) pounds within a 10-fold increase in total waste management practices (from 500 to 5,000 pounds).

6. We have included additional explanation in the report to clarify that EPA considers the Form A to be a range report indicating to the public that a facility released between 0 and 2,000 pounds of a chemical. At the same time, we note EPA's own statement in the final rule that some facilities eligible for Form A continue to report on Form R out of a desire to showcase their pollution prevention efforts or to demonstrate good environmental stewardship. That is, some facilities choose not to use Form A to avoid giving the impression that their releases may have been as large as the range allows. For example, a facility that released 100 pounds of a chemical may file Form R because it does not want the public to assume its releases may have been as high as 2,000 pounds.

7. We disagree that EPA has demonstrated that the rule provides incentives to reduce chemical emissions while minimizing the loss of information to communities about toxic releases and pollution prevention, especially for non-PBT chemicals. In fact, we concluded that the rule may actually reduce the incentives for a facility to prevent pollution by allowing up to 2,000 pounds of releases for those chemicals. Appendix III of this report shows that Form A provides no details about a facility's efforts to increase source reduction, recycling, or treatment of chemicals. Form A leaves the public to assume that the facility is releasing between 0 and 2,000 pounds of a chemical and is managing (e.g., recycling, treating) between 0 and 5,000 pounds of that chemical. With regard to EPA's comment that the rule promotes national policy under the Pollution Prevention Act of 1990—it is unclear whether expanded use of Form A serves that policy. The Congress declared in the Pollution Prevention Act that the national policy of the United States is that (1) pollution should be prevented or

reduced at the source whenever feasible; (2) pollution that cannot be prevented should be recycled in an environmentally safe manner, whenever feasible; (3) pollution that cannot be prevented or recycled should be treated in an environmentally safe manner whenever feasible; and (4) disposal or other release into the environment should be employed only as a last resort and should be conducted in an environmentally safe manner. EPA apparently assumes that some facilities will reduce the amount of toxic chemicals they release in order to qualify for the new, higher Form A thresholds. However, facilities that are presently below these thresholds could now increase their releases of toxic chemicals without triggering the requirement to file Form R. EPA provides no evidence that the higher Form A thresholds will result in net source reduction. Therefore, we disagree that increasing the amount of releases and other waste management allowed on Form A supports national policy to prevent or reduce pollution at its source.

8. We disagree that EPA has sufficiently supported its assertion that the final rule promotes improvements in environmental performance. In fact, only Form R allows facilities to showcase to the public their improvements. In drafting our report, we reviewed all supporting materials that EPA provided in the docket for the proposed and final rules. Although an analysis of actual results of the rule would be meaningful, we agree with EPA that it is premature. However, EPA could have lent credibility to this assertion by providing an analysis to determine whether, for example, whether introduction of Form A in 1995 led to improvements in facilities' environmental performance.

9. We disagree that requiring less information from many facilities will encourage them to reduce emissions and improve their environmental performance. As a general matter, EPA failed to establish that reducing the amount of information that those facilities must disclose would improve accountability for facilities to reduce emissions resulting from their use of toxic chemicals. Also, as discussed above, EPA did not explain the basis for its apparent belief that the incentives provided by the new Form A threshold will result in a net reduction in toxic chemical releases. Hence, it is unclear how EPA's course of action would improve, rather than hinder, facilities' overall environmental performance.

Appendix V: Comments from the Office of Management and Budget

Note: GAO comments supplementing those in the report text appear at the end of this appendix.

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

October 30, 2007

Mr. John B. Stephenson
Director, Natural Resources and Environment
U.S. Government Accountability Office
441 G Street, N.W.
Washington, D.C. 20548

Dear Mr. Stephenson:

This provides the comments of the Office of Management and Budget (OMB) on the excerpts that you have provided to us from the General Accounting Office's (GAO) draft report entitled, *Toxic Chemical Releases, EPA Actions Could Reduce Environmental Information Available to Many Communities*.

As explained below, we have serious concerns regarding how GAO has characterized, in these excerpts, OMB's activities under the Paperwork Reduction Act (PRA) and Executive Order (EO) 12866. Our concerns fall into three areas.

I. The GAO excerpts do not provide the necessary context for properly understanding OMB's role in reviewing the burden estimates for the Toxics Release Inventory (TRI) information collection.

See comment 1.

Our first concern with the GAO excerpts is that they do not provide the necessary context (including an accurate and coherent chronology) that would enable the reader to understand properly OMB's successive interactions with the Environmental Protection Agency (EPA) on, initially, EPA's request that OMB renew our approval under the Paperwork Reduction Act of EPA's collection of information for the TRI and, subsequently, OMB's review under Executive Order 12866 of EPA's draft proposed and final rules to amend EPA's TRI regulations.

As a result, the GAO excerpts suggest, erroneously, that OMB "increased" the estimated paperwork burden for the TRI collection of information (allegedly due to OMB's interest in influencing the burden estimates in connection with EPA's subsequent proposed rule on TRI burden reduction), when the fact is that OMB approved – in response to EPA's request – a reduction of 59% in the estimated PRA burden for the TRI collection. What the GAO excerpts describe as OMB's "increase" in the burden estimate is OMB's decision to approve a 59% reduction in the burden estimate, rather than the 73% reduction that EPA had requested. We do not understand how GAO can describe OMB's decision to approve a 59% reduction in the PRA-approved burden estimate as OMB having "increased" the burden estimate.

See comment 2.

See comment 3.

Here is the chronology. OMB's review of EPA's proposed downward re-estimates of the paperwork burden took place during OMB's PRA reviews of two successive EPA requests for renewal of OMB's approval for the TRI collection of information. These PRA reviews took place in 2002 and 2003, which was *a year and a half before* there was discussion involving OMB of any specific burden reductions proposals or estimates associated with EPA's proposed rule on TRI burden reduction (which was published in October 2005).

In the first of the two PRA reviews, EPA requested that the approved burden estimate for the TRI collection be reduced by 73% (from the previously-approved estimate of 10.257 million hours downward to 2.737 million hours). Not only would this be a very large reduction in the previously-approved burden estimate, but it was not associated with any change in the paperwork requirements of the TRI collection. In other words, the requested burden-estimate reduction of 73% did not reflect any *actual real-world reduction* in paperwork burden. Nevertheless, based on OMB's review of EPA's burden re-estimate, OMB approved a reduction of 41% in the burden estimate (a reduction of 4.227 million hours). A primary reason OMB did not approve all of EPA's requested reduction is that OMB was concerned that EPA's estimates did not appear to account for all categories of burden, including time for data tracking and assembly; creation, operation and maintenance of data tracking systems; training; and compliance determinations. OMB explained the basis for this determination in the public PRA file,[1] and OMB provided EPA with a 10-month approval so that EPA and OMB could revisit again whether additional reductions in the burden estimate were warranted.

During that second PRA review, EPA again requested a further reduction in the burden estimate, again with no associated reduction in the TRI paperwork requirements. OMB ultimately agreed to a further reduction of 1.859 million hours.[2] When combined with OMB's prior approval of the 41% reduction, this represented OMB's approval of a total reduction of 59% in the approved burden estimate, from the original 2002 baseline of 10.257 million hours. Moreover, in approving a 59% reduction, OMB had approved the lion's share (80%) of EPA's original request for a 73% reduction in the burden estimate.

In addition, with respect to the engineering analysis that is discussed in the excerpts, EPA did not present this information to OMB as part of our PRA review, but instead later on – after OMB had renewed the PRA approval for the TRI collection (and prior to the discussions and review of EPA's proposed TRI rule). Therefore, when OMB – during its PRA review – decided to accept most, but not all, of EPA's proposed downward re-estimate of paperwork burden (as discussed above), OMB was not rejecting the engineering analysis, for the obvious reason that EPA had not yet presented that analysis to OMB for our consideration.

[1] See *Notice of Office of Management and Budget Action,* ICR reference numbers 200211-2070-005, and 200211-2070-006 (enclosed).
[2] See *Notice of Office of Management and Budget Action,* ICR reference numbers 200310-2070-002, and 200310-2070-003 (enclosed).

See comment 4.

EPA presented the engineering analysis to OMB in the summer of 2004, outside of the regular PRA approval process (in other words, EPA was not requesting the downward re-estimate as part of a request for OMB to renew the approval of the TRI collection). In response, OMB expressed concerns about the merits of the engineering analysis and suggested to EPA that it discuss the analysis in the preamble of the proposed TRI burden-reduction rule the following year. EPA agreed with this approach.

In the preamble of the proposed rule, EPA described the engineering analysis. In addition, EPA also indicated that, if EPA had used this methodology as the baseline for estimating the burden reduction under the proposed rule, the total burden reduction resulting from the proposed rule would have been about three-fourths of the reduction as estimated using the currently approved PRA-burden estimate as the baseline.

Thus, neither OMB nor EPA concealed either the engineering analysis or what the results would be if its methodology were used to estimate the burden reductions that would occur under the proposed rule. EPA placed in the public docket for the proposed rule both estimates of burden reduction (the one using the current PRA-approved burden estimate and the other using the engineering analysis), and EPA requested public comment on both estimates. EPA also summarized, in the preamble, the results of the independent peer review that EPA had arranged of the engineering analysis:

> *The peer review panel was generally favorable to both the general methodology used in the engineering analysis (summing across Form R elements to derive total burden) and the specific form completion steps described. However, the panel felt that the time allocated for many of the tasks should be increased. The panel disagreed with the assumption in the Agency's engineering analysis that a typical TRI reporting facility was reasonably modern and well-organized. A majority of the panel thought that EPA overestimated the experience and knowledge that a typical TRI reporting facility would have in completing its Form R and thus underestimated the time it would take to complete the Form.*[3]

In response to the proposed rule, EPA received a number of comments on the engineering analysis. The comments were mixed, with several comments questioning the validity of its methodology and/or the lower baseline burden estimates that would result from it.[4] After reviewing the public comments, EPA decided not to use the methodology of the engineering analysis in estimating the burden reduction that would result from the final rule.

II. The GAO excerpts do not provide a complete and balanced presentation of OMB's review of the revised burden estimates that EPA proposed.

See comment 5.

Our second concern, closely related to the first, is that the GAO excerpts do not provide a complete and balanced presentation of OMB's actions in approving most, but not all, of

[3] *Federal Register,* Volume 70, Number 191, Tuesday, October 4, 2005, p 57827.
[4] *Response to Comments, Toxic Release Inventory Phase 2 Burden Reduction Rule*, USEPA, December 18, 2006, pp 149-155 (enclosed).

the proposed downward re-estimates that EPA had put forward for the paperwork burden that is imposed by the TRI collection of information.

As part of our responsibilities under the Paperwork Reduction Act, OMB regularly reviews the re-estimates that agencies develop of the burdens imposed by their paperwork requirements. Such re-estimates and reviews are a normal part of the PRA process. That is because, under the PRA, OMB's approval for a collection of information must be renewed at least once every three years.

In this case, the downward re-estimate that EPA put forward, as part of EPA's request for OMB's renewal of the PRA approval for the TRI collection, were not associated with any actual change (i.e., reduction) in the paperwork requirements that are imposed by the TRI collection. In other words, in PRA terminology, the re-estimate was not associated with what we refer to as a "program change" (e.g., the elimination of certain questions, or a reduction in the frequency of reporting). Instead, EPA's re-estimate was just that – a change in EPA's *estimate* of the burden that was imposed by the (unchanged) TRI collection. In PRA terminology, we refer to such re-estimates as "adjustments." As OMB has explained in its annual PRA report to Congress (the "Information Collection Budget"), such adjustments can occur due to demographic and economic factors (e.g., during a recession, more people submit applications for unemployment benefits) or due to an agency's reconsideration of the prior burden estimates (e.g., because the agency has made a revision to its methodology for estimating paperwork burden). The downward re-estimates that EPA put forward for the TRI program included both types of "adjustments." That is, EPA reduced its estimates of both the number of TRI reports that would be filed and the time needed to complete each report.

Under the PRA, the preparation, review, and issuance of burden estimates is not an end in itself. Instead, burden estimates are an important part of the evaluation, which the PRA requires both the agency and OMB to conduct, of whether the "practical utility" of a proposed collection of information justifies the burden that the collection would impose on the public. For this reason, the burden estimates are most important when those estimates are associated with an agency's proposal to adopt a new collection or to make changes in a collection, such as by increasing – or decreasing – the reporting requirements (i.e., when there is a proposed "program change"). In such cases, the burden estimates are a key component in the evaluation, by the agency and by OMB, of whether the new collection (or the collection changes) should be proposed and approved. As noted above, EPA's request for a downward re-estimate of 73% did not result from a "program change" to the TRI collection, but instead was an "adjustment" based on EPA's reconsideration of the prior PRA-approved burden estimate.

As we have explained above, OMB approved 80% of EPA's proposed downward re-estimate (i.e., OMB approved a 59% reduction in the burden estimate, in response to EPA's request for a 73% reduction). This fact is not at all clear in the GAO excerpts. The excerpts describe the situation as OMB having increased the burden estimate for the TRI collection, and this is because the GAO excerpts use – as the operative "baseline" – EPA's burden estimate under its proposed 73% downward re-estimate. However, EPA's

proposal is not the appropriate baseline to evaluate OMB's actions, because that is not the baseline that OMB, properly, applies under the PRA. Instead, the proper baseline is the estimate that had been previously approved for the TRI collection (which estimate EPA was proposing to reduce).

OMB approved most, but not all, of EPA's proposed burden re-estimate for the following reason. In the case of an information collection that is not being changed (as was the case with the TRI collection during OMB's PRA review), the starting point for the analysis is, as it should be, the collection's prior approved burden estimate. Re-estimates of burden – upward or downward – are permitted, and do occur, but they need to be explained and justified by reference to the prior approved estimate. In the absence of such explanation and justification, periodic re-estimates of burden could result in these estimates becoming meaningless. Accordingly, OMB decided to accept most but not all (i.e., 80%) of EPA's proposed downward re-estimate, because OMB had concluded that EPA sufficiently demonstrated that the original 2002 PRA-approved burden estimate should be reduced by 59%, but OMB was not persuaded that the estimate should be reduced by 73%. OMB therefore proceeded to approve EPA's request that OMB renew its approval for the TRI collection, with the reduced burden estimate (reflecting the 59% reduction in the burden estimate from the original 2002 PRA-approved baseline). It should be noted that this did not mean that this would be the "final" burden estimate. That is because EPA could request a further re-estimate the next time that EPA submitted the proposed collection to OMB for review and approval. In fact, that is what had already happened in this case; OMB initially approved a 41% reduction in the burden estimate, and OMB subsequently approved a further reduction to the estimate, resulting in OMB having approved a total reduction of 59% in the burden estimate.

III. The GAO excerpts do not provide the necessary context for properly understanding EPA's decision to include an option for raising the Form A eligibility threshold in the proposed TRI Burden Reduction Rule.

See comment 6.

Our third concern with the GAO excerpts relates to their discussion of OMB's role with respect to the inclusion, in EPA's proposed TRI rule, of an option to raise the Form A eligibility threshold from 500 to 5,000 pounds. Again, we do not believe that the GAO excerpts provide a complete and balanced presentation of the facts.

As an initial matter, based on the GAO excerpts, one might conclude (erroneously) that the option of raising the Form A eligibility threshold was unheard of, and unanalyzed, before it was included in EPA's draft of the proposed rule. That is definitely not the case. The idea that one way to reduce TRI reporting burden would be by raising the Form A eligibility threshold had been a topic of discussion – both within the Federal Government and between the Federal Government and stakeholders – for many years, in part because several prior EPA rule makings had substantially increased the program's reporting burden.

In September 2002, EPA initiated a Stakeholder Dialogue process to identify improvements to the TRI and to develop opportunities to reduce the burden on reporting

facilities. As part of that process, EPA issued a White Paper with options for TRI burden reduction intended to stimulate public comment. Option 3 in the White Paper was "Expanded Eligibility for the Form A Certification Statement," which included a discussion of raising the Form A eligibility threshold from 500 to either 1,000, 2,000 or 5,000 pounds,[5] exactly the same options discussed in the proposed burden reduction rule several years later.

Moreover, the idea of raising the eligibility threshold had arisen in another public forum, which was OMB's request in February 2004 for the public to submit nominations for reducing regulatory burdens on the manufacturing sector.[6] In response to this request, OMB received nominations for a wide variety of regulatory reforms, several of which – including one from the Small Business Administration's (SBA) Office of Advocacy – focused on the TRI program.[7] (This was not the first time that the TRI program had been the subject of a reform nomination; the TRI program had also been nominated for reform in response to each of OMB's requests for nominations going back to 2001.[8]) One reform that the SBA Office of Advocacy specifically suggested was "expanding the number of filers eligible to use a 'short form' annual form (Form A)."[9] OMB and the relevant regulatory agencies then reviewed the 189 different sets of regulatory nominations. Based on that review, OMB and the regulatory agencies mutually agreed to pursue 76 of these nominations, and the agreed-upon course of action took various forms, such as the regulatory agency conducting a review and reporting back to OMB or the agency initiating a rulemaking.

OMB announced these 76 reforms in a report that OMB issued in March 2005, and one of these reforms (#52) involved "Reporting and Paperwork Burden in the Toxic Release Inventory (TRI) Program." As the report did for each of the 76 nominations, it summarized the comments that OMB had received in support of reform of the TRI program: "*The required TRI database contains thousands of reports that show little or no release of toxic chemicals, an indication that expensive and time-consuming reports are required with little environmental benefit. Burden-reduction reforms are needed such as raising the reporting thresholds on the amount of material that can be used without triggering a report.*" [10] The report then went on to outline the course of action to which OMB and EPA had mutually agreed, which included EPA issuing a proposed rule on TRI burden reduction in August 2005 and issuing the final rule in December 2006.

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[5] *TRI Phase II Stakeholder Dialog*, EPA. Available at http://www.epa.gov/tri/phase2/phase_2.htm#intro.

[6] *Informing Regulatory Decisions: 2004 Draft Report to Congress on the Costs and Benefits of Federal Regulations and Unfunded Mandates on State, Local, and Tribal Entities*, OMB, 2004. Available at http://www.whitehouse.gov/omb/inforeg/draft_2004_cbreport.pdf.

[7] *Progress in Regulatory Reform: 2004 Report to Congress on the Costs and Benefits of Federal Regulations and Unfunded Mandates on State, Local, and Tribal Entities*, OMB, 2004, p 70. Available at http://www.whitehouse.gov/omb/inforeg/2004_cb_final.pdf

[8] See, e.g., *Making Sense of Regulation 2001 Report to Congress on the Costs and Benefits of Federal Regulations and Unfunded Mandates on State, Local, and Tribal Entities*, OMB, 2001, p 94. Available at http://www.whitehouse.gov/omb/inforeg/costbenefitreport.pdf.

[9] *Nominations for Regulatory Reform, Mar 2004*, SBA, p 7. Available at http://www.sba.gov/advo/laws/comments/omb04_0514.pdf.

[10] *Regulatory Reform of the U.S. Manufacturing Sector*, OMB, 2005, p 28. Available at http://www.whitehouse.gov/omb/inforeg/reports/manufacturing_initiative.pdf.

Although it is not clear from the GAO excerpts, the March 2005 report must be what the excerpts are discussing when the excerpts refer, obliquely, to "EPA's commitment to OMB to provide burden reduction by the end of December 2006." Yes, this was a commitment that EPA had made to OMB, but this was also a commitment that EPA had made to itself and to the public.

Thus, the idea of increasing the Form A eligibility threshold, and EPA's commitment to issue a final burden-reduction rule by the end of 2006, were a matter of public knowledge. By failing to provide this context (at least in the excerpts that we have received for review), GAO does not present a complete and balanced picture of EPA's development of the draft proposed rule.

See comment 7.

Another context point, to which the GAO excerpts give insufficient weight, is that the discussion in the excerpts focuses on EPA's inclusion in the *proposed* rule of the option to increase the Form A eligibility threshold. In other words, this is a discussion of an option on which EPA was inviting public comment. Thus, by including this option in the proposed rule, EPA was not making a final decision to increase the eligibility threshold. Instead, EPA had decided that the long-discussed idea of increasing the eligibility threshold was serious enough to warrant inclusion in the proposed rule, so that this option would be subject to public scrutiny and comment (both in favor and against) that EPA would subsequently consider as it reviewed the public comments and developed the final rule.

We see nothing inappropriate about EPA including, in the proposed rule, an option – namely, to increase the Form A eligibility threshold – that had long been a matter of policy discussion and that would be one possible and logical way of reducing the reporting burden of the TRI program. At the end of the day, what ultimately matters is the decisions that a rulemaking agency makes in its final rules. In this regard, courts review final rules; they do not review proposed rules. And, when the courts review a final rule, they evaluate whether the rulemaking agency has sufficiently justified the decisions that the agency has made in the final rule (not whether the agency had sufficiently justified, in the proposed rule, the agency's decision to include the particular options on which the agency was requesting public comment). Finally, we should note that, in its final rule on TRI burden reduction, EPA did not adopt the threshold increase as it had been proposed. Instead, in the final rule, EPA responded to the public comments on the proposal by adopting a significantly different (and smaller) increase in the eligibility threshold for releases to the environment (2000 pounds), while keeping the threshold for chemicals managed as waste at the proposed level of 5,000 pounds.

* * * *

See comment 8.

In conclusion, OMB takes seriously its responsibility under the Paperwork Reduction Act to ensure the integrity of burden estimates. OMB reviewed a series of requests by EPA to reduce its estimates of TRI reporting burden, well before the development of specific options for the proposed burden reduction rule, and OMB approved most, but not all, of

those estimated reductions. Contrary to the GAO excerpts, OMB's approval of a very substantial (59%) reduction in the burden estimate does not constitute OMB increasing the burden estimate. Moreover, with respect to EPA's subsequent rulemaking on reducing TRI burden, there was nothing inappropriate about EPA including in the proposed rule for which EPA was requesting public comment the long-discussed concept of increasing the Form A eligibility threshold.

Thank you for the opportunity to comment on the excerpts from the draft GAO report. In order to correct the report, I request that your staff incorporate these comments.

Sincerely,

Kevin F. Neyland
Deputy Administrator
Office of Information
and Regulatory Affairs

Enclosures

The following are GAO's comments on the Office of Management and Budget's letter dated October 30, 2007.

GAO Comments

1. We believe that the reader would be able to clearly understand OMB's successive interactions with EPA on the agency's request that OMB renew its approval under the Paperwork Reduction Act (PRA) for EPA's collection of information for the TRI. The report provides considerable detail about the process used for estimating the baseline burden associated with collecting TRI information on Form R versus Form A. We provided that level of detail to help the reader understand that the net burden savings associated with EPA's changes is derived from the difference in burden estimates associated with each form. Nonetheless, we reviewed the relevant sections of the report and clarified that the reductions in TRI burden ultimately approved by OMB were smaller than the EPA requested but not necessarily "increased" relative to prior OMB information collection approvals.

2. We agree with OMB's assertion that EPA's request for a reduction in the approved burden estimate for the TRI collection was not associated with any change in the paperwork requirements of the TRI collection. However, we disagree with OMB's assertion that the revision did not reflect any "actual real-world reduction" in paperwork burden. In fact, the request for reduction was based on EPA's evolving understanding of the actual burden associated with reporting to the TRI based on best available information that the agency had at the time. We note that despite EPA's requests, OMB has not allowed EPA to contact more than 10 TRI facilities to develop its burden reduction estimates.

3. OMB's comments implied that the report stated that the office rejected EPA's engineering analysis as part of a PRA review. The report simply compares the lower burden estimates derived from EPA's engineering analysis with the OMB-approved burden estimates for the TRI information collection. The report neither states nor implies that OMB rejected EPA's engineering analysis as part of an ICR. EPA staff knowledgeable about the ICR process stated that OMB had expressed concerns about the merits of the engineering analysis. When we met with OMB staff who were knowledgeable about the engineering analysis, they declined to provide details about the office's rationale on the grounds that such information was related to internal deliberations and OMB policy was to not discuss internal deliberations.

4. OMB stated that, as a result of concerns it raised, EPA decided to discuss the engineering analysis in the proposed TRI Burden Reduction

Rule's preamble. OMB's comments also provided additional details about the comments that EPA received from the public on its engineering analysis. The excerpts that we provided to OMB did not include details of EPA's engineering analysis, or the public comments pertaining to it, because those details did not pertain to OMB's involvement in the TRI rule. Therefore, OMB had no reason to know that our draft report already included many of the details that OMB provided in its letter. OMB further stated that "neither OMB nor EPA concealed either the engineering analysis or what the results would be if its methodology were used to estimate the burden reductions that would occur under the proposed rule." Our report neither stated nor implied that OMB concealed any information. However, as noted earlier, OMB chose to not provide us with details about the office's concerns about the merits of EPA's engineering analysis.

5. OMB's comments raised a concern that the report excerpts did not provide a complete and balanced presentation of OMB's actions in approving most, but not all, of the proposed downward re-estimates that EPA requested in its TRI information collection. As we acknowledged previously, OMB did not have the benefit of the complete draft report, which provides context and balance. Specifically, none of the report's three objectives focused on OMB programs or even OMB's role in the TRI program. Nonetheless, to provide the reader with necessary context to understand the complexity in estimating the baseline burden associated with the TRI information collection requests (i.e., TRI Form R and Form A), we discuss OMB's actions under the PRA in approving EPA's recent TRI information collection requests. As we stated in an earlier comment, we have reviewed the report to ensure that our presentation of the facts clearly states that OMB did not approve all the reduction in estimated burden that EPA had requested and to ensure that the relatively smaller reduction is not construed as an increase in the baseline. Nonetheless, we do not believe that the level of detail provided by OMB's comments is proportional to the relative importance of OMB's role in the context of our report's scope and objectives.

6. OMB stated its belief that the excerpts provided by GAO do not provide a complete and balanced presentation of the facts associated with OMB's role in the development of EPA's TRI Burden Reduction Rule. OMB stated that one might erroneously conclude that the option of raising the Form A eligibility threshold was unheard of, and unanalyzed, before it was included in EPA's proposed rule. OMB stated that was "definitely not the case." We agree, and the draft report

clearly states that we considered in our review the results of EPA's stakeholder process, which started well before the proposed rulemaking commenced. In fact, we state in the report that the TRI workgroup had carefully analyzed and decided to eliminate the option to raise the Form A eligibility threshold from its consideration, at an early step in the rule development process, because of the option's potential adverse impact on the TRI. Therefore, we do not agree that the reader will erroneously conclude that the option was unheard of or unanalyzed. Instead, we believe that the report as a whole provides the reader with the context to understand when in the rule development process OMB's preferred burden reduction option was identified, considered, evaluated, dropped from further consideration, and ultimately picked up again for inclusion in EPA's TRI Burden Reduction Rule.

7. OMB commented that it sees nothing inappropriate about EPA including, in the proposed rule, an option to increase the Form A eligibility threshold—that had long been a matter of policy discussion. Although our report explains that the option was identified well before the rulemaking process commenced, we do not believe that the length of time the option was discussed has much bearing on its appropriateness. Instead, our report focuses on the extent to which EPA followed its internal rule development process, which is intended to ensure that scientific, economic, and policy issues are adequately addressed at the appropriate stages of rule development and to ensure adequate stakeholder participation across EPA's offices until the final action is completed. OMB further stated that "at the end of the day, what ultimately matters is the decisions that a rulemaking agency makes in its final rules." We agree. Accordingly, our report discusses that EPA responded to the overwhelming negative public comments to its proposed rule by raising the Form A threshold only 4-fold, rather than 10-fold, as EPA had proposed. Furthermore, our report evaluated the impact that the final rule may have on the TRI, and we concluded that EPA did not adequately address the analytical concerns we raised with its *proposed* rule in the supporting analysis the agency completed for the *final* rule [emphasis added]. Specifically, we found that despite the EPA's statement of the rule's purpose—to reduce burden while continuing to provide valuable information to the public—EPA did not adequately weight the benefits provided to facilities against the reduction in information available about toxic chemical releases to affected communities.

8. OMB concludes its comments by stating its belief that there was nothing inappropriate about EPA including in the proposed rule the

long-discussed concept of increasing the Form A eligibility threshold. Our report does not assert that inclusion of that option was inappropriate. Instead, we believe that EPA did not fully consider the true impacts its TRI Burden Reduction Rule would have on environmental information available to, and used by, many communities. In addition, we continue to believe that burden reduction can be achieved in ways that do not simultaneously reduce publicly-available information about use and management of toxic chemicals in many communities across the United States.

Appendix VI: GAO Contact and Staff Acknowledgments

GAO Contact

John Stephenson, (202) 512-3841, or stephensonj@gao.gov

Staff Acknowledgments

In addition to the contact named above, Steven Elstein, Assistant Director; Mark Braza; John Delicath; Karen Febey; Timothy Guinane; Terrance Horner, Jr.; Richard Johnson; Alison O'Neill; Jennifer Popovic; Steven Putansu; Kim Raheb; Michael Sagalow; and Jena Sinkfield also made key contributions.

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