



March 11, 2005

Office of Environmental Information (OEI) Docket  
U.S. Environmental Protection Agency  
Docket, Mail Code: 28221T  
1200 Pennsylvania Avenue, N.W.  
Washington, D.C. 20460-0001

RE: Comments of OMB Watch: Docket ID No. TRI-2004-0001

Dear Sir/Madam:

OMB Watch appreciates the opportunity to comment on the Environmental Protection Agency's (EPA) Toxics Release Inventory Reporting Forms Modification Rule, published January 10, 2005. The rule details nine specific reporting requirement changes the agency is considering to reduce the reporting burden under the Toxic Release Inventory (TRI) program, as well as two technical modifications. In addition, the agency is requesting comments on the methodology and results of EPA's analysis on the cost and burden of TRI reporting.

Unfortunately, several of the burden reduction options proposed by EPA would pose complications for stakeholders that rely on access to accurate TRI information. OMB Watch has outlined several problems with certain proposed changes below.

OMB Watch is a nonprofit research and advocacy organization that has government accountability and improving citizen participation as its core mission. Public access to government information has been an important part of our work for more than 15 years, and we have both practical and policy experience with disseminating government information. For example, in 1989 we began operating RTK NET, an online service providing public access to environmental data collected by EPA. Additionally, we are very engaged in agency regulatory processes, encouraging agency rules to be sensible and more responsive to public needs.

### **Removal of Latitude/Longitude Reporting Requirement**

Accuracy of the self-reported latitude and longitude data on Form R and Form A submissions has always been a problem. EPA acknowledges in the proposed rule that this data, along with all locational data, is of the utmost value for all of its databases and tools. The usefulness and importance of such data is obvious for tools like Enviromapper. OMB Watch agrees that accurate locational data is critical to the integrity of TRI.

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EPA intends to address the problem of lat/long accuracy, while also reducing redundancy between many EPA databases. To accomplish this, the agency proposes populating TRI with latitude and longitude information from the Facility Registry System (FRS), which EPA hopes will become the central clearinghouse for facility identification information. While it is important for EPA to use the best data and to reduce redundant efforts, OMB Watch has several concerns about the proposal to import FRS locational data into TRI.

Most importantly, OMB Watch believes that EPA's plan to address information gaps when new facilities must report under TRI is flawed. For new facilities reporting TRI data to EPA for the first time, the agency often does not have latitude or longitude information in either TRI or FRS. EPA employee Pat Garvey noted this issue in his presentation at the TRI Conference February 9, 2005. Garvey stated that TRI's Reporting Year (RY) 2003 data contained over 400 new facilities for which FRS did not have locational data. Even if this were an above average number of new facilities, it clearly indicates that there will be a significant number of data gaps in TRI if these facilities do not submit lat/long data. This data gap problem could also be exacerbated by the fact that not every state is participating in EPA's FRS program. Ideally, EPA should refrain from relying on FRS to supply data to TRI until all states are participating in the FRS program.

The proposed rule outlines the following process to fill these data gaps. For a facility reporting under TRI for the first time, the submitter would "call the TRI Call Center to obtain a TRI ID number to report on their Form A or R. At this time, the Call Center would obtain the facility address and send this information to the FRS management group at EPA. This group would use the FRS locational reference tools to create latitude and longitude data for the facility."

OMB Watch considers this method of creating locational data inadequate. Our understanding is that the locational reference tools referred to in the proposed rule amount to "address matching," where GIS software maps addresses to derive lat/long data. The two most apparent problems with this method are:

- 1) If the facility is in a rural or unpopulated area, offshore, etc., then the software may be unable to match the address to a location.
- 2) The facility's mailing address may not be the location where the toxic releases occur. For example, if a facility picks up mail at a headquarters building that manages several facilities, this would create a different lat/long than where its stacks are located.

Because it is unclear whether address matching will provide the desired results, OMB Watch recommends EPA modify the rule to require reporting of locational data from first time reporters. Additionally, we urge EPA to consider allowing only those submitters using TRI-ME software to get an exemption from reporting lat/long data. The software could allow for the automatic retrieval of FRS locational data. This would reduce burden for the submitter, while also encouraging facilities to use TRI-ME, which is the best way to reduce reporting burden.

Another problem occurs when the TRI dataset contains locational data for facilities that FRS does not cover. EPA suggests that it will use historical TRI data until FRS can provide the data. However, the agency is unclear about how long it will take to populate FRS with TRI data and

complete data quality checks. EPA must ensure that no lapses occur in the availability of locational data as a result of this process.

While OMB Watch supports a move for EPA to use verified, accurate data for the latitudes and longitudes in TRI, it is equally important to ensure that users can still get the information. EPA must make every effort to properly collect new information from covered facilities, and allow the public to access the information through both Envirofacts and TRI Explorer.

### **Removal of Reporting Requirements for EPA Permit and Program ID Numbers**

EPA facility identification numbers are extremely important to TRI, as evidenced by the information's frequent use by EPA programs and the public. EPA proposes to eliminate the requirement to have facilities report this information on the Form R, and instead replace it with data from FRS, much like the proposal for latitude and longitude data.

In one example of this data's usefulness, EPA uses the Resource Conservation and Recovery Act (RCRA) identification numbers to calculate "double counting" of TRI chemical disposal transfers sent to TRI facilities that report the same chemicals again. The RCRA IDs allow transfers of chemicals (marked with RCRA IDs in Section 6 of Form R) to be matched up with receiving TRI facilities (marked with RCRA IDs in Section 4.8). The 1998 report by the public interest organization National Environmental Trust, *Out of Sight, Out of Mind?*, also demonstrates the usefulness of facility identification numbers. The report used the Underground Injection Control ID numbers to help analyze the completeness and accuracy of underground injection well data in EPA databases. These examples are just a small sample of many uses for this data, which is an important component of TRI.

FRS, as the central warehouse for facility information, might seem a more appropriate source for the information, instead of submitters. However, EPA must ensure that the FRS data is of equal or higher quality than the identification numbers contained in the TRI database. Otherwise, EPA may be risking a loss of accuracy in this important data. Before including this provision in the final rule, OMB Watch recommends that EPA conduct a small study to compare subsets of the databases. If the facility identification numbers contained in FRS are equally or more accurate than those tracked in TRI, then EPA could keep this provision. However, if FRS turns out to contain less accurate data, then EPA should eliminate this proposal until the FRS data is sufficiently improved. Again EPA should consider delaying using FRS until all states are participating in the FRS program.

OMB Watch again stresses that there should be no interruption of access to this data if this modification is to take place.

### **Removal of Percentages for Stormwater Runoff**

EPA proposes eliminating the requirement that facilities calculate the percent of Emergency Planning and Community Right to Know Act (EPCRA) section 313 chemicals that are released

into stormwater. This would remove part II section 5.3 column C from the Form R. OMB Watch opposes EPA's proposal to remove this information from TRI and urges the agency to retain the requirement.

Although EPA asserts that stakeholders can derive the data from other sources, the information is extremely useful in analyzing and understanding TRI releases. It is not uncommon for the overall water releases reported in TRI to rise or fall because of a few facilities with large releases. Stormwater runoff often dominates such large releases. Inclusion of the percentage data allows users to better understand what drives year-to-year variations in water release data, and to detect whether increases were due to production changes or rainfall. Although EPA gathers this information through the NPDES program, the agency should continue to also collect the information under TRI so users can easily access the data without having to cobble together information from various sources. OMB Watch urges EPA to retain this reporting requirement.

### **Removal of Reporting Data Field for Optional Submission of Additional Information**

OMB Watch supports EPA's proposal to add an optional text box to TRI-ME so that reporting facilities can provide comments about pollution control techniques when submitting Form Rs. Under the Pollution Prevention Act, EPA must provide space for submitters to provide this type of information. Unfortunately, the agency has previously excluded any information provided in this text box from the electronic TRI database. This oversight resulted because there was no mechanism for submitters to provide the information electronically. Even if a facility submitted its TRI data electronically, EPA did not provide a location to enter this information into the electronic format. Therefore facilities wishing to provide additional comments on pollution prevention would be forced to submit them separately on paper, which would not be coded into the database. EPA's proposal would add a notation on the Form R so that stakeholders could see whether facilities have provided additional text, and the text would be available for the first time on the Internet, therefore improving access. OMB Watch supports this proposal, and encourages EPA to make this information available through both TRI Explorer and Envirofacts.

### **Burden Reduction Economic Assessment**

EPA estimates that the reporting changes in the proposed rule would reduce burden by 45,000 hours with an estimated cost savings of \$1.85 million. For the relatively minor changes that EPA has proposed, this is an impressive reduction. While OMB Watch has not supported all of the changes, it is clear that the changes we have supported would discernibly reduce the reporting burden associated with TRI.

However, OMB Watch is troubled about the lack of clarity surrounding the burden estimates. EPA does not provide clear, understandable baseline estimates of burden hours in the proposed rule. In a stakeholder meeting on TRI burden reduction, Paul Borst, an EPA employee, reported that EPA is using a 2002 baseline burden of approximately 4.1 million hours (3.8 million for Form R and 260,000 for Form A). However, the agency reported significantly different burden estimates in Information Collection Requests for TRI Forms R and A published in the Federal

Register on Oct. 31, 2003. In those requests, EPA estimated burdens of 2.4 million hours for Form R and 174,000 hours for Form A. These would only total 2.6 million hours.

In those ICRs, EPA also acknowledges that a significant reduction in the burden estimates had just occurred, with a reduction of over 3.1 million burden hours. This resulted from an adjustment of the burden average based on responses from reporting facilities about the actual reporting burden and the increased use of TRI-ME software. For Form R alone, the ICR estimates a burden reduction of 232,000 hours from the use of TRI-Me reporting software.

In light of the more significant burden reduction rule that EPA is slated to propose later this year, it seems prudent that the agency clarify the burden estimates that it is using in this process. OMB Watch does not understand why EPA is considering the massive changes to TRI reporting for this larger rule when the agency has just posted significant reductions in 2003. If EPA is using baseline burden numbers from before these reductions occurred, it would be irresponsible and misleading to risk the integrity of this important program based on inflated numbers. If EPA has already adjusted for the reduced burden estimates, then the agency should better explain its rationale for considering such drastic measures after achieving such significant reductions. Furthermore, EPA should fully disclose all of the burden estimates for the past several years.

Given the significant burden reduction that TRI-ME has already achieved, OMB Watch would also like EPA to better explain why the agency has not developed an option to more aggressively expand and improve this program. The electronic reporting software has reduced the reporting burden for submitters by hundreds of thousands of hours without reducing the quantity or quality of information at all. The *Estimates of Burden Hours for Economic Analyses of the Toxic Release Inventory Program*, written by Cody Rice in EPA's Office of Environmental Information in 2002, estimated an even higher level of burden reduction than reported in the 2003 ICRs. A sample of facilities testing TRI-ME estimated a 25 percent reduction in calculations, form completion, and recordkeeping/mailling activities. The report projected 283,000 hours of reduced burden with just 60 percent of facilities using the program compared to the 232,000 burden hours the ICR reported with 90 percent use.

EPA should seek to maximize the burden reduction from this program first, before considering options that would eliminate information or lower the accuracy of information in TRI. Since the TRI-ME effort is relatively new, it stands to reason that there remain significant improvements and refinements for the agency to make. The agency could require use of the TRI-ME software for reporting unless a facility applied for an exemption. EPA has such a requirement for reporting Risk Management Plans and achieved near 100 percent electronic submission in the first round of reporting five years ago. Increased computerization would make an electronic reporting requirement even easier for facilities to meet now. In addition to maximizing use of the program, EPA could propose other program improvements to further reduce burden. By working with submitters, EPA should be able to identify the best burden saving assistance that could be programmed into the TRI-ME software, such as automated data quality warnings to alert submitters to possible data entry or calculation errors. The agency could also explore expanding the software tools to incorporate year-round record keeping options or programs to familiarize first reporters with the TRI program. With maximized use of the program, each improvement would automatically be multiplied across the entire population of TRI submitters.

## Conclusion

OMB Watch understands the importance of reevaluating reporting requirements under the TRI program. The process allows the agency to identify and address ineffective or problematic requirements. However, these efforts to reduce the reporting burden should never detract from the primary purpose of TRI — providing accurate useful information to the public about chemical releases into their environment. The public has right to know what is being put into the land they live on, the air they breathe, and the water drink. Congress recognized this right when it passed the statute creating TRI, and it is not EPA's role to undercut Congress's intention for the sake of burden reduction.

Many of the changes contained in EPA's proposed rule have merit and deserve serious consideration. However, OMB Watch has concerns about several proposed changes and urges EPA to carefully consider the issues raised in our comments before finalizing these provisions. Specifically in regard to the proposed rule, OMB Watch recommends EPA:

- Refrain from replacing submitter data with FRS information until all states are participating in the FRS program
- Retain the requirement to report locational data for first time reporters;
- Reserve automatic retrieval of FRS locational data for TRI-ME submitters only;
- Conduct a small study to evaluate the data quality of facility identification numbers in the FRS database before substituting it for submitter data;
- Retain the requirement that facilities calculate the percent of TRI chemicals released in stormwater; and
- Maintain the plan to add a text box to TRI-ME software for submitters' comments on pollution prevention efforts and provide the information online.

In addition to these recommendations on EPA's proposed changes to the TRI program, we also urge the agency to develop burden reduction options that capitalize on technological advances and educational efforts rather than reductions in information collection. Electronic reporting is already being implemented and can continue to reduce reporting burden as it becomes more widely used by submitters and the software program becomes more refined.

OMB Watch appreciates the opportunity to provide these comments and hopes they are helpful. We look forward to working with EPA on throughout the burden reduction process.

Sincerely,



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