



## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 372

[EPA-HQ-TRI-2011-0174; FRL-9642-2]

### Electronic Reporting of Toxics Release Inventory Data

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** Facilities that currently report Toxics Release Inventory (TRI) data to the U.S. Environmental Protection Agency (EPA) use either paper reporting forms or the online reporting software application known as the Toxics Release Inventory-Made Easy Web or simply *TRI-MEweb*. Effective January 1, 2013, EPA proposes to require facilities to report non-confidential TRI data to EPA using electronic software provided by the Agency. The only exception to this electronic reporting requirement would be for the few facilities that submit trade secret TRI information (including sanitized and unsanitized information), who would continue to submit their trade secret reporting forms and substantiation forms in hard copy. As of Reporting Year (RY) 2010, approximately 95 percent of TRI reporting facilities were using *TRI-MEweb*, making it possible for the Agency to process and expedite the release of TRI data to the public.

Under this rulemaking, EPA would also require facilities to submit electronically (i.e., not on paper forms or CD-ROMs) any revisions or withdrawals of previously submitted TRI data. For trade secret submissions, EPA would still accept revisions or withdrawals of previously submitted trade secret information on paper forms.

**DATES:** Comments must be received on or before [insert date 60 days after publication in the Federal Register].

**ADDRESSES:** Submit your comments, identified by Docket ID No. **EPA-HQ-TRI-2011-0174**,

by one of the following methods:

- [www.regulations.gov](http://www.regulations.gov): Follow the on-line instructions for submitting comments.
- Email: [oei.docket@epa.gov](mailto:oei.docket@epa.gov)
- Fax: 202-566-9744
- Mail: OEI Docket, Environmental Protection Agency, Mailcode 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.
- Hand Delivery: EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to Docket ID No. **EPA-HQ-TRI-2011-0174**. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at [www.regulations.gov](http://www.regulations.gov), including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through [www.regulations.gov](http://www.regulations.gov) or e-mail. The [www.regulations.gov](http://www.regulations.gov) website is an “anonymous access” system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through [www.regulations.gov](http://www.regulations.gov) your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment,

EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

*Docket:* All documents in the docket are listed in the [www.regulations.gov](http://www.regulations.gov) index. Although listed in the index, some information is not publicly available, e.g., CBI or other information for which disclosure is restricted by statute. Certain other materials, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically through [www.regulations.gov](http://www.regulations.gov) or in hard copy at the OEI Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. This Docket Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the OEI Docket is (202) 566-1752.

**FOR FURTHER INFORMATION CONTACT:** For general information on TRI, contact the Emergency Planning and Community Right-to-Know Hotline at (800) 424-9346 or (703) 412-9810, TDD (800) 553-7672, <http://www.epa.gov/epaoswer/hotline/>. For specific information on this rulemaking, contact David Turk, Toxics Release Inventory Program Division, Mailcode 2844T, OEI, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; Telephone: (202) 566-1527; Email: [Turk.David@epa.gov](mailto:Turk.David@epa.gov).

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### **I. Background and General Information**

#### **A. Acronyms and Abbreviations Used in this Document**

AFR -- Automated Form R

APA -- Administrative Procedure Act

ATRS -- Automated TRI Reporting Software  
 CBI -- Confidential Business Information  
 CDX -- Central Data Exchange  
 CFR -- Code of Federal Regulations  
 CROMERR -- Cross-Media Electronic Reporting Rule  
 DPC -- TRI Data Processing Center  
 EO -- Executive Order  
 EPA -- U.S. Environmental Protection Agency  
 EPCRA -- Emergency Planning and Community Right-to-Know Act  
 FR -- Federal Register  
 GPEA -- Government Paperwork Elimination Act  
 ICR -- Information Collection Request  
 NAICS -- North American Industry Classification System  
 NTTAA -- National Technology Transfer and Advancement Act of 1995  
 OEI -- Office of Environmental Information (EPA)  
 OMB -- Office of Management and Budget (Executive Office of the President)  
 PPA -- Pollution Prevention Act  
 RY -- Reporting Year  
 SIC -- Standard Industrial Code  
 TRI -- Toxics Release Inventory  
 TRI-ME -- TRI-Made Easy Desktop Software  
*TRI-MEweb* -- Toxics Release Inventory-Made Easy Internet-based Software Application  
 U.S.C. -- United States Code  
 XML -- Extensible Markup Language

**B. Does this Action Apply to Me?**

This proposed rule applies to facilities that submit annual reports under section 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA) and section 6607 of the Pollution Prevention Act (PPA). To determine whether your facility would be affected by this action, you should carefully examine the applicability criteria in Part 372, Subpart B, of Title 40 of the Code of Federal Regulations. Potentially affected categories and entities may include, but are not limited to the following:

Category	Examples of Potentially Affected Entities
Industry	Facilities included in the following NAICS manufacturing codes (corresponding to SIC codes 20 through 39): 311*, 312*, 313*, 314*, 315*, 316, 321, 322, 323*, 324, 325*, 326*, 327, 331, 332, 333, 334*, 335*, 336, 337*, 339*, 111998*, 211112*, 212324*, 212325*, 212393*, 212399*, 488390*, 511110, 511120, 511130, 511140*, 511191, 511199,

	<p>512220, 512230*, 519130*, 541712*, or 811490*.  *Exceptions and/or limitations exist for these NAICS codes.</p> <p>Facilities included in the following NAICS codes (corresponding to SIC codes other than SIC codes 20 through 39):</p> <ul style="list-style-type: none"> <li>• 212111, 212112, 212113 (correspond to SIC 12, Coal Mining (except 1241));</li> <li>• 212221, 212222, 212231, 212234, 212299 (correspond to SIC 10, Metal Mining (except 1011, 1081, and 1094));</li> <li>• 221111, 221112, 221113, 221119, 221121, 221122, 221330 (Limited to facilities that combust coal and/or oil for the purpose of generating power for distribution in commerce) (correspond to SIC 4911, 4931, and 4939, Electric Utilities);</li> <li>• 424690, 425110, 425120 (Limited to facilities previously classified in SIC 5169, Chemicals and Allied Products, Not Elsewhere Classified);</li> <li>• 424710 (corresponds to SIC 5171, Petroleum Bulk Terminals and Plants);</li> <li>• 562112 (Limited to facilities primarily engaged in solvent recovery services on a contract or fee basis (previously classified under SIC 7389, Business Services, NEC)); and</li> <li>• 562211, 562212, 562213, 562219, 562920 (Limited to facilities regulated under the Resource Conservation and Recovery Act, Subtitle C, 42 U.S.C. 6921 et seq.) (correspond to SIC 4953, Refuse Systems).</li> </ul>
Federal  Government	Federal facilities

If you have questions regarding the applicability of this action to a particular entity, consult the individual listed in the preceding FOR FURTHER INFORMATION CONTACT section. This action may also be of interest to those who use EPA’s TRI data and have an interest in the public availability of high-quality, timely TRI data and information, including state agencies, local governments, communities, environmental groups and other non-governmental organizations, as well as members of the general public.

**C. What Should I Consider as I Prepare My Comments for EPA?**

1. *Submitting CBI.* Do not submit this information to EPA through [www.regulations.gov](http://www.regulations.gov) or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI

information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

*2. Tips for Preparing Your Comments.* When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, Federal Register date and page number).
- Follow directions – The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree, suggest alternatives, and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

## **II. What Is EPA's Statutory Authority for Taking this Action?**

The EPA is implementing this action under sections 313(g), 313(h), and 328 of EPCRA, 42 U.S.C. 11023(g), 11023(h) and 11048, and section 6607 of the Pollution Prevention Act, 42 U.S.C. 13106.

Under EPCRA, Congress granted EPA broad rulemaking authority. EPCRA section 328 provides that the “Administrator may prescribe such regulations as may be necessary to carry out this chapter.” 42 U.S.C. 11048. EPCRA requires EPA to “publish a uniform toxic chemical release form for facilities covered” by the TRI Program. 42 U.S.C. 11023(g).

The Government Paperwork Elimination Act (GPEA) (Public Law 105-277 (44 U.S.C. 3504)) allows Federal agencies to provide for electronic submissions and the use of electronic signatures, when practicable. Similarly, EPA’s Cross-Media Electronic Reporting Regulation (CROMERR) (40 CFR Part 3), published in the Federal Register issue of October 13, 2005, states that any requirement in Title 40 of the CFR to submit a report directly to EPA can be satisfied with an electronic submission that meets certain conditions, once the Agency publishes a notice that electronic document submission is available for that requirement.

### **III. What Reporting Requirement Change Is EPA proposing?**

#### **A. Description of Proposed Change**

EPA is proposing to require facilities to report non-confidential TRI data to EPA electronically. Under this proposal, EPA would no longer accept paper submissions of TRI reports, except for trade secret submissions which would still be submitted on paper forms (including sanitized and unsanitized versions).

Currently, EPA provides an online-reporting application, *TRI-MEweb*, for facilities to use to report TRI data to the Agency. *TRI-MEweb* provides a number of features that allow facilities to prepare and submit their TRI reports to EPA more efficiently. For example, it includes data validation tools that help facilities submit complete and valid data and compare the current year’s data to the prior year’s data – a feature which can sometimes help facilities identify potential data errors. Comprehensive use of *TRI-MEweb* should help facilities prepare and submit accurate

TRI reports and reduce the amount of time it takes EPA to process the reports and make the data available to the public.

Many TRI facilities have recognized the benefits of electronic reporting, as reflected by the general increase in the percentage of facilities that use *TRI-MEweb* to submit TRI data to EPA electronically each year. For reporting year (RY) 2010, approximately 95% of facilities used *TRI-MEweb* to report TRI data.

Because such a large portion of TRI reporters already use *TRI-MEweb*, this proposed TRI electronic reporting requirement is not expected to affect the majority of TRI reporting facilities. In fact, fewer than 5% of current TRI reporting facilities would need to become familiar with the electronic reporting process. Information about using *TRI-MEweb* to report electronically is available on the TRI website (<http://www.epa.gov/tri>) and in the most recent version of the Toxic Chemical Release Inventory Reporting Forms and Instructions (RFI), which is available on the TRI website.

Under this proposed rule, facilities that submit trade secret information would continue to submit two versions of the substantiation form and two versions of Form R or Form A — sanitized versions that include the generic chemical name that is structurally descriptive of the chemical being claimed as a trade secret and unsanitized versions that include the trade secret chemical name. *TRI-MEweb* does not allow facilities to submit trade secret information; however, to facilitate reporting of such information, EPA currently provides electronically fillable/printable versions of the TRI reporting forms (i.e., Form A, Form R, and Form R Schedule 1) on the TRI website. EPA strongly recommends that TRI facilities that submit TRI trade secret information use a computer or typewriter to prepare their hard-copy submissions of TRI information and consult the TRI website (<http://www.epa.gov/tri>) for more detailed

information.

To codify this proposed rule, EPA proposes inserting a paragraph (c) into 40 C.F.R. § 372.85. This codification would require most regulated facilities to submit TRI data electronically using the current electronic reporting tool provided by EPA. EPA would only accept TRI data that are submitted electronically, except for trade secret TRI forms and substantiations; and EPA would not accept or process TRI data that are not submitted in the appropriate manner.

#### **B. How Are TRI Reports Currently Submitted to and Processed by the Agency?**

Currently, facilities submit TRI reporting forms electronically or by paper. To submit TRI data by paper, facilities download the appropriate TRI reporting form or forms from the TRI website (accessible at <http://www.epa.gov/tri>). Before RY 2006, EPA mailed paper TRI reporting forms to facilities each year. Since RY 2006, EPA has made the TRI reporting forms available on its website.

If using a paper TRI reporting form, the facility's form Preparer enters the facility's data on the form, the Certifying Official certifies/signs the form, and the facility then sends the form to EPA's TRI Data Processing Center (DPC) via mail or courier. The current RFI, available on the TRI website (accessible at <http://www.epa.gov/tri>), provides a more detailed explanation of this process.

In January 2011, EPA began providing fillable/printable versions of the TRI Reporting Form R, Form R Schedule 1, and Form A through the TRI website. For those facilities still wishing or needing to submit paper forms (e.g., for trade secret submissions), EPA encouraged the use of the fillable/printable forms, rather than handwritten forms, to help ensure that the data – once received by the DPC – could be read and entered into the TRI database.

Electronic reporting using *TRI-MEweb* is already EPA's recommended reporting approach for submitting TRI information to the Agency, and under this proposed rule, it would become the required approach. To submit TRI data electronically, a facility registers with EPA's Central Data Exchange (CDX) and uses *TRI-MEweb* to prepare, certify, and submit TRI reports. The use of CDX and *TRI-MEweb* to prepare and submit TRI reports is explained below, in Unit III.D, "How Does a Facility Report TRI Data Using *TRI-MEweb*?"

### **C. What Is the History of Electronic Reporting of TRI Data to EPA?**

Beginning in 1987, the Agency began encouraging facilities to submit TRI Form R data electronically using magnetic media. Initially, EPA provided year-specific Automated Form R (AFR) software that allowed a facility to submit TRI data for a particular reporting year. Facilities could install and use the AFR software to produce either a hard-copy TRI report or a diskette, which facilities could then submit to EPA. Upon receipt, the DPC would transcribe hard-copy TRI reports into a database and electronically enter diskette submissions into a database. The use of AFR proved to be popular among facilities, and the percentage of TRI reporting facilities using this tool increased from 13 percent in 1990 to 62 percent in 1996.

Generally, the Agency improved upon the AFR each year by incorporating new features, such as the ability to submit TRI data for multiple reporting years (i.e., separate reports for each year), data validation checks, and the ability to load data from prior years into the current reporting year's electronic form. In 1998, EPA renamed the AFR software to Automated TRI Reporting Software (ATRS) to reflect the addition of Form A into the software.

After RY 2000, EPA replaced ATRS with TRI-Made Easy (TRI-ME), which was a computer desktop application that a facility could download from the TRI website or receive in the mail upon request. TRI-ME provided electronic assistance to a facility preparing TRI reports

and, for the first time, allowed a facility to submit TRI data to EPA's CDX via the Internet.

TRI-ME also allowed facilities to print a hard-copy version of the TRI report or produce a digital file that could then be submitted online or copied to a diskette and mailed to the DPC.

In 2006, for RY 2005, EPA began making the *TRI-MEweb* application available to a limited number of facilities. *TRI-MEweb* is a Web-based reporting application that includes validation features to help facilities report accurate information. This application is entirely online, meaning a facility can access the application from any computer that is connected to the Internet. In addition, because the application is online, EPA can instantly perform any needed software updates or corrections without requiring users to download an updated version of software. Most, if not all, computers and Web software should be compatible with *TRI-MEweb*.

EPA continued to refine *TRI-MEweb* each year after its limited release, expanding the number of facilities that could use it and eventually making the application widely available to nearly all facilities for RY 2008. The Agency also, for RY 2008, informed facilities that it would focus on providing *TRI-MEweb*, and would no longer provide the TRI-ME CD-ROM.

Accordingly, a steadily increasing percentage of facilities have submitted TRI data to EPA using *TRI-MEweb*, as illustrated in Chart 1. Electronic reporting using *TRI-MEweb* has now become the predominant mechanism that facilities use to submit TRI data to EPA.

<b>Chart 1: Breakdown of Submission Methods Used During the Past Five Reporting Years</b>						
<u>Media Type</u>	<u>RY 2005</u>	<u>RY 2006</u>	<u>RY 2007</u>	<u>RY 2008</u>	<u>RY 2009</u>	<u>RY 2010</u>
<i>TRI-MEweb</i> Submissions	0.34%	3.12%	31.69%	65.77%	92.16%	94.60%
TRI-ME via CDX Submissions	62.50%	70.42%	43.34%	17.73%	0.18%	0.01%
TRI-ME via Diskette Submissions	28.71%	21.22%	18.20%	9.79%	0.16%	0.02%
Paper Submissions	8.46%	5.24%	6.78%	6.71%	7.50%	5.37%

Due to the longstanding history of electronic reporting of TRI data, the benefits that *TRI-MEweb* provides, and the prevalence and availability of the Internet, EPA published a notice in the Federal Register on January 14, 2011, which encouraged facilities to utilize *TRI-MEweb*. The notice also notified facilities of the availability of fillable/printable TRI reporting forms on the TRI website and stated that the Agency was considering publishing this proposed rule to require electronic reporting of TRI data.

#### **D. How Does a Facility Report TRI Data Using *TRI-MEweb*?**

*TRI-MEweb* is an interactive, user-friendly Web-based application that guides facilities through the TRI reporting process. As currently implemented, one or more representatives from each facility must establish an account with EPA's CDX in order to prepare, transmit, certify, and submit TRI Forms. CDX is EPA's centralized node on the Environmental Information Exchange Network that serves as EPA's main mechanism for receiving and exchanging electronic information. A facility representative may register for a CDX account or gain access to an existing CDX account at <https://cdx.epa.gov/>.

During the CDX registration process, CDX prompts the facility representative to indicate which applications (e.g., *TRI-MEweb*) to link with the account. If the facility representative has previously registered with CDX for other purposes, then he/she can add *TRI-MEweb* to his/her existing CDX account.

When adding *TRI-MEweb* to the CDX account, CDX will ask the facility representative to select a role as a form Preparer or Certifying Official. Either a Preparer or a Certifying Official can enter a facility's TRI data in *TRI-MEweb* and transmit it to CDX to await certification; but only a Certifying Official can approve and certify a TRI reporting form and submit the final, certified form to EPA using *TRI-MEweb* and CDX. Preparers and Certifying

Officials can potentially perform their TRI reporting roles (preparing and/or certifying TRI forms) for multiple facilities, if so designated by the facilities.

EPA's current electronic reporting procedures require each Certifying Official to sign and submit a hard-copy Electronic Signature Agreement (ESA) to EPA before certifying any TRI reports. Once a facility representative registers in CDX as a *TRI-MEweb* Certifying Official, EPA sends an ESA to that representative via e-mail. The ESA includes a TRI Facility Identification number for each facility for which the Certifying Official is responsible. The Certifying Official must sign this ESA in hard-copy and mail it to the DPC. Upon receiving an ESA, the Agency may take five to seven days to approve it. Once the ESA is approved by EPA, the Certifying Official may review, certify, and submit any pending TRI submissions to EPA using *TRI-MEweb* and CDX. More detailed information on these procedures is available on the TRI website.

Once registered with CDX and *TRI-MEweb*, a facility's Preparer or Certifying Official can gain access to *TRI-MEweb* through CDX. Once opened, the *TRI-MEweb* application provides interactive Web pages that enable a Preparer or Certifying Official to provide and validate the current year's data. After providing the pertinent data, a Preparer (or Certifying Official) can transmit the data electronically to CDX where it is then available for certification by the facility's Certifying Official(s). The Certifying Official can then log into CDX to review, certify, and submit the TRI report to EPA. Once EPA receives the certified report in CDX, the data are then sent to the TRI database (and if appropriate, also to a state).

Some TRI facilities have their own software or use private software to assist in collecting chemical release data. This "third-party software" is often designed to produce output data files that match EPA's electronic data structure specifications. *TRI-MEweb* accepts chemical data

files from third-party software using Extensible Markup Language (XML). Detailed information describing the XML schema *TRI-MEweb* uses for the current reporting year is available online at <http://www.exchangenetwork.net/exchanges/cross/tri.htm>.

Detailed instructions on using CDX and *TRI-MEweb*, including tutorials, are available on the TRI website and in the RFI, which is also available through the TRI website. Facilities may also contact the TRI Information Center, the CDX Helpdesk, the TRI DPC, the Regional TRI Coordinators, or the TRI Program staff at EPA Headquarters for further assistance. Please see the “Contact Us” information located on the TRI website for further details.

Please note that the use of *TRI-MEweb* to report TRI data to EPA does not necessarily satisfy all reporting requirements that a state or local government might require. However, as will be explained below in Unit III.G, “What Benefits Will this Proposed Rule Likely Produce?,” facilities that are located in states or territories (hereinafter collectively referred to as “states”) that actively participate with the TRI Data Exchange (TDX) can meet dual-reporting requirements by submitting TRI reports using *TRI-MEweb*. In these states, reports submitted via *TRI-MEweb* are electronically made available to the state in which the facility is located, thus satisfying the requirement to report TRI data for both the applicable state and EPA.

For facilities located in states not actively participating in TDX, *TRI-MEweb* can provide these facilities with a certification statement which the Certifying Official can sign and mail to the appropriate state along with a diskette or hard copy of the TRI data the Preparer or Certifying Official entered into *TRI-MEweb*.

#### **E. Why is EPA Proposing this Requirement?**

Electronic reporting not only makes it easier for facilities to prepare and submit their TRI data to EPA, it also helps EPA process and make the data available to the public more quickly

than is possible for data submitted on paper forms. When facilities submit paper forms, EPA must manually enter the data into the TRI electronic database, which requires more time and staff resources than required to process electronic submissions. In addition, transcription errors can inadvertently be introduced during this process, particularly if the data have been handwritten on the reporting forms. Electronic reporting makes it possible for EPA to more quickly process the data and provide communities with access to the latest TRI data on toxic chemical releases and other waste management.

Electronic reporting itself prevents transcription errors and expedites TRI data processing; but in addition, *TRI-MEweb*, provides useful features that make it easier and faster for facilities to prepare and submit TRI data to EPA. For example, *TRI-MEweb* provides facility representatives with access to a facility's prior years of reporting data (as applicable), pre-populates selected fields on the TRI forms (i.e., if the facility previously submitted a TRI report), provides standardized parent company information and chemical pick-lists, and automatically calculates the data for some numerical fields on the TRI forms. *TRI-MEweb* also provides data validation features, which help prevent facilities from submitting incomplete or invalid data. Due to the benefits *TRI-MEweb* provides, EPA expects that its use by all facilities will enhance data accuracy and expedite EPA's processing and public release of the TRI data.

This proposal to require electronic TRI reporting supports broader government efforts to further the electronic collection and dissemination of data and information, and it is consistent with the provisions of the Government Paperwork Elimination Act (GPEA). GPEA authorizes federal organizations to use electronic forms, electronic filings, and electronic signatures, when practicable, to conduct official business with the public.

#### **F. How Does this Proposed Rule Affect Revisions and Withdrawals of Previous TRI**

## **Submissions?**

This proposed rule would require facilities that wish to revise or withdraw previously submitted non-confidential TRI data to do so electronically. As part of this proposed rule, the Agency would continue to allow facilities to revise or withdraw TRI reports going back to RY 2005, but not for reporting years prior to RY2005. Moreover, EPA would only accept revisions and/or withdrawals submitted via *TRI-MEweb*. *TRI-MEweb* allows a facility to gain access to and revise or withdraw TRI reports in *TRI-MEweb* for prior reporting years, back to RY 2005, even if the facility did not use *TRI-MEweb* for the original submission.

EPA proposes this RY 2005 cut off date for several reasons, including (1) the small number of revisions/withdrawals received for reporting years prior to RY 2005 (a relatively small proportion of TRI form revisions/withdrawals are generally submitted to EPA each year, and most of these revisions/withdrawals relate to TRI reports for the past few years), (2) the resources that would be required to modify *TRI-MEweb* and related information exchange capabilities to accommodate all reporting reporting years, and (3) the staff resources and time required to continue processing paper form revisions/withdrawals.

As with original TRI submissions, preparing and submitting revisions/withdrawals electronically should facilitate the reporting process for facilities, while also making it possible for EPA to more quickly process and make the updated data available to the public. Information on using *TRI-MEweb* to submit TRI revisions/withdrawals is available on the TRI website and in the *TRI-MEweb* application.

In order to focus Agency resources on processing and making the most recent TRI data available to the public and to maintain some consistency in the handling of non-confidential and trade secret data, EPA plans to accept paper submissions of trade secret revisions/withdrawals

that concern reporting years back to RY 2005.

### **G. What Benefits Will this Proposed Rule Likely Produce?**

Requiring facilities to report TRI data electronically will help reduce the likelihood of data entry errors occurring at either the facility or EPA, as well as reduce the amount of time it takes EPA to process the data, when compared to paper-based submissions. By requiring electronic reporting, the Agency will be able to more effectively provide the public with timely access to the latest TRI data on toxic chemical releases and other waste management within communities.

Another benefit electronic reporting provides is that TRI data submitted via CDX is sent digitally to those states that participate in the TRI Data Exchange (TDX). Since 2005, EPA has entered into separate Memoranda of Agreements (MOA) with states that have elected to participate in TDX. More information on TDX is available through the TRI website.

A facility located in a state that participates in TDX can satisfy its requirement to report TRI data to both EPA and to the applicable state by electronically submitting certified TRI data to EPA. These TRI data are then automatically made available to the state within which the facility is located.

Under the proposed rule, facilities would be required to submit their TRI data to EPA electronically; and therefore, those facilities located in TDX-participating states would be able to satisfy the requirement to submit federally-required TRI data to both the EPA and the state with one electronic submission. Currently, if a facility submits a paper report to EPA, even if it is located in a TDX-participating state, the facility must also submit its TRI report directly to the state to meet its legal reporting obligations. Requiring the use of electronic reporting would make the state processing of TRI data easier for TDX-participating states because they would no

longer need to process paper reporting forms for TRI data. Facilities that are located in states that do not participate in TDX would prepare and submit their TRI data to EPA using *TRI-MEweb*, and they could then use *TRI-MEweb* to produce a certification statement, along with a hard-copy TRI report or CD, which could be signed by the Certifying Official and mailed to the appropriate state.

#### **H. Would EPA Offer Any Exceptions to the Proposed Requirements?**

The Agency expects facilities that submit TRI data to EPA to do so electronically. Only trade secret TRI reports (including both sanitized and unsanitized information) would still be submitted to EPA on paper forms. EPA believes that the overall benefits of submitting TRI data electronically exceed those associated with maintaining a paper-based reporting approach. EPA recognizes that there could potentially be unexpected initial set-up costs or technical challenges associated with a requirement to submit TRI reports electronically, particularly for facilities that have never used electronic reporting; however, the Agency believes that the benefits of electronic reporting of TRI data – considering the ease of reporting, enhanced data quality, and faster public access to the data – would ultimately outweigh other considerations.

EPA also offers forms of assistance to TRI reporters looking for help with electronic reporting. The Agency provides guidance on the TRI Program website, maintains a TRI help desk, and offers webinars and other training programs. Further, EPA believes nearly all facilities can already access the Internet because the Agency stopped providing physical copies of the TRI reporting forms in 2006, exclusively thereafter offering the forms online and only mailing a physical copy upon request.

#### **I. What Is EPA Doing to Help Ensure Facilities Know about This Proposed Rule?**

To inform facilities about this rulemaking and to solicit feedback prior to publication of

the proposed rule, EPA sent a letter via email or postal carrier if an email address was not available to technical contacts for facilities that submitted TRI data for RY 2009 and RY 2008. This letter notified these facilities that EPA was considering a proposed rule to require the electronic reporting of TRI data and informed the facilities of an online discussion forum where any interested stakeholder could comment on EPA's plan to require electronic reporting of TRI data. EPA recognizes the discussion forum was provided electronically, which could bias the discussion toward facilities with access to computers, so EPA explained in the letter that facilities could physically mail comments to the Agency so that the Agency could make these comments available on the discussion forum.

The discussion forum went live on June 19, 2011, was accessible via the TRI homepage, and stayed open through July 1, 2011, receiving 57 comments. Both the discussion forum and the comments received are publically available for viewing in the docket for this rulemaking (EPA-HQ-TRI-2011-0174). The comments received via the forum fall into several broad categories: support for the proposed action; concerns involving the online reporting tools, and concerns regarding requiring electronic reporting.

Comments supporting this action: Many of the comments received support requiring electronic reporting of TRI data, noting electronic reporting expedites the reporting process and improves data quality, which, in turn, allows EPA to provide timely, accurate data to TRI data users. Adding to this perspective were comments suggesting nearly all TRI reporters likely have access to a computer and the Internet. Additionally, some of the comments requested EPA to require states to accept electronic submissions by mandating participation in the TRI Data Exchange.

Concerns involving the currently available reporting tools: EPA received some

comments, both supportive and critical of this rulemaking, stating CDX and *TRI-MEweb* could be more intuitive. In particular, many of these comments requested a simplification to the process used to register a Certifying Official. Many comments also expressed concern that the current process for registering a Certifying Official, which typically takes about a week, can become a major impediment to reporting before the yearly July 1 deadline should managers become unavailable or should the facility change its management in June.

EPA recognizes there are situations where a facility could face last-minute difficulties due to the current Certifying Official registration process. However, facilities may submit TRI reports prior to the deadline. In fact, *TRI-MEweb* for the reporting period is typically made available in January, thereby providing facilities up to six months to report TRI data prior to the yearly July 1 deadline. Any facility that foresees an upcoming change to its Certifying Official should be able to report prior to the change. Moreover, the Agency encourages facilities to designate an Alternate Certifying Official should the Certifying Official become unavailable close to the reporting deadline. In most situations either the Certifying Official or Alternate Certifying Official should be available prior to the reporting deadline.

It is important to note that the current process used to register Certifying Officials is evolving. EPA wants to make reporting as simple as possible, and, thus, is considering ways to simplify and expedite the process. It is quite possible that a new process will become available in the next year or two that will enable the near-instantaneous registration of a Certifying Official.

Comments also voiced concerns with various aspects of *TRI-MEweb*. EPA improves *TRI-MEweb* each year and plans to address some of the issues raised by comments. For example, changes anticipated for future releases of *TRI-MEweb* include supporting more Web

browsers, clarifying the submittal process, and incorporating additional features into *TRI-MEweb* to further expedite the reporting process. EPA plans to continue addressing issues and improving *TRI-MEweb* for successive reporting years.

Concerns regarding requiring electronic reporting: A few comments suggested the electronic reporting requirement should not extend to all facilities, suggesting not all facilities have access to a computer and the Internet. While EPA recognizes this possibility, EPA, as explained above, does not foresee that facilities meeting TRI Reporting thresholds will have difficulty accessing a computer and the Internet. Further, due to the high percentage of facilities that already use *TRI-MEweb* and the longstanding practice of providing the reporting forms exclusively online, most facilities already appear to have access to a computer and the Internet.

Some of the comments requested EPA provide various exceptions should a facility be unable to report using *TRI-MEweb* prior to the yearly July 1 deadline. The Agency does not foresee the need for such regulatory exceptions. EPCRA provides a yearly deadline of July 1, and *TRI-MEweb* is typically available in January, which allows facilities nearly six months to report the required TRI data. If facilities encounter unexpected difficulties with electronic reporting, they may use any one of the several help services EPA provides to assist facilities in reporting TRI data.

Several comments expressed a preference for paper reporting, stating it is easier to report by paper, especially for facilities that only submit one TRI reporting form to EPA. EPA understands in some cases a facility might prefer a paper reporting option but EPA believes, on the whole, electronic reporting will benefit facilities, TRI data users, and the Agency for all of the reasons noted in this proposed rule. Moreover, electronic reporting enables the Agency to publish data sooner, minimizes paper waste, and reduces costs to the Agency. At this point, EPA

does not foresee a need to allow facilities to submit paper reports of non-confidential TRI data.

#### **IV. Request for Comment**

In connection with this proposed rule, EPA encourages all interested persons to submit comments on the following topics or other relevant topics:

1. EPA specifically seeks comment on whether facilities foresee any significant challenges in submitting RY 2012 TRI reports electronically, and if so, how EPA could potentially facilitate the process (e.g., through Webinars, Regional hands-on assistance, etc.).
2. *TRI-MEweb* currently does not allow a facility to revise or withdraw TRI reporting forms submitted for reporting years prior to RY 2005. The Agency proposes to begin requiring electronic reporting for reporting year 2012, which means facilities would be able to modify data submitted for the prior seven reporting years (RY 2011 through RY 2005), but not for reporting years 2004 through 1988. Historically, only a small proportion of revision and withdrawal submissions received each year pertain to reporting years beyond a seven-year period. EPA seeks comment on whether limiting revisions to data submitted for reporting years 2005 through the present would impose any hardship or concerns.
3. EPA does not foresee a need for an exception to an electronic-reporting requirement. However, the Agency is interested in receiving input on what exceptions, if any, might be appropriate in light of an electronic reporting requirement.

Input on these or other topics directly relevant to this proposed rule will assist the Agency in developing a final rule that addresses information needs, while minimizing the potential reporting burden associated with the rule. EPA requests that those who submit comments provide specific recommendations and include supporting documentation, as appropriate.

#### **V. References**

The following is a listing of the documents referenced in this preamble that have been placed in the public docket for this proposed rule under docket ID number EPA–HQ–TRI-2011-0174, which is available for inspection as specified under ADDRESSES. For assistance in locating any of these documents, please consult the technical person listed under FOR FURTHER INFORMATION CONTACT.

1. EPA. Office of Environmental Information. Economic Analysis of the Electronic Reporting Proposed Rule: Community Right-to-Know; Toxic Chemical Release Reporting. July 7, 2011.

2. EPA. Request Facilities To Report Toxics Release Inventory Information Electronically or Complete Fill-and-Print Reporting Forms. Federal Register (76 FR 2677, January 14, 2011) (FRL-9251-2). Available on-line at: <http://www.regulations.gov>.

## **VI. What Are the Statutory and Executive Order Reviews Associated With This Action?**

### **A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review**

This action is not a "significant regulatory action" under the terms of Executive Order (EO) 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011).

### **B. Paperwork Reduction Act**

This proposed action does not impose any new information collection burden. Instead, this proposed action would merely change the manner in which the Agency receives information. The Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the existing regulations 40 CFR Part 372 under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. and has assigned the

following OMB control numbers 2025-0009 (EPA Information Collection Request (ICR) No. 1363.21) and 2050-0078 (EPA ICR No. 1428.08). The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

**C. Regulatory Flexibility Act, as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996, 5 USC 601 et seq.**

The Regulatory Flexibility Act generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice-and-comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

For purposes of assessing the impacts of today's proposed rule on small entities, small entity is defined as: 1) a small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; 2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and 3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

EPA conducted an economic analysis to consider the possible effects of this rulemaking on small entities. This analysis, "Economic Analysis of the Electronic Reporting Proposed Rule: Community Right-to-Know; Toxic Chemical Release Reporting" (Ref. #1), demonstrates this proposed rule should not create an economic burden on an individual small business of more than 1% of its sales (or equivalent metric) and, thus, will not have a significant adverse impact on small businesses. After conducting this initial analysis, however, EPA established a new methodology in order to increase transparency and consistency in assessments of burden associated with TRI reporting. (This new economic analysis methodology was recently cleared

by OMB as part of OMB's approval of the Information Collection Request (ICR) (a Paperwork Reduction Act (PRA) requirement) which EPA relies upon for collecting information under TRI). EPA has determined that the amount of burden estimated for small entities in the economic analysis is not affected by the previously noted change in burden assessment methodology. As a result, and regardless of whether the previous or current methodology is used, EPA is able to demonstrate that this proposal would not have a significant impact on small businesses.

In summary, this proposed rule would create a one-time burden and a minor subsequent burden for facilities that have not previously used *TRI-MEweb* to submit TRI data to EPA. This burden would relate to obtaining access to a computer and the Internet, designating a facility form Preparer and Certifying Official, establishing an account in CDX, and associating the CDX account with *TRI-MEweb*. The economic analysis EPA prepared for this proposed rule which describes this burden in detail is available under docket ID number EPA-HQ-TRI-2011-0174 as Reference #1.

After considering the economic impacts of this rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities.

#### **D. Unfunded Mandates Reform Act**

This rule does not contain a Federal mandate that may result in expenditures of \$100 million or more for state, local, and tribal governments, in the aggregate, or the private sector in any one year. This rule will merely require facilities under the TRI Program to submit electronic reports using *TRI-MEweb*. Most facilities already adhere to this requirement, thus this rule will affect a relatively small number of facilities. Further, the cost to adhere to this rule is small and, in aggregate, will not cost more than \$100 million or more for state, local, and tribal governments, or

the private sectors in any one year. Thus, this rule is not subject to the requirements of sections 202 or 205 of the Unfunded Mandates Reform Act (UMRA).

This rule is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. Any small government that reports to the TRI Program will not incur significant costs because the cost, if any, to report electronically, as described above, is minimal.

#### **E. Executive Order 13132, Federalism**

This action does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This action would require facilities that submit annual reports under section 313 of EPCRA to do so electronically, which will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Thus, Executive Order 13132 does not apply to this action.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed action from State and local officials.

#### **F. Executive Order 13175, Consultation and Coordination with Indian Tribal Governments**

Under E.O. 13175, entitled Consultation and Coordination with Indian Tribal Governments (65 FR 67249, November 9, 2000), EPA has determined that this proposed rule does not have tribal implications because it will not have substantial direct effects on

tribal governments, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in the Executive Order. Instead, the rule merely affects how facilities report information to the TRI Program. Thus, E.O. 13175 does not apply to this proposed rule.

#### **G. Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks**

EPA interprets E.O. 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5-501 of the Executive Order has the potential to influence the regulation. This action is not subject to E.O. 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

#### **H. Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use**

This action is not subject to Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is not a significant regulatory action under Executive Order 12866.

#### **I. National Technology Transfer and Advancement Act**

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (“NTTAA”), Public Law No. 104-113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide

Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

#### **J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations**

E.O. 12898 (59 FR 7629, Feb. 16, 1994) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this proposed rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. Instead, this rule would merely address the manner in which regulated facilities submit reporting information.

#### **List of Subjects in 40 CFR Part 372**

Environmental protection, Community right-to-know, Reporting and recordkeeping requirements.

Dated: February 23, 2012

Signed: Lisa P. Jackson,

*Administrator.*

For the reasons set out in the preamble, Chapter I of Title 40 of the Code of Federal Regulations is proposed to be amended as follows:

**PART 372—[AMENDED]**

1. The authority citation for Part 372 continues to read as follows:

**Authority:** 42 U.S.C. 11023 and 11048.

2. Section 372.85 is amended by adding paragraph (c) to read as follows:

**§ 372.85 Toxic chemical release reporting form and instructions.**

\* \* \* \* \*

(c) *Filing Requirements.* Effective January 1, 2013, facilities that report non-confidential TRI data, including revisions and withdrawals of TRI data, to EPA must prepare, certify, and submit their data to EPA electronically, using the most current version of the TRI online-reporting software provided by EPA.

(1) EPA will no longer accept non-confidential TRI reports, revisions, or withdrawals on paper reporting forms, magnetic media, or CD-ROMs. Information and instructions regarding online reporting are available on the TRI website. The only exception to this TRI electronic reporting requirement relates to trade secret TRI submissions (including sanitized and unsanitized reporting forms), which must be submitted to EPA on paper.

(2) Facilities must submit electronically any revisions or withdrawals of previously submitted TRI data. Facilities may only revise or withdraw TRI data previously submitted for reporting years 2005 through the present reporting year.

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