



ASSOCIATION CONNECTING
ELECTRONICS INDUSTRIES®

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May 20, 2004

Lorraine Hunt
OIRA, OMB
NEOB Room 10202
725 17th Street, NW
Washington, DC 20503

**RE: Draft 2004 Report to Congress on the Cost and Benefits of Federal Regulations;
Notice of Availability and Request for Comments**

Dear Ms. Hunt:

IPC- The Association Connecting Electronics Industries is pleased to comment on the Office of Management and Budget's (OMB's) *2004 Draft Report on the Costs and Benefits of Federal Regulations*.

IPC is the national trade association for the electronic interconnection industry, and represents more than 2,200 member companies that manufacture printed circuit boards and attach electronic components, such as computer chips. Printed circuit boards and electronic assemblies are used in a variety of electronic devices that include computers, cell phones, pacemakers, and sophisticated missile defense systems. The industry is vital to the U.S. economy. Without printed circuit boards and electronic assemblies, you would not be able to start your car, watch television, answer a telephone, turn on a light switch, or brew a cup of coffee.

Although IPC members include electronic giants, such as Intel, Hewlett Packard, and IBM, sixty percent of IPC members meet the Small Business Administration's definition of "small business."

IPC appreciates the Draft Report's focus on the effects of regulation on the manufacturing sector, especially as they affect small- and medium-sized firms. The manufacturing sector is struggling

to compete under constant pressure and competition in our global economy. Domestic regulations have a significant impact on the competitiveness of U.S. manufacturing and should therefore be held to a strict cost-benefit standard.

Over 80 percent of IPC's members are small and medium businesses. IPC agrees with and supports the findings of the 2001 report for the Small Business Administration Office of Advocacy, *The Impact of Regulatory Costs on Small Firms*¹ (Crain and Hopkins), cited in the OMB's draft report. The findings demonstrate what IPC's members already knew: the burden of regulation falls disproportionately on the manufacturing sector, particularly upon small businesses. Specifically, Crain and Hopkins found that in 2000 the manufacturing sector shouldered \$147 billion of the \$497 billion onus of environmental, economic, workplace, and tax compliance regulation. Overall, Crain and Hopkins found that the per employee regulatory costs of businesses with fewer than 20 employees was \$6,975, 60 percent more than the \$4,463 cost per worker for firms with more than 500 employees. In manufacturing, this disparity was even wider, as the cost per employee for small firms (less than 20 employees) was \$16,920, or 127 percent higher than the \$7,454 cost per employee for medium-sized firms (20 – 499 employees) and 140 percent more than the \$7,059 cost per employee for large firms (500 or more employees).

IPC previously submitted comments in 2002 regarding needed regulatory reforms.² While the OMB forwarded our nominations to the appropriate agency, in most cases, little to no action has been taken. In fact, all of the agency regulations nominated by IPC still lack cost-benefit analysis. OMB either needs to impose discipline on the agencies by returning rules that are incompletely analyzed, perhaps holding the paperwork review officer at the offending agency accountable, or find a way to monetize the costs and benefits for regulations where this was not done initially.

IPC hopes that OMB will encourage the agencies to promptly address the issues raised in the final report. IPC also notes the continued staffing pressures at the OMB Office of Information

¹ Mark Crain and Thomas Hopkins, 2001. *The Impact of Regulatory Costs on Small Firms*. Washington, D.C.: U.S. Small Business Administration, Office of Advocacy.

² May 28, 2002. IPC Comments in RE: Notice and Request for Comment on the Office of Management and Budget Draft Report to Congress on the Costs and Benefits of Federal Regulations (67 FR 15013, March 28, 2002).

and Regulatory Affairs (OIRA) and hopes the agency will find a way to work with the Assistant Secretary of Commerce for Manufacturing and Services, perhaps through the Office of Industry Analysis recommended in *Manufacturing in America: A Comprehensive Strategy to Address the Challenges to U.S. Manufacturers*.³

A related study performed by the National Association of Manufacturers (NAM)⁴, examined structural costs borne by manufacturers in the U.S. as compared to our nine largest trading partners. The principal finding was that structural costs, those imposed domestically “by omission or commission of federal, state and local governments,” were 22.4 percent higher in the U.S. than any foreign competitor. The structural costs included regulatory compliance, excessive corporate taxation, and the escalating costs of health and pension benefits, litigation and energy. The NAM Report concludes that the 2003 “total compliance burden of environmental, economic, workplace and tax compliance on the economy is in the order of \$850 billion – with \$160 billion on manufacturers alone, equivalent to a 12 percent excise tax on manufacturing production.”

The IPC wishes to point out the significant discrepancy of \$800 billion between OMB’s estimate of \$34 – \$39 billion and at least the Crain and Hopkins estimate for 2000 of \$843 billion. While we understand that the OMB’s analysis is limited to major rules reviewed by OMB from October 1, 1993 to September 30, 2003, we are nevertheless concerned that OMB’s analysis, based as it is upon agency estimates, may significantly understate the regulatory burden. OMB must find a way to hold the agencies accountable for providing OMB with more credible estimates of the costs and benefits of their regulatory programs. Only then will the annual report to Congress have the analytical value envisioned at the time of enactment.

The Draft Report notes that “pre-regulation estimates prepared for rules adopted more than ten years ago are of questionable relevance today.” What *is* relevant, however, is what costs do rules in place impose on society and what benefits do rules in place engender for society? OIRA has taken an important first step by asking the public to help identify rules that may no longer be

³ U.S. Department of Commerce, *Manufacturing in America, A Comprehensive Strategy to Address the Challenges to U.S. Manufacturers*, Washington, D.C. January 2004.

⁴ Jeremy A. Leonard, *How Structural Costs Imposed on U.S. Manufacturers Harm Workers and Threaten Competitiveness*, National Association of Manufacturers, Manufacturing Institute, December 2003.

cost-effective. It is hoped that these suggestions for improving the cost-effectiveness of our nation's regulatory system will be evaluated, and acted on as appropriate.

SPECIFIC REGULATIONS IPC WOULD LIKE TO NOMINATE FOR REVIEW

Environmental Protection Agency Toxic Release Inventory, Lead Rule (40 CFR 372)

Description of Problem:

On January 17, 2002, The U.S. Environmental Protection Agency (EPA) published a final rule⁵ lowering the Toxic Release Inventory (TRI) reporting threshold for lead and lead compounds from 25,000 pounds to 100 pounds.

Our concerns regarding the TRI Lead rule include the following issues, which were detailed in our 2002 comments:⁶

- The rule is not cost effective. Additionally, there is an extremely high marginal cost for a large number of businesses, the majority of which are small businesses, reporting extremely low releases.
- The rule has a disparate impact on manufacturing facilities. During the first reporting year (2001) of the lowered reporting threshold for lead, 8,561 Form Rs were filed for lead and lead compounds. Over 85 percent of these forms were filed by the manufacturing sector, yet this same sector was responsible for only 6 percent of reported releases. While 2, 615 Form Rs reporting zero releases were filed by manufacturing facilities, the median release to the environment was one pound.
- EPA's estimate of over \$4,000 per facility for Form R completion understates the true burden on small manufacturing facilities.
- EPA unnecessarily increased the reporting burdens by eliminating the use of Form A, a burden reduction measure designed specifically to streamline reporting for businesses with small releases, the majority of which are small businesses.
- Elimination of the de-minimis exemption represents a particularly large burden for manufacturing facilities. The de-minimis exemption allowed facilities to disregard for the purposes of threshold and release calculations constituents that were not reported on

⁵ 66 FR 4500; January 17, 2001

⁶ IPC Comments in RE: Notice and Request for Comment on the Office of Management and Budget Draft Report to Congress on the Costs and Benefits of Federal Regulations (67 FR 15013, March 28, 2002), May 28, 2002.

Material Safety Data Sheets even though they might be found in trace amounts as contaminants or impurities, or in the case of lead, as a naturally occurring substance.

- EPA has provided no monetized benefit for the lowered reporting threshold.
- The scientific criteria used in the rule were not peer validated. The rule inappropriately relied on Persistence, Bioaccumulation and Toxicity (PBT) criteria, which were developed for synthetic organic chemicals and are not useful indicia of hazards for metals and inorganic metal compounds. EPA has now undertaken a scientific analysis of appropriate hazard criteria for metals, and is developing a metals framework that is scheduled for SAB review in September 2004 and final release by the end of 2004.

Proposed Solution:

While EPA has recently initiated a stakeholder dialogue⁷ for the purpose of discussing TRI burden reduction options, no commitment has been made to reduce the burden of reporting under the TRI program. As a minimal step towards improving the cost-effectiveness of this rule, existing TRI burden reduction options should be made available to lead reporters including the use of the simplified Form A, *de-minimis*, and range reporting.

The 100 pound threshold requires too many reports from manufacturers who collectively are the source of only 6 percent of reported releases, further straining the manufacturing community. EPA should take measures to refocus the reporting program on facilities with significant releases. The agency's intention to create a simplified Form NS for those facilities that report negligible lead releases may be one way to address this issue.

Additionally, EPA should review the justification for the lowered reporting threshold for lead and, consistent with the findings of the Science Advisory Board; reexamine the lowered reporting threshold which was based on the erroneous application of the persistent bioaccumulative and toxic (PBT) criteria.

⁷Federal Register, November 5, 2003, 68 FR 62579.

Environmental Protection Agency, Resource Conservation and Recovery Act, Listed Hazardous Waste F006 (40 CFR Part 261 Subpart 31)

Description of Problem:

In March 2002, EPA announced their intention to remove regulatory barriers to the recycling of metal containing electroplating sludge (67 FR 11251, March 13, 2002). Under the Resource Conservation and Recovery Act (RCRA), metal precipitate sludge is considered an F006 listed hazardous waste when a manufacturing facility ships it off-site for metals recovery.

As discussed in 2002 comments:

- Wastewater treatment sludges from electroplating operations, produced predominantly by small manufacturing facilities in the metal finishing and printed circuit boards industries represent one of the largest sources in the United States of untapped metal-bearing secondary material amenable to metals recovery.
- The listed hazardous waste designation only serves to discourage reuse, recycling and reclamation by greatly increasing the cost of recycling these valuable materials.
- Reducing regulatory barriers will encourage more facilities to reclaim electroplating sludge, reducing landfill volumes and decreasing the environmental impact of metals mining.
- The original listing for F006 was made in 1980. Testing conducted to date in two EPA projects have demonstrated that the key factors that originally triggered the sludges listing are no longer applicable for the majority of wastewater treatment sludges from printed circuit board facilities.
- The costs of managing electroplating sludge as a hazardous waste are significant. According to the IPC 2001 Environmental Benchmarking Survey, small PCB facilities spent an average of \$24,896 for disposal of electroplating sludge, while large facilities spent \$54,004 on the average.
- Exempting recycled electroplating sludge from hazardous waste management requirements, would substantially lower the cost of recycling by increasing the number, type, and geographical distribution of metals recovery facilities, thus decreasing both recycling/treatment costs, but lessening transportation costs as well.

Proposed Solution:

IPC supports the EPA's intentions to improve the RCRA program by reducing the regulatory barriers to recycling. In particular, regulatory flexibility for electroplating wastewater treatment sludge would increase the quantity of metal precipitates that are recycled through metals reclamation, thus conserving valuable metal resources and better protecting the nation's environment. OMB should encourage the EPA to propose the referenced regulatory improvement as expeditiously as possible.

Environmental Protection Agency, Resource Conservation and Recovery Act Subtitle C Hazardous Waste Requirements, (40 CFR 261.2)

EPA recently published a proposed rule entitled, "Revisions to the Definition of Solid Waste," that would revise the definition of solid waste to define certain recyclable hazardous secondary materials as not discarded and thus no longer a "waste" subject to regulation under Subtitle C of RCRA.⁸ Reducing the barriers to recycling will have the dual benefit of reducing waste management costs for manufacturers while providing environmental benefits by increasing the volume of materials that are recycled. However, EPA's main proposal is overly narrow and will fail to meet these goals.

IPC submitted detailed comments to the EPA⁹ in response to the proposed rule. In our comments, IPC encouraged the EPA to adopt the broad based reform option outlined in the proposal's preamble. The broader option would define legitimate recycling within the RCRA regulatory framework to exclude those materials legitimately recycled or reclaimed from Subtitle C RCRA jurisdiction.

While EPA conducted analysis of its limited rule, it did not conduct a full cost-benefit analysis of the broader option discussed in the proposal. While it is therefore, difficult to quantitize the economic benefit of the broader proposal, it may be possible to apply the same methodologies utilized in the limited analysis.

⁸ 68 Fed. Reg. 61558 (October 28, 2003).

⁹ IPC Comments in RE: EPA Proposed Rule, Revisions to the Definition of Solid Waste [68 FR 61558], February 23, 2004.

Proposed Solution:

OMB should review EPA's revisions to the definition of solid waste, a true attempt at RCRA reform, and provide information on the proposal in its Report to Congress. Additionally, OMB should encourage EPA to conduct a full cost-benefit analysis as a first step towards finalizing the broader option discussed in the preamble to the rule.

Conclusions

Thank you for the opportunity to comment on the *2004 Draft Report on the Costs and Benefits of Federal Regulations*. IPC understands and supports the need for cost effective, science-based regulations that are protective of the public's well being. The regulations and guidance discussed in our comments have a significant affect on the cost of manufacturing electronics in the United States without providing corresponding benefit.

We appreciate the opportunity to offer these comments. Please contact me at 202-962-0460 should you have any questions.

Sincerely,



Fern Abrams

Director of Environmental Policy