



ASSOCIATION CONNECTING
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Office of Environmental Information (OEI) Docket
U.S. Environmental Protection Agency
Mail Code 2822T
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

RE: Docket ID No. EPA-HQ-TRI-2007-0355, 72 FR 37762-37766 (July 11, 2007)
Agency Information Collection Activities, Proposed Collections; Toxic Chemical
Release Reporting; Request for Comments on Proposed Renewals of Form R
(EPA ICR No. 1363.15, OMB Control No. 2070-0093) and Form A Certification
Statement (EPA ICR No. 1704.09, OMB Control No. 2070-0143)

IPC-Association Connecting Electronics Industries is pleased to submit the following comments in response to the above referenced Information Collection Request (ICR). IPC believes that the July 2007 ICR has inaccurately estimated the burden to Toxics Release Inventory (TRI) reporters. The ICR has failed to account for the latest scientific information which questions the validity of the PBT (persistent bioaccumulative toxic) methodology currently used by EPA to evaluate metals. As such, the ICR has neglected to fulfill statutory requirements under the Paperwork Reduction Act (PRA) to justify the necessity of TRI metals information collection and requirements of the EPA Information Quality Guidelines (IQG) to disseminate accurate TRI data.

IPC is the national trade association for the electronics interconnection industry, and represents more than 2500 member companies. IPC members manufacture printed circuit boards (PCBs) and electronic assemblies, which are used in a variety of electronic devices including computers, cell phones, pacemakers, and sophisticated missile defense systems. Although IPC members include electronic giants, sixty percent of IPC members meet the Small Business Administration's definition of "small business." The typical IPC member has 100 employees and has a profit margin of less than four percent.

IPC would like to commend EPA for achieving the delicate task of rebalancing the TRI program without compromising the public's right to information when issuing the EPA TRI Burden Reduction Rule (71 FR 76932, December 2006). As reflected in the July 2007 ICR, the TRI Burden Reduction Rule is expected to reduce Form R respondent burden from 3,746,590 hours to 3,215,715 hours. The ICR estimates that approximately 11,780 Form Rs (from a TRI Form R universe of 78,535) will be replaced by Form As due to increased Form A eligibility. The burden reductions that are enabled through the TRI Burden Reduction Rule will enhance the utility of the TRI program by allowing the public to focus on facilities that represent a genuine risk to their community. IPC supports EPA's TRI improvement efforts and encourages the Agency to continue to explore burden-saving TRI reforms that do not jeopardize the public's right to know, or the quality of the TRI database.

Since 2001, when EPA inappropriately lowered the TRI reporting threshold for lead from 25,000 lbs to 100 lbs based on the PBT criteria, the reporting burden on industry drastically increased. The TRI Lead Rule¹ nearly doubled the number of TRI reporters for lead in the electrical and electronic manufacturing industries. In fact, in the first year alone under the new lead threshold, TRI Form R reports were filed by 2,025 facilities in the electrical and electronics equipment manufacturing sector. According to the July 2007 ICR, completion of Form R for PBT chemicals requires an estimated 66.8 hours per form in the first year and 46.3 hours per form in subsequent years. To date, industry has endured this significant burden for six TRI reporting cycles since promulgation of the TRI Lead Rule.

In order to quell overwhelming concern expressed over the scientific validity of application of the PBT criteria to lead, EPA promised to seek external peer review. While the logical process would have been to examine the science behind the TRI Lead Rule **before** implementing the rule, EPA decided to conduct the external peer review **after** the TRI Lead Rule was adopted. EPA committed to undertaking a cross-Agency metals assessment framework in 2001, with a final Scientific Advisory Board (SAB) review of the framework to be completed in 2003. After years of missed deadlines and a litany of broken promises, the final *Framework for Metals Assessment* was nearly four years overdue when released in March 2007. Every step of that assessment, from the Metals Action Plan, to the Issue Papers, to the final Metals Assessment Framework, has emphasized the inapplicability of the PBT criteria to metals.

EPA no longer has any justification for requiring facilities to incur the significant burden of reporting TRI information on metals releases based on the flawed PBT methodology.

¹ Lead and Lead Compounds; Lowering of Reporting Thresholds; Community Right-to-Know Toxic Chemical Release Reporting (66 FR 4500; January 17, 2001): Final Rule

The Metals Framework clearly concludes that the basis under EPA's PBT approach for evaluating bioaccumulation is inappropriate for assessing metal hazard:

The latest scientific data on bioaccumulation do not currently support the use of the bioconcentration factor (BCF) and bioaccumulation factor (BAF) values when applied as generic threshold criteria for the hazard potential of inorganic metals in human and ecological risk assessment (e.g. classification as a persistent bioaccumulative toxic [PBT] chemical).

The Framework particularly emphasizes the unique properties of metals (versus organic compounds) that should be considered by all EPA programs and regional offices in metal risk assessments. The Framework directly contradicts the TRI Lead Rule's assumption that the basic properties of the PBT approach "are fundamentally the same for organic chemicals as they are for inorganic chemicals, including metals and metal compounds." Given the findings of the Framework, the July ICR has not justified the continued collection of TRI information on metals based on the scientifically flawed PBT methodology.

IPC believes EPA's ICR has also failed to fulfill requirements under the Paperwork Reduction Act (PRA) and EPA's Information Quality Guidelines (IQG). Under requirements of the PRA §3508, EPA must justify whether the information collected under TRI is necessary for carrying out the functions of the Agency and whether it will have practical utility. The collection, use and dissemination of accurate scientific information are integral to EPA's mission to protect human health and the environment. However, instead of fulfilling its mission, EPA has created unnecessary public concern by inappropriately classifying metals as PBTs. In fact, collecting and disseminating TRI information based on the flawed PBT criteria provides the public with virtually meaningless metals risk information which serves no practical utility. IPC urges EPA to adequately justify the necessity for collection of TRI information on metals releases based on the flawed PBT methodology.

Under EPA's IQG, EPA must ensure that the "disseminated information is being presented in an accurate, clear, complete, and unbiased manner, and as a matter of substance, is accurate, reliable and unbiased." Collecting and disseminating information based on a flawed methodology is not presenting the information in an accurate manner. Since EPA's PBT approach for metals is scientifically flawed according to EPA's Metals Framework, EPA is disseminating PBT information that is inaccurate, incomplete, unreliable, and possibly biased. Therefore, the quality and utility of the TRI data is significantly compromised. IPC encourages EPA to disseminate accurate scientific information consistent with the IQG. Given that the July ICR has not complied with requirements of the PRA and IQG, IPC urges EPA to promptly revise the TRI Lead Rule by withdrawing the PBT classification of lead. After amending the TRI Lead Rule, EPA should issue a new ICR to reflect the significant burden reduction benefits of aligning the TRI Program with the scientific findings of the Metals Framework.

The July ICR also grossly underestimates the burden associated with rule familiarization. According to the ICR, the burden associated with rule familiarization occurs only in the first year that a facility becomes subject to reporting. In subsequent years, a facility's staff is assumed to be familiar with the requirements that apply to their facility. IPC believes that rule familiarization is an ongoing activity that does not end after the first year. EPA's TRI website alone has over 40 guidance documents that TRI filers need to constantly review for new interpretations or guidance. EPA also needs to consider that given employee turnover and shifts in job responsibilities, the same employee may not be completing TRI forms every year. A person new to TRI reporting must invest a significant amount of time in training in order to familiarize themselves with the TRI Program requirements. IPC urges EPA to revise the burden estimates in the July ICR to account for the rule familiarization burden incurred by subsequent year filers.

IPC has the following comments in response to the proposed new data elements identified in the July ICR. In general, IPC believes that the ICR process is inappropriate for announcing proposed changes to the TRI forms. We are extremely concerned that significant changes in the TRI forms have been concealed in an ICR notice, rather than being properly addressed through a notice and comment rulemaking. In fact, the title of the Federal Register Notice announcing the ICR reflects no indication that EPA is proposing to make changes to the TRI forms. As a result, the changes will go unnoticed by the vast majority of TRI filers who are most likely unaware that EPA is using the ICR process as a means to add new data fields to the TRI forms. In the interest of maintaining transparency, IPC urges EPA to initiate a full notice and comment period for the proposed new data elements as required under the Administrative Procedures Act (APA).

In the July ICR, EPA has proposed to include a check box in both TRI forms to indicate whether a reporting facility's parent company is a small business. The ICR states that this information will help EPA determine the impact of regulatory changes on small businesses quickly and accurately. While IPC agrees that this information could be useful, merely posing the question without adequate instructions on how to determine whether a facility is a small business will likely result in erroneous and inaccurate data. Since TRI reporters may not be fully aware of the Small Business Administration's criteria for qualifying as a small business, EPA must provide clear guidance explaining how to appropriately ascertain the data requested. IPC suggests that EPA explain in the TRI guidance documents and training materials that the SBA defines a small business based on either millions of dollars or number of employees, depending on North American Industry Classification System (NAICS) codes. EPA should also provide the SBA "Table of Small Business Size Standards Matched to North American Industry Classification System Codes," in the TRI guidance documents, accompanied by a hyperlink directly to the SBA document:

http://www.sba.gov/idc/groups/public/documents/sba_homepage/serv_sstd_tablepdf.pdf

An alternative approach would be for EPA to collect information on the number of employees by providing check boxes for several employee ranges (i.e. less than 100

employees, more than 100 employees). EPA can use this information to determine whether the facility is a small business.

IPC also believes that the ICR has underestimated the burden associated with determining small business qualification. The ICR states that the burden expected with this new data element would be 15.4 minutes the first year and 0.8 minutes in subsequent years. Without EPA providing further guidance, TRI filers would need to search the SBA website for the SBA Small Business Standards to determine if indeed the facility meets SBA qualifications for small business designation. TRI filers would also need to consult with the appropriate internal staff and obtain the necessary company information. The total time spent to ascertain the necessary data would undeniably exceed the 15.4 minutes proposed by the ICR. Additionally, EPA cannot assume that once a company checks that it is a small business in the first reporting year, the burden would be reduced to 0.8 minutes in subsequent years. Facilities will have to verify its small business qualification every year since employee and revenue numbers may fluctuate between TRI reporting cycles. Therefore, while the burden for subsequent year filers should be less than first year filers, it is significantly more than the mere 0.8 minutes (48 seconds) allotted by the ICR.

The July ICR also proposes to include new data elements to enhance the point of contact information by adding fields in Forms A and R for "Form Preparer," and a "Public Contact" field in Form A. IPC believes that the proposed points of contact are unnecessary since Form A and R already request "Technical Contact" information and Form R additionally requires a "Public Contact." According to the ICR rationale, EPA staff have "in a number of instances in the past" contacted the "Technical Contact" and have been referred to another individual who prepared the form on the facility's behalf. IPC believes that it is inappropriate for EPA to contact a third-party form preparer without notifying the facility. Since EPA should obtain authorization from the facility before contacting a third-party form preparer, collecting form preparer contact information on the TRI forms would be counter-productive and should be removed from the ICR. Additionally, IPC believes that a small number of instances in the past, where EPA has had to make a few phone calls to identify an appropriate facility contact, do not serve as a justifiable reason for adding entire new fields to the reporting forms which burden the universe of TRI filers. If these instances are significant, EPA must provide numerical estimates for the frequency of occurrences where EPA has had to identify the appropriate contact to address questions regarding a facility's data submission. EPA must also calculate the staff burden against the TRI reporter burden to properly demonstrate the justification for additional points of contact. Unless the staff burden exceeds the projected industry burden, the new data elements should be removed from the ICR.

EPA also proposes to add boxes on both TRI forms where up to two codes can be entered to indicate the main reason(s) that a form is being revised. Currently reporters are required to check a box to indicate that the form is a revision but are not required to provide a reason for the revision. The July ICR proposes 16 reasons for which a facility

can request a revision. IPC is concerned that reasons such as “to revise as a result of an EPA/State inspection,” could be used to collect enforcement and compliance information on facilities, which is not the purpose of the TRI Program. According to EPCRA §313, the data submitted in the forms are intended to inform the public about releases of toxic chemicals in the environment, not to inform the public on a facility’s compliance record.. IPC is also concerned that publicizing such information may discourage TRI form revisions and diminish the quality and accuracy of the TRI data. IPC suggests that unless facilities are provided adequate privacy protection, EPA should not collect information on the reasons for revisions.

IPC appreciates the opportunity to provide comments on the proposed renewal of information collection. IPC understands and supports the need for cost effective, science-based regulations that are protective of the public welfare. EPA must adequately fulfill PRA requirements to justify metals TRI data collection and IQG requirements to provide the public with accurate and reliable data on metals releases. In order to properly collect and disseminate information on the true level of PBT releases to the environment, EPA must revise the TRI program to reflect the scientific results of the Metals Framework. EPA must also ensure that any changes to the TRI Program are properly addressed through a full notice and comment rulemaking as required under the APA.

We look forward to working with EPA to improve data collection under the TRI Program. Please contact me at 703-522-0225 or saharosman-sypher@ipc.org should you have any questions.

Sincerely,

Sahar Osman-Sypher
Project Manager, Environmental, Health and Safety