



April 4, 2011

Improving Regulations Docket  
Environmental Protection Agency, EPA Docket Center  
Mailcode: 2822T  
1200 Pennsylvania Ave., NW.  
Washington, DC 20460

RE: EPA's Plan for Retrospective Review under Executive Order 13563: Toxics (Docket ID: EPA-HQ-OPPT-2009-0159)

IPC – Association Connecting Electronics Industries appreciates the opportunity to comment on EPA's Plan for Retrospective Review under Executive Order 13563. These comments will focus on the need for EPA to review the proposed modifications to the Toxic Substances Control Act (TSCA) Inventory Update Reporting (IUR) rule (hereafter referred to as the proposed rule). IPC is extremely concerned with the proposed rule and the potential detrimental effect it will have on U.S. manufacturing. While the proposed rule is not finalized, this would be an excellent opportunity for EPA to reconsider a burdensome regulation before it is implemented. Reviewing a burdensome regulation before it is implemented is more effective than retrospective review because identifying burdensome reporting requirements prior to their implementation will minimize adverse impacts. IPC strongly believes that the proposed rule should be made a priority regulation for review.

IPC, a U.S. headquartered global trade association, represents all facets of the electronic interconnection industry, including design, printed board manufacturing and electronics assembly. Printed boards and electronic assemblies are used in a variety of electronic devices that include computers, cell phones, pacemakers, and sophisticated missile defense systems. IPC has more than 2,700 member companies, 1,700 of which are located in the U.S.

### **General Overview**

IPC believes that the proposed rule warrants regulatory overview because it would impose undue burdens on the entire U.S. manufacturing sector, including electronics, without environmental benefit. IPC is seriously concerned that EPA's decision to treat byproducts sent for recycling as new commercial chemicals subject to the IUR rule will create unnecessary burdens and cause significant confusion among industry. This interpretation contradicts other EPA regulations that classify the same recycled byproduct as a hazardous waste. This apparent contradiction is likely to be extremely confusing to manufacturers, and may cause them to stop reporting byproducts sent for recycling under the Resource Conservation and Recovery Act (RCRA) and other waste regulations because they are now considered new chemicals. Furthermore, the proposed rule creates a strong disincentive to recycle because manufacturers of byproducts are required to comply with burdensome reporting requirements if they send their byproducts for recycling. The timing of the proposed rule is also troublesome. EPA's intention to require reporting only thirty days after the June 1, 2011 publication will be totally insufficient for manufacturers to understand the rule, gather

data, and report, especially to those reporting for the first time. IPC and its members strongly urge EPA to review the proposed rule and implement suggested changes to the reporting requirements before it imposes undue burdens on the entire U.S manufacturing sector.

Byproducts sent for recycling should be exempt from reporting under TSCA IUR. While byproducts are a direct result of non-chemicals manufacturing, they are produced unintentionally, without a separate commercial intent. Many byproducts from industrial manufacturing operations contain valuable materials that make them attractive for recycling and reuse. For example, byproducts from printed circuit board (PCB) manufacturing contain a considerable amount of copper compounds that can be extracted from the byproduct for reuse and recycling. According to EPA's flawed logic, if a generator sends a copper containing byproduct for recycling, these copper compounds become component chemical substances produced for a commercial purpose and therefore subject to IUR reporting requirements by the generator. EPA has wrongly interpreted the act of finding a useful purpose for what would otherwise be a waste product, otherwise known as recycling, as somehow changing and transforming the byproduct into an intentionally manufactured chemical. IPC strongly urges EPA to review the proposed rule because all byproducts sent for recycling, regardless of whether they are disposed or sent for recycling should be exempt from reporting under TSCA IUR.

### **The Proposed Rule Contradicts Other EPA Regulations**

The proposed rule should be reviewed because it appears to contradict other EPA regulations and programs. The treatment of byproducts sent for recycling as new chemicals under the proposed rule, may have unintended effects on other EPA rules. In the proposed rule, EPA states that byproducts from manufacturing processes that are sent for recycling are new chemicals subject to reporting requirements under the TSCA IUR rule because they are a feedstock to the recycler (Section IV (B), pg. 49675-6). The proposed rule classifies byproducts sent for recycling as new chemicals, whereas RCRA, the Toxics Release Inventory (TRI) Program, and other regulations classify those same byproducts as wastes, or even hazardous wastes. The inherent contradiction of simultaneously regulating byproducts as new chemicals and wastes will cause significant confusion among manufacturers in many industries and impact the data quality for multiple EPA regulations. For example, F006 wastewater sludge is classified as a listed hazardous waste under RCRA. According to the proposed TSCA IUR rule, that same F006 wastewater sludge is considered a new chemical if it is recycled. This confusion could cause manufacturers to stop reporting byproducts under RCRA and other EPA regulations because the byproducts are now regulated by EPA as new chemicals. This could have a significant effect on data quality and ultimately EPA programs to protect human health and the environment. Although the proposed rule is not finalized, it has already caused considerable confusion. Reviewing the proposed rule could alleviate significant confusion among industry and ensure EPA receives accurate data. EPA should review the proposed rule in order to harmonize Agency regulations.

### **The Proposed Rule is a Disincentive to Recycle**

The regulatory burden imposed by the flawed interpretation that byproducts sent for recycling are new chemicals regulated under the proposed rule creates a disincentive to recycle. According to the proposed rule, if a manufacturer decides to send a byproduct for recycling they are subject to IUR reporting. Only byproducts that are discarded qualify for the byproducts exemption. The significant burden of meeting both existing and proposed additional reporting requirements creates a

disincentive to recycle, which directly contradicts EPA's overall goals of promoting recycling and enhancing human health and environmental protection. EPA should review the proposed rule in order to unify EPA's policies and send a clear message of EPA's support for recycling.

### **The Proposed Rule is Burdensome and Has No Commensurate Benefit to Human Health and the Environment**

EPA has proposed a number of changes to the reporting requirements which are extremely burdensome and provide no clear benefit to the public or the environment. Many of the proposed changes will inundate EPA with data that may not be useful or accurate. Both, the proposed elimination of the threshold for reporting processing and use data and the proposed changes in the methodology for determining whether a facility must report, will drastically increase the amount of data received. IPC believes that EPA has not clearly assessed whether all of this data is needed, nor has the Agency articulated how it will be able to efficiently and effectively utilize all of the data. If EPA collects copious amounts of data without a clear plan for how that data will be used, industry and Agency resources will be wasted. EPA should review the proposed rule in order to minimize the burden of unnecessary and duplicative reporting requirements.

EPA's proposal to require manufacturers to report under the IUR rule if the production volume of a reportable chemical is above the threshold during any year since the last principal reporting year is unrealistic and burdensome. Generators of byproducts have not collected data on the production volumes of the component chemical substances contained within their byproducts because they never considered themselves to be subject to TSCA IUR. Identifying and tracking the volume of each component chemical substance within each byproduct on an annual basis would require costly analysis and analytical verification of the component chemical substances within the byproducts. Analyzing the byproducts may not produce accurate determinations of the amount of each component chemical substance present in the byproduct. The byproduct generator cannot determine what component chemical substances will be extracted and in what quantities. Manufacturers should only be required to report under the IUR rule if the production volume of a reportable chemical substance is above the threshold during the principal reporting year only.

The proposed changes to eliminate the 300,000 lb. threshold for requiring processing and use data and increase the reporting frequency are burdensome and unnecessary. The extra data EPA would receive will require expeditious analysis of the data by the Agency in order to have an immediate, direct benefit to the public. EPA has not stated whether additional staff will be hired in order to analyze and evaluate the copious amounts of data that will be submitted. If EPA cannot rapidly expedite the data analysis to the public then more frequent data collection will represent a burden to industry with no commensurate benefit to society. EPA should gather data that is needed for specific purposes and programs, rather than requesting a vast data set from which the Agency may pick and choose pieces for undefined future uses. EPA should not increase the reporting frequency or eliminate the 300,000 lb. threshold for reporting processing and use data.

The proposed rule violates the Paperwork Reduction Act (PRA) by requiring duplicative reporting. According to the PRA, the proposed rule cannot require data to be reported that is already collected through other agencies. The proposed TSCA IUR rule requires manufacturers to report worker exposure data — information that the Occupational Safety and Health Administration (OSHA) currently collects through existing regulations and standards. At a minimum, EPA must explain how their data needs cannot be met with the OSHA data on worker exposures. Under EPA's

interpretation that byproducts are new chemicals reportable under the IUR rule, many data elements would be reported by the recycler of the byproduct as well as the generator of the byproduct. EPA should only require recyclers of byproducts to report under the IUR rule in order to avoid duplicative reporting. EPA should reevaluate the data elements they are proposing to collect to ensure duplicative reporting does not occur among Federal agencies and industry.

The proposed rule is burdensome to manufacturers with no commensurate benefit to human health and the environment and therefore should be a priority for regulatory review. EPA should review the proposed rule in order to minimize burden on U.S. manufacturers.

### **The Timing of This Rulemaking is Extremely Late; 2010 Data Should Not Be Reported**

EPA should change the reporting year to 2011 since the Agency has yet to finalize reporting requirements when reviewing the proposed rule. Requiring manufacturers to go back and gather data will cause significant data quality issues because of unreliable estimates. Since manufacturers did not know at the beginning of 2010 what data they should be collecting in order to comply with the IUR rule, they will be forced to estimate data elements that were not required during the last reporting cycle. Manufacturers that never reported under the IUR rule will be forced to estimate all data elements required to be reported. For example, manufacturers that produce chemicals below 300,000 pounds per year will face a host of new processing and use data requirements under the proposed rule. Although postponing the submission period to a later four-month period in 2011 would be helpful to give manufacturers more time to gather data, it will not solve data quality issues. Postponing the reporting period will help ensure EPA obtains valuable information. After reviewing the proposed rule, EPA should strongly consider postponing the reporting year to 2011 with reports due in 2012 in order to avoid potential data quality issues.

### **Conclusion**

The proposed rule should be a priority for regulatory review. Reviewing a regulation before it is finalized will enable EPA to mitigate unnecessary, burdensome reporting requirements that could require industry and EPA to utilize valuable resources. EPA should review the proposed rule in order to withdraw its interpretation that byproducts sent for recycling are regulated under TSCA IUR. Withdrawing this interpretation would alleviate significant burdens for the entire U.S. manufacturing sector. Exempting byproducts sent for recycling from the proposed TSCA IUR rule would encourage recycling and unify the Agency's goal to promote recycling. Confusing classification of the same chemical as a new chemical and hazardous waste would also be eliminated should EPA withdraw its interpretation. EPA should also postpone the reporting period in order to allow manufacturers adequate time to become familiar with the rule and report useful, accurate information. IPC strongly urges EPA to make the proposed TSCA IUR rule a priority regulation for regulatory review.

Sincerely,

Stephanie Castorina  
Manager, Environmental Programs