



ASSOCIATION CONNECTING
ELECTRONICS INDUSTRIES®

Government Relations
1333 H Street, N.W., 11th Floor, West Tower, Washington, DC 20005
Tel. 202.962.0460 Fax 202.962.0464
www.ipc.org

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RE: Toxic Chemical Release Reporting; Community Right to Know; Notice of Online Dialogue [EPA Docket TRI-2003-0001; 68 Fed.Reg. 62579 (Nov. 5, 2003)]

IPC - Association Connecting Electronics Industries - is pleased to submit the following comments in response to the Toxic Chemical Release Reporting; Community Right to Know; Notice of Online Dialogue. IPC is the national trade association for the electronic interconnection industry, and represents over 2,200 member companies. Virtually one hundred percent of IPC members that manufacture printed circuit boards and electronics assemblies are required to report under the Toxic Release Inventory (TRI). TRI reporting is a significant and growing burden for the increasingly beleaguered American manufacturing sector.

IPC believes that the value of the TRI program is best preserved through the collection of necessary information at a minimal burden to reporting industries. While IPC recognizes the importance of the TRI program in generating information for the public, we believe EPA can and should seek to continually improve the efficiency of the TRI program. IPC is encouraged that the EPA is seeking public input on options for reducing the burden imposed by the TRI program and urges EPA to commit to a prompt implementation of TRI burden reductions.

Although the dialogue seeks to identify, "a specific burden reduction initiative," EPA should recognize that there may be no single option that alone "effectively lessens the burden on facilities but at the same time ensures that TRI continues to provide communities with the same high level of significant chemical release and other waste management information." In order to achieve the goal of burden reduction that does not reduce the value of the TRI program, EPA should implement any and all burden reduction options that would reduce the reporting burden without significantly affecting the value of the TRI program.

IPC appreciates the opportunity to file these comments.

Option 1: Higher Reporting Thresholds for Small Businesses

As noted by EPA, complying with TRI regulation represents a disproportionate burden for small business. Small businesses have less staff and other resources to devote to regulatory compliance. Higher reporting thresholds for small businesses would be consistent with EPA's stated objective, "to reduce burden associated with TRI reporting while at the same time continuing to provide valuable information to the public consistent with the goals and statutory requirements of the TRI program." Should EPA undertake reforms aimed specifically at small businesses, it is recommended that the Small Business Administration's (SBA's) small business definitions be used. SBA has put significant effort and study into the determination of appropriate definitions of small businesses in each industry code. It would be consistent and efficient to utilize the definitions already developed by SBA. As noted by EPA, providing higher reporting thresholds for companies meeting the SBA's small business definitions could eliminate reporting by 31% of facilities, accounting for 4% of total releases and 11% of total production-related waste. As demonstrated by EPA's Appendix A analysis, higher reporting thresholds would meet the statutory requirement [Section 313(f) (2)] that EPA may revise thresholds only to the extent that the revised threshold obtains reporting on a substantial majority of total releases of the chemical at all facilities subject to the Emergency Planning and Community Right to Know Act (EPCRA) Section 313.

Because many of the other options discussed in this paper would provide relief to small businesses as well as larger businesses with small releases of TRI chemicals, it may be more efficient to promulgate the broader burden relief options discussed in Options 2, 3, 4 and 6.

Specifically, it should be noted that many of the small businesses reporting under TRI do so because of the lowered threshold for lead. As discussed under Options 2, 3, and 6, respectively, EPA should evaluate the option of raising the reporting threshold for lead, reinstating the use of Form A for lead reporting, and reinstating the de-minimis exclusion for lead reporting.

Option 2: Higher Reporting Thresholds for a Category of Facilities or Class of Chemicals with Small Reportable Amounts

IPC believes this option has a high potential for reducing the reporting burdens for a number of facilities which must undergo the annual burden of TRI reporting despite having very low releases of toxic chemicals to the environment. This type of focused relief would meet the stated goals "to reduce burden associated with TRI reporting while at the same time continuing to provide valuable information to the public consistent with the goals and statutory requirements of the TRI program." Additionally removal of facilities reporting minimal releases could improve the quality of the TRI database by focusing on releases that represent a real risk to the public welfare.

Releases of lead to the environment by the electronics and electrical equipment manufacturing sector (SIC 36), and by industry in general, are virtually insignificant. In SIC 36, 1,252 Form Rs were filed for lead and lead compounds in reporting year 2001. The

median lead release by reporters in SIC 36 was zero; while the median lead release for all reporters was one pound. In the electronics sector, over 70% of all Form Rs for lead and lead compounds reported less than one pound of lead released to the environment. Total releases reported by SIC 36 amounts to less than 0.1% of all lead releases.

Raising the lead reporting threshold for manufacturing facilities would provide substantial burden relief while continuing to meet the statutory requirement [Section 313(f) (2)] that EPA may revise thresholds only to the extent that the revised threshold obtains reporting on a substantial majority of total releases of the chemical at all facilities subject to EPCRA Section 313. EPA should not misinterpret the requirements under the Pollution Prevention Act (PPA) to require that quantities of toxic chemicals recycled by a facility must be included in an assessment of conformance with the requirement of obtaining reporting on a substantial majority of total releases of the chemical.

In addition to lead, we have identified several other chemicals for which the electronics sector has consistently reported very low releases. Often these result from thresholds based on manufacture and use which occurs within a contained facility. These chemicals are consumed and or treated onsite and therefore do not result in environmental releases or risk to the public. It is recommended that EPA either raise the threshold for these chemicals or re-focus TRI on actual releases as discussed below under Option 3.

- Acid aerosols, which are manufactured, sprayed, and condensed, often within closed equipment, do not result in environmental releases or risk to the public. Nitric acid is treated on site subsequent to use and therefore is not released in any significant amount. Additionally, the same molecules are reported again under TRI as the nitrates that are manufactured from the on-site treatment of nitric acid. This is in essence double reporting with no informational value.
- Copper is a significant raw material that is incorporated into circuit boards during the manufacturing process. Little copper is released as a result of this process.
- Similarly, formaldehyde is consumed during the manufacturing process and is not released to the environment.

Our comments have focused on a small group of chemicals that are specific to electronics manufacturing. EPA should review the agency's Form A and Form R databases to identify other specific chemicals and or industries which consistently have small reportable releases. Based on this data, EPA should increase the reporting threshold accordingly.

Option 3: Expanding Eligibility for the Form A Certification Statement

The alternate threshold certification, otherwise known as Form A, was introduced by EPA in attempt to reduce the burden of TRI reporting for facilities with low releases. As EPA has previously observed, Form A represents only partial relief as facilities still must undertake detailed calculations to determine eligibility for Form A reporting. Nevertheless, Form A represents what may be the best option "to reduce burden associated with TRI reporting while at the same time continuing to provide valuable information to the public consistent

with the goals and statutory requirements of the TRI program.” IPC believes that expanding the use of Form A is a burden reduction measure that merits serious EPA consideration.

Unfortunately, recent EPA rulemakings, specifically the lowered reporting threshold for lead, have significantly decreased the proportion of facilities eligible for this lower burden form of reporting. Review of the data presented in EPA’s response to OMB’s January 18, 2001 Terms of Clearance indicates that the restriction on Form A usage for lead reporting has reversed the trend of increasing Form A usage. In order to offer real reductions in TRI reporting, EPA should allow Form A to be used for reporters of lead releases. As evidenced by the large number of facilities reporting lead releases of one pound or less, restoration of Form A would not result in any significant information loss. If necessary, EPA could modify either the thresholds for Form A or Form A itself in order to address increased concerns about PBT releases.

In addition to restoring use of Form A for lead reporting, EPA should modify the "annual reportable amount" criterion to reflect only reported releases to the environment and not the waste management activities (e.g., recycling, energy recovery) currently included. These materials are not released to the environment and should not be included in TRI reporting thresholds for Form A. Inclusion of these materials in the Form A ‘reportable amount’ thresholds results in unnecessarily barring many facilities from the burden relief offered by Form A reporting. Changing the definition of “annual reportable amount” to exclude materials that are reclaimed and recycled would provide incentive for pollution prevention activities. Review of Appendix B to the EPA ‘white paper’ indicates that this modification would result in over 99% of TRI releases still being reported. This would certainly meet the requirement that EPA may revise thresholds only to the extent that the revised threshold obtains reporting on a substantial majority of total releases of the chemical at all facilities subject to EPCRA Section 313.

EPA should also consider increasing the Form A thresholds. Review of Appendix B indicates that increasing the Form A threshold to 5,000 lbs would result in the loss of only 0.003% of TRI release data. Even when recycling and other PPA waste management activities are included, over 90% of releases and other waste management of toxics are reported to EPA.

Should the public be concerned that increased use of Form A would result in the loss of information regarding other waste management activities, EPA may wish to add simple, range type reporting of other waste management activities to Form A. While this would increase the burden of Form A reporting, it may represent a necessary compromise in achieving burden reduction while addressing the requirements of the PPA.

In their ‘white paper’ EPA notes that Form A usage has not risen since 1998. As discussed by several other commenters, there are several factors contributing to the ‘underutilization of Form A.’ In particular we would like to highlight the concern that many facilities believe that use of Form A leaves them open to EPA enforcement for failure to file, should it be determined that they were not eligible to report under Form A. To encourage broader use of

Form A, EPA should issue a binding statement that facilities found to be improperly filing Form A (or Form NS discussed in Option 4) will face enforcement for incorrect filing, not failure to file Form R.

Finally, we would like to note that burden relief for the currently ineligible facilities, particularly those reporting virtually no releases of lead, should not be dependent on the usage rate by the currently eligible facilities. The appropriateness of the Form A substitution should rest solely on an analysis of the relative value and the paperwork burdens of the two competing forms, and should not be affected by the degree of usage of the Form A by the currently eligible facilities.

Option 4: Creating a new "No Significant Change" Certification Statement

While this option has the potential to reduce reporting burdens for a number of facilities, the definition of 'no significant change will have a significant effect on the number of eligible facilities and the degree to which burdens are reduced.

In order to result in meaningful burden reduction, determination of eligibility for this option should not require that Form R reporting calculations be performed in order to determine the percent change in releases relative to the baseline year. Percentage changes in production quantities, raw materials usage, and or manufacturing processes would be easier to calculate. Nevertheless because of the dynamics of the manufacturing process, particularly in the electronics industry, it may be difficult for many facilities to certify no significant change based on raw material inputs or changes to the manufacturing process.

In many cases, as discussed previously under Option 2, many facilities have zero or very small release of materials subject to TRI reporting thresholds. As these insignificant releases do not represent a risk to the public, IPC would support the establishment of a minimum quantity threshold below which any change in releases would not be considered significant, regardless of its percentage relative to the designated baseline year.

As the lowered reporting thresholds for PBT chemicals have resulted in considerable burdens while generating a large number of reports of zero releases, PBT chemicals such as lead should not be excluded from use of the No Significant Change form. To do so would eliminate a substantial portion of the burden reducing potential of this form.

Option 5: Use of Range Reporting for Section 8 of Form R

EPA currently allows range reporting for non-PBT chemicals in Sections 5 and 6 of Form R. Range reporting is not used in Section 8 of Form R, despite the fact that Section 8 data is utilizing range reporting in Sections 5 and 6 of Form R to report specific numbers for the same information in Section 8. Allowing the use of range reporting in Section 8 may be one way to reduce the burden of completing Form R.

Option 6: Other Options for Burden Reduction

Zero Releases

EPA indicated in the Phase II Dialogue's White Paper that the agency considered an option that would afford reporting relief to those facilities that report zero releases on their Form R reports. The Agency decided not to include this approach since EPA questions whether such an approach would result in significant burden reduction given that facilities would first have to determine there were no releases in order to qualify. Further, EPA is concerned that relief from reporting based solely on zero releases would result in the loss of reporting on other waste management activities taking place at the facility. IPC disagrees with this position.

The very existence of a significant number of TRI reports for zero releases is indicative of the extent to which the TRI program fails to achieve its goals in an efficient and effective manner. TRI reporting is a significant burden. The imposition of this burden is justified only to the extent that the TRI reports result in a reduction of risk to the environment or the public. It is very hard to imagine that such a justification exists for facilities forced to file Form R reports for chemicals of which there are no releases.

EPA's concern that facilities would still have to determine that there were no releases in order to qualify for a 'zero release exemption' is misguided. All of the burden relief options discussed in the 'white paper' would require some form of calculation. The goal of burden relief should be to simplify and reduce the amount of calculation, recordkeeping, and reporting that is required without reducing the value of TRI. Clearly, zero release reporters are facilities doing their best to manage TRI chemicals such that there is no release, and therefore risk, to the environment or the public. As such, removal of these companies from TRI should not represent a significant loss of information. Furthermore, EPA should eliminate reporting for chemicals with zero release quantities. This option would have the benefit of allowing EPA to focus its energy on better, faster public release of significant TRI data and encouraging facility pollution prevention by rewarding facilities that eliminate the release of TRI chemicals.

De-Minimis Exemption A for Lead

EPA's 2001 rule lowering the reporting threshold, eliminating the de-minimis exemption level, and prohibiting the use of Form A for Lead reporting is a significant source of TRI burdens that EPA refuses to acknowledge. Extremely low levels of lead are naturally occurring in many materials. However, most Material Safety Data Sheets (MSDS) do not have accurate concentration listings for constituents at or below the de-minimis levels. The de-minimis exemption allowed reporting facilities, when making threshold determinations and release calculations, to disregard certain minimal concentrations of chemicals in mixtures or other trade name products they process, otherwise use, or which are manufactured as impurities. Elimination of this exemption for PBT reporting has created a huge burden associated with obtaining the relevant data. EPA should reinstitute a de-minimis exemption for lead PBT reporting. As evidenced by the large number of facilities reporting lead

releases of one pound or less, restoration of these provisions would not result in any significant information loss.

IPC urges EPA to reestablish the de minimus exception and use of Form A for lead reporting. Absent this, EPA should follow through on optional reporting for facilities with “zero releases.”

Guidance and Instructions

Changes in EPA guidance and instructions represent a significant and unaccounted for regulatory burden. Furthermore, it is often de-facto rulemaking which is not subject to public review and comment. All changes to guidance and instructions should be treated as the regulatory change it represents. Proposed changes should be announced via the federal register and subject to public comment. Additionally, EPA should be required to calculate the burden of training, reporting, and requirements associated with the proposed changes.

TRI-ME

IPC recommends that EPA automate the completion of Section 8 entries based on the data entered in Sections 5 and 6 and production factors. This would eliminate the significant hassle of reconciling Section 8 data with Sections 5 and 6.

Other Burden Reduction Options

A white paper prepared by the Chemical Manufacturers Association (now known as the American Chemistry Council or ACC) in September, 1999 identified several data elements currently required to be reported on the Form R that may not be mandated by EPCRA Section 313(g)(1) or PPA Section 6607(b). These data elements do not provide information necessary for communities to assess potential impacts from nearby facilities. EPA should examine whether any of these data elements could be removed from Form R.

Conclusions

IPC appreciates the opportunity to review and propose options that would reduce the burden associated with TRI, enhance the use of the collected data, and ensure that TRI provides communities with the information envisioned by Section 313 of the Emergency Planning and Community Right to Know Act (EPCRA). Effective burden reduction will enhance the utility of the TRI program by allowing the public to focus on facilities that represent a genuine risk to their community. In addition, efforts to streamline reporting could enhance EPA’s abilities to more promptly distribute TRI data.

IPC urges EPA to move beyond discussion of burden reduction options and proceed as quickly as possible to implement burden reduction options that would reduce the reporting burden without significantly affecting the value of the TRI program. In order to achieve the goal of burden reduction that does not reduce the value of the TRI program, EPA should

implement any and all burden reduction options that would reduce the reporting burden without significantly affecting the value of the TRI program. In particular, we believe that a combination of raising the reporting thresholds for specific chemicals with low reportable releases, combined with an expanded Form A and the creation of a 'No Significant Change' reporting form will result in significant burden reductions for our member companies and the manufacturing sector in general.

Once again, IPC appreciates the opportunity to comment on the Phase II Dialogue's White Paper and looks forward to working with the EPA to implement these improvements to the TRI Program.