Office of Information and Regulatory Affairs  
Office of Management and Budget (OMB)  
725 17th Street, NW  
Washington, DC  20503  
Attention: EPA Desk Officer

EPA Docket Center Mail Code 2844  
Environmental Protection Agency  
1200 Pennsylvania Avenue NW  
Washington, DC  20460

RE:  Notice of Toxic Chemical Release Reporting; Request for Comment on Renewal Information Collection (EPA ICR No. 1363.12; OMB No. 2070-0093)

IPC - Association Connecting Electronics Industries - is pleased to submit the following comments in response to the Notice of Toxic Chemical Release Reporting; Request for Comment on Renewal Information Collection.  IPC is the national trade association for the electronic interconnection industry, and represents more than 2,400 member companies.  IPC believes that the Environmental Protection Agency (EPA) has:

• Failed to properly assess the costs and benefits of the proposed information collection on businesses (particularly on small businesses) by significantly underestimating the burdens associated with completing the Toxic Release Inventory (TRI) Forms  
• Failed to fulfill its commitments under the Paperwork Reduction Act (PRA) to reduce reporting burdens, especially as they pertain to small businesses  
• Failed to fully address comments filed in response to the notices in 67 FR 44213 and 67 Fed. Reg. 44197

IPC believes that the Office of Management and Budget (OMB) should not grant approval for the aforementioned Information Collection Request (ICR) unless the agency commits to undertake serious efforts to reduce the reporting burden, especially for small business.  Given EPA’s failure to address previous OMB requests in this area, we recommend that this ICR be approved for a period of one year, in order to provide the EPA an opportunity to demonstrate its willingness to undertake burden reduction.
IPC appreciates the opportunity to file these comments.

I. Background

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 electronics 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. There would be no Internet, no e-mail, no VCRs or Nintendo. The industry employs more than 400,000 people and exceeds $44 billion in sales. Industry members operate in every U.S. state and territory.

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.” The typical IPC member has 100 employees and has a profit margin of less than four percent.

Virtually one hundred percent of IPC members that manufacture printed circuit boards and electronics assemblies are required to report under TRI. The vast majority filed for the first time in 2002 under the requirements of the lowered reporting threshold for lead. We believe that examination of data for new reporters under this rule will reveal that a majority are small businesses with virtually insignificant release of lead to the environment.1 Completion of TRI Form R is a significant burden for these small businesses.

II. Accuracy of Burden Estimate

EPA has significantly underestimated the burden associated with completion of TRI reporting. EPA has relied upon extremely limited data to drastically reduce the estimated burden of completing TRI Form R. EPA then relies upon faulty methodology and flawed assumptions to justify the burden reduction.2

A. EPA has Inappropriately Lowered the Burden Estimate

In this ICR, EPA has drastically lowered the estimated burden associated with completing the TRI Form R from 47.1 to 14.5 hours. The basis of this drastic reduction is data collected from 180 facilities during the last 10 years. While EPA cites the statistical validity of this data collection, no discussion of the statistical

---

1Many of these companies are required to report due to tin-lead solder returned to suppliers for purification and reuse.
sampling methodology is provided. It is unclear whether these facilities were representative of the universe of TRI reporters in terms of the distribution of company size, number of TRI Form Rs filed annually, experience in completing TRI Form Rs, SIC code or other measures of industry processes and products. Furthermore, all of these studies were conducted prior to the imposition of PBT reporting requirements. The PBT reporting requirements represent significant changes that EPA dismisses out of hand without undertaking to collect any supporting data.

EPA further attempts to bolster the validity of their estimates by repeatedly citing data submitted by the American Petroleum Institute (API). The facilities surveyed by API represent only one sector of the economy and only a small fraction of TRI reporters. Overvaluation of the data collected from this one sector would certainly invalidate appropriate statistical sampling methodologies.

**B. EPA's Revised Estimates Have No Valid Basis**

EPA has inappropriately revised the burden estimates based on inaccurate assumptions and limited data collection. While we appreciatively acknowledge EPA’s adjustment of their originally proposed ICR (OEI-10015 67 FR 44213 and OEI-10016 67 Fed. Reg. 44197) to include the reporting burdens of companies that are reporting under EPCRA for the first time, we are concerned that EPA has rather cavalierly dismissed other equally valid concerns raised by commentors.

1. **Burden of Repeated Changes in EPA Guidance**

EPA fails to account for the fact that many of the burdens assumed to be associated only with first reporters are also accrued by repeat filers as EPA changes (TRI form completion) directions, interpretations and guidance on a regular basis. Many of these changes are de-facto rulemaking that is conducted without public input or an analysis of the economic impact and cost-benefit. Each year repeat filers must conduct familiarization with new requirements, as well as adjust their compliance determination and Form R calculations to conform to the new requirements.

For example, Questions 114 and 137 of the Revised 1998 EPCRA Section 313 Questions and Answers represents a fundamental shift in EPA guidance on the counting of non-isolated intermediate compounds. While Question 138 in the original 1989 Q&A stated,

---

5 US EPA, December 1998, EPA 745-B-98-004
6 Toxic Chemical Release Inventory Questions and Answers, Revised 1989 Version, January 1990, EPA 560/4-90-003. Excerpts are presented as Attachment C.
“A facility uses a chrome anode in an electroplating bath of sulfuric acid to plate chrome onto fabricated metal. Chromium compounds are generated in the bath and some chrome is deposited onto the fabricated metal part. The unutilized compounds are sent to the facility’s waste treatment process, where hexavalent chromium is reduced to trivalent chromium. How are these reduced compounds counted for section 313 threshold determination? The threshold determination for chromium compounds is based upon the amount of chromium compounds generated in the plating bath. Any subsequent transformations of hexavalent to trivalent chromium compounds as a result of waste treatment does not affect the threshold determination. To do so would involve double counting.” (Emphasis added)

By contrast, the 1998 Q&A expands the universe of reporting entities by requiring double, triple, or even quadruple counting. The original Question 138 has disappeared and is replaced by Question 137 which requires that 15,000 lbs of copper be counted four times during electrolytic plating: 15,000 lbs of copper are processed to manufacture 37,000 pounds of copper sulfate, and 37,000 lbs of copper sulfate are processed to manufacture 15,000 lbs of elemental copper.

Likewise, Question 162 in the 1998 Q&A requires that the conversion of chromium III compounds in refractory brick be considered manufactured when they are converted to chromium IV compounds, in direct contrast to the earlier guidance that opposed this type of double counting.

EPA also fails to address the time required for annual training. If there was no need for repeat filers to become familiarized with the annual changes in TRI reporting, then why do the EPA regions conduct annual TRI training? Responsible TRI filers attend eight to sixteen hours per year of TRI training, if available, in order to ensure compliance with continually changing guidance and interpretation.

2. Annual Burden Associated with Staff Turnover

EPA’s burden estimates fail to address the fact that staff turnover, experienced by all businesses (and government agencies such as EPA) requires new employees to become familiar with TRI requirements, even when there are no new regulations. EPA’s response to comments implies that companies have caused this problem by assigning TRI work to “newer, less experienced staff with lower wages.” EPA implies that no turnover occurs among experienced, more highly paid staff, a clearly erroneous assumption.

3. Improperly Assumed Burden Reductions due to Better Information

EPA inappropriately assumes a reduction in compliance burden has occurred due to “changes in the availability of information to facility staff.” In actuality, the increased availability of information has increased the reporting burden as staff must
review the additional information and perform additional calculations in order to comply with the stationary requirement to use available information.

EPA goes on to state, “These sources include information on product composition and impurities from suppliers…” This explanation is also flawed, as it fails to account for the unavailability of information regarding de-minimis concentrations of PBTs for which reporting is required, but supplier notification is not required.

EPA also cites “…improved and detailed guidance from EPA and trade associations” as an explanation for decreased reporting burdens. As a matter of fact, EPA has published a significant number of rather lengthy guidance documents. For example, the compliance guide for lead reporting is over 200 pages. The 1998 Questions and Answers document, which is referenced in the lead compliance guide, is over 300 pages. Not to mention over a dozen other chemical specific guides and another dozen industry specific guides. The time required to read these guides in order to responsibly complete TRI forms results in significant additional burdens.

EPA further cites, “emissions factors provided by EPA” as a factor contributing to decreased reporting burden. In fact, these emissions factors are extremely limited. Emissions factors presented in the lead compliance guide are mostly air emissions from AP-42. Most industry sectors have not been provided emissions factors of any type.

4. Flawed Extrapolation of Reporting Patterns

EPA has incorrectly assumed that the current reporting pattern will be replicated in future reporting year. EPA states, “…for the 2000 reporting year, over 60 percent of Form Rs reported releases to a single medium,” as a justification for lowering reporting burden estimates based on multi-media reporting. In fact, the promulgation of lowered reporting thresholds for PBTs will require all releases, however minute or de-minimis, to be reported. Thus many more facilities are likely to report small amounts of PBT materials in several different media that were previously not required to be reported. In this changing reporting climate, it would be unwise for EPA to extrapolate single media reporting which occurred under a far different set of regulatory requirements.
5. Overestimated Benefit of TRI-ME

EPA has also overestimated the value of TRI-ME software. EPA asserts a 34% reduction in burden due to the use of TRI-ME.\textsuperscript{7} This extraordinary savings is based on data collected from a, “small sample of facilities that used TRI-ME for the 2000 reporting year as part of a pilot process.” It is unclear what statistically valid methodology EPA used to extrapolate this small sample to the entire TRI Universe. Further information made available by commentors based on their own experiences with TRI-ME was dismissed by EPA in the response to comments.

C. EPA Has Failed to Account for the Increased Burden of PBT Reporting

EPA has failed to adequately account for the increased burden of eliminating de-minimis and range reporting for PBT compounds. These concerns, which were raised in comment to EPA in response to the prior public notice of this ICR, were arbitrarily dismissed by EPA in the response to comments accompanying the current submission. Instead of collecting actual burden data from companies reporting under the new requirements for 2001, EPA merely repeats its response to comments in the final lead rule (66 FR 4500). EPA refers to the lead data as, “reporting that has not yet occurred,” despite the fact that data was collected in July 2002. EPA makes no attempt to analyze the actual data that was submitted or the burden associated with collecting it.

1. De-Minimis

Under the de-minimis exemption, companies were able to exclude from TRI reporting the amount of TRI chemicals that were present in a mixture or trade name product at a concentration of less than 0.1 percent for a carcinogen or less than 1 percent for all other chemicals. In addition to eliminating the de-minimis exclusion and range reporting for PBT chemicals, EPA's guidance for compliance with the lowered reporting threshold for lead requires facilities to report lead to a precision of 0.1 lbs. Without a de minimis exemption and the current “rounding” rule, the burdens imposed on regulated entities are far greater than those estimated by EPA.\textsuperscript{8}

Despite requiring chemical users to report even de-minimis substances, EPA maintained the exemption that suppliers need not notify their customers of materials containing de-minimis levels of PBT chemicals. In the preamble to the rule lowering the reporting threshold for lead, EPA states, “EPA did not propose, however, to modify the applicability of the de-minimis exemption to the supplier notification requirements\textsuperscript{9} because the Agency believed there was sufficient information available.” EPA fails, however, to identify the source of this information in either the

\textsuperscript{7} EPA reduces the 14.5 hours for Form R completion by an additional 5 hours for TRI-ME users.
\textsuperscript{9} 40 CFR 372.45(d)(1).
preamble to the rule or in the compliance guide. The creation of this information gap creates a significant burden for businesses struggling to complete TRI reporting forms.

2. Range Reporting

EPA's elimination of range reporting, combined with the guidance to facilities to report to the nearest tenth of a pound also imposes significant costs and burdens on small facilities in the form of additional research, inquiries of suppliers not required to provide notification of de-minimis levels of PBT chemicals, additional calculations for compliance determinations, additional calculations for Form R completion, and recordkeeping. EPA’s presumption that manufacturers have the knowledge for accurate reporting is erroneous.

III. Minimize the Burden of Collection

Despite OMB’s encouragement in the last ICR clearance, EPA has failed to take any actions that would significantly reduce reporting burdens. Instead EPA has relied on limited data and flawed assumptions in order to derive reduced burden estimates.

A. Small Entity Flexibility

EPA has failed to ensure that the impact of the TRI program on small business is in compliance with the letter and spirit of the Small Business Regulatory Flexibility Act (SBREFA). In the response to comments, EPA denies responsibility for addressing small business burdens under Executive Order 13272 because this ICR is not a rulemaking.

EPA does, however, address small entity flexibility in Section 4(c) of the supporting statement for this ICR. Unfortunately, range reporting and the alternate threshold certification (Form A) are the flexibilities discussed in the supporting statement, are available only if a small entity is not reporting a PBT.

Also discussed in this section is the TRI-ME software. It is unclear why EPA considers TRI-ME to be a form of small entity flexibility. Small entities are least likely to have access to computers or have the necessary information technology staff to assist with the myriad of installation and operational issues discussed in the comments submitted in response to the previous public notice of this rule.

---

10 Proper Consideration Small Entities in Agency Rulemaking
11 67 FR 44213 and 67 FR 44197
B. Form A

The alternate threshold certification, otherwise known as Form A, is a significant burden reduction option of the TRI program. As previously discussed, EPA has in recent years, 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\textsuperscript{12} indicates that the introduction of the PBT restriction on Form A usage has reversed the trend of increasing Form A usage.

1. PBT

EPA’s decision to forbid the use of Form A by reporters of PBT substances has reduced the number of reports that are eligible for Form A. In order to offer real reductions in TRI reporting, EPA should allow Form A to be used for reporters of PBT releases. If necessary, EPA could modify either the thresholds for Form A or Form A itself in order to address increased concerns about PBT releases.

2. Misrepresentation of Data Collected Under the Requirements of the Pollution Prevention Act

In the response to comments, EPA claims that it would be unable to meet the requirement of RCRA were it to increase the applicability threshold for Form A. EPA cites Section 313(f) (2) which states 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. To substantiate this claim, EPA refers to their response to OMB’s January 18, 2001 Terms of Clearance notice for the ICR renewal of Form A, which is included as Attachment F for the Supporting Statement for the Form A ICR.\textsuperscript{13}

Review of the analyses presented in the Response to Clearance indicates that EPA has misinterpreted the requirements under the Pollution Prevention Act (PPA).\textsuperscript{14} As discussed by EPA in the response to comments, Section 6607 of the PPA requires reporting of “the amount of the chemical from the facility which is recycled and the process of recycling used.” EPA thus concludes that quantities of toxic chemicals recycled by a facility must be included in TRI reporting. EPA does not, however, explain why materials reported under the PPA must be included in TRI threshold determinations. There is nothing in either EPCRA or the PPA that requires materials sent off-site for recycling

\textsuperscript{12} EPA’s Response to OMB’s January 18, 2001 Terms of Clearance notice for the ICR renewal of Form A, which is included as Attachment F for the Supporting Statement for the Form A ICR. EPA 1704.06, OMB 2070-01143.
\textsuperscript{13} EPA 1704.06, OMB 2070-01143.
\textsuperscript{14} 42 USC 11071 to 11079.
to be included in TRI threshold determinations. Rather, EPA has misused quantities of **recycled** materials included on TRI reports, as per the PPA, to bolster its claims that raising the Form A thresholds would make EPA unable to meet its statutory requirements under EPCRA to capture the substantial majority of **releases**. EPA’s supporting analysis, presented in Tables 5 and 6, further this error by lumping recycled materials in the general category of “releases.” EPA’s circular logic should not be permitted as a justification for not raising the Form A thresholds, nor should it be considered justification for not excluding recycled materials from TRI threshold determinations.

Most importantly, removal of recycled materials from TRI reporting would have the dual effect of lowering the reporting burden in addition to encouraging materials recycling.

IV. **Request for E-mail Addresses**

IPC opposes EPA’s request for e-mail addresses to facilitate communication between TRI reporters and EPA staff. EPA has failed to provide regulatory justification for its request. In addition, EPA has failed to address how it will protect the privacy of email addresses. EPA’s response to comments states that it will provide email addresses under FOIA requests. Absolutely nothing in this process prevents misuse of the FOIA process to collect a list of email addresses for spamming purposes by community groups or other members of the public.

In addition, E-mail addresses change much more frequently than physical addresses or telephone numbers. Unlike a phone extension which will continue to ring even if the person at the desk has been replaced, email addresses are personal and are associated only with a specific person. EPA’s response that facilities will be responsible for updating email addresses represents an additional burden on facilities.

V. **Conclusion**

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’s well being. Unfortunately, the TRI reporting forms and instructions have, over the years, strayed further and further from its original goals, continually increasing the burden of reporting while failing to provide corresponding benefit. Rather than seeking to increase use of the simpler Form A, the agency has actually reduced its use while making the reporting requirements for Form R even more burdensome.
We respectfully request that OMB not grant approval for this ICR until the agency commits to undertake serious efforts to reduce the reporting burden, especially for small business. Please contact me at 202-962-0460 should you have any questions.

Sincerely,

Fern Abrams
Director of Environmental Policy