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ELECTRONICS INDUSTRIES®

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EPA Docket Center
EPA West, Room B102
Environmental Protection Agency
1301 Constitution Avenue NW
Washington, DC 20460

RE: Toxic Chemical Release Reporting; Request for Comment on Renewal Information and Proposed Changes to Part II of the Form R Collection (Docket OEI-2003-0025)

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 and Proposed Changes to Part II of the Form R Collection. IPC is the national trade association for the electronic interconnection industry, and represents more than 2,400 member companies.

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 imaginary reduced burden estimates.

IPC believes that the Environmental Protection Agency (EPA) has:

- Failed to accurately 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) Form
- Failed to assess the burdens of its proposed changes to the TRI Form R
- Failed to address concerns regarding the utility of TRI data
- Failed to fulfill its commitments under the Paperwork Reduction Act (PRA) to reduce reporting burdens, especially as they pertain to small businesses

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.

As previously commented by IPC¹, the lowered reporting threshold for lead significantly increased the reporting burden on industry, but has resulted in little additional data. In 2001, the most recent year for which reporting data is available and the first reporting year under the lowered reporting threshold for lead, 8,561 Form Rs were filed for lead and lead compounds. Over 85% of these forms were filed by the manufacturing sector, yet this same sector was responsible for only 6% of reported releases. In fact, the median lead release of lead to the environment for all reporters is one pound.

In the electronics and electrical equipment manufacturing sector (SIC 36), 1,252 Form Rs were filed for lead and lead compounds at a cost estimated by EPA to exceed \$7,400 per facility.² Over 1,000 of these Form Rs were filed by facilities that were 'new,' that is they had not filed for lead or lead compounds prior to the lowering of the reporting threshold in 2001. Releases of lead to the environment by the electronics sector, and by industry in general, are virtually insignificant. The median lead release by reporters in SIC 36 is zero; while the median lead release for all reporters is 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. The total releases reported by SIC code 36 amounts to less than 0.1% of all lead releases.

II. Accuracy of Burden Estimate

EPA has significantly underestimated the burden associated with completion of TRI reporting. EPA has relied upon extremely limited and non-representative 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.

¹Comments of the IPC on Notice of Toxic Chemical Release Reporting; Request for Comment on Renewal Information Collection (EPA ICR No. 1363.12; OMB No. 2070-0093), January 8, 2003.

²*Lead and Lead Compounds: Community Right-to-Know Toxic Chem Release Reporting*, 66 FR 4500, January 17, 2001, pp. 4534.

In this ICR, EPA states that the burden for completing and submitting the new Form R is a decrease of 3,162,697 total burden hours, compared to the March 10, 2003 ICR burden estimate. In the current ICR, EPA estimates that 2.68 million hours of the total decrease is due to a reduction in burden hours for Form R completion from 47.1 to 14.5 hours.³ The basis of this drastic reduction is data collected from 182 facilities that reported in 1994-1999.⁴ There are several problems with the use of this data to support the proposed reduction in the estimated burden for completing Form Rs:

- The data is not representative of the current reporting universe
- The conclusions of the burden surveys have not been statistically analyzed or validated
- Changes in reporting requirements, subsequent to the facility burden surveys, have increased the burden of completing Form R
- Many of EPA's explanations for lowered burden estimates are based on invalid, unsubstantiated assumptions
- The burden resulting from EPA's proposed changes to Form R are not accounted for in the estimated reporting burden.

As detailed in the following sections, the data cited by EPA should not be used to revise the estimated burden of TRI Form R Completion. EPA should instead undertake to change TRI reporting such that it results in a genuine reduction of reporting burdens.

A. The data is not representative of the current reporting universe

1. 1999 Surveys

In 1999, EPA contractors surveyed 18 facilities regarding the burden of completing TRI Form R.^{5,6} It is unclear how these facilities were selected and on what basis they were determined to be representative of the reporting universe. However, the report clearly indicates the inadequacy of the sample stating, "*Additional analysis is required to substantiate the results*" (emphasis added).

EPA did not perform any standard statistical analysis on the reported Form R burdens. The standard deviation in Form R completion for the facilities included in the May, 1999 and June, 1999 surveys is equal to the average per form burden – both are 25 hrs. Based on the sample size, the 90%

³Toxic Chemical Release Inventory, Toxic Chemical Release Reporting, Information Collection Request Supporting Statement, OMB Control Number 2070-0093 EPA ICR#1363.13 June 2003

⁴Estimates of Burden Hours for Economic Analyses of the Toxics Release Inventory Program, Cody Rice, Analytical Support Branch, Environmental Analysis Division, Office of Environmental Information, US EPA, June 10, 2002.

⁵Memorandum from Smita Brunnermeier, Mike Gallaher and Laura Bloch, Research Triangle Institute to Joe Callahan, May 7, 1999.

⁶Memorandum from Smita Brunnermeier, and Mike Gallaher, Research Triangle Institute to Joe Callahan, June 15, 1999.

confidence level for Form R completion lies anywhere between 15 and 35 hours – significantly higher than 14.7 hours proposed by EPA in the ICR!

The memoranda summarizing these surveys indicates that the surveyed facilities were in SIC Codes 26 (11%), 28 (33%), 29 (11%), 33 (17%), 35 (11%) and 37 (11%). Given that a much broader range of facilities is covered under TRI reporting requirements, it is hard to understand how this incomplete list of covered industries was considered representative of the reporting universe. This is a significant defect given the reports statement, “It is clear that there is a significant variability in the burden per form across facilities.” The report further states, “There appear to be economies of scale within the chemical industry; however *one cannot draw similar conclusions about within-industry variation for the other industries given the paucity of data points*” (emphasis added).

While the May report does not identify or discuss the states in which these facilities are located, the June report lists the facilities as located in the following states: Washington, Puerto Rico (3 facilities); Massachusetts, Delaware, Pennsylvania, Vermont, and Rhode Island. Unless a full one-third of the reporting universe is located in Puerto Rico, the sample is not representative of the reporting universe in regard to facility location. The report goes on to discuss the possibility that “*state reporting requirements make a significant impact*” on the effort required for Form R completion. Unfortunately, EPA is unable to adjust for this possibility as the sample is not representative of the reporting universe.

Estimates for Form R completion burden in both reports are based on the division of total burden for completing TRI Forms divided by the number of Form Rs completed. The eighteen facilities surveyed filed an average of 10 Form Rs per facility. This is valid only if all Form Rs are equally difficult to complete. According to the May 1999 report, “The actual burden may differ from chemical to chemical even within a given facility, so this assumption need not be true.” In fact, the burden of Form R completion is significantly higher in facilities completing one to two Form Rs as opposed to more than 2 Form Rs. This issue is discussed in the 1996 TRI Data Quality Report which states, “It takes more time per Form R for a facility to complete one Form R, compared to multiple Form Rs. Facilities filing only one Form R took an average of 22 hours to complete it, while facilities filing more than one Form R took an average of 16 hours per Form R.”⁷ Under the lowered reporting threshold for lead, it is likely that a significant number of facilities are now filing a single Form R. EPA should verify that its sample has accurately represented these facilities in the average Form R burden determination.

⁷TRI Data Quality Report (EPA-745-R-98-016) December, 1988, Executive Summary, pg vii.

The 1999 surveys do not provide information on the size of the surveyed facilities. This may also have a bearing on the amount of time needed for Form R completion and should be assessed when evaluating the degree to which the burden estimates accurately represent the reporting universe.

2. 1996 TRI Data Quality Report

In this report, 60 facilities in SIC 33 (45%); 36 (23%); and 37 (32%) were surveyed with the purpose of reviewing the accuracy of TRI reporting for 1996. According to the report, “EPA’s Site surveys were designed to provide a quantitative assessment of the accuracy of the data submitted for a calendar year by identifying the frequency and the magnitude of errors in the Form R data and the reasons these errors occurred.”⁸

According to the report, “To allow EPA to compare the site survey program results to the TRI database for the SIC codes surveyed, weighting factors were applied to the site visit data.” Unfortunately, given the changes in reporting requirements since the survey was conducted, these data weights are most likely no longer valid. The lowering of the reporting threshold for lead has had a significant impact on the types and size of facilities reporting under TRI. Additional changes in chemical thresholds and Industries required to report have also rendered this sample no longer representative of the reporting universe.

Furthermore, adjusting for SIC code does not ensure that the sample is representative of the reporting universe. In the Section discussing the limitations of the analysis, the report states that the “Three primary sources of error are: sample selection bias; survey implementation; data reduction and analysis. The relatively small number of facilities sampled introduced a sample selection bias. The smaller the number of facilities sampled, the greater the likelihood that these facilities do not accurately represent the universe of reporting facilities.” As discussed previously, factors such as facility size, facility location, and number of Form Rs filed by a facility all affect the hours required to complete each Form R.

In particular, the number of Form Rs completed by a facility has a significant affect on the number of hours to complete each form. According to the report, “The time range reported by each facility was then divided by the total number of Form Rs filed by each facility...” “For SIC Codes 33 and 36, Table 7-5 shows that it takes more time per Form R for a facility to complete one Form R compared to multiple Form Rs. These calculations were repeated and the same conclusions apply to facilities that complete ‘one or two’ Form Rs, compared to more than two Form Rs.” For

⁸1996 TRI Data Quality Report (EPA-745-R-98-016) December, 1998, p. 1-2

SIC 36 (a sector under which a number of facilities filed a single Form R of the lowered reporting threshold for lead) facilities completing only one or two Form R spent 130% more time on Form R completion.

3. 1994/1995 TRI Data Quality Report

In the 1994/1995 TRI Data Quality report, 104 facilities were surveyed with the purpose of reviewing the accuracy of TRI reporting. According to the report, “EPA’s site surveys were designed to provide a quantitative assessment of the accuracy of the data submitted for a calendar year by identifying the frequency and the magnitude of errors in the Form R data and the reasons these errors occurred.”⁹ The surveys were not designed to gauge the burden of completing TRI Form R.

The surveyed facilities were in SIC 25 (24%), 26 (10%), 281 (18%), 285 (16%), 286 (10%), 30 (22%). Once again, the sample was not representative of the industries in the TRI reporting universe. No information is provided regarding any attempt to assess whether the sample was representative of the reporting universe on the basis of facility size, facility locations or the number of Form Rs completed by each facility. Despite the statement, “The relatively small number of facilities sampled clearly introduced a sample selection bias,”¹⁰ the report does not perform any statistical analysis of the data nor does it attempt to quantify or account for variability in Form R burdens.

4. The conclusions of the burden surveys have not been statistically analyzed or validated

In its Estimates of Burden Hours for Economic Analyses of the Toxic Release Inventory (Burden Analysis),¹¹ EPA states that, “The existing burden estimates for subsequent year compliance determination, Form R calculations and form completion, and recordkeeping/ mailing are above the 95th percentile of per form burden reported by actual TRI respondents.” As detailed previously, there are significant problems with the validity of this statement. EPA’s own documents state that sample size is inadequate and that concerns exist regarding the data’s potential to “not accurately represent the universe of reporting facilities.” EPA has neglected to perform even

⁹1994/1995 TRI Data Quality Report (EPA-745-R-98-002) March 1998. Section 1.2 Site Survey Objectives, Pg 1-2.

¹⁰1994/1995 TRI Data Quality Report (EPA-745-R-98-002) March 1998, pg 2-12.

¹¹Estimates of Burden Hours for Economic Analyses of The Toxics Release Inventory Program, Cody Rice, Analytical Support Branch, Environmental Analysis Division, Office of Environmental Information, US EPA, June 10, 2002.

basic statistical analysis of the sample such as measures of variability, confidence level, and sample size adjustments.

B. Changes in reporting requirements have increased the burden of completing Form R

Contrary to the arguments presented in the proposed rule, EPA actions have actually increased the reporting burden.

1. Burden of Repeated Changes in EPA Guidance

EPA's frequent regulatory and interpretive changes often result in an increase in burden imposed on the reporting community. Each year repeat filers must conduct familiarization with new directions, interpretations and guidance, as well as adjust their compliance determination and Form R calculations to conform to the new requirements. EPA has failed to account for these burdens accrued by repeat filers, which are similar to those assumed by EPA to be associated only with first-time reporters. Many of these changes are de-facto rulemaking that is conducted without public input or an analysis of the economic impact and cost-benefit.

This year's proposed Form R represents yet another example of EPA's attempts to discount the true burden associated with changes to TRI reporting requirements.

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

All of EPA's cited data on TRI Form R burdens was collected prior to the imposition of Persistent Bioaccumulative and Toxic (PBT) reporting requirements. The PBT reporting requirements represent significant changes that EPA dismisses out of hand without undertaking to collect any supporting data.

EPA has failed to adequately account for the increased burden of eliminating de-minimis and range reporting for PBT compounds. 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.

The de minimis exemption allows 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.

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 requirements¹² because the Agency believed there was sufficient information available.” EPA fails, however, to identify the source of this information in either the 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.

Most MSDS do not have accurate concentration listings for constituents at or below the de minimis levels (especially if a trade secret ingredient is one of those listed). Hence, the data gaps found to exist will be extremely costly to assess. It is unrealistic for EPA to assume that the industry will report only on what they “know,” without making an effort to fill the gaps.

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.

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 will be far greater than those estimated by EPA.¹³

EPA's elimination of range reporting, combined with the guidance to facilities to report to the nearest tenth of a pound 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

¹²40 CFR 372.45(d)(1).

¹³Guidance for Reporting Releases and Other Waste Management Quantities of Toxic Chemicals, Lead and Lead Compounds, US EPA 260-B-01-027, December 2001.

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.

EPA has failed to adequately account for the increased burden of eliminating de-minimis and range reporting for PBT compounds. These concerns were arbitrarily dismissed by EPA in the response to comments for the previous ICR¹⁴. 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.

C. Many of EPA's Assumptions are not Valid

1. 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 for the previous ICR¹⁵ 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.

2. Improperly Assumed Burden Reductions due to Better Information

In the burden analysis,¹⁶ 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.

¹⁴ Response to Comments Received on the Request for Comment on Renewal Information Collection for Toxic Chemical Release Reporting for the Form R (EPA ICR No. 1363.12, OMB No. 2070-0093, 67 FR 44213) and the Form A Certification Statement (EPA ICR No. 1704.06, OMB No. 2070-0143, 67 FR 44197)

¹⁵ Response to Comments Received on the Request for Comment on Renewal Information Collection for Toxic Chemical Release Reporting for the Form R (EPA ICR No. 1363.12, OMB No. 2070-0093, 67 FR 44213) and the Form A Certification Statement (EPA ICR No. 1704.06, OMB No. 2070-0143, 67 FR 44197)

¹⁶ Estimates of Burden Hours for Economic Analyses of The Toxics Release Inventory Program, Cody Rice, Analytical Support Branch, Environmental Analysis Division, Office of Environmental Information, US EPA, June 10, 2002.

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.

3. 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.

4. Overestimated Benefit of TRI-ME

EPA has also overestimated the value of TRI-ME software. EPA asserts a 25% reduction in burden due to the use of TRI-ME.¹⁷ This extraordinary savings is based on data collected from a, “small sample of facilities that

¹⁷ Toxic Chemical Release Inventory, Toxic Chemical Release Reporting, Information Collection Request Supporting Statement, OMB Control Number 2070-0093 EPA ICR#1363.13 June 2003, pg. 84.

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. In EPA’s recent stakeholder dialog on TRI, less than 1/3 of those commenting on TRI-ME found it to be helpful or easy to use. Of those that supported TRI-me, 75% felt improvements were needed.

D. EPA’s proposed changes represent an unaccounted for increase in the reporting burden

EPA has proposed major changes to the format of Form R. The length of the draft Form R has increased from five to nine pages, and requires a significant number of new, specific quantities to be reported. Beginning on page 25 of the supporting statement, EPA discusses changes to the TRI Form R. Review of the crosswalk in Attachment G indicates a total of 67 changes to Section II of Form R. EPA asserts that 59 of these changes are previously collected data elements that have been rearranged, four elements represent a subset of a previous data element, and four elements are new sums of previous elements. While the same general information may be required, much more detailed breakdowns of various quantities must be developed and reported separately, increasing the burden for those reporting.

EPA’s burden estimate must include additional time for facilities needing to read the instructions and guidance, attend training, or adjust internal tracking and reporting systems to figure out this new form or perform additions, sums, and subsets. While EPA claims that previously reporting facilities are estimated to reduce Form R completion hours from 47.1 to 14.5 hrs, it is more likely that these facility will undergo many of the same burdens as facilities reporting for the first time.

EPA’s statement “These modifications may prompt some increase in unit reporting burden as facilities become familiar with the new reporting format, but the increase should be mitigated by the fact that the modifications are related to presentation of data that have already been assembled by the reporting facility,” does not stand up to any realistic scrutiny. While the use of existing data may reduce the additional impact associated with the 59 changes identified as mere rearrangement, it certainly does not *mitigate* those burdens. And certainly the eight new data elements represent an additional reporting burden as well.

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? How does EPA expect responders to understand and follow the proposed 67 changes to Form R? 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.

III. Data Utility

EPA has not indicated how the substantial changes in the proposed Form R will benefit the public, maximize and promote the utility of the information, or improve the quality and use of Federal information, as is required by the Paperwork Reduction Act and the Data Quality Act. We are concerned that the proposed rule and its supporting statement:

- Fails to quantify or support its claims that the TRI program provides a cost-effective program;
- Fails to demonstrate how the proposed changes in the TRI Form R will improve the way the data is characterized and presented in the Public Data Release (PDR);
- Fails to address the repeated changes in TRI guidance which have resulted in nearly meaningless long-term data trends;
- Failed to adequately address the issues surrounding the addition of email contacts to Form R;
- And, failed to explain the utility of data collected under the lowered reporting threshold for lead.

In its supporting statement, EPA states that, “According to many, the TRI program is one of the most effective environmental programs ever legislated by Congress and administered by EPA.”¹⁸ If EPA wishes to make this assertion, it should identify the measure of effectiveness that is being evaluated and the identity of those making the evaluation. EPA goes on to state, “The information collected under Emergency Planning and Community Right-To-Know Act (EPCRA) Section 313, and subsequently distributed through EPA outreach and awareness programs, **is provided at relatively low cost compared to the value it represents to the general public**”¹⁹ (emphasis added). To the best of our knowledge, EPA has never estimated the value of the information collected under TRI.²⁰ It is therefore unclear how relative cost/value comparisons are assessed.

IPC agrees that EPA should distinguish between a waste transfer or contained disposal and a release. As discussed by EPA in the FR ICR notice, many stakeholders have requested that EPA differentiate between genuine environmental releases and transfers off-site for permitted treatment and disposal. EPA’s designation of contained and uncontained disposal as “releases” for purposes of compiling the PDR report runs counter to the statutory definition of the term “release.” EPCRA defines release as “any spilling, leaking, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment....”²¹ The Pollution Prevention Act of 1990 adopted this definition of release.²²

¹⁸Toxic Chemical Release Inventory, Toxic Chemical Release Reporting, Information Collection Request Supporting Statement, OMB Control Number 2070-0093 EPA ICR#1363.13 June 2003, pg 6.

¹⁹Toxic Chemical Release Inventory, Toxic Chemical Release Reporting, Information Collection Request Supporting Statement, OMB Control Number 2070-0093 EPA ICR#1363.13 June 2003, pg 6.

²⁰ Stimulating Smarter Regulation: 2002 Report to Congress on the Costs and Benefits of Federal Regulations and Unfunded Mandates on State, Local, and Tribal Entities, Office of Management and Budget, Office of Information and Regulatory Affairs, December 2002, p. 56.

²¹ 42 U.S.C. § 11049

²² 42 U.S.C. § 13102

The plain language of this definition requires an actual release into the environment, and in no way contemplates an offsite transfer to a waste treatment, storage or disposal facility, especially considering that the offsite facility has its own reporting requirements for the exact same waste. The reporting of such offsite transfers unfairly and unreasonably inflates the quantity of releases by the reporting entity, and paints an inaccurate picture of the entity's activities to the public through the PDR.

EPA's apparent attempt to differentiate between transfers and releases on the proposed from by creating section 8.1 subcategories is not an acceptable solution because EPA continues to erroneously consider all of these activities as releases for purposes of PDR reporting. While we appreciate EPA's efforts in this regard, we are concerned that the significant burden imposed by the proposed changes in the TRI Form R will not improve the way the data is characterized and presented in the PDR.

EPA should also consider how increases in the overall complexity of the TRI program, combined with EPA's frequent changes in interpretation and guidance have contributed to the decreasing value of the TRI data. Repeated and frequent changes have resulted in significant inconsistencies in year to year data. The result is data with nearly meaningless long-term data trends based on different reporting requirements. Many of the Supporting Statement uses of TRI are either inappropriate or impossible given the poor data quality predicated by frequent changes in reporting.²³

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 for the previous ICR²⁴ 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.

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.

In addition, we note that EPA has not provided, either by way of explanation or anecdote, an explanation of how the public will benefit from the data collected under the lowered reporting threshold for lead. In particular, we are interested in understanding the utility and value of this subset of data which had a median reported release of one pound.

²³Toxic Chemical Release Inventory, Toxic Chemical Release Reporting, Information Collection Request Supporting Statement, OMB Control Number 2070-0093 EPA ICR#1363.13 June 2003, pg 6.

²⁴Response to Comments Received on the Request for Comment on Renewal Information Collection for Toxic Chemical Release Reporting for the Form R (EPA ICR No. 1363.12, OMB No. 2070-0093, 67 FR 44213) and the Form A Certification Statement (EPA ICR No. 1704.06, OMB No. 2070-0143, 67 FR 44197)

IV. Lack of Genuine Burden Reduction

The ICR notice states, “EPA ICR No. 1363.12 was approved by OMB on March 10, 2003 with a shorter than usual clearance in order to provide the EPA an opportunity to examine in more detail **the TRI burden estimates and opportunities for reducing burden** and enhancing the practical utility of the data” (emphasis added).²⁵ Despite OMB’s encouragement in the last ICR clearance, EPA has failed to take any actions that would significantly reduce reporting burdens and has instead relied on limited data and flawed assumptions in order to derive imaginary reduced burden estimates

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). response to comments for the previous ICR²⁶, EPA denies responsibility for addressing small business burdens under Executive Order 13272²⁷ because the 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), 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 associated with TRI-ME.

V. Burden Reduction Options EPA Should Consider

IPC respectfully requests that EPA make a concerted effort to comply with the requirements of the PPA by proposing real burden reductions such as those discussed in the sections below.

A. Restore Form A, De-minimis, and Range Reporting for Lead

EPA’s withdrawal of the use of Form A, the de-minimis exclusion and range reporting for TRI reporting of lead and other PBTs represents a significant burden, as discussed previously. Restoration of these burden reduction provisions would offer a significant burden reduction. 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.

²⁵68 FR 39074 July 1, 2003

²⁶ Response to Comments Received on the Request for Comment on Renewal Information Collection for Toxic Chemical Release Reporting for the Form R (EPA ICR No. 1363.12, OMB No. 2070-0093, 67 FR 44213) and the Form A Certification Statement (EPA ICR No. 1704.06, OMB No. 2070-0143, 67 FR 44197)

²⁷Proper Consideration Small Entities in Agency Rulemaking

B. Evaluate Non-Statutory Data Elements

A white paper prepared by the Chemical Manufacturers Association (CMA)²⁸ identified several data elements currently required to be reported in the Form R that may not be mandated by EPCRA Section 313(g)(1) or PPA Section 6607(b), nor do they provide information necessary for communities to assess potential impacts from nearby facilities. Non-statutory data elements that add to the overall reporting burden include:

1. The Waste Stream Code, Influent Concentration Range, and Basis of Estimate in Part II; Section 7A;
2. The facility Latitude and Longitude;
3. The various non-TRI facility ID numbers required in Part I, Sections 4.7 – 4.10 (D&B No., RCRA ID No., NPDES Permit Nos., and UIC Well Code Nos.);
4. The Parent Co. name and D&B No. in Part I, Section 5;
5. Identification of chemicals that are Imported in Part II, Section 3.1;
6. Reporting whether a chemical is manufactured as a byproduct or an impurity in Part II, Section 3.1;
7. Distinguishing between Non-point and Point air emissions in Part II, Sections 5.1 and 5.2;
8. Distinguishing between Water Bodies for releases to water in Part II, Section 5.3;
9. The Percent of water releases from Stormwater in Part II, Section 5.3;
10. The Basis of Estimate for air, water, and land releases reported in Part II, Section 5, Column B;
11. The Basis of Estimate related to transfers to POTWs reported in Part II, Section 6.1.A.2;
12. The County name in Part II, Sections 6.1 and 6.2; and
13. The Basis of Estimate related to offsite transfers reported in Part II, Section 6.1.A.

Of the thirteen non-statutory data points listed above, relief from reporting the current Section 7A data requirements (number one) may provide the greatest opportunity for reducing reporting burden without compromising the quality and usefulness of the data. It appears that the detailed information about the onsite treatment methods and efficiency reported in Section 7 is not being used in any meaningful way by the TRI community. CMA recommended that EPA reduce, to the extent allowed under EPCRA, information reported in Section 7A “On-Site Waste Treatment Methods and Efficiency.”

Similar concerns exist for each of the non-statutory data elements noted above, every one of which requires some amount of additional effort to obtain and report, but which provide very little value in meeting the overall intent of TRI reporting. The cumulative effect of requiring all of this information represents a significant portion

²⁸ TRI BURDEN REDUCTION OPTIONS, Chemical Manufacturers Association, September 16, 1999

of the overall compliance burden that is not justified by the original Congressional intent or stated purpose of TRI.

C. Alternate Reporting Schedules

EPA should consider allowing facilities to submit a multi-year Form R (or equivalent) that would allow a covered facility the option to submit a Form R that would remain on file for a specified period of time (e.g., 3 to 5 years). The submission would be modified during this period only if certain elements changed (such as off-site transfer locations), or if there were significant increases or reductions in Section 8 data.

EPA should also consider the burden reductions offered to both industry and EPA through a two-year reporting cycle under the TRI program from a burden reduction standpoint. Such an approach is similar to that currently used in the Resource Conservation and Recovery Act (RCRA) hazardous waste program. The Agency could consider collection of TRI information from all facilities on alternate years or could design a reporting process where certain SIC Codes report one year, with the remaining SIC Codes designated for reporting the next year. In the later scenario, approximately one-half of the regulated community would be submitting Form Rs each year.

A similar option involves allowing facilities to certify “no significant change” in alternate/ intermediate years. This option would allow facilities to certify that their releases and other waste management quantities reported for the current reporting year have not changed significantly from the previous reporting year.

D. Exempt Zero-Release Reports

EPA should eliminate reporting for chemicals with zero release quantities and/or require reporting only for facilities above a threshold release quantity (500 or 1,000 pounds). This option would have the benefit of allowing EPA to focus its energy on better and faster public release of significant TRI data and encouraging facility pollution prevention by rewarding facilities that eliminate the release of TRI chemicals.

E. Increase the Use of 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 Clearance²⁹ indicates that the introduction of the PBT restriction on Form A usage has reversed the trend of increasing Form A usage.

In the response to comments for the previous ICR³⁰, EPA claimed that it would be unable to meet the requirement of EPCRA were it to increase the applicability threshold for Form A. EPA cited 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 referred to their response to OMB's January 18, 2001 Terms of Clearance notice for the ICR renewal of Form A.³¹

Review of the analyses presented in the Response to Clearance indicates that EPA has misinterpreted the requirements under the Pollution Prevention Act (PPA).³² As discussed by EPA in the response to comments for the previous ICR³³, 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 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, furthers 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.

VI. 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

²⁹ 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.

³⁰ Response to Comments Received on the Request for Comment on Renewal Information Collection for Toxic Chemical Release Reporting for the Form R (EPA ICR No. 1363.12, OMB No. 2070-0093, 67 FR 44213) and the Form A Certification Statement (EPA ICR No. 1704.06, OMB No. 2070-0143, 67 FR 44197)

³¹ EPA 1704.06, OMB 2070-01143.

³² 42 USC 11071 to 11079.

³³ Response to Comments Received on the Request for Comment on Renewal Information Collection for Toxic Chemical Release Reporting for the Form R (EPA ICR No. 1363.12, OMB No. 2070-0093, 67 FR 44213) and the Form A Certification Statement (EPA ICR No. 1704.06, OMB No. 2070-0143, 67 FR 44197)

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. IPC urges EPA to give serious consideration to available options for genuine burden reduction.

Sincerely,



Fern Abrams
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