



March 18, 2022

Submitted via regulations.gov and reginfo.gov

EPA Docket Center

Environmental Protection Agency

1200 Pennsylvania Ave. NW, Mail Code 28221T

Washington, DC 20460

Re: Information Collection Request Submitted to OMB for Review and Approval; Comment Request; Trade Secrets Claims for Community Right-to-Know and Emergency Planning (Renewal), 87 Fed. Reg. 8834 (February 16, 2022), Docket ID. No. EPA-HQ-SFUND-2006-0361

Dear Sir or Madam:

The American Chemistry Council (ACC)¹ appreciates the opportunity to submit comments to the Office of Management and Budget (OMB) and the Environmental Protection Agency (EPA) regarding renewal of an information collection request (ICR), *Trade Secrets Claims for Community Right-to-Know and Emergency Planning* (EPA ICR Number 1428.12, OMB Control Number 2050-0078) submitted by EPA to OMB for review and approval in accordance with the Paperwork Reduction Act. EPA has requested a 36-month renewal of the ICR without change of the currently approved collection.

While EPA presents the ICR as a routine filing, recent legislative directives and EPA actions and statements bely that assertion, particularly with respect to the expected scope and paperwork burden associated with the ICR activities. For example, Section 7321 of the 2020 National Defense Authorization Act for Fiscal Year 2020 (NDAA) immediately added certain per- and polyfluoroalkyl substances (PFAS) to the list of chemicals covered by the Toxics Release Inventory (TRI) under Section 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA) and provided a framework for additional PFAS to be added to TRI on an annual basis. Following the initial addition, EPA added more PFAS substances in 2022.

For the purposes of this ICR, EPA anticipates a total burden of 2,689 hours per year for applicable respondents.² The Agency also estimates the cost to be \$164,989 per year with no capital or operation/maintenance costs.³ ACC believes that the true compliance burden and potential costs associated with compliance with the ICR will be much higher than originally anticipated for the reasons discussed in these comments.

¹ The American Chemistry Council (ACC) represents the leading companies engaged in the multibillion-dollar business of chemistry. ACC members apply the science of chemistry to make innovative products, technologies and services that make people's lives better, healthier, and safer. ACC is committed to improved environmental, health, safety, and security performance through Responsible Care®; common sense advocacy addressing major public policy issues; and health and environmental research and product testing. ACC members and chemistry companies are among the largest investors in research and development, and are advancing products, processes, and technologies to address climate change, enhance air and water quality, and progress toward a more sustainable, circular economy.

² 87 FR 8835.

³ Id.



In light of these recent actions, and the likelihood that the burden and reach of EPA's TRI program will expand significantly during the next three years, OMB should limit the renewal of this ICR to one year and require that EPA update its burden analysis associated with current collection requirement.

- I. Renewal of the ICR should be limited to 12 months to give the agency and the public an opportunity to better understand the impact of recent additions to the TRI list, expansion of the scope of industries and facilities covered, and anticipated regulations expanding the scope and extent of TRI reporting including those with trade secret claims.

1. Since the last extension of this ICR, almost 200 chemicals have been added to the TRI list.

Over the last two years, hundreds of additional chemicals and products have been added to the TRI reporting list. These include:

- The National Defense Authorization Act for Fiscal Year 2020 (NDAA) added 172 per- and polyfluoroalkyl substances (PFAS) to the TRI list effective for the 2020 reporting period (reporting forms were due by July 1, 2021).
- Four additional PFAS were added to the TRI list by the NDAA in Reporting Year 2021.
- Four more PFAS were added to the TRI list for Reporting Year 2022.

While the total added burden of these additions remains unclear, there is no debate that the net implementation and compliance burden with this expansion will increase generally, including but not limited to the burden of assessing, substantiating, and filing claims for CBI treatment.

2. Reporting requirements for these PFAS recently added to the TRI list may impact more entities than previous listings.

Most chemicals on the TRI list trigger reporting if a facility manufactures or processes the chemical in excess of 25,000 pounds or otherwise uses the chemical in excess of 10,000 pounds during the reporting year. The reporting thresholds for the recently added PFAS chemicals are much lower.

- The *de minimis* level for Perfluorooctanoic acid (PFOA) (CASRN: 335-67-1) was initially 0.1% and all other PFAS additions have a *de minimis* level of 1%. However, EPA recently announced its intent to propose a rulemaking this summer that would, among other changes, remove the eligibility of the *de minimis* exemption for PFAS.⁴ We look forward to commenting on any such rulemaking by EPA addressing the *de minimis* exemption for PFAS.
- The NDAA establishes TRI manufacturing, processing, and otherwise use reporting thresholds of 100 pounds for each of the listed PFAS.

⁴ <https://www.epa.gov/newsreleases/new-toxics-release-inventory-data-show-decline-releases-certain-toxic-chemicals>



By lowering the reporting threshold, EPA’s actions will expand the number and types of entities subject to compliance and result in many others to conduct resource intensive investigations of their operations and supply chain to confirm their omission. EPA has omitted any consideration of these expansions.

3. EPA has recently extended the scope of industrial sectors and facilities covered by TRI reporting.

- In November 2021, EPA added natural gas processing facilities to the scope of the industrial sectors covered by the Toxics Release Inventory (TRI).
- In December 2021, EPA extending TRI reporting requirements to 29 contract sterilization facilities using ethylene oxide and for ethylene glycol to 16 of those facilities.

Despite these significant expansions to the scope of sectors covered by the reporting requirement, EPA’s current ICR omits any recognition, let alone accounting, of the increased burdens associated with new industries.

4. EPA recently published a proposed rule that would expand the list of chemicals subject to TRI reporting.

On October 18, 2021, EPA published a proposed rule to add 12 chemicals to the list of chemicals subject to the reporting requirements under the Emergency Planning and Community Right-to-Know Act (EPCRA) and the Pollution Prevention Act (PPA).⁵ In addition, EPA proposed that one chemical, 1,3,4,6,7,8-Hexahydro-4,6,6,7,8,8-hexamethylcyclopenta[γ]-2-benzopyran (aka HHCB; CAS number 1222–05–5), be classified as a persistent, bioaccumulative, and toxic (PBT) chemical and designated as a chemical of special concern with a 100-pound reporting threshold.

5. Given these significant expansions to the TRI program, a 3-year renewal of the current ICR would fail to meet the intent and requirements of the Paperwork Reduction Act

The aggregate effect of these additions to the TRI list, reduced reporting thresholds, and extension of the industrial facilities subject to TRI reporting will undisputedly increase the number of facilities that may be obligated to read and understand the rule, assess their compliance status, make determinations regarding CBI claims, and file such claims. Moreover, the lower reporting thresholds will specifically impact small businesses more significantly, many of which may have had limited exposure to the TRI program, implications for confidential business information, and procedural requirements for protecting such claims.

Until EPA has experience understanding the impacts of the recent changes on TRI reporting, the ICR extension should be limited to 12 months.

⁵ <https://www.federalregister.gov/documents/2021/10/18/2021-22112/addition-of-certain-chemicals-community-right-to-know-toxic-chemical-release-reporting>



II. EPA should reevaluate its estimated burden to reflect the actual cost of reporting **and** the cost of compliance.

The burden associated with TRI reporting includes the total time and effort to, among other things, read and understand the rule, assess reporting obligations, and investigate procedures for making and substantiating CBI claims. These processes to disclose or provide information to a Federal agency, and the time and effort necessary to comply with a collection of information, even if it does not result in a trade secret claim, are not usual and customary⁶.

Given the increased reporting requirements and expanded reach of the rule, the agency's retention of a prior burden estimate of 2,689 hours, \$164,989, and 283 trade secret claims per year is unreasonable.

1. The estimated burden does not seem to anticipate that there is a burden to evaluate whether one must report and whether one should assert that compliance necessitates a trade secret claim, even if it does not result in one or both.

The total estimated burden should consider that associated with entities that report to TRI and those that believe they may be required to comply with the statute and regulations but determine in the course of investigation that they are not required to report. Likewise, reporting entities may initially believe that they need to assert a claim of trade secret but through the course of investigation determine they do not need to assert such a claim or are not eligible for such a claim.

2. The estimated burden hours per response (9.5 hours) is unrealistically low.

The estimated burden per response does not seem to anticipate that new entities unfamiliar with the TRI reporting process may now be required to comply and report especially given the recent and proposed additions to the TRI list and the extended scope of sectors and facilities covered. Because of the low thresholds, many new businesses, particularly small business may be subject to compliance even if they do not end up reporting or asserting a trade secret claim. It will be necessary for these entities to familiarize themselves with TRI regulations and reporting requirements, and that will likely require multiple personnel. Moreover, because of the sensitive nature of trade secret claims, there would be a need to involve in-house and/or outside counsel.

3. The estimated hourly cost for each response (\$61.36 per hour) is unrealistically low.

As noted above, the nature of trade secret claims is extremely sensitive and is likely to involve internal and/or external lawyers. The rates for counsel to assist in complying with a trade secret claim is likely to exceed the apparent hourly cost estimated (\$61.36 per hour) for this ICR renewal.

The true burden to comply whether or not it results reporting to TRI or the assertion of a trade secret claim is likely to be much greater than that estimated for this ICR renewal (\$583 per trade secret claim). Given recent and proposed additions to the TRI list, expansion of the scope of TRI reporting, and potential elimination of *de minimis* exemptions, many more entities heretofore unfamiliar with TRI will

⁶ 5 CFR 1320.03(b)



need to assess their reporting obligations and the need to protect their trade secrets in the course of compliance. The agency needs to consider these costs more thoroughly.

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ACC appreciates OMBs consideration of our comments. Please contact me at 202-249-6415 or Paul_DeLeo@americanchemistry.com if you have any questions.

Sincerely,

Paul C. DeLeo, PhD
Senior Director, Regulatory and Scientific Affairs

