



Institute of
Scrap Recycling
Industries, Inc.

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Office of Pollution Prevention and Toxics (OPPT)
Environmental Protection Agency
1200 Pennsylvania Ave., NW
Washington, DC 20460-0001

Re: Docket ID No. EPA-HQ-OPPT-2009-0187, TSCA Inventory Update Reporting Modifications, Proposed Rule

To Whom It May Concern at EPA:

The Institute of Scrap Recycling Industries, Inc. (ISRI) is pleased to submit the following comments on EPA's Proposed Rule on *TSCA Inventory Update Reporting Modifications* (henceforth, "Proposed Rule"; Docket ID No. EPA-HQ-OPPT-2009-0187, 75 FR 49656-49707, August 13, 2010).

ISRI is the "Voice of the Recycling Industry." With 21 chapters nationwide and headquarters in Washington, DC, ISRI represents more than 1,550 companies that process, broker, and industrially consume scrap commodities, including metals, paper, plastics, glass, rubber, electronics, and textiles. ISRI provides education, advocacy, and compliance training, and promotes public awareness of the value and importance of recycling to the production of the world's goods and services. In 2009, the latest year with complete figures, the industry employed more than 100,000 individuals on average and processed more than 130 million metric tons (mt) of scrap materials, including 71 million mt of iron and steel, 4.6 million mt of aluminum, and 1.7 million mt of copper. The industry conserves impressive amounts of energy and natural resources and minimizes environmental emissions associated with production of the world's goods and services.

As the "Voice of the Recycling Industry", ISRI would like to preface its comments on TSCA IUR generally and the Proposed Rule with some relevant industry background.

Industry Background

In very general functional terms, the scrap recycling industry (henceforth, "the industry") provides the first link in the recycling chain between materials at end-of-life or obsolescence (EOL) and their return to commerce as new basic materials for use in subsequent manufacturing activities. It is estimated that recycled scrap commodities produced by the industry supply more than 40% of global raw material needs.

At a more-detailed level, in very general operational terms, the industry obtains raw scrap materials from a wide variety of sources (e.g., EOL vehicles and small appliances, industrial

prompt and home scrap metal, and demolition scrap metal) and processes these raw scrap materials mechanically or physically into specification-grade scrap commodities. Mechanical processing includes size reduction of the raw scrap by, for instance, shredding or shearing and downstream separation of the resulting pieces into distinct material categories using manual or automated sorting methods to produce specification-grade scrap commodities¹. Physical processing, which is less common, may use heat to cause a material phase change (i.e., to melt solid metal into a liquid) that facilitates separation of materials without chemical reaction. In the vast majority of instances, these commodities substitute directly for virgin materials (e.g., mined iron ore and bauxite that must be reduced to metallic iron and aluminum, respectively) in the manufacture of new basic materials (e.g., new steel and aluminum). The use of these recycled commodities to produce new basic materials results in substantial natural resource and environmental benefits.

This description of the industry in functional and operational terms has relevance to the following discussion about TSCA IUR.

TSCA IUR and the Industry

As with other EPA regulations (e.g., the Resource Conservation and Recovery Act, or RCRA), the industry finds itself subject to TSCA IUR regulations that, in ISRI's view, are incidentally applicable to it in unintended ways. This results from a TSCA IUR history that had no connection to the industry and thus no appreciation of the functional differences between the industry and the other industries that have had a historical connection to TSCA IUR.

From the beginning of TSCA IUR in 1986 through 2002, TSCA IUR focused exclusively on the production of organic chemical substances contained in the TSCA Chemical Substance Inventory (henceforth, "the Inventory") because inorganic chemical substances (e.g., elemental metals) were exempted from reporting requirements (see 40 CFR §710.26). It is evident from the TSCA IUR regulations that they were developed to reflect the characteristics of those other industries. From a chemical substance perspective, the industry was effectively exempted from TSCA IUR during that period.

Reportable Chemical Substances for the Industry

The 2003 TSCA IUR Amendments (IURA) changed the situation for the industry significantly. First, the TSCA IURA removed the exemption from reporting requirements for inorganic chemical substances. Second, it increased the reporting requirements for chemical substances to include information on industrial processing and use and on commercial and consumer use by entities that received chemical substances from the reporting facility.

On the first, removal of the exemption for inorganic chemical substances made the industry potentially subject to reporting requirements by way of reportable chemical substances. Inorganic chemical substances contained in the Inventory include every industrially important metallic element, if not every metallic element, whether they are toxic or not. For instance, the

¹ For many decades, ISRI has issued and maintained internationally recognized scrap specifications for these commodities, some of which have origins going back nearly a century.

Inventory not only contains the eight RCRA metals identified in the Toxicity Characteristic at 40 CFR §261.24², it also includes aluminum, copper, iron, and zinc, which are not generally considered to be toxic in their bulk elemental states. In contrast, the regulations for Emergency Planning, and Community Right-To-Know Act (EPCRA) Programs exempt from release reporting requirements solid metals listed in 40 CFR §302.4 as Comprehensive Environmental, Response, Compensation, and Liability Act (CERCLA, or “Superfund”) hazardous substances if the solid metals released off-site have diameters above 100 microns (0.004 inch). This strongly suggests that bulk elemental solid metals do not pose a hazard.

In responses to public comments on the Proposed IURA³, EPA explained its rationale for not exempting metals specifically from reporting requirements as it removed the exemption for inorganic chemical substances generally. Of significance to the industry, EPA’s rationale seemed to focus on its need to better understand and assess the risks of environmental and health exposures to chemical compounds containing metals (e.g., metal oxides and metal salts) rather than solid elemental metal in bulk (e.g., scrap iron girders). ISRI agrees with this assessment and believes that solid elemental metal, perhaps scrap metal specifically, should be exempted from reporting requirements as a low priority for EPA.

On the second, the inclusion of industrial processing and use and commercial and consumer use to the reporting requirements posed additional reporting burdens on the industry for information on downstream use that is already known to a large degree for the industry. For facilities that produce chemical substances that are used by different types of users for incorporation into or production of various industrial, commercial, and consumer products, these additional reporting requirements seem appropriate to the structure of downstream use of such chemical substances. Specification-grade scrap metal commodities produced by industry facilities do not have such a diffuse downstream use structure. In fact, they have only one direct use. They serve as raw materials in a variety of mills and furnaces to make new basic metals. Such mills and furnaces are known to EPA by identity, operational activities, or both via a variety of other EPA regulations. Because the pathway by which raw scrap metals are transformed into new basic metals is already well-known to EPA, ISRI believes that EPA would not gain much additional useful information by way of industry reporting of bulk elemental metals pursuant to TSCA IUR. For this reason, scrap metal should be exempted from reporting requirements as a low priority for EPA.

Even though the industry became potentially subject to TSCA IUR when elemental metals became reportable chemical substances, an industry facility has to meet operational criteria related to scrap metal before being required to report.

² These RCRA metals are arsenic, barium, cadmium, chromium, lead, mercury, selenium and silver.

³ “Summary of EPA’s Responses to Public Comments Submitted for the Proposed TSCA Inventory Update Rule Amendments (64 FR 46772)” (Docket Document EPA-HQ-OPPT-2002-0054-0271)

Required Reporting by the Industry

For reportable chemical substances⁴, the TSCA IUR regulations at 40 CFR §710.48(a) set out the following criteria for recurrent reporting:

Any person who manufactured (including imported) for commercial purposes 25,000 lbs. (11,340 kg) or more of a chemical substance described in §710.45 at any single site owned or controlled by that person at any time during calendar year 2005 or during the calendar year at 5-year intervals thereafter is subject to reporting.

These criteria depend upon the following definitions at 40 CFR §710.3 of “manufacture” and “manufacture or import ‘for commercial purposes’”:

- *“Manufacture means to manufacture, produce, or import for commercial purposes.”*
- *“Manufacture or import ‘for commercial purposes’ means to manufacture, produce, or import with the purpose of obtaining an immediate or eventual commercial advantage, and includes, for example, the manufacture or import of any amount of a chemical substance or mixture:*

“(1) For commercial distribution, including for test marketing, or

“(2) For use by the manufacturer, including use for product research and development, or as an intermediate.”

While industry members are manufacturers of specification-grade scrap commodities by any objective measure (e.g., facility structures, equipment, materials, and activities), the TSCA IUR regulations make a programmatic distinction between “manufacture” and “process” based on whether an activity entails creation of a chemical substance via chemical reaction between other chemical substances, notwithstanding “importing”. In distinction to “manufacture” and “manufacture or import ‘for commercial purposes’”, “process”, “process for commercial purposes”, and “processor” have the following TSCA IUR definitions at 40 CFR §710.3:

- *“Process means the preparation of a chemical substance or mixture, after its manufacture, for distribution in commerce:*

“(1) In the same form or physical state as, or in a different form or physical state from, that in which it was received by the person so preparing such substance or mixture, or

“(2) As part of a mixture or article containing the chemical substance or mixture.”

- *“Process ‘for commercial purposes’ means to process:*

⁴ A “reportable chemical substance” is a listed chemical substance that is not exempted at 40 CFR §710.46. Under certain circumstances, facilities may not be required to report a chemical substance(s) because of exemptions related to identity of chemical substances (e.g., the polymers exemption at 40 CFR §710.46), company size (i.e., the “small manufacturer” exemption at 40 CFR §710.49), and importation of chemical substances in articles (i.e., “article” exemption at 40 CFR §710.50).

“(1) For distribution in commerce, including for test marketing purposes, or

“(2) For use as an intermediate.”

- *“Processor means any person who processes a chemical substance or mixture.”*

As profiled above, for TSCA IUR purposes, scrap recyclers are “processor[s]” and “process for ‘commercial purposes’” because scrap recyclers “process” (without chemical reaction) raw scrap consisting of or including previously “manufactured” metal(s) into specification-grade commodities that are sold to mills and furnaces.

However, between the definitions of “manufacture” and “processor” exists the potential for a facility both to “manufacture” and to “process” – or perhaps more accurately, to have its “processor” status superseded by, or ‘upgraded’ to, a new “manufacture[r]” status – if that “processor” facility happens to import a reportable chemical substance.

As a consequence of these reporting criteria and definitions, the industry finds itself generally not required to report on a recurring basis pursuant to 40 CFR §710.48(a) because industry facilities “process” as opposed to “manufacture”. However, if any of these “processor” facilities imports, which is included in the definition of “manufacture” as well as emphasized in 40 CFR §710.48(a), 25,000 lb or more of bulk elemental metal during a reporting year (e.g., 2010), then that processor facility needs to report because its importing activity rendered it a “manufacture[r]”.

This potential for some part of the industry to be required to report while the larger remainder is not results in a disproportionate burden for reporting facilities that, in ISRI’s view, is a regulatory accident. Among those reporting facilities, some may be required to report because of importing only one shipment of raw scrap containing metal. This outcome may reflect TSCA IUR’s original focus on organic chemical substances for which 25,000 lb (or 10,000 lb, an earlier threshold) might have represented a substantial amount of facility production (or importing). This is definitely not the case for the industry. Industry facilities may process hundreds of tons of scrap metal every day. The 25,000-lb (12.5-ton) threshold represents a small amount of scrap-metal processing and is effectively a zero threshold. For iron at a density of nearly 500 lb/ft³ (about eightfold the density of water), 25,000 lb would make a 45-inch cube (51 ft³). To put it in another way, facilities importing EOL vehicles (ELVs) for processing would exceed the 25,000-lb (12.5-ton) threshold for iron by importing only 15 ELVs. The resulting reporting burden for such facilities would be very disproportionate to the 25,000-lb trigger for reporting.

As mentioned above, ISRI believes that reporting by such industry facilities would provide very little, if any, additional useful information to EPA. Such information would likely only pertain to a small fraction of industry facilities and, in any case, a small fraction of the raw scrap metal processed domestically into specification-grade scrap commodities by industry facilities. This information would not enhance EPA’s current understanding of scrap-metal processing and downstream use of the resulting specification-grade scrap commodities by mills and furnaces. Given the reporting burden on the industry and limited usefulness of the information to EPA, ISRI does not see how requiring the industry to report pursuant to TSCA IUR helps the industry

or EPA. In making this statement, ISRI is certainly not asking EPA to expand the scope of reporting to include “processors” in addition to “manufacture[rs]”.

To summarize the discussion of TSCA IUR and the industry, ISRI believes that the industry should not be subject to TSCA IUR for elemental metals on two different levels:

- 1) Bulk scrap metals are a low priority with respect to risk and should be exempt from reporting requirements.
- 2) Reporting of scrap metals by industry facilities would provide little, if any, additional useful information to EPA because the processing of scrap metals and the downstream use of specification-grade scrap metal commodities are already sufficiently known to EPA.

ISRI outlines for EPA’s consideration some potential amendments to the TSCA IUR regulations that could effectively exempt industry facilities from reporting requirements for scrap metals. Such amendments could include modifying the definition of “processor” at 40 CFR §710.3 to disallow ‘upgrading’ of a “processor” to a “manufacture[r]” solely because of importing, adding bulk scrap elemental metals to the TSCA Inventory while simultaneously adding an exemption from reporting requirements for bulk scrap elemental metals at 40 CFR §710.46(a), or classifying bulk scrap elemental metal as an “article” to allow it to meet the “article” exemption at 40 CFR §710.50(b) for chemical substances imported as part of an “article”.

From consideration of TSCA IUR generally, ISRI now addresses the Proposed Rule.

The Proposed Rule

From the positions that the industry should not be subject to TSCA IUR and that reporting by the industry facilities provides little additional useful information to EPA while entailing a disproportionate reporting burden, ISRI generally opposes the Proposed Rule.

First, the Proposed Rule would expand reporting requirements for the industry that in ISRI’s view would simply increase the reporting burden on industry facilities without any increase in the usefulness of the information reported to EPA. Elements of the proposed expansion include the following:

- Increased frequency of reporting by facilities from every five to four years;
- Increased facility recordkeeping of annual “manufactur[ed]” quantities of reportable chemical substances from only the current principal reporting year to all years since the preceding principal reporting year up to and including the current principal reporting year;
- Increased facility reporting of “manufactur[ed]” quantities of chemical substances and associated information from only the principal reporting year to all years since the preceding principal reporting year up to and including the current principal reporting; and

- Increased facility reporting of use information for “manufactur[ed]” chemical substances for the principal reporting year, including quantity used on-site and exported directly and processing, use, and exposure information at other facilities for chemical substances produced by the reporting facility.

In ISRI’s view, the additional reporting requirements embodied in the Proposed Rule – especially the reporting of processing, use, and exposure information for chemical substances at downstream facilities – appears to be driven by the needs of the High Production Volume Challenge and New Chemicals Programs. These programs involve industries very different from the scrap recycling industry. This reinforces ISRI’s position that the industry should not be subject to TSCA IUR.

With respect to EPA’s request for comment on specific issues in Unit V of the Proposed Rule, ISRI offers the following comments by issue number:

1. Transition to New IUR Requirements: In the case of inorganic chemical substances, because they have only been reportable chemical substances for only one submission period (i.e., 2006) – a period fraught with significant communications issues between EPA and the regulated community – ISRI believes that more experience is needed with reporting inorganic chemical substances before reporting requirements are expanded. The current submission period (i.e., 2010) at least should not include the expanded reporting requirements contained in the Proposed Rule.

4(i) and 4(ii). Reporting Frequency: ISRI believes that the reporting frequency should remain at five years, especially with increased reporting requirements, and should in no case be three years or less because of the increased reporting burden for industry facilities at higher reporting frequencies.

4(iii). Reporting Quantity Threshold: As a reporting threshold, 25,000 lb of scrap metal represents a very small amount of daily processing, let alone annual processing, at an industry facility. Given this curious fact, it seems clear that such a threshold was never intended to be applied to the industry. By the suggestion to return the threshold to 10,000 lb, as it once was, EPA seems to be concerned about potent chemical substances produced in small quantities that might evade reporting. Such a concern hardly describes scrap metal. If this is the case, then ISRI would welcome EPA’s declaration that scrap elemental metal is a low priority for TSCA IUR and, as a low priority, will be exempted from reporting requirements.

9. Additional Exposure-Related Data Elements under Consideration: As described in the Proposed Rule, these exposure-related additional elements are derived from the Premanufacturing Notice (PMN) Program. Given that the industry is not involved in the PMN Program, many of these data elements are simply not applicable to the industry or refer to information not ascertainable by industry facilities. While industries involved in or familiar with the PMN Program may be able to provide information for these data elements, the scrap recycling industry is not one of those industries. ISRI believes that reporting information on these data elements would be extremely burdensome on industry facilities, and, as explained earlier, would not provide much additional useful information to EPA.

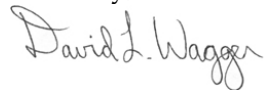
10. *Collecting Exposure-Related Information from Processors:* In addition to the response to Issue 9, ISRI believes that collecting exposure-related information, as described in Issue 9, from “processors” would pose an extreme reporting burden on the industry by subjecting all industry facilities to reporting. Industry facilities, whether they are “processors” or “manufacturer[s]” (because of importing), have similar profiles with respect to exposure-related information; that is, they process raw scrap metal in the same ways and sell specification-grade scrap commodities to the same mills and furnaces. ISRI believes that under this proposal, the reporting burden on the industry would greatly outweigh any gain in EPA’s knowledge about these aspects of the industry. For this reason, ISRI strongly opposes this proposal to subject “processors” to reporting as described in Issue 9.

Summary

As a general matter, ISRI believes that the TSCA IUR regulations were never intended to apply to the scrap recycling industry. As an unintended consequence, these regulations burden industry facilities with reporting requirements only when industry facilities import scrap metal in quantities at or above 25,000 lb during a reporting year – a very low threshold with respect to such facilities. In ISRI’s view, scrap metal does not pose a hazard, and such reporting by a relatively small number of industry facilities for scrap metal would provide little, if any, additional useful information to EPA about the industry and the use of specification-grade scrap metal commodities to make new basic metals. For these two reasons, ISRI believes that industry facilities should not be subject to reporting requirements pursuant to TSCA IUR. This position would also hold for other scrap materials (e.g., paper) that are reportable chemical substances. Given this position and the reporting burden on industry facilities pursuant to TSCA IUR currently, ISRI opposes the Proposed Rule. The Proposed Rule’s expansion of reporting requirements would increase the reporting burden of industry facilities required to report. ISRI further opposes the Proposed Rule’s suggestion to expand certain reporting requirements to “processors” because that would impose reporting requirements on all industry facilities.

In closing, ISRI appreciates this opportunity to comment on EPA’s Proposed Rule on *TSCA Inventory Update Reporting Modifications* and thanks EPA for its consideration of these comments. If there are any questions, I can be reached at 202-662-8533 or DavidWagger@isri.org.

Sincerely,



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