

Comments of the
Semiconductor Industry Association (SIA)
On
Greenhouse Gas Reporting Program:
Publication of Aggregated Greenhouse Gas Data
79 Fed. Reg. 32948 (June 9, 2014)

July 23, 2014

Submitted by email to: A-and-R-Docket@epa.gov

Docket ID No. EPA-HQ-OAR-2014-0410

The Semiconductor Industry Association (SIA), the voice of the U.S. semiconductor industry,¹ appreciates the opportunity to submit comments on EPA's proposal on the publication of aggregated greenhouse gas data as part of the greenhouse gas reporting program. 79 Fed. Reg. 32948 (June 9, 2014).² SIA is concerned that EPA's proposed approach to aggregate, subdivide, and publish certain information deemed to be confidential when reported in their original form by individual reporters could result in the disclosure of confidential information, and that this disclosure would harm the competitive position of U.S. semiconductor companies.

1. The Proposal Does Not Adequately Protect CBI in the Semiconductor Industry

For Subpart I, EPA proposes to publish in aggregated form the following two data elements:

- a. Annual production in terms of substrate surface area (e.g., silicon, PV-cell, glass) reported under 98.96(e); and
- b. Annual manufacturing capacity of each fab at the facility used to determine the annual manufacturing capacity of the facility in Equation I-5 of subpart I reported under 98.96(a)

EPA further proposes to report these data elements by various subcategories, including device type, wafer size, levels of abatement, and other factors.

SIA is concerned that the publication of this information in this aggregated form and subdivided by these categories does not adequately protect confidential business information (CBI) of the semiconductor industry. EPA has previously determined that annual production and manufacturing capacity are considered to be CBI when reported by individual facilities, and we fear that public disclosure of this information in the aggregated form and by the subcategories proposed by EPA has the potential to reveal confidential information concerning production and capacity of specific semiconductor fabs and companies. While EPA has attempted to "mask" the information sufficiently in order to avoid disclosure of confidential data, we believe that the proposal does not achieve this goal.

Both data elements are deemed to be highly confidential within the semiconductor industry and disclosure of this information would place U.S. manufacturers at a competitive disadvantage. In the aggregated form proposed by EPA and with the subcategories for reporting proposed by EPA, it may be possible to reverse engineer the data to calculate confidential information on

¹ Additional information on SIA is available at www.semiconductors.org.

² On July 9, 2014, EPA extended the time to file comments on this proposal. See 79 Fed. Reg. 38885 (July 9, 2014).

particular companies or facilities. The data aggregation proposed by EPA may make sense in other sectors, where there are large numbers of individual facilities and numerous operators. In contrast, semiconductor manufacturing in the United States has been subject to significant consolidation, and the aggregated data and subcategories of information could be used to gain insights into the confidential operations of particular companies and facilities.

In the proposal and the accompanying memorandum, EPA sets forth four criteria it will employ in determining that release of the data in aggregated form poses no risk of disclosing CBI. SIA appreciates EPA's attempt to develop these criteria as a means of avoiding disclosure of CBI, but there are problems with several of these criteria. For example, criteria 1a provides that "[t]he data used to calculate the aggregated value must be reported by at least three separate facilities or suppliers that have no common ownership or operator." The requirement of only "three separate facilities or suppliers that have no common ownership or operator" is insufficient and the number of separate facilities and owners should be increased. At minimum, to provide adequate protection for all segments of the semiconductor industry, there should be at least 5 facilities with no common ownership or operator.³ Increasing the number of facilities in this manner is an essential safeguard to reduce the risk of disclosure of CBI. In addition, EPA should clarify the definition of "common ownership or operator" and how this term may be applied to the various business relationships that may exist in the semiconductor industry.

Similarly, criteria 2a provides that "[n]o single owner or operator can contribute more than x percent to a particular aggregated value. (The EPA will not disclose the value of x.)" Criteria 3a states that "[n]o two owners or operators can contribute more than y percent of a particular aggregated value. (The EPA will not disclose the value of y.)" For both criteria 2a and 3a, EPA does not describe the process to be employed for calculating x or y, the methodology for devising these values, whether these values will be the same for all industries, or whether different values would be appropriate in different industries. EPA should address these concerns before applying them to Subpart I.

2. **EPA Fails to Provide an Adequate Justification for Aggregating and Subdividing the Subpart I Data as Set Forth in the Proposal**

As a general proposition, SIA supports EPA's proposal to use the tool of data aggregation as a means of providing information to the public, so long as there are sufficient protections to assure that such aggregation does not risk disclosure of CBI. For the reasons set forth above, however, we believe that EPA's proposal is not sufficient to assure that no Subpart I CBI will be revealed, particularly given the consolidation that has occurred in recent years in the semiconductor manufacturing sector and the tremendous competitive value of the CBI data elements EPA is proposing to aggregate. EPA sets forth generic rationales as to the benefits of aggregating data and releasing it to the public – e.g., supporting quality assurance/quality control of the Inventory, informing future climate policy development, increasing transparency – but the proposal lacks any justification specific to the benefits of aggregating and subdividing the Subpart I data elements in question. Given the CBI sensitivities and the serious risk of revealing Subpart I CBI under the proposal, it is imperative that EPA justify – with specificity – the purpose of aggregating and subdividing the Subpart I data elements and the steps that it will take in the case of Subpart I data aggregation to avoid revealing CBI. In summary, EPA's

³ We note that an industry consortium, SEMATECH, regularly conducts surveys of the industry on various topics. In order to protect confidentiality within the industry, SEMATECH requires at least 5 company responses before distributing the survey results among the industry.

proposal lacks specificity in terms of the rationale to allow SIA a meaningful opportunity for comment.

In a similar vein, EPA states that it will use a third-party database, the World Fab Forecast, to subdivide Subpart I CBI data elements, such as device type. However, EPA provides no rationale for why such subdivision is useful and no explanation for why the World Fab Forecast should be used for such purpose. SIA is not familiar with the accuracy of this database and does not believe it should be used as a basis for categorizing and publishing confidential data submitted to EPA. EPA should consider other ways of categorizing our industry, and SIA would be pleased to work with EPA in this regard.

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SIA appreciates the opportunity to submit our views.