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U.S. Environmental Protection Agency  
Office of Pollution Prevention and Toxics  
1200 Pennsylvania Ave NW  
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IPC appreciates the opportunity to respond to the Notice “Preliminary Lists Identifying Manufacturers Subject to Fee Obligations for EPA-Initiated Risk Evaluations under Section 6 of the Toxic Substances Control Act” posted January 27, 2020.

IPC represents more than 5,900 member-company sites around the world and brings together all the players in the electronics manufacturing industry including designers, printed circuit board manufacturers, contract and assembly companies, suppliers, and original equipment manufacturers. In the United States, IPC represents almost 2,700-member company sites across a diverse collection of industries that are integral parts of the economy – electronics manufactured by our members are used in thousands of critical industry sectors.

We welcomed the Agency’s announcement on March 25, 2020, of its plan to consider a proposed rule that would allow exemptions to the Final Rule on Fees for the Administration of TSCA (the Fees Rule) and the associated “No Action Assurance.” The announcement addressed many of our members’ concerns as discussed on February 20, 2020, with the Deputy Director Mark Hartman and on March 20, with Assistant Administrator Alexandra Dapolito Dunn and Deputy Assistant David Fischer.

In response to the March announcement, IPC worked with member companies that may be affected by the Fees Rule and we identified several companies that either: (1) import small amounts or small concentrations of a high-priority substance but that are not currently on the preliminary lists because they did not need to report to the TRI (because they did not meet chemical thresholds for one or more TRI chemicals during a calendar year) or (2) are listed on the preliminary lists because they report to the TRI but they do not manufacture or import high-priority chemical substances. IPC requests the Agency consider extending the exemptions and the No Action Assurance to address these two situations.

#### **Recast the Fees Rule to Extend Exemptions to Importers of Small Amounts**

Based on the March 25 announcement, we understand that the Agency plans to initiate a new rulemaking process that will exempt all or many manufacturers that import a high-priority substance in an article, produce the substance as a byproduct, and produce or import the substance as an impurity. Also, we understand that the Agency aims to consider additional improvements to the overall TSCA Fees Rule scope and structure. To this end, we recommend that the Agency explicitly expand its proposed exemptions for those companies that import small amounts, to include small concentrations (weight by volume), of high priority substances.

The background section to the Notice document identifies the fee obligations of manufacturers of substances and states that it applies to “those who import the chemical as part of an article, or manufacture (including import) chemical substances that are considered an impurity or byproduct, or in small amounts...” The potential exemptions announced on March 25 mirror the language regarding articles, byproducts, and impurities but does include “small amounts.” Given that the Agency proposed the exemptions for the three categories, it is assumed that it recognizes that the current Fees Rule will place an inequitable burden on these groups and, therefore, sees the need to exempt them. Those who

manufacture or import small amounts, to include small concentrations, of a high-priority substance also should be exempt for the same reason.

For example, an IPC member company has imported less than two kilograms of a lubricant product containing less than 0.5 percent (w/v) phosphoric acid, triphenyl ester (TPP, CASRN 115-86-6) per year since 2016. Currently, the Agency has identified approximately a dozen companies on the preliminary list for TPP that could be obligated to pay fees to support the TPP risk evaluation. This member company is not currently listed, is not a small business and, therefore, could be expected to pay 1/13<sup>th</sup> of the total fee obligation because the company imports TPP, even though the total amount of TPP imported for four years has been approximately 0.01 kg. Another IPC member company imports products most of which contain a very small concentration, 0.02 percent (w/v), of formaldehyde (CASRN 50-00-0). Since 2016, the company imported a total 170,000 liters of products, but the average amount of formaldehyde in these products was only approximately 150 kg per year. Companies see the need to self-identify out of an abundance of caution and to avoid potential compliance or enforcement actions and fees, yet the distribution of fees to those importing small quantities is inequitable and does not align with the intention expressed by the March 25 announcement.

### **Extend the No Action Assurance to Inaccurately Identified Companies on the Preliminary Lists**

More than two dozen IPC member companies were identified by the Agency on the preliminary lists for 11 different high-priority substances. Electronics manufacturing requires the use of chemicals, some of which are high-priority substances, as reactants in electronics manufacturing processes. These companies do not manufacture or process the chemical, but it is “otherwise used.” When companies report emissions for TRI reporting, they indicate the type of use in the activity determination. However, it appears that the preliminary lists provided by the Agency in the Notice include all companies who reported to the TRI, not just those that are categorized as manufacturers in the activity determination. That is, the preliminary lists include companies that reported an “otherwise used” activity determination, yet the Fees Rule does not apply to this category. IPC notified member companies of their identification on the preliminary lists and asked that they do their due diligence to determine if that was in error. By extending the No Action Assurance to companies, the Agency demonstrates awareness of the potential for inaccurate identification and provides time for the Agency to refine the lists based on the results of this Notice as well as their improved use of TRI data.

### **Request for Continued Dialogue**

We appreciate the Agency’s continued collaboration with IPC. We believe it is necessary and feasible to provide exemptions for the three categories as proposed on March 25 and to extend exemptions for entities that import small amounts including small concentrations. This exemption will require work to define the term “small amounts.” Also, it will require work to establish de minimis thresholds for each high-priority substance that considers the amount imported as well as the concentration of the substance within a product.

In addition, IPC encourages the Agency to consider clarifying risks to companies associated with self-identification including: how the Agency will make use of the information that they gain from those who self-identify; the connection between fee payment obligations and the conditions of use in the risk evaluations; and potential compliance or enforcement actions after the No Action Assurance is removed.

Thank you for making the time to meet in February and March and to commit to lasting solutions to our concerns. We are grateful for the opportunity to collaborate directly with the Agency on these important issues.

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