



February 28, 2020

The Honorable Alexandra Dapolito Dunn
Office of Chemical Safety and Pollution Prevention
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington, DC 20460-0001

Re: Docket ID No. EPA-HQ-OPPT-2019-0677 – Preliminary Lists Identifying Manufacturers Subject to Fee Obligations for EPA-Initiated Risk Evaluations Under Section 6 of the Toxic Substances Control Act (TSCA)

Dear Assistant Administrator Dunn,

IPC, the Consumer Technology Association (CTA), and the Information Technology Industry Council (ITI) are writing on behalf of the approximately 8,000 member companies that we represent: electronics suppliers, fabricators, assemblers, original equipment manufacturers, innovators, and information and consumer technology leaders. Collectively, over 80 percent of the companies represented by our membership qualify as small and medium-sized businesses and start-ups. Our members represent the complex, global supply chain of electronics – what our members make is used in thousands of products across dozens of industry sectors, including products found in homes and businesses across the U.S.

On February 20, 2020, we met with Mr. Mark Hartman and his staff to initiate a conversation about the Notice document “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. We are grateful for the time we had with the EPA. The discussion was productive in that we explored possible solutions, including procedural actions to take in the short-term, that would address our members’ concerns regarding the requirement to self-identify as an importer of an article containing a TSCA High-Priority Substance while enabling the EPA to collect fees to defray some of the costs associated with TSCA implementation efforts.

We appreciate EPA’s offer to consider how best to assist the electronics industry and our companies, and other industries and companies, as they navigate the self-identification pathway and the implementation of the Fees Rule. Here is a summary of the challenges and the policy and procedural opportunities that we discussed. We intend for this summary to be useful to future bi-lateral conversations.

1. Awareness: Our members must determine if they are required to self-identify as importers of articles containing HP Substances. In the short term, there is an opportunity to extend the current comment period on the Notice to self-identify. This will allow more time for dissemination of information to members regarding applicability of the Fees Rule to substances in articles as well as provide time for learning the Chemical Data Exchange system. Also, there is an opportunity for EPA to provide interpretation or clarification that outlines procedures that will enable better compliance as an importer of an article. This will help the EPA to ensure that they are enabling accurate self-identification that does

not place undue burdens on industry or the agency. If countless companies self-identify as a protective matter, EPA would likely be inundated with “manufacturers” and potentially additional “conditions of use” that the agency will need to evaluate.

2. Due Diligence: Our members are part of supply chains that are global, multi-layered, and comprise numerous suppliers. Members make complex objects, products, and articles from many chemicals and materials, not all of which are required to be disclosed under company chemical management programs including how and when they are used within the life cycle. In the short term, there is an opportunity for EPA to provide interpretation or clarification that establishes EPA’s expectations for compliance as an importer of an article. Also, there is an opportunity to revisit criteria for self-identification. This may include requiring those entities that knowingly (i.e., have actual or constructive knowledge based on reasonably ascertainable information) manufacture or import the chemical substance or an article containing the substance to self-identify.

3. Materials Declaration: Where applicable, our members comply with the EPA’s Chemical Data Reporting and Toxics Release Inventory reporting requirements, however neither obligate information about substances in articles. Members comply with global REACH and RoHS regulations; however, these regulations recognize declarations against de minimis levels and/or against a specific volume or quantity being imported. Identifying complete substance content is known to be resource-intensive (i.e., the amount of time required to do analyses and costs associated with those analyses). In the short term, there is an opportunity for EPA to provide interpretation or clarification that establishes EPA’s expectations for the due diligence required to obtain accurate and reliable information about article content. In the long term, there should be opportunities to revisit materials declaration requirements under the Fees Rule for substances in articles in an effort to harmonize with existing global regulatory structures. Also, consideration of industry insights in data collection and data exchange and reporting about chemical or material content could be prioritized, for example, by considering existing materials declaration standards, like the IPC-175X family of standards, and data exchange databases, such as the automotive industry’s IMDS database, the burgeoning ECHA SCIP database and the electronics ChemSHERPA, as benchmarks.

4. Precautionary Self-Identification: Our members may self-identify as importers of articles containing HP substances out of an abundance of caution and regardless of whether they have accurate and reliable knowledge about article content or their status as importers of articles. In the short term, there is an opportunity to provide interpretation or clarification about the risks associated with self-identification: how the EPA will make use of the information that they gain from those who self-identify, the likely impacts on the conditions of use that EPA expects to consider in the risk evaluation, potential compliance or enforcement actions and fees, and expected annual administrative burdens.

5. Balanced Consortia Development: Our members may join consortia because they are overly cautious, but not because they have accurate and reliable knowledge about article content or their status as importers of articles. In the short term, there is an opportunity to provide interpretation or clarification that outlines how to balance consortia to ensure self-directed or formulaic fees allocation meets their obligations under the Fees Rule and can be fairly distributed among manufacturers and importers of chemicals as well as importers of articles. In the long term, for example during the reopening of the Fees Rule, there is an opportunity to revisit criteria for self-identification, especially for importers of articles. Also, there is an opportunity to consider timing for self-identification that is based on the scope of the risk evaluations or, even, following the completion of a risk evaluation once unreasonable risk determinations have been made.

Thank you again for making the time to meet earlier in February and to commit to an achievable pathway through short-term and long-term solutions. We appreciate the meaningful conversation and we appreciate EPA's continued collaboration with CTA, ITI, and IPC.

Sincerely,



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