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March 14, 2017

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Submitted Via Regulations.gov

RE: TSCA Inventory Notification (Active-Inactive) Requirements Proposed Rule [Docket No. EPA-HQ-OPPT-2016-0426]

IPC – Association Connecting Electronics Industries, represents more than 3,900 member facilities in the electronics industry, including design, printed board manufacturing and electronics assembly. IPC members use chemicals to manufacture electronics for the communications, defense, transportation, and consumer sectors.

IPC supported the passage of the "Frank R. Lautenberg Chemical Safety for the 21st Century Act" (LCSA) amending the Toxic Substances Control Act (TSCA). A cohesive federal chemical law that will provide certainty for our members who manufacture, supply and sell electronics to a national market is important to IPC.

IPC supports the goals outlined in section 8(a)(5)(A) of the Lautenberg Act, which direct the Environmental Protection Agency (EPA) to not require unnecessary or duplicative reporting. Specifically, IPC supports the proposals in the Notice of Proposed Rulemaking (NPRM) to use the 2012 and 2016 CDR data to populate the interim active inventory and to allow processors to voluntarily report chemicals in use after the deadline for reporting by manufacturers.

While IPC supports several proposals in the Inventory Reset Rule, we have the following recommendations:

- EPA Should Limit the Rulemaking to Collection of Data Elements that are Required by Statute
- Clarify the Definition of "Processors"
- Clarify Exclusion of Reporting of Chemicals in Articles
- Provide More Information About Use of the CDX for the Reset

IPC appreciates the opportunity to offer the following comments on the EPA's Proposed Inventory Reset Rule (The Rule).

The Rule Should Avoid Unnecessary or Duplicative Requirements

TSCA Section 8(a)(5)(A) specifies that, to the extent feasible, the inventory reset regulation should avoid requiring reporting that is "unnecessary or duplicative." Although EPA's proposal contains some provisions to avoid unnecessary or duplicative efforts, we believe more can be done to promote efficiency and reduce the burden on both the agency and industry.

IPC Supports the Establishment and Population of an Initial Inventory by EPA

Where EPA already has knowledge that a chemical is active in commerce from an EPA-managed program or reporting requirement, EPA should use this information and not require additional, duplicative reporting of the same information.

IPC supports EPA's proposal to base the interim active inventory on 2012 and 2016 Chemical Data Reporting (CDR) data and that manufacturers and processors would not need to further report, under the Inventory Reset Rule, the use of these chemicals. Further, we encourage EPA to release the 2016 data as soon as it is compiled, and before the date of promulgation of the rule, to assist manufacturers, importers and processors as they prepare for the notification period(s).

IPC Supports Voluntary Reporting by Processors

IPC supports EPA's proposal to have chemical manufacturers, who have the primary responsibility, to report first, followed by a voluntary period for processors to report substances that have not been placed on the preliminary active list by EPA (based on the 2012 and 2016 CDR) or manufacturers.

IPC believes this two-step process will be efficient and would prevent the duplicative, confusing data collection if both manufactures and processors were required to report simultaneously and should reduce the overall reporting burden on processors.

IPC recommends that EPA post an initial list of active substances as soon as possible and then frequently update the list as additional substances are identified as active throughout the entire reporting period, which would allow manufacturers to avoid duplicative reporting of chemicals already identified as active.

EPA Should Limit the Rulemaking to Collection of Data Elements that are Required by Statute

EPA should not require more than the simple notification process set out by statute and it should eliminate the requirements to report manufacturing dates. The proposed requirement to report the dates of manufacture and processing adds substantial burden to the notification effort.

By statute, a substance qualifies as active if it was domestically manufactured or imported at any time during the ten-year lookback period. The statute does not require reporting of date ranges nor particular documentation of the date (or date range) a chemical was manufactured or imported. Since a

single occurrence of manufacturing during the lookback necessitates classification of the chemical as active in commerce, reporting of the dates of first and last manufacture are unnecessary.

Locating records to conclusively establish first and last dates of manufacture would be significantly more burdensome than the effort to simply verify that a substance had been manufactured during the relevant period. If a company manufactured or processed a chemical substance as much as 10 years ago, those specific dates – first and last date of process – may not be available to the processor. Many companies' corporate retention record policy is shorter than 10 years; moreover, this exceeds TSCA's five-year record retention requirement.

EPA Should Remove Recordkeeping Requirements for Manufacturers and Processors

IPC opposes the proposal that requires manufacturers and processors to retain records that documents any information reported to EPA for the inventory reset for up to five years as an unnecessary burden that has not been justified and is not statutorily required.

Given that the primary responsibility for submitting information to EPA is on chemical manufacturers, and that EPA will be in control of the information submitted to the agency, EPA should, at a minimum, clarify that the reporting requirements in § 710.35 do not apply to processors. In the proposed rule text, under section 710.35, the section regarding recordkeeping requirements, EPA notes that "each person who is subject to the notification requirements of this part must retain records that document any information reported to EPA." In section 710.25, the section regarding persons subject to the notification requirement, the rule notes that any person who manufactured a chemical during the lookback period *is required* to submit a notice of activity form to EPA and any person who processed a chemical during the lookback period *may* submit a notice of activity form to EPA.

IPC Encourage EPA to Clarify the Definition of Processing

IPC encourage EPA to clarify the term "processing." The definitions in 40 CFR Part 710, on which EPA proposes to base the TSCA § 8(b) reporting, are overly simple and prone to misinterpretation. Specifically, IPC asks the EPA to clarify that "processing" does not include assembling parts into articles when it does not involve the "preparation of a chemical substance or mixture" after its manufacturer, "as part of a mixture or article containing the chemical substance or mixture." Misinterpretation of the definition to include all assemblers of products as processors would have a significant negative impact on downstream users of articles and increase exponentially the burden of The Rule.

IPC Encourages EPA to Clarify that Information is Not "Reasonably Available" if it is not in the Possession, Custody or Control of the Manufacturer or Importer

The 10 year "lookback" for active chemicals may significantly exceed the time period that a company retains corporate records, and it exceeds TSCA five-year record retention requirements. In the preamble to The Rule, EPA notes that any person required to report under this rule must provide

information to the extent it is "known or reasonably ascertainable." EPA defines the terms known or reasonably ascertainable as "all information in a person's control, plus all information that a reasonable person similarly situated might be expected to possess, control, or know." Consequently, EPA implies that notification is not required for records that are no longer available due to company document retention policies as those records would not be reasonably ascertainable. EPA should clarify that records that are no longer available due to document retention policies are not required to be reported under The Rule.

Clarify Exclusion of Reporting of Chemicals in Articles

In the preamble to The Rule, EPA states that it interprets the language in TSCA § 8(b) as encompassing the reporting exemptions for persons who import chemical substances solely as part of articles. IPC strongly supports this exemption for companies that import chemical substances as part of articles from reporting under the retrospective and forward-looking reporting. Importers of these articles may not have the requisite knowledge of the chemical substances contained in these imported articles. Further, this information could be extremely burdensome, if not impossible, to obtain.

EPA Should Establish a Formal Mechanism and Time Period for Corrections to the Active List

EPA established a mechanism for corrections to listing on the original TSCA inventory. The agency should anticipate that some errors will occur in the significant undertaking that is the inventory reset and offer a discrete process to ensure that corrections can be made on a timely basis. We also suggest EPA communicate a process to facilitate these corrections and establish a reasonable time period during which corrections can easily be made.

IPC Suggests that EPA Provide More Information About Use of the CDX for the Reset

IPC is concerned about the Central Data Exchange (CDX) system's ability to support the size and scale of this notification activity, given the difficulty CDX had in handling the 2016 CDR reporting. While we appreciate that EPA is working on a statutory deadline to complete this rulemaking, we urge EPA to release training and support materials on use of the CDX as soon as possible. We further suggest that EPA consider CDX "beta testing" in advance of the launch of the manufacturer notification period, or at least as early in the process as possible.

EPA has Underestimated the Regulatory Burden of the Reset

EPA has significantly underestimated the amount of time needed for data gathering, and some of the major activities needed for determining active status are simply not accounted for in the time estimates.

The preamble states that the effort required for "compliance determination", which is stated to include, "...reviewing files to determine whether reporting is required for chemical substance(s) manufactured (including imported) and/or processed by a particular company," is estimated at 0.5 hours per company,

regardless of the number of chemicals involved. Best Professional Judgment is cited as the basis for this estimate. An additional per chemical burden of 0.083 hours (i.e., 5 minutes) is estimated for reviewing the list of active chemicals, but this is associated only with searching EPA sources, such as the TSCA Inventory or the Substance Registry Service (SRS) for the appropriate chemical ID.

As part of the activities associated with "Form Completion/Submission," the effort required for reporting of "Date Range" is estimated at 0.944 hours per chemical. The assessment states that this activity would require submitters to refer to company records to identify the necessary and relevant information. The estimate is based on what the assessment describes as a similar activity required in TRI reporting for identifying the maximum amount of the toxic chemical on site at any time during the calendar year.

These assumptions seem likely to greatly underestimate the effort needed for reset reporting. While the TRI analogy may be appropriate for some aspects of the reset reporting, there are significant differences that increase the effort required for reporting of a single chemical under the reset requirements. First, the 10-year lookback will require a greater effort for location and compilation of records than for a single calendar year record for an established TRI reporting program. The level of effort required will likely increase with the age of the records that must be evaluated.

Conclusion

IPC supports many of the proposals in the NPRM, particularly the two-step process allowing voluntary reporting for processors and the exemption for companies that import chemical substances as part of articles. However, IPC urges EPA to eliminate unnecessary burden on businesses and to limit requirements to what is germane and necessary to designate substances as active or inactive on the TSCA inventory.

IPC welcomes the opportunity to work further with EPA on this and other critical TSCA framework issues. Please contact me at (202) 661-8092 or fabrams@ipc.org if you have questions or require any further information on these comments.

Sincerely,

Fern Abrams
Director, Regulatory Affairs