



March 29, 2017

Christopher Moore, Ph.D.
CDR Associates

Laura Sneeringer
Consensus Building Institute

RE: Draft Situation Assessment Report on Convening a Negotiated Rulemaking Process to Negotiate a Proposed Rule to limit Chemical Data Reporting Requirements for Certain Inorganic Byproducts under Section 8(a) of the Toxic Substances Control Act (TSCA), as amended by the Frank. R. Lautenberg Chemical Safety for the 21st Century Act

Dear Dr. Moore and Ms. Sneeringer,

IPC-Association Connecting Electronic Industries appreciates your work in preparing the Draft Situation Assessment (Assessment). As one of the stakeholders in the process, and the primary advocate for this negotiated rulemaking, IPC and our member companies have a direct interest in the accuracy and completeness of the Assessment.

IPC has three concerns regarding the Assessment which are detailed below, along with our recommendations:

- The background information (Section I) regarding byproducts is incomplete and consequently provides a misleading situation description.
- The description of Consensus Decision Making (Section V) presents an unnecessarily limited definition.
- The assessment presents an interpretation of the statutory requirements pertaining to this rulemaking (Section V).

The Background Information Regarding Byproducts Should Include EPA Interpretations of TSCA

Although the background section accurately summarizes the federal regulations pertaining to the definition of and exemptions from TSCA pertaining to byproducts, it fails to include EPA's interpretations of these regulations. Longstanding EPA interpretation regarding byproducts has rendered the exemptions for byproducts that are manufactured without commercial intent and are not used for non-exempt purposes. Historically, EPA has interpreted almost every activity by a commercial entity as having a commercial purpose. For example, EPA has interpreted treatment to comply with wastewater treatment regulations as a commercial purpose and therefore the sludge resultant from that treatment as ineligible for the exemptions provided for byproducts. ***IPC recommends that the Assessment include a discussion of the EPA***

Interpretation of commercial purpose and the byproducts exemptions as this is a critical underpinning of the reporting requirements for inorganic byproducts under TSCA and the need for regulatory relief that is the subject of this rulemaking.

EPA is Required by the LCSA to Propose and Finalize a Rulemaking, Regardless of the Outcome of the Negotiated Rulemaking

IPC believes that the Assessment misinterprets the requirements of the LCSA as they pertain to a negotiated rulemaking to limit the reporting requirements, for manufacturers of inorganic byproducts are subsequently recycled, reused, or reprocessed. The Assessment mistakenly “presupposes” a conditional relationship between a consensus outcome of the negotiated rulemaking and the EPA’s obligation under the LCSA to propose and finalize a rule lessening the reporting burdens for inorganic byproducts sent for recycling.

The LCSA does not state that a rule shall be proposed only if consensus is achieved. This conditional relationship between the obligation to conduct a negotiated rulemaking and the obligation to propose and publish a rule is not supported by the LCSA text. EPA should conduct and participate in the negotiated rulemaking with the good faith intention of using the outcome to inform and support their required proposal and publication of the rule, as required by the LCSA. Regardless of the outcome of the negotiated rulemaking, the agency is obligated to publish a final rule. **IPC recommends that the incorrect statement regarding statutory obligations, be removed from Section V of the Assessment.**

Definition of Consensus Should Reflect the Broad Interests of the Negotiated Rulemaking

IPC believes that the described goal of consensus sets an unreasonably high bar for success of the Committee. By proposing to define consensus as unanimous concurrence or abstention of 100 percent of the Committee, the agency bestows each member of the Committee with veto power, which significantly raises the likelihood of Committee being able to reach consensus. Further, given that the Committee is only negotiating the contents of a proposed rule, which will be published for public comment, there is no reason to require unanimous concurrence. **IPC strongly recommends that the Committee, with the assistance of the facilitators, select a more reasonable definition of consensus, closer to the supermajority used in the US legislative process (60%), requirements to amend the US constitution (75%), and the processes of US standards making bodies (51%-80%).**

Conclusion

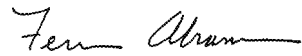
IPC appreciates the opportunity to offer these comments and encourages the that the Assessment be revised as recommendations, which we believe will lead to a more productive

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outcome and allow EPA to fulfill the LSCA requirement to propose and publish, by June 2019, a rule to lessen the reporting burden under TSCA for inorganic byproducts sent for recycling, recovery, or reprocessing.

Sincerely,

A handwritten signature in cursive script that reads "Fern Abrams".

Fern Abrams

Director, Regulatory Affairs