

SIA Comments on  
“Preliminary Lists Identifying Manufacturers Subject to Fee Obligations  
for EPA-Initiated Risk Evaluations Under Section 6 of the  
Toxic Substances Control Act (TSCA)”

85 Fed. Reg. 4661 (Jan. 27, 2020).

[EPA–HQ–OPPT–2019–0677; FRL–10010– 37]

June 15, 2020

The Semiconductor Industry Association (SIA) submits these comments to the U.S. Environmental Protection Agency (EPA) on the Preliminary Lists Identifying Manufacturers Subject to Fee Obligations for EPA-Initiated Risk Evaluations Under Section 6 of the Toxic Substances Control Act (TSCA). 85 Fed. Reg. 4661 (Jan. 27, 2020).<sup>1</sup>

SIA is the trade association representing leading U.S. companies engaged in the design and manufacture of semiconductors. Semiconductors are the fundamental enabling technology of modern electronics that has transformed virtually all aspects of our economy, ranging from information technology, telecommunications, health care, transportation, energy, and national defense. The U.S. is the global leader in the semiconductor industry, and continued U.S. leadership in semiconductor technology is essential to America’s continued global economic leadership. More information about SIA and the semiconductor industry is available at [www.semiconductors.org](http://www.semiconductors.org).

SIA supports EPA’s announcement of its intent to propose and finalize exemptions from self-reporting, including for importers of High Priority chemical substances as part of articles, producers or importers of High Priority chemical substances as an impurity, and producers of High Priority Substances as a byproduct.<sup>2</sup> EPA also announced a “no action assurance” notice covering these entities in anticipation of issuing specific exemptions.<sup>3</sup> SIA believes these policies are appropriate and should be codified as permanent regulations as soon as possible. Furthermore, SIA requests that when EPA eventually proposes and codifies the specific exemptions, the provision makes clear that entities exempted are not subject to *any* fee sharing obligations under the amended regulation, as opposed to merely being exempted from “self-identification” under 40 CFR §700.45(b).

On March 4, 2020, SIA submitted a letter (see Attachment A) to EPA Assistant Administrator Alexandra Dunn expressing concern with the initial EPA interpretation that importers of manufactured articles that contain any High Priority Substances were subject to the fee rule. SIA’s letter summarized the reasons why the Agency should not require entities that import

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<sup>1</sup> The comment period has been extended to June 15, 2020. See 85 Fed. Reg. 32,036 (May 28, 2020).

<sup>2</sup> EPA press release “EPA Announces Plan to Reduce TSCA Fees Burden for Stakeholders,” <https://www.epa.gov/newsreleases/epa-announces-plan-reduce-tsca-fees-burden-stakeholders>.

<sup>3</sup> “Information on Plan to Reduce TSCA Fees Burden and No Action Assurance,” <https://www.epa.gov/tsca-fees/information-plan-reduce-tsca-fees-burden-and-no-action-assurance>.

articles containing a High Priority Substances to be subject to “self-identification” and the “fee sharing” obligations for such substances. The letter covered three areas of concern:

1. Semiconductor manufacturing equipment and infrastructure – Advanced semiconductor manufacturing equipment and fab infrastructure may contain chemical substances in the thousands of components that make up this highly complex equipment, with little to no prospect for the release of these substances or exposure to these substances. It would be impractical for U.S. semiconductor companies to track and report the small quantities of chemical substances that may be present in these components.
2. Finished semiconductor devices – Finished semiconductor devices, components, and packages that are imported into the U.S. may contain High Priority Substances, and the potential for a release from these finished articles is extremely remote. As we noted in our letter, EPA has made no finding that there would be exposure to High Priority Substances in finished semiconductor devices. Accordingly, it would be improper to require semiconductor manufacturers to share in the fees for these substances.
3. Chemical substances generated as byproducts or impurities – The manufacturing process of numerous chemical substances and mixtures, as well as formulated products and articles, may generate chemical substances as a byproduct or impurity. Identifying and reporting on the presence of such substances is technologically challenging. If undertaken solely for purposes of participation in fee sharing exercises, would be potentially impossible, and an expensive and time-consuming exercise that will not contribute to reductions in exposures or potential risks. We agree with EPA that such substances should not be subject to the fee rule.

SIA calls on EPA to issue its expected proposal to codify and expediently make permanent the exemption announced for chemical substances imported as part of an article, imported or produced as an impurity, or produced as a byproduct. We appreciate the EPA clarification on this topic and believe it would be appropriate for EPA to codify this exemption in a permanent regulation.

## ATTACHMENT A

March 4, 2020

Via E-mail

The Honorable Alexandra Dunn  
Assistant Administrator  
U.S. Environmental Protection Agency  
1200 Pennsylvania Ave., NW  
Washington, DC 20460

Dear Assistant Administrator Dunn:

I am writing on behalf of the Semiconductor Industry Association (SIA)<sup>4</sup> to express our concerns and request clarification on the recent Federal Register notice announcing the “Preliminary Lists Identifying Manufacturers Subject to Fee Obligations for EPA-Initiated Risk Evaluations Under Section 6 of the Toxic Substances Control Act (TSCA),” 85 Fed. Reg. 4661 (Jan. 27, 2020). In this notice EPA states its interpretation that importers of manufactured articles that contain any High Priority Substances are subject to the fee rule.<sup>5</sup> In contrast, this interpretation was not discussed in the initial proposal of the Fees Rule for Administration of TSCA, nor was the topic addressed in the preamble to the Final Rule. Waiting until 2020 to issue the first public notice in the Federal Register articulating this interpretation raises concerns about the procedural fairness of the underlying rulemaking. Moreover, the interpretation deviates from past practices the Agency has followed under numerous other TSCA regulations. Moreover, the interpretation has created considerable confusion and concern in the regulated community. SIA requests that the Agency officially abandon this recent interpretation of the fees rule and confirm that importers of manufactured articles containing a High Priority Substance are not required to self-identify under the procedures established by the final Fees Rules.

Semiconductor manufacturing – which is conducted in 19 states throughout the U.S. and produces America’s 4<sup>th</sup> largest export – occurs in highly advanced fabrication facilities (“fabs”) that employ sophisticated, complex and specialized manufacturing equipment (known in the industry as “tools”). This equipment conducts hundreds of carefully controlled steps to deposit, modify, and remove chemicals – in exactly the right amount, in exactly the right place, at exactly the right time – to a thin, round slice of silicon (known as a “wafer”) to create numerous

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<sup>5</sup> 40 CFR Part 700.

patterned layers of the integrated circuit, typically many thousands of times thinner than that of a human hair. Tools are costly, highly engineered pieces of equipment comprised of many thousands of parts and costing millions of dollars (USD).

To meet the demands of this high-precision manufacturing, these tools may contain High Priority Substances in one or more of its thousands of component parts, including hoses, gaskets, coatings, seals, and storage containers. To the extent the equipment contains High Priority Substances, these substances may be present because they possess unique chemical and physical attributes that provide the necessary functionality for advanced semiconductor manufacturing. There are typically no alternative available that meet the functional requirements needed by our industry. However, the presence of a High Priority Substance within a component of a tool is not a sufficient basis for EPA to determine it is reasonably anticipated to result in the release of the substance to the environment, nor will its presence enable worker exposure. These are the very factors Congress directed EPA to consider before the Agency takes an action which will regulate an article, or category of articles, under Sections 5 or 6 of the amended statute.

In addition, finished semiconductor devices and components that may contain High Priority Substances may be imported into the U.S. Chemicals, including High Priority Substances, may be present in minute quantities in finished semiconductor devices, components, and packaging, and the potential for a release from these finished articles is extremely remote. EPA has made no finding, as required by the TSCA amendments of 2016, that there would be exposure to High Priority Substances in finished semiconductor devices. Accordingly, it would be improper to require semiconductor manufacturers to share in the fees for these substances.

As a practical matter, it would be impossible to identify and track the presence of High Priority Substances in each of these components and spare parts throughout the supply chain, including where these substances may be present as an impurity. Advanced tools contain thousands of distinct parts, each of which is a finished article produced in a complex and globalized supply chain. SIA companies lack the critical information from their suppliers and the supply chain on whether each component in a tool might contain a High Priority Substance. Testing and identifying the presence of these substances in each component would be highly burdensome, and provide little value for human health and the environment, given that there is infinitesimal risk of release or exposure to these substances during the operation of the tools in a fab or the use of finished semiconductor devices.

We request EPA relinquish its recent, informal interpretation of the Fees Rule and clarify that importers of manufactured articles that contain a High Priority Substance are not required to self-identify under the Fees Rule. Thank you for your attention to this matter, and we would welcome the opportunity to work on this matter with you and your team.

Sincerely,

David Isaacs  
Vice President, Government Affairs

cc: Tom Tyler  
Mark Hartman  
Ryan Schmit