

Common understanding of REACH and RoHS under REACH JBCE contribution to the currently ongoing consultation on SVHCs recommended for REACH Authorization

Dear European Chemical Agency,

30, November 2014

1. Introduction

We, JBCE (Japan Business Council in Europe) appreciate for your hard and transparent work in REACH regulation in order to minimize chemical risk by 2020.

In this time, we are writing to ask you that how you handle in order to avoid double regulation and/or inconsistency between REACH and RoHS in practical way.

We will explain about on-going example of lead oxide as follows.

2. Practical example

Here below is an example for lead monoxide (lead oxide, CAS Number 1317-36-8). Please note that other substances such as orange lead (lead tetroxide, CAS Number 1314-41-6) would be also in similar situation.

2.1 Situation in REACH regulation

Lead monoxide (lead oxide) is under public consultation in the link below.

[Link of recommendation for inclusion in the Authorisation list and public consultation]

<http://echa.europa.eu/addressing-chemicals-of-concern/authorisation/recommendation-for-inclusion-in-the-authorisation-list/-/substance/6721/search/+del/20/col/extraColumn2504/type/asc/pre/1/view>

2.2 Situation in RoHS directive

Following exemptions that might be related to lead oxide has been granted in annex III, exemption list of the directive, 2011/65/EU.

7(c)-1: Electrical and electronic components containing lead in a glass or ceramic other than dielectric ceramic in capacitors, e.g. piezoelectronic devices, or in a glass or ceramic matrix compound

13(a): Lead in white & glasses used for optical applications

13(b): Cadmium and lead in filter glasses and glasses used for reflectance standards

25: Lead oxide in surface conduction electron emitter displays (SED) used in structural elements, notably in the seal frit and frit ring

32: Lead oxide in seal frit used for making window assemblies for Argon and Krypton laser tubes

2.3 Common understanding of REACH vs RoHS in CARACAL, CA/36/2014

The situation between 2.1 and 2.2 is actually the case of 1. (b) in CA/36/2014.

The application that lead oxide has been exempted in RoHS directive should be also granted in REACH regulation in a manner to avoid double regulation.

[Copy of CA/36/2014]

1. Substance already in Annex II to RoHS is proposed for inclusion in Annex XIV to REACH

(b) Where RoHS provides for exempt applications (so that certain EEE containing a given substance may be placed on the market in specified cases), the incorporation of that substance in EEE by EU manufacturers would be subject to the authorisation procedure under REACH. However, the possibility is also open to exempt the uses covered by the RoHS restriction (including its exempted applications) from the authorisation process under REACH pursuant to Article 58(2) of REACH on the basis of the arguments described above.

An additional issue to be considered where RoHS provides for exempt applications is whether the pressure to substitute would be lost if the incorporation of substances in EEE was exempted from the REACH authorisation requirement. In this regard, it should be noted that decisions taken under Article 5 of RoHS to include materials in Annexes III and IV (exempt applications) must take into account the practicability, reliability or socioeconomic impact of substitution. Moreover, the exemptions are time limited and will only be renewed after submission of the information listed in Annex V to RoHS, including updated details of the practicability and reliability of substitution, an analysis of possible alternatives and a timetable for action to

develop /apply possible alternatives. All of these requirements may be seen as mirroring the substitution objective of the REACH authorisation procedure.

While recognising the preference for RoHS to deal with all aspects of the incorporation of substances in EEE, a case-by-case analysis may conclude that the restriction of a substance under RoHS with exempted applications does not constitute “proper control” for the purposes of Article 58(2) of REACH. In this event it is worth underlining that subjecting the inclusion of a substance to REACH authorisation for manufacture of EEE for which an exemption has been granted under RoHS will only apply to EU manufacturers and not to imported EEE manufactured outside the EU. Consequently, there would be an additional burden for EU manufacturers until such time that the exemption under RoHS is terminated.

3. Our request and/or inquiry

3.1 Avoidance of double regulation for lead oxide

REACH authorisation bans substances and mixtures in a specific use without authorisation approval. If lead oxide were listed in annex XIV without any exemption or exclusion, it would arise contradiction between REACH authorisation and RoHS exemption described in 2.2.

As referred above, B.1(b) of CA/36/2014 describes that there is possibility for the uses covered by the RoHS restriction (including its exempted applications) to be exempted from the authorisation process under REACH pursuant to Article 58(2) of REACH. We believe that this possibility should be well considered, because technical and socio-economic reviews have been already done thoroughly for the exempted applications and these exempted applications will be reviewed periodically.

We would like you to discuss with your RoHS expert and to make coherent decision of how to handle the lead oxide.

3.2 Appropriate legislative measure

A measure of lead oxide is only an example and it is not solved for potential future substances. This chaotic scenario may be avoided if you can exclude the whole batch of relevant RoHS exempted applications from the REACH authorisation scope. There might be two possible ways to amend Article 2 or Article 56, 1(b) in connection with Article 58(2) to implement it legally, however it is easy to imagine that it will take much time because it is an entire legislative proposal by co-decision process. Another easier way might create a guidance document.



We don't care the way and method, but we strongly request to clarify how to handle avoidance of double regulation between REACH and RoHS in practical REACH and RoHS process.

[About JBCE]

Created in 1999, **the Japan Business Council in Europe (JBCE)** is a leading European organisation representing the interests of almost 70 multinational companies of Japanese parentage active in Europe. Our members operate across a wide range of sectors, including information and communication technology, electronics, chemicals, automotive, machinery, wholesale trade, precision instruments, pharmaceutical, railway, textiles and glass products. Together, our member companies represented in 2013 global sales of 1.4 trillion euros. Building a new era of cooperation between the European Union (EU) and Japan is the core of our activities. www.jbce.org