29 January 2020

COMMENTS ON
ÖKO-INSTITUT RoHS ANNEX II STUDY (PACK 15)
SUBSTANCE PRIORITISATION
STAKEHOLDER CONSULTATION 4 (2019)

Comments provided by:

Nickel Institute
Brussels, Belgium

For additional information:

Dr. Mark Mistry
Senior Manager Public Policy, Nickel Institute
mmistry@nickelinstitute.org

Mr. Marco Vallini
Manager Public Policy, Nickel Institute
mvallini@nickelinstitute.org

Introduction

Nickel Institute[1] (NI) takes note of the "2019 Stakeholder consultation 4 – Substance Prioritisation" launched by the Öko-Institut in the context of the "Study to support the review of the list of restricted substances and to assess a new exemption request under RoHS 2 (Pack 15)". The aim of the consultation is to collect quantitative and usage information for 43 substances shortlisted by the Öko-Institut as "highest priority group" in electric and electronic equipment (EEE), with a view to a refined prioritisation for future review cycles of the RoHS restriction.

Comments on substance prioritisation

We note that nickel metal (CAS N°7440-02-0) and nickel monoxide (CAS N°1313-99-1) have been included in the shortlisted substances and we would like to provide comments on their inclusion as well as some general remarks on the process.

Remarks on the prioritisation process

We believe that the current process is unclear and inadequate. It is unrealistic to expect stakeholders to provide quantitative and usage information on a wide range of substances with many different properties and applications, when there is lack of clarity on the approach followed and its application to the Inventory. Furthermore, we have concerns about the RoHS Methodology.

- Before carrying out the prioritisation, it is necessary to finalise and agree on the revised Inventory, which should only contain relevant substances present in EEE.

- Similarly, before requesting tonnage and usage data, including availability of alternatives and substitution, which is complex and sensitive information, it would be appropriate to agree on what the priority substances should be and why, in a transparent, predictable and robust framework.

- The current process is unclear and lacks transparency with regard to application of the Methodology and the determination of the priority groups / substances. The approach and the calculation followed to assign a specific substance to a specific priority group, based on the RoHS Methodology criteria, are not available to stakeholders.

Remarks on the shortlisting of nickel metal and nickel monoxide

- As we have already pointed out in our previous comments[2], it is unclear what approach has been followed to pre-assess nickel and assign it to the highest priority group ("Group I") in the Inventory. In particular, we do not understand why nickel metal was assigned to the "Hazard Group I" category. As noted in our previous contribution, nickel metal has a different and lower hazard classification compared to inorganic nickel compounds as well as compared to other

[1] Nickel Institute (NI) is the global association of the world's primary nickel producers. NI is the centre of excellence for information on nickel and nickel-containing materials. NiPERA Inc., the separately incorporated science division of NI, undertakes leading edge nickel scientific research relevant to human health and the environment. NI's identification number in the EU Transparency Register is 77947983421-21.

[2] Nickel Institute's Comments on RoHS stakeholder consultation 2, 2019 (link)

Nickel Institute – Brussels Office
Rue Belliard, 12 – B-1040 Brussels, Belgium – Tel: +32 2 290 32 00 – Fax: + 32 2 290 32 20
Email: brussels@nickelinstitute.org – Web: www.nickelinstitute.org

substances which were assigned to this group. We have not received any feedback on our 2019 submission.

- Most importantly, nickel metal is not classified as a CMR Cat. 1A-1B under the CLP Regulation and it is not a PBT substance. The harmonised hazard classification of nickel metal in the CLP Regulation does not seem to fulfil the criteria which would justify assigning a substance to Human Health or Environmental "Hazard Group I" based on the RoHS Methodology itself.

- Furthermore, it is worth noting that the main application of nickel (70% of its first use globally) is in the production of stainless steel, which has been used safely for decades in EEE and other products, and which was assigned to the lowest priority (Group X) in the Inventory. As an alloying element, nickel enhances important properties of stainless steel such as formability, weldability and ductility, while increasing corrosion resistance.

- Previous extensive assessments by public authorities such as the EU Risk Assessment Report (2008), the Danish EPA "Survey of nickel metal" (2015) or a comprehensive Risk Management Option Analysis under REACH (2016) did not identify any concern that would require EU regulatory action on nickel metal (or nickel monoxide or other nickel compounds) under RoHS.

- Previous assessments recommended the establishment of EU occupational limit (OEL) values under workplace legislation, as the most effective and efficient risk management measure to address potential risks from the use of nickel compounds such as nickel monoxide. The regulatory process to set OELs at EU level is ongoing and a legislative proposal from the European Commission is expected in the second half 2020.

- Overall, the potential risks from the use of nickel metal, nickel monoxide or other compounds are already thoroughly addressed and managed by wide-ranging existing EU regulations in the field of chemicals (e.g. REACH), environmental policy (EQS Directive, Industrial Emissions Directive, etc.) as well as existing and upcoming EU regulation on workplace legislation (4th revision of Directive 2004/37/EC).

Finally, it is important to keep in mind that:

- Due to its unique physico-chemical properties, nickel in alloys or coating plays a crucial role in many EEE, ensuring performance, functionality and reliability in many applications and technologies.

- In addition, nickel is fully recyclable and – given its economic value – its presence is an incentive for the recycling of EEE as well as nickel-containing alloys and materials. It thus contributes to the circular economy objective, an important aspect of the European Green Deal.

Conclusions

For all these reasons, we conclude that nickel and nickel monoxide are not relevant substances for a RoHS restriction and do not fulfil the criteria of Article 6 of the RoHS Directive. Nickel metal and nickel monoxide should therefore be removed from the shortlist. Their listing is not justified and can create uncertainty, concerns and confusion in the EEE value chain in Europe.