



ITI Comments on Draft Brazil RoHS Regulation

April 16, 2019

The Information Technology Industry Council (ITI), the global voice of the tech sector, is the premier advocate and thought leader in the United States and around the world for the information and communications technology (ICT) industry, and represents leading companies from across the ICT sector, including hardware, software, digital services, semiconductor, network equipment and Internet companies. Our members are the leaders in the energy and environment space as we stand in the forefront as innovators to advance circular economy and adopt the concept of eco-designs. We take environmental responsibility seriously and we seek to be a resource and partner to the Brazilian government. In that spirit, we appreciate the opportunity to submit the following recommendations on the draft RoHS regulation in Brazil for your consideration, and we look forward to a continued dialogue with the Government of Brazil on this important issue.

Recommendations

Section	Issue	Comments
CAPÍTULO I CAPÍTULO II Art. 5 Section 1	Categories of EEE	<p>Neither the current scope, definition of EEE, or Annexes use categories of EEE. We recommend that the Regulations incorporate categories of EEE covered by the Regulation so that implementation can be set out over time, starting initially within a period of ninety (90) days from publication of the final resolution, and thereafter harmonized with the requirements of the EEE Categories set out in Annex I to the EU RoHS Directive . We also recommend introducing separate and extended compliance dates for Categories 8 (Medical devices) and 9 (Monitoring and control instruments including industrial monitoring and control instruments) for future updates.</p> <p><u>Justification</u></p> <p>Many descriptions of exemptions in the EU RoHS Directive are based on or specific to categories of EEE. For example, Annex IV of the EU RoHS Directive creates additional exempted applications for categories 8 and 9. If Brazil has the intention to introduce EU RoHS-like exemptions, we recommend also using the categories of EEE. In addition, the current draft RoHS resolution does not have different timelines for different categories of EEE. However, the EU and many other countries introducing RoHS have set other timelines and additional exemptions specific to EU categories 8 and 9, due to their unique characteristics, which include high complexity, extended lifecycle, extensive reuse, among others. The products in EU categories 8 and 9 have very long design life and many product models are provided in small quantities. For such product categories, special care is needed.</p>

<p>CAPÍTULO II Art. 4, Section 1, I</p>	<p>Timeline for restriction of PBB and PBDE</p>	<p>As a general rule, we recommend that no requirements become effective at the date of entry into force/at the date of publication of the final Resolution. Thus, we recommend that the timeline for restriction of PBB and PBDE is not set at the date of entry into force or at the date of publication of the final Resolution and be harmonized with other first RoHS-restricted substance groups.</p> <p><u>Justification</u></p> <p>RoHS affects industry and other stakeholders at large, including but not limited to businesses and public authorities, worldwide. The amount of time and work required to effectively disseminate requirements and take appropriate action globally should not be underestimated.</p> <p>To ensure effective global public awareness and understanding of final requirements and adequate implementation, a transition period should be set.</p>
<p>CAPÍTULO II Art. 5, Section 1, 2 and 3 Art. 6</p>	<p>Publication of exemptions and procedures for setting exemptions</p>	<p>The proposed conditions for how exemptions are established is internationally harmonized and reasonable. However, we recommend adding the following additional parameters foreseen in the EU RoHS Directive to be taken into account in the decision-making regarding Exemptions: “Decisions on the inclusion of materials and components of EEE in the lists of Exempted applications and on the duration of any exemptions shall take into account the availability of substitutes and the socioeconomic impact of substitution. Decisions on the duration of any exemptions shall take into account any potential adverse impacts on innovation. Life-cycle thinking on the overall impacts of the exemption shall apply, where relevant.”</p> <p>If the initial list of exempted applications is foreseen to be released within a period of ninety (90) days from publication of the final resolution, and given that applications for renewals of existing EU RoHS Exemptions are due to be filed with the EU within the period of November 2019 to January 2021, we recommend the initial list of exempted applications to be aligned with applications set in Annexes III and IV of the EU RoHS Directive, but deleting each “date of applicability”.</p> <p>We do not recommend Brazil duplicate the process and full burden of the EU scheme for reviewing RoHS exemptions once per 5 year period. Brazil should instead monitor the developments of the EU process and harmonize with its results in the form of amendments to the initial listing published by the Ministry.</p> <p><u>Justification</u></p>

		<p>As key participants in the EU RoHS Exemptions Umbrella Industry Project, currently involving 37+ partnering industry associations globally, ITI's members have been key contributors to the current EU RoHS Directive and Exemptions' technical adaptations to everyone's benefit. Further, we are long-standing supporters of efforts to simplify legislation, remove red tape and lower costs without compromising policy objectives, contributing to a clear, stable and predictable regulatory framework supportive of growth and jobs. In that regard, we look forward to supporting you in producing the initial listing of exempted applications, and the procedures and criteria for the application and the examination of applications for the granting, renewal and/or withdrawal of exemptions.</p> <p>Recognizing the nature and breadth of this complex task, we look forward to sharing views, experience and concrete examples, and jointly exploring opportunities for regulatory simplifications and improvements, taking into account key considerations such as stakeholder need for predictability and legal certainty, consistent regulatory environment and global harmonization, scientific methodology with key consideration of socioeconomic impacts, realistic timings and feasible transition periods, and beyond. Finally, RoHS Exemptions affect industry and other stakeholders at large, including but not limited to businesses and public authorities, worldwide. Requirements are complex, and the amount of time and work required to effectively disseminate requirements and changes and to allow stakeholders at large to take appropriate action globally should not be underestimated.</p>
<p>CAPÍTULO III Art. 7 Section 3</p>	<p>Preparing technical documents in Portuguese language</p>	<p>We would recommend accepting technical documents in English which is accepted globally as the standard language.</p> <p><u>Justification</u></p> <p>EEEs are manufactured through long supply chains that are widely and internationally constructed, and technical documents are prepared in many places within such supply chains. Considering these situations, preparing documents in English is the most workable and feasible way for global companies. Further, as an example, under EU RoHS, in the case of a reasoned request by national authorities in the context of post market surveillance, it is sufficient for the manufacturer to provide the part of the technical documentation related to the claimed non-conformity appropriate for demonstrating whether the issue has been dealt with by the manufacturer. Therefore, under EU RoHS, the request for translation of technical documentation should be limited to these parts of the documentation, and if the market surveillance authority considers a translation necessary, it must clearly indicate the part of the documentation to be translated and allow</p>

		<p>reasonable time for this to take place. Under EU RoHS, no further conditions may be imposed on the translation, such as a requirement of a translator accredited or recognized by the public authorities. Finally, under EU RoHS, national authorities might accept a language they understand, and which is different from the national language(s), and the language chosen could be a third language, if accepted by that authority.</p>
<p>CAPÍTULO V Art. 16</p>	<p>Contact address in Brazil</p>	<p>We recommend not requiring a Brazil address on the product label and suggest requiring it in the supporting documentation instead.</p> <p><u>Justification</u> EU/CE Conformity Mark regulations do require a EU based address, but this is only required to be reported in the declaration of conformity, not on the product label. We suggest requiring a single point of contact as per the EU RoHS Directive on the product or with the documentation, but that address does not need to be in Brazil.</p>
<p>CAPÍTULO III Art. 9</p>	<p>Importers information</p>	<p>We suggest alignment with the EU requirements for importers; that information may be made available when requested, but not provided in advance of import.</p> <p><u>Justification</u> Importers have an obligation to request to the manufacturer and also maintain the technical documentation, which is very different from EU legislation requirement for importers to ensure that the technical documentation can be made available to the competent national authority upon request. Under EU harmonization legislation/EU RoHS, importers are not obliged to have a copy of the technical documentation but they must ensure that it is made available to the relevant authorities upon request.</p>
<p>Procedimento de Avaliação de Conformidade especialmente for 3)</p>	<p>International standard for declaration of conformity</p>	<p>We would like to urge Brazil to align proposed RoHS requirements with international standards and best practices provided in IEC 63000.</p> <p>Demonstrating conformity to RoHS according to IEC 63000 should be also accepted without requiring “Bill of materials” or “parts list”. Most of detailed description in 3) d, e and f should not be provided as standardized procedures but as additional guidelines.</p> <p><u>Justification</u> The introduction of IEC 63000 states as follows: “For those restrictions that apply at the “homogeneous material” level, it is impractical for manufacturers of complex products to undertake their own testing of all materials contained in the final assembled product. Instead, manufacturers work with their suppliers to manage compliance and compile technical documentation as</p>

		<p><i>evidence of compliance. This approach is well recognised by both industry and enforcement authorities.”</i></p> <p>The proposed procedure seems to lack the fundamental recognition of this fact in EEE.</p> <p>RoHS requires restriction of substances contained in EEE setting maximum concentration values in relation to each “homogeneous material”. Tens of thousands, or in cases of complex EEE, hundreds of thousands of homogeneous materials exist in one EEE. EEE are complex product, and various suppliers all over the world are involved in their manufacturing from raw materials, parts or components to the final products.</p> <p>Especially for complex EEE, making BOM or parts list is unfeasible in practice. Even if it can be carried out, providing the list may cause serious problems in intellectual property rights and trade secret issues. One can copy a product with detailed a BOM.</p> <p>We suppose that the detailed description of BOM and parts list would have been derived from the description of “Information showing the relationship between the documents and the corresponding materials, parts and/or subassemblies in the product”. The manufacturers have made some information according to this description, which is appropriate to their products. How such information is provided should be determined by manufacturers depending on their products and scheme of the supply.</p>
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ITI appreciates the opportunity to this request for comment, and we would like to reiterate our industry’s commitment for environment and sustainability. We look forward to continuing to work with the Government of Brazil and relevant stakeholders in finding the best solutions.

Sincerely,



Ashley Friedman
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