



March 27, 2023

Office of Pollution Prevention and Toxics
U.S. Environmental Protection Agency
1200 Pennsylvania Ave. NW
Washington, DC 20460

Submitted online via the Federal eRulemaking Portal: <http://www.regulations.gov>

RE: Docket Id No. EPA-HQ-OPPT-2022-0867 – Significant New Use Rules; Per- and Polyfluoroalkyl Substances (PFAS) Designated as Inactive on the TSCA Inventory.

Under Section 5(a)(2) of the Toxic Substances Control Act (TSCA), EPA is proposing a Significant New Use Rule (SNUR) for certain PFAS that are designated as inactive on the TSCA Inventory. This action would require persons subject to the SNUR to notify the EPA at least 90 days before commencing manufacture or processing for any use.

The Consumer Technology Association™ (CTA), IPC, and Information Technology Industry Council (ITI) respectfully submit these comments on behalf of the approximately 5,000 member companies including printed circuit board manufacturers, electronics manufacturing services, cable and wire harness manufacturers, electronics industry suppliers, original equipment manufacturers, retailers, innovators, and information and consumer technology leaders. Collectively, over 80 percent of the companies represented by our membership are small and medium-sized businesses and start-ups. Our members represent the complex, global supply chain of electronics, and include a wide range of manufacturers and importers – what our members manufacture, and import is used in thousands of articles across dozens of industry sectors, including products found in homes and businesses around the world.

Following our review of the SNUR proposal, we offer the following recommendations:

1. We encourage EPA to maintain the articles exemption.
2. We encourage EPA to maintain the impurities exemption and expand the byproducts exemption.
3. We encourage EPA to specify the Chemical Abstracts Service (CAS) Registry Number (RN) or accession numbers of the 330 substances.

Articles Exemption:

EPA has significantly expanded its regulation of articles by more frequently eliminating the article exemption. While EPA has the authority to do so, it must recognize the challenges inherent in understanding 100 percent composition of complex articles and that generating that information retrospectively is essentially impossible. In response to the proposed Section X. Regulatory Alternative Considered, we would like to express our support for leaving the article exemption at 40 CFR 721.45(f). in place.

We encourage maintaining the articles exemption based on the following reasons: (1) EPA is proposing a SNUR predicated on the fact that no entity reported the proposed substances as having been manufactured or imported as substances during the Notices of Activity (NOA) look-back period. There were no

requirements during the NOA look back period for article importers or processors to provide information or data, so EPA has no evidence that these PFAS are not present in imported articles, meaning the presence in articles may be an on-going use that cannot be defined as a significant new use. (2) Articles generally result in significantly lower exposure opportunities than bulk chemicals and (3) The level of detail, resources, and information needed to report PFAS in articles is incredibly difficult and burdensome to industry. If this is information that EPA intends to seek, EPA must undertake separate rulemaking. As discussed in more detail below, it will be impossible to sufficiently delve into complex supply chains to document the presence or absence of these 330 PFAS chemicals during the comment period of this SNUR, we therefore urge to leave the article exemption in place.

As we have indicated in previous comments¹ the electronics industry consists of thousands of companies that manufacture and sell a multitude of complex articles that are produced via global, multi-layered supply chains. It is therefore extremely difficult for electronic industry manufacturers and importers to obtain credible and accurate information regarding specific chemical substance content. Complex articles are not a homogeneous material, and instead include possibly thousands of components supported by a multi-tier, global supply chain. The identification of chemicals in complex articles will be incredibly costly². Visibility from the original equipment manufacturers, the electronics assemblers, or the electronics suppliers up the supply chain to the chemical formulators and manufacturers is constrained by the limited ability to connect with and obligate all supply chain partners to reliably collect and accurately report data on the presence or absence of PFAS used in any number of different electronics manufacturing processes, parts, and components. If EPA prohibits the import of articles that contain one of these substances, importers will have to know that none is present at any level—basically an impossible task in a complex supply chain. Suppliers simply will not certify to the complete absence of any of these substances because no supplier could ensure that was the case. While the SNUR focuses on 330 PFAS chemicals, the difficulties and complications related to obtaining data across the supply chain remains even with a limited scope.

In the context of this proposed rule, most electronics article manufacturers and importers do not have information on the PFAS content of the electronics articles for a variety of reasons, including:

- Many PFAS are not currently tracked through supply chains. This is changing as more manufacturers and importers seek to better understand supply chains, but more thorough understanding of the electronics supply chain will take a significant amount of time. Furthermore, as stated above, suppliers will not certify to zero presence of PFAS. At best, they might certify to no intentionally added PFAS and no PFAS above a certain threshold.
- Articles are not supplied with and generally do not require detailed material content documentation (e.g., safety data sheets for chemicals), and there are no universal best practices or regulatory requirements for full material disclosure or full substance disclosure requirements.

¹ Comments of the Consumer Technology Association (CTA), IPC, and Information Technology Industry Council (ITI)(September 27, 2021), <https://www.regulations.gov/comment/EPA-HQ-OPPT-2020-0549-0087>.

² TSCA 8a7 Small Business Advocacy review SBAR Panel Report on EPA's Proposed Rule Toxic Substances Control Act Reporting and Recordkeeping Requirements for Perfluoroalkyl and Polyfluoroalkyl Substances (EPA-HQ-OPPT-2020-0549-0123), <https://www.regulations.gov/document/EPA-HQ-OPPT-2020-0549-0123>

Again, this practice is changing, but getting full visibility into the entire supply chain is a slow evolution. It cannot be completed in time to comply with this SNUR if the article exemption is not offered.

- Electronics articles have evolved with time and legacy data regarding substance content may not be available. Similarly, many electronics companies and suppliers have merged or gone out of business, and legacy data on former products may not be available.
- Substance data management systems are not widely used. There are limitations to these systems and their robustness continues to be updated with time. As stated above, this is changing as more supply chain participants seek additional data.

As EPA is aware, an importer has strict liability for compliance with, for example, a SNUR. If EPA effectively bans the import of these 330 substances as part of articles and an importer of an article later is found to have, knowingly or not, one of these substances in the article, EPA's standard view is that the importer has violated TSCA. With the proposed extremely short compliance date, the only way an importer could ensure compliance is to cease to import an article. The economic disruption that would ensue could be catastrophic.

In summary, because EPA exempted substances as part of the NOA reporting, EPA cannot know whether any of the inactive substances in this SNUR proposal are not currently manufactured or imported as part of an article. Therefore, EPA cannot state with certainty that such uses are not on-going, meaning such a use cannot be a significant new use. For electronics manufacturers to develop knowledge on the presence of absence of the substances proposed in the SNUR, EPA would have to allow substantial time (likely many years) for every electronics manufacturer or importer to analyze their supply chain and research every chemical substance and article for the listed 330 substances. This requires a high level of intricacy and detail that is beyond the scope of the SNUR. If EPA requires such data, it must be through its existing chemical authority under Section 6 and based on a need founded by sound science.

Byproducts and Impurities:

We thank EPA for proposing in this SNUR to exempt from the notice requirement PFAS present as impurities and certain byproducts, but we believe that the exemption for byproducts should be expanded beyond the current exemption of “[a]ny byproduct which is not used for commercial purposes” to include all byproducts exempt under 40 C.F.R. §720.30(g) and (h). Such byproducts (along with impurities) were (and are) exempt from NOA reporting. As with article imports, EPA has no facts to support that the manufacture or import of these 330 substances are not currently manufactured or imported as impurities or byproducts exempt under 40 C.F.R. §720.30(g) and (h). As with our comment above regarding PFAS in articles, our view is that if EPA seeks to prohibit manufacture or import of these substances, it must do so through its Section 6 authority.



Transparency on 330 PFAS CAS Registry Numbers:

We would like to take the opportunity to further emphasize the point that PFAS are a large and diverse family of chemistry representing thousands of substances. When it comes to the regulation of this chemistry family, it is difficult for our industry to identify substances that do not have CAS RNs. CAS RNs are universally recognized chemical identifiers and are necessary in identifying the use and presence of substances. We respectfully request that EPA disclose the CAS RNs for the full list of 330 PFAS. Though this will require a minor disclosure of confidential business information (CBI) for the handful of substances that do not contain “fluor” in the generic name, it will be beneficial for industry to understand what chemicals specifically will be subject to the rule. Presumably, no entities have a commercial interest in these chemicals, so there is little risk or impacts in this disclosure. At a minimum, we urge EPA to disclose the accession numbers for all of these SNUR substances that are listed on the confidential portion of the Inventory. Identifying the small number of substances subject to this SNUR proposal that are listed with generic names that do not include an indication that a fluorine is present discloses only a minimal amount of information about those substances, so there is very little loss of confidential information. If EPA does not disclose the specific accession numbers for those substances, EPA may face dozens or hundreds of bona fide intent notices as companies seek to ensure that substances in their supply chain that might match one of those identities are not subject to this SNUR.

Conclusion:

CTA, IPC, and ITI appreciate the exemption of imported articles under this SNUR. Additionally, we strongly recommend the continued exemption of article manufacturers (including importers) from future TSCA regulations, including SNURs, as reference in Section X. Regulatory Alternative Considered. Reporting for electronics article manufacturers (including importers) will result in unreliable data to drive future EPA action, especially for reporting of historical data.

Thank you for the opportunity to provide comments on this proposed rule. We thank EPA for its continued collaboration in the areas of chemical reporting and disclosure. We look forward to any follow-up conversations to these comments.



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Consumer Technology Association

As North America's largest technology trade association, CTA® is the tech sector. Our members are the world's leading innovators – from startups to global brands – helping support more than 18 million American jobs. CTA's members have long been recognized for their commitment and leadership in innovation and sustainability, often taking measures to exceed regulatory requirements on environmental design, energy efficiency, and product and packaging stewardship. CTA owns and produces CES® – the most influential tech event on the planet. Find us at CTA.tech. Follow us [@CTAtech](https://twitter.com/CTAtech).

IPC

IPC (www.IPC.org) is a global industry association dedicated to the competitive excellence and financial success of its 3,000+ member companies which represent all facets of the electronics industry, including design, printed board manufacturing, electronics assembly, and testing. As a member-driven organization and leading source for industry standards, training, industry intelligence and public policy advocacy, IPC supports programs to meet the needs of an estimated \$2 trillion global electronics industry. IPC maintains additional offices in Washington, D.C.; Atlanta, GA.; Miami, FL.; Brussels, Belgium; Munich, Germany; Bangalore and New Delhi, India; Bangkok, Thailand; and Qingdao, Shanghai, Shenzhen, Chengdu, Suzhou and Beijing, China.

Information Technology Industry Council (ITI)

The Information Technology Industry Council (ITI) is the premier global advocate for technology, representing the world's most innovative companies. Founded in 1916, ITI is an international trade association with a team of professionals on four continents. We promote public policies and industry standards that advance competition and innovation worldwide. Our diverse membership and expert staff provide policymakers the broadest perspective and thought leadership from technology, hardware, software, services, and related industries.