



August 7, 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-2023-0012 – Proposed Significant New Use Rules for Certain Non-ongoing Uses of Three Flame Retardants**

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 aerospace, automotive, semiconductors, as well as products found in homes and businesses around the world.

EPA is proposing a Significant New Use Rule (SNUR) for three flame retardants that the agency is currently evaluating under Section 5 of the Toxic Substances Control Act (TSCA). The SNURs would ensure that no one could begin manufacturing or processing these chemicals for a significant new use without agency review and risk determination. In addition, the proposed rule will help ensure that EPA's TSCA Section 6 risk evaluations for these chemicals include consideration of all existing Conditions of Use (COUs). The agency is also proposing to significantly expand its regulation of chemicals in articles by eliminating the article exemption and is requesting comment on the alternative of making inapplicable the article exemption of 40 CFR 721.45(f). As we explain below, CTA, IPC, and ITI insist that it is imperative to retain the article exemption.

EPA may require a significant new use notice for the import of chemical substances as part of an article only where "the Administrator makes an affirmative finding that the reasonable potential for exposure to the chemical substance through the article or category of articles subject to the rule justifies notification." The 2016 amendments to TSCA require that a specific statutory finding must be made before EPA may promulgate or amend a SNUR to require significant new use reporting based on the presence of a specific chemical substance in a manufactured article. The 2016 amendments made clear that EPA must address the scientific bases for concluding there is a more-than-theoretical reason to anticipate that exposures will occur from the presence of a substance subject to a SNUR in a manufactured article. The regulated community expects that the agency would need to make such a finding on an article-specific basis,

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considering whether there are differences in potential releases depending on the substances and applications that may be covered by any SNUR that addresses articles. There may be many uses of TCEP, TBBPA, and TPP in many different articles that are not reasonably expected to be released in a manner that creates an unreasonable risk and, therefore, such substances should not be subject to a SNUR without the necessary foundation.

As we indicated in our previous comments<sup>1</sup> 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 homogeneous materials 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 costly.<sup>2</sup> 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 flame retardants 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, manufacturers will have to know that none is present at any level—basically an impossible task in a complex supply chain.

In 2023, in response to a request made by then OCSPP Assistant Administrator Dunn, the Assistant Administrator for Enforcement and Compliance Assurance recognized concerns raised by stakeholders regarding the broad definition of “manufacturers.”<sup>3</sup> That is, those that import the chemical substance in an “article,” produce the chemical substance as a “byproduct,” or produce or import the chemical substance as an “impurity.” These concerns remain relevant to both EPA and the stakeholders who raised them in 2020: extreme burden – if not impossibility – created by EPA in requiring importers of articles to identify the presence (or not) of substances in articles and potential requirements to test thousands of imported articles. That memorandum also reinforces EPA’s long-standing recognition that the benefits from requiring importers of articles to identify, collect, and submit data from a global supply chain are outweighed by the overwhelming costs.

According to EPA, numerous conditions of use have been identified during their Risk Evaluation process for these flame retardants. However, moving forward, EPA may not consider exemptions for uses not identified during this process. At the SNUR proposal stage, we will need to provide EPA with detailed application information. Further complicating matters is the possibility that suppliers may refuse to share information due to confidential business information, making it impossible to determine the substance’s

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<sup>1</sup> Comments of the Consumer Technology Association (CTA), IPC, and Information Technology Industry Council (ITI) comment submitted to EPA on September 27, 2021, <https://www.regulations.gov/comment/EPA-HQ-OPPT-2020-0549-0087>. Comments of the Consumer Technology Association (CTA), IPC, and Information Technology Industry Council (ITI), comment submitted to EPA on May 17, 2021, <https://www.regulations.gov/document/EPA-HQ-OPPT-2021-0598-0015>.

<sup>2</sup> 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>

<sup>3</sup> U.S. Environmental Protection Agency. Assistant Administrator for Enforcement and Compliance Assurance. No Action Assurance Regarding Self-Identification Requirement for Certain “Manufacturers” Subject to the TSCA Fees Rule. Memorandum to Assistant Administrator Dunn. March 24, 2020.

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use. It is crucial to recognize that manufacturers dealing with articles often have less access to substance use information than upstream suppliers handling the substance directly.

In the context of this proposed rule, most electronics article manufacturers and importers do not have information on the flame retardant content, inclusive of TCEP, TBBPA, and TPP, of the electronics articles for a variety of reasons, including:

- Flame retardants are not currently tracked through supply chains. This is changing as more manufacturers and importers seek to better understand supply chains, but a more thorough understanding of the electronics supply chain will take multiple years, if not decades, to discover.
- 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 for electronic articles. 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. At a minimum, “repair as produced” principles need to be applied as well as acknowledgment of “sell through” dates and spare parts and products already in commerce.
- Substance data management systems are not widely used. Articles have never been required to be reported to the TSCA Inventory. There are limitations to trying to develop and manage such data management systems. 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 three 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 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. The wider implications of enacting new SNURs should be thoroughly considered.

### **Conclusion**

CTA, IPC, and ITI appreciate EPA’s efforts to list exempted uses of flame retardants under this SNUR. Additionally, we insist on the continued exemption of article manufacturers (including importers) from future TSCA regulations, including SNURs.

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](http://CTA.tech). Follow us [@CTAtech](https://twitter.com/CTAtech).

### **IPC**

IPC ([www.IPC.org](http://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.