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*Submitted electronically*

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Re: CTA Comments on Draft Regulatory Determinations Report to the Legislature

To the Washington Department of Ecology and the Safer Products for Washington Program:

On behalf of the Consumer Technology Association (CTA), we respectfully submit these comments on the [Draft Regulatory Determinations Report to the Legislature](#) for the Safer Products for Washington Implementation Phase 3 (“Draft Report”). We appreciate the opportunity to submit these comments and Ecology’s willingness to engage with stakeholders throughout this process.

CTA is North America’s largest technology trade association. Our members are the world’s leading innovators – from startups to global brands – helping support more than 18 million American jobs. Our member companies have long been recognized for their commitment and leadership in innovation and sustainability, often taking measures to exceed regulatory requirements on environmental design and product stewardship.

Our comments primarily engage with the section of the Draft Report related to organohalogen flame retardants (“HFRs”) in electronics enclosures. However, we also comment on PCBs in printing inks and bisphenols in thermal paper. First are brief, high-level comments on the overall approach and determinations by the Draft Report regarding HFRs in electronics enclosures. Then, more detailed comments regarding priority product scope, the determination of alternatives feasibility and availability, as well as a few comments on implementation of any potential regulations.

### **Draft Report’s Overall Approach on Electronics Enclosures**

The Draft Report proposes restricting all organohalogen flame retardants as a class in the enclosures of all electronic devices. We have concerns with treating all HFRs as a single class, restricting HFRs in the enclosures of all electronic devices, and the lack of analysis on how proposed alternatives impact product performance and economics.

In its review of HFRs, the Draft Report acknowledges there are insufficient data on the risk posed by all chemicals within the class. We do not believe a class-based approach, particularly one with incomplete assessment data, is a good foundation for regulating materials in products. When the Consumer Product Safety Commission examined whether to

regulate HFRs as a class in 2017, the CPSC's staff concluded that was that it was not reasonable to restrict HFRs as a class.<sup>1</sup> Then, in 2019, the National Academies of Sciences, Engineering, and Medicine looked at the same question and concluded that all HFRs should not be treated as an entire class but rather a subclass approach was preferable.<sup>2</sup> HFRs should not be restricted as an entire class, but rather given proper risk assessment and addressed through subclasses or individually.

The Draft Report also proposes regulating all electronic products as a single group of priority products. However, electronic devices and components are embedded in countless different product categories. Each of these products has different enclosures with different functional needs. Proposing a regulation on all electronic products is far too broad and goes beyond regulations in any other jurisdiction. The only state in the United States which restricts HFRs in electronics enclosures is New York which passed a law last month covering only electronic display enclosures.<sup>3</sup> In Europe, the Ecodesign Directive from 2019 also only restricts flame retardants in the enclosures of electronic displays and display stands.<sup>4</sup> These laws only prohibit HFRs in the enclosures of electronic displays and display stands and do not restrict HFRs in enclosures of other electronic products. We respectfully ask that any regulation limit its initial scope to just electronic display enclosures which ensures harmonization with other states and countries.

In its proposal to restrict HFRs in electronics enclosures, it seems that there has been no analysis on the proposed flame retardant alternatives' impact economics or on product performance beyond preventing fire. Without any such analysis, product manufacturers are unable to comment whether the alternatives proposed exist sufficiently in the global marketplace. Many electronic products and parts are part of a complex global supply chain, and there does not seem to be any determination on the global availability of these alternatives. The Draft Report addresses the use of non-HFRs to meet flammability standards in electronics enclosures, but it does not address whether or not the proposed alternatives have any impact on any other aspects of product functionality. Changing materials in plastics also changes the properties of those plastics, and the Draft Report has made no attempt to address how alternatives may change product performance. These elements should be considered when determining whether a proposed alternative is feasible and available.

### **Product Scope for Electric and Electronic Product Device Casings**

The Draft Report proposes restricting organohalogen flame retardants in device casings or enclosures of electric and electronic products. The section on scope defines casings as “the

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<sup>1</sup> CPSC staff [recommended](#) against treating HFRs as a class when examining a petition to restrict HFRs in electronics enclosures.

<sup>2</sup> <https://www.nap.edu/read/25412/chapter/1>

<sup>3</sup> New York Senate Bill 4630-B was signed into law in December 2021. <https://www.nysenate.gov/legislation/bills/2021/S4630>

<sup>4</sup> EU Ecodesign Directive (2019) laying down ecodesign requirements for electronic displays <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02019R2021-20210501>. This Directive and the New York law only apply to display enclosures and display stands. They do not apply to displays with a screen area 100cm<sup>2</sup> or smaller, projectors, all-in-one video conference systems, medical displays, VR headsets, displays integrated into certain other products, and industrial displays. Several other exemptions can be found in the statute. Any alignment with these laws should include the same scope.

exterior material of the electric or electronic product that serves as a barrier to surround ‘inaccessible electric component(s).’” The report lists a number of device enclosures which are in scope and provides examples of items not included in scope.<sup>5</sup> While this provides some guidance on the scope of products proposed as priority products, there are few clear definitions for product manufactures to rely on. We urge the Department of Ecology to consider much more specific definitions so manufacturers can know what is in or out of scope. We have included below a number of elements the Department should consider if it decides to move forward with restrictions in electronics enclosures:

- **Internal Components and Replacement Parts.** The lack of clear definitions leaves open the possibility that the scope of priority product includes replacement parts and electronic components sold independently. Often internal electronic components are sold separately and have their own plastic enclosures. The statutory exemption for “inaccessible electronic components” shows intent by the legislature to prevent internal components from being caught within the scope of this Draft Report. Any regulation should make clear that such parts and components are not within scope. Internal components and replacement parts of necessity use organohalogen flame retardants and the Draft Report has not provided evidence that alternatives are feasible and available for such components. One way to exempt replacement parts might be to look at the federal Consumer Product Safety Improvement Act where the CPSC provided an interpretation on exempting components and replacement parts. The law, which restricts lead in certain electronic products, exempts “components of electronic devices that are removeable or replaceable, such as battery packs and light bulbs that are inaccessible when the product is assembled in functional form...”<sup>6</sup> A definition which only covers enclosures of products in their assembled, functional form would successfully exempt replacement parts, components sold separately, as well as any parts which may be “accessible” during product repair. In addition to these concerns, we also suggest any definition should make clear that batteries, ports, jacks, hinges and buttons are excluded from scope.
- **Refurbished and repaired products.** The Draft Report is silent on how refurbished and repaired products might be treated. Any restriction on chemicals in products should have a clear exemption for refurbished and repaired products. The electronics industry supports a robust repair ecosystem. Repairing products or selling refurbished products which were manufactured before enforcement of any restrictions should not be disincentivized.
- **Screens on Electronic Devices.** We also suggest that Ecology clarify that screens are not within the scope of this Draft Report. Many screens on electronic devices are made of plastic and have different functionality requirements compared to other

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<sup>5</sup> From the Draft Report p. 50-51: Examples of items included in the scope of device casings or enclosures are: the external housing material of personal computers, laptops, monitors, televisions, mobile phones, kitchen appliances, washing machines, irons, and hair dryers, to name a few (not an exhaustive list). Examples of items not included in the scope of electric and electronic enclosures are printed circuit boards, internal fans, wires, cables, switches and connectors.

<sup>6</sup> The Consumer Product Safety Improvement Act limits lead in certain electronic devices.  
<https://www.law.cornell.edu/cfr/text/16/1500.88>

plastic enclosures. Without a thorough assessment of whether alternatives to HFRs are available and viable for screens, the Draft Report should not propose any restrictions on screens at this time.

- **Recycled plastic.** The Draft Report does not address any specific elements on recycled plastic. It is possible that recycled older electronics would contain HFRs and those HFRs could end up in recycled plastics in new devices. We think it important to encourage recycling by exempting articles which are made from recycled plastic, so long as no new prohibited chemicals are added during the recycling or production process. EPA has issued rules with similar language under TSCA which contain exemptions for products and articles made from recycled plastic.<sup>7</sup>
- **Research & Development.** Any potential restriction on electronics enclosures should include an exemption for research and development purposes. Manufacturers need the freedom to innovate, particularly in the constantly evolving technology and electronics space. TSCA recognizes the importance of allowing certain uses for research and development and provides some R&D exemptions.<sup>8</sup>

### **Feasible and Available Alternatives for HFRs in Electronics Casings**

A number of alternatives to organohalogen flame retardants are proposed in the Draft Report. However, at this time, we cannot make a good determination whether those alternatives are both feasible and available for all types of electronics products. As stated above, the electronics sector is incredibly complex and comprises countless product types. The class of restricted chemicals is also very broad. It could be months or years before manufacturers know well the viability for the proposed alternatives, so there is not sufficient time for CTA to comment on the viability of alternatives during this process.

Since manufacturers at this time cannot know whether the proposed alternatives are feasible and available for all uses in electronics enclosures, we believe it is important for Ecology to develop a procedure to remedy any issues that may arise if alternatives end up being not feasible and available. For example, other jurisdictions are restricting chemicals which are listed in the Draft Report as proposed alternatives including TPP and fluoroorganic compounds.<sup>9</sup> If proposed alternatives become unavailable due to regulation in other jurisdictions, or if they are found to be not viable in certain products for other reasons, there should be a mechanism to petition Ecology for a remedy from any restriction.

### **Implementation Timeline**

The current timeline set out by Safer Products for Washington program suggests adopting final rules in June 2023. Since electronic devices are manufactured through a complex global

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<sup>7</sup> EPA's rules for [DecaBDE](#) and [PIP \(3:1\)](#) in 2021 provide exemptions for articles and products made from recycled chemical-containing plastic provided no new amounts of that chemical is added during the recycling process or added to the articles and products made from the recycled plastic.

<sup>8</sup> [Section 5\(h\)\(3\) of TSCA](#) grants the EPA Administrator the ability to develop regulations exempting manufacturers from certain requirements for New Chemical Review if substances used only in small quantities for experimentation and analysis. [TSCA also contains exemption](#) for R&D for significant new uses.

<sup>9</sup> EPA is currently undergoing a [risk evaluation for TPP](#) under TSCA and may ban its use. [A new Maine law](#) has banned the sale of all products which contain a fully fluorinated carbon atom by 2030.

supply chain, manufacturers would require sufficient lead time to implement any regulatory changes. For manufacturers to transition to the proposed alternatives, any regulation should establish a compliance timeframe of at least 48 months after the effective date of final rule adoption. Four years may be sufficient for transition if alternatives are truly available, and there is international precedent for a 48-month compliance timeframe under both the European Restriction of Hazardous Substances in Electrical and Electronic Equipment 2 Directive (RoHS 2) and the European Chemical Agency's Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) regulation impacting articles. We request a harmonized approach with existing regulations for any phase down or phase out of chemicals.

In addition, any restriction on products should be enforced based upon date of manufacture and not date of sale. Companies manufacturing products can only control when the product is made and not when it is sold to the consumer. The date over which industry has the most control in the manufacturing, distribution and retail chain is the "manufactured by" date. Manufacturers have the ability to determine compliance because these "manufactured by" dates can be confirmed based on unique product identifiers such as lot or serial numbers which can be marked on finished goods. A prohibition based on date of sale means a finished product on retail shelves can be compliant one day and out of compliance the next. This can lead to significant resource loss and an increase in environmental impact as the materials and resources utilized to create finished goods are lost and additional resources are utilized to create the new finished goods to replace it.<sup>10</sup>

### **Ecology Should Provide CAS Registry Numbers**

If the Safer Products for Washington program does restrict or require reporting of chemicals in electronic enclosures, it is essential that the Department provide CAS RNs on any chemical that it restricts. As manufacturers communicate up the supply chain, these numbers are the most efficient and effective way to accurately ensure compliance. If companies are to quickly change their products to comply with a regulation, the Department providing CAS RNs would make it significantly easier and more efficient.

### **PCBs in Printing Inks**

The Draft Report has also selected PCBs in the priority products of paints and inks. The priority product scope at this time should be limited to those categories and not be expanded to other products which simply contain paints and inks. Expanding to products which contain paints/inks would require significantly more analysis and product evaluation in many other manufacturing categories beyond those addressed in the Draft Report in this section.

For printing inks, inkjet printer manufacturers use some inks which contain PCBs. There are some colors for which the use of PCB-containing pigments is technically essential. Inkjet printer manufacturers use the pigments for the inks in which PCBs have been reduced to Best Available Techniques (BAT) levels where possible.

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<sup>10</sup> For a more extensive discussion around timeframe for electronics to transition to alternatives, see comments submitted to EPA in 2021 by CTA, IPC, and ITI regarding TSCA regulation of PIP (3:1) <https://www.regulations.gov/comment/EPA-HQ-OPPT-2021-0202-0148>

### **Bisphenols in Thermal Paper**

The Draft Report proposes restricting the use of bisphenols in thermal paper. Much like our comments above on timeline for electronics enclosures, we respectfully ask that any regulation on thermal paper allow for sufficient lead time to transition to alternatives. We incorporate our comments above regarding electronic enclosures and ask for a 48-month timeframe after adoption of any final rule as well as enforcement based on a date of manufacture. In addition, any regulation should include reasonable concentration thresholds so that any impurities are exempt.

### **PFAS**

The Draft Report includes PFAS as a priority chemical class. While electronic products are not included as priority products in this section of the Draft Report, we would like to comment briefly given the possible precedential nature of including this priority chemical class. PFAS is defined as a class of chemicals with at least one fully fluorinated carbon atom, which we believe is far too broad a scope. This definition would encompass thousands of chemical compounds. The Draft Report should instead focus on narrower subclasses of PFAS.

### **Conclusion**

Thank you again for the opportunity to provide these comments on the Draft Report. We also would like to thank the Department of Ecology for being open to engaging with stakeholders in this process during the initial Phases, and we would welcome meeting with Department staff to further discuss our comments above. If you have any questions about our concerns, please do not hesitate to contact me at [dmoyer@cta.tech](mailto:dmoyer@cta.tech).

Sincerely,

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Consumer Technology Association