The International Bromine Council

30 August, 2022

Washington Department of Ecology
Email: SaferProductsWA@ecy.wa.gov

Re: Preliminary Draft Rule Regulating the Use of Flame Retardants

Our association, The International Bromine Council (BSEF), would like to comment on the recently proposed published Preliminary Draft Rule for Safer Products for Washington, the regulatory program to implement the Pollution Prevention for Healthy People and Puget Sound Act (Chapter 70A.350 RCW). In particular, we are strongly concerned with regards to the proposed 1) Restrictions for OFRs in plastics casings and enclosures for EEE intended for use indoors; and 2) Reporting requirements OFRs in plastic casings and enclosures for EEE intended for use outdoors.

Our global members Albemarle, ICL, Lanxess, and Tosoh produce organohalogen flame retardants, which prevent fires and make products safer. We share the concerns of our partner organization NAFRA regarding your proposal.

The Preliminary Draft Rule is Not the Least Burdensome Alternative

Any regulation associated with Safer Products for Washington is considered a significant legislative rule (Chapter 34.05.328 RCW), and as such must be "the least burdensome alternative for those required to comply with it that will achieve the general goals and specific objectives." The relative contribution of electronic and electrical casings to potential flame retardant exposure has not been well-established by the Department, and thus the regulatory proposal is overly broad and disproportionate to the risks that Ecology is seeking to mitigate.

Greater Consideration for Product Design

The Department in the Preliminary Draft Rule has proposed a reporting requirement, and not restrictions, for OFRs used in casings for EEE intended for outdoor use due to weathering concerns. The resin typically used in casings for outdoor products to address weathering concerns utilizes OFRs. In this instance, Ecology considered design considerations and performance criteria in developing its regulatory proposal. The Department should similarly consider product performance and design – including the potential for fire risk – as it evaluates possible regulatory actions for OFRs used in casings for EEE intended for indoor use.

Manufacturers Need Options to Meet Safety Requirements

Flame retardants are used by electronics manufacturers based on the product's attributes, properties, usage, and potential ignition threats. Although in some instances there might be alternatives to OFRs for use in electronic device casings, substitutes are not always practical or feasible, and there is a need for product manufacturers to have choices in meeting safety standards and performance criteria.

Proposal is not Supported by the State of the Science

The Department's current approach for regulating OFRs goes against the recommendations of the National Academy of Sciences (NAS) that this diverse group of chemicals cannot be treated as a single class for purposes of assessment. Instead, the NAS has recommended that OFRs be sorted into 14 subgroups based on chemical structure, physicochemical properties, and predicted biologic activity for purposes of further assessment.

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Regulations Should Align with State, Federal, and International Authorities
No state, federal, or international regulatory authority has imposed restrictions on flame retardants in EEE as broad as the ones being considered in Washington State. This would make the state an outlier, potentially both decreasing electronic and electrical products available for purchase in the state and potentially making the products that are available more likely to pose fire risks.

Regulatory Proposal Should be Narrowed
The Department should narrow the scope of the Preliminary Draft Rule by 1) specifying individual finished electronic and electrical products that it plans to regulate and 2) specifying individual OFRs by CAS Registry Number that it plans to regulate. This information is needed to alleviate confusion and avoid potential supply chain disruptions that could harm availability of some electronic and electrical products available for purchase in Washington State.

Based upon the facts and arguments set out above we ask the Washington State department to reconsider moving forward with the proposed restrictions and reporting requirements for OFRs in plastic device casings for electronic and electrical equipment.

Sincerely,

Michael Hack
Secretary General
BSEF aisbl, The International Bromine Council

About BSEF
BSEF – the International Bromine Council, is the global representative body for bromine producers and producers of bromine technologies. Originally founded in 1997, BSEF works to foster knowledge on the societal benefits of bromine and its applications. The members of BSEF are Albemarle Corporation, ICL Industrial Products, Lanxess and Tosoh.