

Consumer Technology Association

Attached is the Consumer Technology Association's comments on the Preliminary Draft Rule Language for the Safer Products law.

August 31, 2022

Washington Department of Ecology
P.O. Box 47600
Olympia, WA 98504-7600

Re: CTA Comments on Preliminary Draft Rule Language

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 [Preliminary Draft Rule Language](#) (Draft Rule) for the Safer Products Restrictions and Reporting law. 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.

We would like to thank Ecology providing this Draft Rule in advance of their formal rulemaking. This engagement is useful for industry to get a perspective on what regulations may look like as well as advance dialogue among stakeholders. We expect to have additional comments during the next phase of rulemaking, but for now, we provide the following feedback on these sections in the Draft Rule:

015 Applicability

In the Applicability section, we believe the word “repair” should be included. This would recognize that some components may need to be replaced due to normal maintenance schedules while others are needed to repair a damaged or defective product. Both the product and the corresponding replacement parts for that product should be excluded in 015(2):

*015(2)(d) Consumer product **repair and** replacement components manufactured before the effective date of the restriction.*

In addition, replacement parts which are manufactured after the effective date may be needed parts for products which are manufactured before the effective date. This would allow for the continued service and repair of older finished goods without having to generate unnecessary waste. These replacement parts for older products may need to continue to contain restricted substances, so we ask that they also be excluded and listed in 015(2).

We support Ecology applying the regulations in this Draft Rule to products “manufactured by” the enforcement date.

020 Requesting an Exemption

We appreciate the creation of an exemption process within this Draft Rule. This will allow for needed flexibility given the wide-ranging restrictions proposed in the Draft Rule. There may be circumstances in the future where Ecology’s proposed alternatives are not feasible and/or available. We hope that Ecology will expand on this section to provide a clear framework for how to request an exemption. It would be useful to specify the timeline for an exemption application and approval. If a manufacturer submits a request for an exemption, the Department should state whether the manufacturer is able to continue selling a product during the time until the Department grants/denies an exemption request.

025 Acronyms and Definitions

Displays and Televisions. Section 112 on Flame Retardants creates a different compliance timeline for displays and televisions from all other electronic products. We support this distinction given that existing laws in other jurisdictions only restrict flame retardants in displays and televisions but do not restrict them in any other electronic products. Washington would be the first jurisdiction to apply these restrictions to all electronics.

We recommend adding definitions for Displays and Televisions into Section 025 using the definition and scope for these products used in the European Union¹. New York state recently passed a law restricting organohalogen flame retardants in televisions and displays, but they still have yet to enact regulations to specify some of the unclear issues around scope in their statute. Therefore, we recommend Ecology aligning with the existing law in the EU. The EU definition has a number of products which are excluded from their definition of “displays,” and we recommend that Ecology follow these exclusions when applying their stricter timeframe for displays and televisions.

Electronic product. We recognize that the definition provided in the Draft Rule is from the Safer Products statute. However, there could still be significant confusion over what falls under the definition of “electronic product” since the language is a list of products that are “included” within the scope of that term. We ask that Ecology further clarify the statutory definition for “electronic product” especially whether this list of products within the definition is exclusive.² The definition of “electronic product” also references “peripherals” which is left undefined but should be defined within the Draft Rule.

Intended for Indoor/Outdoor Use. These definitions potentially conflict. While the definition of “indoor” says a product “designed primarily for use inside buildings,” the definition for “outdoor” specifies a product designed to maintain functionality after extended exposure to outdoor elements. It is possible for a product to meet both of these definitions.

¹ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02019R2021-20210501>

² In addition, we direct Ecology to the definitions under New York’s new flame retardants statute which define “consumer product” and “display.” <https://www.nysenate.gov/legislation/laws/ENV/37-1001>

If the intent is to exempt products which will be exposed to outdoor elements for extended time, we recommend the definition of indoor be altered to say “intended **only** for indoor use.” Then, the definition for outdoor could encompass all other products which fit the Draft Rule definition. If Ecology does not plan to alter these definitions, we ask that they clarify and provide examples of what types of products fall under the two definitions.

There will also be products which fall under neither of the two definitions in the Draft Rule. For example, some electric power tools like electric chainsaws are not designed primarily for use inside buildings but also are not designed to be exposed to water or immersion for an extended time. This is another situation where it would be practical to define “indoor” products as “intended only for indoor use” and then products like chainsaws would fit into a broader outdoor definition.

Organohalogen. Since the Draft Rule restrictions only specify bromine, chlorine, and fluorine, we recommend clarifying by limiting the definition to these three specific halogens as shown with this edit: *means a class of chemicals that includes any chemical containing one or more of the halogen elements bromine, chlorine, or fluorine bonded to a carbon.*

Product component. Throughout the Draft Rule, the definition of “product component” seems to be used inconsistently and the listed definition might better be applied to describe “product material.” Components are made up of parts. Parts make up components and components make up finished goods. The definitions for “product component” and “product part” should be separate, distinct, and precise.

060 Previously-owned priority consumer products

The Draft Rule bans the sale of previously-owned priority consumer products that contain a priority chemical above the applicable threshold level. This rule will create unnecessary waste with adverse environmental impacts by prohibiting the resale of existing products. It also conflicts with Draft Rule 015(2)(d) which states that the chapter does not apply to products manufactured before the effective date of restriction. We respectfully ask Ecology to expressly exempt previously-owned products and align with TSCA.³ Allowing such use of products supports wider circular economy goals. However, if Ecology retains the language in Section 060, it should clarify whether it applies to products which are repaired and/or refurbished which use some parts manufactured prior to the effective date.

065 Reporting Requirements

Under the section on Reporting Requirements in the Draft Rule, we ask that Ecology allow for the option to report generic names of chemicals. We also recommend Ecology provide for ways reporting parties can comply if the necessary information is unavailable to a reporting party. Notification standards should be based on reasonably ascertainable information. We also would like Ecology to provide further clarity and give examples as to what types of information they are requesting under sections 3(a)-3(g).

³ The following section in TSCA allows for sale of previously-owned consumer products:
<https://www.ecfr.gov/current/title-40/chapter-I/subchapter-R/part-751/subpart-E/section-751.401>

112 Flame Retardants

112(1)(a) Applicability

For section 112(1)(a)(i) and 112(2)(a)(i) we suggest that Ecology clarify that the regulation applies to the enclosures of the electronic products and that the enclosures themselves are not the products. One solution may be the following edit: *This subsection applies to **the plastic external enclosures** of the following consumer products.*

~~*Plastic external enclosures of*~~ *Electric and electronic products intended for **indoor** use that are powered by either of the following...*

For part 112(1)(a)(ii)(D), this section lists a number of external components which are not part of the product enclosure like wires, cords, and cables. Ecology should state whether this list is exhaustive or simply a list of examples. For similar but unlisted components such as adapters and external power supplies, it should be clarified whether these are considered within the scope of this section.

For part 112(1)(a)(ii)(G), we recommend a slightly modified definition which provides more detail on the scope of this section: *Internal **parts, components and consumables** that are removable and replaceable, but not accessible **during normal product operation** once the product is in its fully assembled and functional form.* As stated in the definitions section above, parts and components are distinct and it would be practical to define them separately.

Recycled plastic. The Draft Rule does not provide any reference to the use of recycled plastic. It is possible that recycled older electronics would contain restricted substances in some amount and that this could end up in the recycled plastic used to make 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 exemption for products and articles made from recycled plastic.⁴

112(1)(b) Compliance Schedule

We ask that Ecology alter 112(b)(iii) to take effect on June 1, 2027 for all products instead of 2026 for some businesses. 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. There is precedent for a 48-month compliance timeframe under both the RoHS 2 and REACH regulations. For an in-depth discussion for why 48 months is necessary, we incorporate CTA's comments to Ecology from January 2022⁵ and CTA's comments submitted to EPA in 2021.⁶

112(1)(c) Restriction

⁴ 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.

⁵ CTA comments to Ecology January 2022: https://scs-public.s3-us-gov-west-1.amazonaws.com/env_production/oid100/did200002/pid_202268/assets/merged/li03ii2_document.pdf?v=953QVP6SW

⁶ CTA, IPC, and ITI comments to EPA on TSCA regulations: <https://www.regulations.gov/comment/EPA-HQ-OPPT-2021-0202-0148>

In this section, Ecology states a presumption that the presence of certain halogens indicates that they are used as organohalogen flame retardants. Using analytical methods for determining the total bromine or other elements would not differentiate the use of halogens as organohalogen flame retardants versus some other use. For example, if a product used fluorinated coatings, the total fluorine test would identify the use of fluorine and this would lead to an inaccurate assumption that it is from an organohalogen flame retardant. This presumption sets up a very costly and challenging mechanism for manufacturers to comply.

We do not think Ecology should use this presumption to structure this restriction. However, if it does continue with this presumption, 112(1)(c)(iii)(B) should be harmonized with 112(1)(c)(ii) with the following: *A statement that the consumer product described in (a) of this subsection does **not** contain more than 1,000 ppm of any **individual** intentionally added organohalogen flame retardant, and evidence supporting that statement. Include information, data, and sources relevant to demonstrate the ~~organohalogen~~ **detection of halogens** is from a source other than **organohalogen** flame retardants.*

112(2)(b) Compliance Schedule

For section 112(2) regarding plastic external enclosures for electronic products for outdoor use, we ask that Ecology change its reporting requirement to January 1, 2025. Manufacturers need at least 18 months to survey supply chains for the use of flame retardants in external enclosure parts of 0.5g or more.

112(2)(c) Reporting

Ecology should use the same threshold limits in 112(2) that it used in 112(1). This would be 1000 ppm for individual and 1500 ppm for combined intentionally added organohalogen flame retardants. Companies need some threshold limit to determine the use of these chemicals in parts.

Additional comments

Research and 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 sector. TSCA recognizes the importance of allowing certain uses for research and development and provides some R&D exemptions.⁷

Ecology should provide CAS Registry Numbers for all proposed restrictions. It is essential that the Department of Ecology provide Chemical Abstract Services Registry Numbers (CAS RNs) on any chemical that it restricts in consumer products. As manufacturers communicate across the supply chain, referring to these identification numbers is the most effective way to accurately ensure compliance. If companies are to change their products to comply with any chemical regulation in a timely manner, the Department providing CAS RNs would make it significantly easier and more efficient to accomplish.

⁷ [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.

Imaging Equipment. We ask that Ecology clarify whether imaging equipment (such as printers, scanners, multi-function devices, etc.) are in scope for this Draft Rule. If imaging equipment is included, we ask that Ecology apply similar exclusions that are used in EPEAT (IEEE1680.2) or Blue Angel (DE-UZ 219) for hazardous substances in casings and casing parts for plastics. The criterion and exemption described in DE-UZ 219 exempt certain fluoroorganic additives, fluorinated plastics, certain plastic parts close to heating and fuser elements, certain reused parts, and plastic parts with a mass less than or equal to 25g and not the 0.5g outlined in the Draft Rule.⁸ We recognize that Ecology used the 0.5g exclusion based on TCO certification, however, manufacturers of imaging equipment often use the other standards referenced above. We recommend that Ecology reference these alternative standards for imaging equipment.

Bisphenols

In the Draft Rule's section about bisphenols in thermal paper, we suggest that Ecology provide a clear definition of "thermal paper." In addition, we respectfully ask that Ecology regulate "intentionally added bisphenols" and remove the 200 ppm threshold. Bisphenols may be present as impurities or contaminants, and there may be no numerical thresholds that manufacturers are aware of in terms of the amount of impurities present.

PFAS

The Draft Rule includes PFAS as a priority chemical class. While electronic products are not included as priority products, we would like to comment briefly given the possible precedential nature of including this priority chemical class. The definition of PFAS in the Draft Rule would encompass thousands of chemical compounds which is far too broad a scope. Instead, it should focus on narrower subclasses of PFAS. We also ask Ecology explain the basis for concluding that a detection of total fluorine equates to the intentional addition of PFAS. Fluorine may be present in products for reasons other than PFAS. If Ecology wants to ensure that priority chemicals are properly regulated, it should not assume that the presence of total fluorine indicates an intentional use of PFAS. This assumption may collaterally impact the use of other fluorinated non-PFAS substances and go far beyond the scope of the Department's regulatory intent. Finally, we suggest that Ecology in its Rulemaking clarify that fabrics that have already been treated themselves are not within scope.

Conclusion

Thank you again for the opportunity to provide these comments on the Preliminary Draft Rule Language. If you have any questions about our comments, please do not hesitate to contact me at dmoyer@cta.tech.

Sincerely,
Dan Moyer
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Consumer Technology Association

⁸ Full details on how plastics enclosures in imaging equipment are handled can be found in Section 3.2.1 here: <https://produktinfo.blauer-engel.de/uploads/criteriafile/en/DE-UZ%20219-202101-en%20Criteria-V3-2022-06-03.pdf>

