Arnold & Porter

Camille Heyboer
+1 202.942.6420 Direct
Camille.Heyboer@arnoldporter.com

July 9, 2026

VIA REGULATIONS.GOV

James Yan
New Chemicals Division
Office of Pollution Prevention and Toxics
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington, D.C. 20460

Re: Significant New Use Rules on Certain Chemical Substances (26-2), 91 Fed. Reg. 22,075 (Apr. 24, 2026); Docket No. EPA-HQ-OPPT-2025-2932

Dear Mr. Yan:

Chemical Users Coalition (CUC) appreciates the opportunity to provide these comments regarding the U.S. Environmental Protection Agency's (EPA's or the Agency's) proposed Significant New Use Rules (the "SNUR") for the chemical substances cobalt lithium manganese nickel oxide, metals-doped (generic) and cobalt lithium manganese nickel oxide, metals-doped (generic) (the "SNUR substances").

CUC is an association of companies from diverse industries that are interested in chemical management policy from the perspective of those who use, rather than manufacture, chemical substances.[1] CUC members acquire a wide range of formulations and articles from suppliers, often importing complex pieces of equipment that may contain a multitude of components, each of which is itself a finished article. CUC encourages the development of chemical regulatory policies that protect human health and the environment while simultaneously fostering the pursuit of technological innovation. Aligning these goals is particularly important in the context of chemical management policy in a highly competitive global economy.

The Requirements of the Proposed SNUR are Unclear and Impracticable.

CUC is requesting that EPA withdraw the proposed SNUR because certain provisions of the regulatory language are unclear and will be impracticable for users of the

[1] The members of the Chemical Users Coalition are Airbus S.A.S., The Boeing Company, GE Vernova, HP Incorporated, IBM Company, Intel Corporation, Lockheed Martin Corporation, National Electrical Manufacturers Association, RTX, Sony Electronics Inc., and TDK U.S.A. Corporation.

SNUR substances (and entities that receive manufactured/imported articles incorporating the SNUR substances) to comply with its terms.

For example, the Agency has not provided a clear explanation of how it distinguishes between the "processing" and "use" of the SNUR substances or how it will apply its interpretations of these terms to activities such as the repair of batteries containing the SNUR substances or the incorporation of such batteries into more complex articles. Further, it is unclear how (if at all) the requirements of the proposed SNUR would apply to the import of batteries containing the SNUR substances, either by themselves or when embedded or incorporated into larger articles. Relatedly, to the extent that the proposed SNUR would restrict the manufacture and processing of articles (*i.e.*, batteries) that contain the SNUR substances, the Agency has not satisfied the requirements of TSCA section 5(a)(5). This section specifies that the Administrator may only require a SNUR notification for the "import or processing of a chemical substance as part of an article…if the Administrator makes an affirmative finding in a rule that the reasonable potential for exposure to the chemical substance through the article or category of articles subject to the rule justifies notification." Neither the proposed regulation nor the accompanying preamble includes such a finding.

Additionally, as proposed, the SNUR will create regulatory confusion and compliance challenges within the supply chain among the manufacturers/importers, distributors, users, and recyclers of batteries that contain the SNUR substances. Specifically, such confusion will be created by the proposed language in 40 C.F.R. § 721.12219 and 40 C.F.R. § 721.12220 stating that:

> "The article exemption applies unless/until the article has been shredded or processed such that dust is generated. Once the article containing the substance is or has been shredded or otherwise handled such that there is potential for exposure to or release of the substance, the article exemption no longer applies."

The proposed language appears to provide that the terms of the SNUR (other than the labeling provisions) are inapplicable if the SNUR substances are included in a battery or other manufactured article, but that the applicability of the article exemption is revoked once the article has been shredded or otherwise processed such that dust is generated. CUC previously filed comments on EPA's proposed Significant New Use Rules on Certain Chemical Substances (25-2.5e), 90 Fed. Reg. 49,180 (Nov. 3, 2025), which included similar language with respect to the applicability (or lack thereof) of the articles

exemption.[2] As noted in CUC's prior comments, this regulatory language and approach to triggering a SNU notification responsibility potentially imposes new and complicating obligations on those entities downstream of the manufacturers (including importers) of a chemical substance, in addition to the manufacturers of batteries that contain the SNUR substances, and entities that acquire such batteries for use. These complications are exacerbated by the proposed recordkeeping obligations to document compliance with the many provisions of the SNUR as proposed. Furthermore, it is not clear how compliance with this proposed SNUR would be monitored and enforced as to downstream entities.

The Proposed SNUR May Cover Ongoing Uses.

It is also possible that the proposed SNUR would inadvertently impact existing (ongoing) uses of the SNUR substances because it is unclear the extent to which the SNUR substances already may be used in the manufacture of imported batteries which may also already be recycled in the United States at various facilities in which the proposed controls have not been required or implemented. While the proposed SNUR explains why the Agency believes the uses of the SNUN substances it proposes to designate as significant new uses are not ongoing, it does not specifically address the possibility of ongoing manufacture and processing of the SNUN substances that would not have been subject to TSCA section 5 notice requirements—*e.g.*, the import of the SNUN substances when incorporated into an article and the subsequent recycling of such articles.

Thus, there is risk that finalizing this SNUR as proposed would result in a disruption to the ongoing TSCA compliant import and recycling of batteries and battery-containing products, impacting the availability of these products throughout the supply chain and causing interruptions to the recovery of critical minerals during the recycling of these products. Such a result would be contrary to EPA's long-established interpretations of its section 5 authority and judicial interpretation of this section, and inconsistent with Agency policy.[3]

The Proposed SNUR Would Impose Significant Burdens on Importers of Articles.

Further, CUC members have been unable to definitively determine whether batteries that they currently import may contain either of the SNUR substances because the

---

[2] Comments of the Chemical Users Coalition, Significant New Use Rules on Certain Chemical Substances (25-2.5e), Docket EPA-HQ-OPPT-2025-0314 (Dec. 3, 2025), https://www.regulations.gov/comment/EPA-HQ-OPPT-2025-0314-0065.

[3] *See, e.g.*, EPA, Extended Battery Producer Responsibility Framework – Battery Recycling Goals and Reporting Requirements (Sept. 8, 2025), https://www.epa.gov/electronics-batteries-management/extended-battery-producer-responsibility-framework-battery (noting "the United States' broader goals of restoring domestic energy dominance and reducing dependence on foreign energy sources by increasing the recycling and recyclability of critical minerals and materials").

specific chemical identities of the SNUR substances have been claimed as confidential. Based on the generic chemical identities provided in the SNUR, CUC members have conducted investigations into their product lines to identify which products may be impacted by the SNUR. One CUC member identified anywhere from 0 to more than 700 potentially impacted products at a global level, depending on the specific identities of the chemical substances that are subject to the SNUR. Thus, if finalized, this SNUR could have a significant impact on CUC members' existing uses of the SNUR chemicals, especially to those who manufacture and distribute product globally.

Similarly, if finalized as proposed, downstream users of chemical substances such as CUC's members—and in particular those importing articles that contain chemical substances—would face a significant burden when trying to comply with the terms of the proposed SNUR. For example, to the extent that the proposed SNUR would impose requirements on imported articles, such as batteries or products containing batteries, importers of such articles would first have to determine the specific identities of the chemical substances contained in the articles they import, then request an applicability determination with respect to the SNUR pursuant to 40 C.F.R. § 721.11. The supplier of a chemical substance within an article—particularly a complex article—is likely to be many levels upstream of the U.S. importer of such article and the identity of the supplier may not be known to the article importer. If the supplier is known to the article importer, the supplier may be unwilling to share the specific chemical identities of the substances contained in a battery because the supplier views such information as confidential. Without this information, article importers like CUC members could not request an applicability determination under 40 C.F.R. § 721.11.

Additionally, even if the supplier of the chemical substance is known to the article importer in the U.S. and is willing to share the specific chemical identity of the substances contained in a battery, the article importer would have to seek an applicability determination each time it imports a different type of battery (or similar batteries from a different supplier) that may contain a mixed metal oxide. Thus, in the unlikely event that an article importer in the U.S. could identify the supplier of chemical substances in a battery and obtain information about the specific chemical identity of such substances, the burden on the article importer would still be significant, and the opportunities for inadvertent compliance failures considerable.

Finally, under the proposed Sections 721.12219(a)(2)(iii) and 721.12220(a)(2)(iii), it would be a significant new use to use the SNUR substances "without labeling the exterior of batteries or the exterior of packaging containing multiple batteries to indicate that they contain a substance that is subject to restrictions under TSCA, including during recycling…." Assuming that the proposed SNUR would impose requirements on imported articles that are or contain batteries and the importers of such articles are able to determine

that the SNUR substances are contained within these batteries, importers would then have to contend with the interplay between numerous state battery labeling regulations and the battery labeling provisions of the proposed SNUR. CUC highly encourages EPA to consult the appropriate state agencies regarding the purpose of and need for current battery labeling requirements and the potential impact of the proposed SNUR on such requirements before incorporating labeling provisions into any final SNUR.

* * *

For these reasons, CUC urges EPA to withdraw the proposed SNUR or, at minimum, decline to finalize the proposed provisions implicating articles or any limitations on the articles exemption. In developing a revised SNUR, CUC recommends that the Agency collect information on and consider existing exposure controls and other responsible risk management practices currently in place in facilities that process and use chemical substances similar to the SNUR substances. CUC also encourages the Agency to meet with stakeholders who are downstream users of chemical substances—like CUC's members—to discuss the potential impacts on their operations of the approach to regulating articles that is outlined in the proposed SNUR.

CUC appreciates your consideration of these comments. If you have any questions relating to this submission, please feel free to contact me.

Best regards,

Camille Heyboer
Counsel for CUC

cc: Lawrence Culleen
CUC Members