DE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 751

[EPA-HQ-OPPT-2021-0202; FRL-6015.5-03-OCSPP]

RIN 2070-AK89

Regulation of Persistent, Bioaccumulative, and Toxic Chemicals Under TSCA Section 6(h); Phenol, Isopropylated Phosphate (3:1); Compliance Date Extension

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is amending the regulations applicable to phenol, isopropylated phosphate (3:1) (PIP (3:1)) promulgated under the Toxic Substances Control Act (TSCA). Specifically, EPA is extending the compliance date applicable to the processing and distribution in commerce of certain PIP (3:1)-containing articles, and the PIP (3:1) used to make those articles from March 8, 2021, to March 8, 2022. For such articles, EPA is also extending the compliance date for the recordkeeping requirements applicable to manufacturers, processors, and distributors from March 8, 2021, to March 8, 2022. The articles covered by this amendment include a wide range of key consumer and commercial goods such as cellular telephones, laptop computers, and other electronic and electrical devices and industrial and commercial equipment used in various sectors including transportation, life sciences, and semiconductor production.

DATES: This final rule is effective on [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA-HQ-OPPT-2021-0202, is available at *https://www.regulations.gov*.

Due to the public health concerns related to COVID-19, the EPA Docket Center (EPA/DC) and Reading Room are closed to visitors with limited exceptions. The staff continue to provide remote

customer service via email, phone, and webform. For the latest status information on EPA/DC services and docket access, visit *https://www.epa.gov/dockets*.

FOR FURTHER INFORMATION CONTACT: *For technical information contact*: Cindy Wheeler, Existing Chemicals Risk Management Division, Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (202) 566-0484; email address: *TSCA-PBT-rules@epa.gov.*

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SUPPLEMENTARY INFORMATION:

I. Executive Summary

A. Does this Action Apply to Me?

You may be potentially affected by this action if you manufacture (including import), process, distribute in commerce, or use phenol, isopropylated phosphate (3:1) (PIP (3:1)), or PIP (3:1)-containing articles, especially plastic articles that are components of electronics or electrical articles. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Petroleum Refineries (NAICS Code 324110);
- All Other Basic Organic Chemical Manufacturing (NAICS Code 325199);
- Plastics Material and Resin Manufacturing (NAICS Code 325211);
- All Other Miscellaneous Chemical Product and Preparation Manufacturing (NAICS Code 325998);
- Machinery Manufacturing (NAICS Code 333);

• Air-Conditioning and Warm Air Heating Equipment and Commercial and Industrial Refrigeration Equipment Manufacturing (NAICS Code 333415);

• Other Communications Equipment Manufacturing (NAICS Code 334290);

• Computer and Electronic Product Manufacturing (NAICS Code 334);

• Small Electrical Appliance Manufacturing (NAICS Code 335210);

• Major Household Appliance Manufacturing (NAICS Code 335220);

• Motor and Generator Manufacturing (NAICS Code 335312);

• Switchgear and Switchboard Apparatus Manufacturing (NAICS Code 335313);

• Relay and Industrial Control Manufacturing (NAICS Code 335314);

• Other Communication and Energy Wire Manufacturing (NAICS Code 335929);

• Current-carrying Wiring Device Manufacturing (NAICS Code 335931);

• Transportation Equipment Manufacturing (NAICS Code 336);

• Musical Instrument Manufacturing (NAICS Code 339992);

• All Other Miscellaneous Manufacturing (NAICS Code 339999);

• Other Chemical and Allied Products Merchant Wholesalers (NAICS Code 424690);

• Motor Vehicle and Parts Dealers (NAICS Code 441);

• All Other Home Furnishings Stores (NAICS Code 442299);

• Electronics and Appliance Stores (NAICS Code 443);

• Building Material and Garden Equipment and Supplies Dealers (NAICS Code 444);

• Research and Development in the Physical, Engineering, and Life Sciences (NAICS Code 541710).

B. What is the Agency's Authority for Taking this Action?

1. Toxic Substances Control Act (TSCA). TSCA section 6(h), 15 U.S.C. 2605(h), directs EPA to take expedited action on certain persistent, bioaccumulative, and toxic (PBT) chemical substances. For chemical substances that meet the statutory criteria, EPA is directed to issue final rules that address the risks of injury to health or the environment that the Administrator determines are present and to reduce exposure to the substance(s) to the extent practicable. In response to this directive, EPA identified PIP (3:1) as meeting the TSCA section 6(h) criteria and issued a final rule for PIP (3:1) on January 6, 2021 (Ref. 1). The January 2021 final rule prohibits the processing and distribution of PIP (3:1), PIP (3:1)-containing products, and PIP (3:1)-containing articles, with specified exclusions; prohibits or restricts the release of PIP (3:1) to water during manufacturing, processing, distribution, and commercial use; requires persons manufacturing, processing, and distributing in commerce PIP (3:1) and products containing PIP (3:1) to notify their customers of these prohibitions and restrictions and to keep records. Several different compliance dates were established, the first of which was March 8, 2021, after which processing and distribution of PIP (3:1), PIP (3:1)-containing products, and PIP (3:1)-containing articles were prohibited unless an alternative compliance date or exclusion was otherwise provided. With the obligation to promulgate these rules, the Agency also has the authority to amend them if circumstances change, including in relation to the receipt of new information and in relation to compliance deadlines established under TSCA section 6(d). It is well settled that EPA has inherent authority to reconsider, revise, or repeal past decisions to the extent permitted by law so long as the Agency provides a reasoned explanation. See *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009). Here, as explained further in Unit I.D., based on information submitted by regulated entities since the publication of the final rule in January 2021, the Agency has determined that a limited extension to certain PIP (3:1) revised compliance dates is appropriate and necessary to address comments that the original compliance dates were not practicable and did not provide adequate transition time because they would have caused extensive harm to the economy and public due to unavailability of critical goods and equipment. This limited extension to the referenced compliance dates is intended to allow EPA

additional time to consider how best to approach the concerns raised in comments seeking longer term extensions.

2. Administrative Procedure Act (APA). APA section 553(d), 5 U.S.C. 553(d), provides that the publication of a substantive rule must occur no later than 30 days before its effective date, with certain exceptions. The purpose of this provision is to "give affected parties a reasonable time to adjust their behavior before the final rule takes effect." See *Omnipoint Corp. v. Fed. Commc'n Comm'n*, 78 F.3d 620, 630 (D.C. Cir. 1996); see also *United States v. Gavrilovic*, 551 F.2d 1099, 1104 (8th Cir. 1977) (quoting legislative history). Of relevance here, APA section 553(d)(1), 5 U.S.C. 553(d)(1), provides that final rules shall not become effective until 30 days after publication in the *Federal Register* "except . . . a substantive rule which grants or recognizes an exemption or relieves a restriction." However, when the agency grants or recognizes an exemption or relieves a restriction, affected parties do not need a reasonable time to adjust because the effect is not adverse. See *Indep. U.S. Tanker Owners Comm. v. Skinner,* 884 F.2d 587 (D.C. Cir. 1989) (upholding immediate effective date for a final rule intended to avoid disruption in domestic trade by lifting a ban on vessels participating in domestic shipping), *mandate modified on other grounds,* 901 F.2d 1116 (D.C. Cir. 1990). EPA has determined that this rule relieves a restriction by providing additional time for regulated entities to comply with the applicable requirements. Accordingly, EPA is making this rule effective immediately upon publication.

C. What Action is the Agency Taking?

EPA is amending the regulations at 40 CFR 751.407(a)(2) to provide for a phased-in prohibition for the processing and distributing in commerce of PIP (3:1) for use in certain articles and for the processing and distributing in commerce of certain PIP (3:1)-containing articles. Articles covered by this phased-in prohibition include any article not otherwise covered by a different compliance deadline or exclusion described in 40 CFR 751.407(a)(2)(ii) or (b). The compliance date for the prohibitions on processing and distributing in commerce of PIP (3:1) for use in articles, and the processing and distributing in commerce of PIP (3:1)-containing articles in the final rule published on January 6, 2021 (Ref. 1), as well as for the recordkeeping requirements, was 60 days after the date of publication, or

March 8, 2021. With this amendment, EPA is extending the compliance date for the processing and distributing in commerce of PIP (3:1) for use in articles, and the processing and distributing in commerce of PIP (3:1)-containing articles, to March 8, 2022. With respect to articles covered by this final rule, EPA is also extending the compliance date from March 8, 2021, to March 8, 2022, for the recordkeeping requirements applicable to manufacturers, processors, and distributors of PIP (3:1)-containing articles. In addition to this final rulemaking, EPA is planning to issue a separate notice of proposed rulemaking (NPRM) in the near future to request comment on a further compliance date extension for certain PIP (3:1)-containing articles, the PIP (3:1) used to make those articles, and the recordkeeping associated with PIP (3:1)-containing articles.

D. Why is the Agency Taking This Action?

EPA is issuing this final rule to address the hardships inadvertently created by the January 2021 final rule on PIP (3:1) (Ref. 1) due to uses and supply chain challenges that were not communicated to EPA until after the rule was published. Shortly after the final rule was published in January 2021, many stakeholders, including, for example, the electronics and electrical manufacturing sector and their customers, raised significant concerns about their ability to meet the March 8, 2021, compliance date for PIP (3:1)-containing articles (Ref. 2). These stakeholders requested an extension of the compliance date in order to clear the existing articles through the supply chain, find and certify an alternative chemical, and produce or import new articles that do not contain PIP (3:1). In the *Federal Register* of March 16, 2021 (Ref. 3), EPA requested additional comment on this specific issue (Ref. 3), as well as on other aspects of all of the TSCA section 6(h) final rules in general (Refs. 4, 5, 6, 7). According to the comments received in response to the March comments solicitation, a wide range of key consumer and commercial goods are affected by the prohibitions in the PIP (3:1) final rule such as cellular telephones, laptop computers, and other electronic devices and industrial and commercial equipment used in various sectors including transportation, life sciences, and semiconductor production (Ref. 8). This action will ensure that the supply chains for these important articles continue uninterrupted in the near term

while allowing EPA to take additional comment on a separate proposal for a longer-term compliance date extension.

E. What are the Incremental Economic Impacts?

EPA evaluated the potential incremental economic impacts and determined that these changes reduce the existing burden of this action. The quantified effect of this compliance date extension reflects the difference between the incremental cost and benefits of the final rule as it was originally promulgated and the incremental cost and benefits of this final rule with the compliance date in place. Quantified costs were estimated for substitution and recordkeeping by moving the associated costs, assuming they will be incurred as the compliance date extension expires. In summary, extending the compliance date by one year for PIP (3:1)-containing articles would result in an estimated annualized cost savings of $0.9 million (from a cost of $23.6 million for the original rule to $22.7 million) at a 3 percent discount rate or $1.3 million (from $22.8 million for the original rule to $21.5 million for this final rule) at a 7 percent discount rate over a 25-year time horizon. Other qualitative costs savings may include allowance of more time for manufacturers and retailers to sell articles prior to the prohibition deadline rather than being forced to dispose of them, thereby avoiding loss of revenue from those products. Secondly, any reformulation costs (such as research and development, laboratory testing, and re-labeling) could be reduced since companies will have more time to gather information regarding the steps involved in the reformulation process. The level of these cost savings is dependent on complexity of achieving needed efficacy, length of time needed for testing and quality control, and the current status of development of alternatives, which may vary greatly by sector and end use product. Lastly, the compliance date extension may provide additional time for information gathering through the supply chain to alleviate the necessity for chemical testing of certain articles. Although the benefits of the final rule were not quantified, the extension would also postpone decreases in potential releases and exposures to PIP (3:1). Due to discounting, in a manner similar to costs, this postponement would lead to lower potential benefits. On balance, this rule is appropriate in light of the disruptive consequences of implementing the prohibition without the compliance extension. The economic consequences (such as

loss of supply) could be severe, given the apparent ubiquity of the chemical in commerce. Thus, EPA has determined that the cost savings and avoidance of disruption to industry outweigh the delayed realization of benefits that may accrue from reduced exposure.

II. Background

A. History of the TSCA Rulemaking on PIP (3:1)

TSCA section 6(h) requires EPA to take expedited regulatory action under TSCA section 6(a) for certain PBT chemicals identified in the 2014 Update to the TSCA Work Plan for Chemical Assessments (Ref. 9). More specifically, under TSCA section 6(h)(1)(A), the subject chemical substances are those that:

- EPA has a reasonable basis to conclude are toxic and that with respect to persistence and bioaccumulation score high for one and either high or moderate for the other, pursuant to the 2012 TSCA Work Plan Chemicals: Methods Document (Ref. 10) or a successor scoring system;
- Are not a metal or a metal compound; and
- Are chemical substances for which EPA has not completed a TSCA Work Plan Problem Formulation, initiated a review under TSCA section 5, or entered into a consent agreement under TSCA section 4, prior to June 22, 2016, the date that the Frank R. Lautenberg Chemical Safety for the 21st Century Act became law.

In addition, in order for a chemical substance to be subject to expedited action, TSCA section 6(h)(1)(B) states that EPA must find that exposure to the chemical substance under the conditions of use is likely to the general population or to a potentially exposed or susceptible subpopulation identified by the Administrator, or to the environment on the basis of an exposure and use assessment conducted by EPA. For chemical substances subject to TSCA section 6(h), EPA was directed to issue a proposed rule by June 22, 2019, and a final rule no later than 18 months after issuance of the proposal. The statute further provides that the Administrator shall not be required to conduct risk evaluations on chemical substances that are subject to TSCA section 6(h)(1).

1. June 2019 proposed rule for PBT chemicals under TSCA section 6(h). EPA issued a proposed rule for PIP (3:1) and four other chemical substances in June 2019 (Ref. 11). EPA proposed to determine that PIP (3:1) met the TSCA section 6(h)(1)(A) criteria for expedited action. In addition, based on an exposure and use assessment for PIP (3:1) (Ref. 12) conducted as directed by TSCA section 6(h)(1)(B) and which was subject to peer review and public comment, EPA also proposed to find that exposure to PIP (3:1) is likely.

During the development of the 2019 proposed rule (Ref. 11), EPA conducted extensive outreach to understand the uses of the five PBTs. Outreach included a public webinar, a Small Business Roundtable hosted by the Small Business Administration Office of Advocacy, and meetings with more than 90 stakeholders. Based on this outreach as well as EPA's practicability analysis for various prohibitions and restrictions, EPA proposed extended compliance dates for some uses of PIP (3:1) and exclusions for others.

The public comment period on the proposal was open for a total of 90 days, closing on October 28, 2019. EPA received a total of 48 comments, with three commenters sending multiple submissions with attached files, for a total of 58 submissions on the proposal for all five of the PBT chemicals. This includes the previous request for a comment period extension (EPA-HQ-OPPT-2019-0080-0526). Two commenters submitted confidential business information (CBI) or copyrighted documents with information regarding economic analysis and market trends. Of the comment submissions, 30 of the approximately 50 comments addressed EPA's proposed regulation of PIP (3:1). Copies of all the non-CBI documents, or redacted versions without CBI, are available via *https://www.regulations.gov* in docket ID number EPA-HQ-OPPT-2019-0080.

2. *January 2021 final rule for PIP (3:1) under TSCA section 6(h).* The final rule for PIP (3:1) was published in the *Federal Register* on January 6, 2021 (Ref. 1). EPA determined in the final rule that PIP (3:1) met the TSCA section 6(h)(1)(A) criteria for expedited action. In addition, EPA determined, in accordance with TSCA section 6(h)(1)(B), that exposure to PIP (3:1) was likely under the conditions of use to the general population, to a potentially exposed or susceptible subpopulation, or the

environment. The PIP (3:1) final rule prohibits processing and distribution in commerce of PIP (3:1), and products or articles containing the chemical substance, for all uses, except for the following different compliance dates or exclusions:

- Use in photographic printing articles after January 1, 2022;
- Use in aviation hydraulic fluid in hydraulic systems and use in specialty hydraulic fluids for military applications;
- Use in lubricants and greases;
- Use in new and replacement parts for the aerospace and automotive industries;
- Use as an intermediate in the manufacture of cyanoacrylate glue;
- Use in specialized engine air filters for locomotive and marine applications;
- Use in sealants and adhesives after January 6, 2025; and
- Recycling of plastic that contained PIP (3:1) before the plastic was recycled, and the articles and products made from such recycled plastic, so long as no new PIP (3:1) is added during the recycling or production process.

In addition, the January 2021 final rule requires manufacturers, processors, and distributors of PIP (3:1) and products containing PIP (3:1) to notify their customers of these restrictions. Finally, the rule prohibits releases to water from the remaining manufacturing, processing, and distribution in commerce activities, and requires commercial users of PIP (3:1) and PIP (3:1)-containing products to follow existing regulations and best practices to prevent releases to water during use.

Also defined at 40 CFR 751.403 for the purposes of 40 CFR part 751, subpart E, which includes the January 2021 PIP (3:1) final rule, are the terms “article” and “product” (Ref. 1). “Article” is defined as a manufactured item: (1) Which is formed to a specific shape or design during manufacture, (2) Which has end use function(s) dependent in whole or in part upon its shape or design during end use, and (3) Which has either no change of chemical composition during its end use or only those changes of

composition which have no commercial purpose separate from that of the article, and that result from a chemical reaction that occurs upon end use of other chemical substances, mixtures, or articles; except that fluids and particles are not considered articles regardless of shape or design. For example, laptop computers are articles, as are the internal components such as chips, wiring, and cooling fans. "Product" is defined as the chemical substance, a mixture containing the chemical substance, or any object that contains the chemical substance or mixture containing the chemical substance that is not an article. For example, hydraulic fluids and motor oils are products.

The January 2021 final rule differed from the proposal in several ways as a result of the information provided during the public comment period. The exclusions that were based on information received during the public comment period are the exclusion for the use of PIP (3:1) in new and replacement parts for aerospace vehicles, as an intermediate in a closed system to produce cyanoacrylate adhesives, in specialized engine air filters for locomotive and marine applications, plastics recycling, and finished products or articles made of recycled plastic. The final rule also features delayed compliance dates for the use of PIP (3:1) in photographic printing articles and adhesives and sealants.

B. The March 16, 2021 Notification and Request for Comments

Shortly after the publication of the January 2021 final rule, a wide variety of stakeholders from various sectors, including the electronics and electrical manufacturing community and their customers, started raising concerns about the March 8, 2021, compliance date in the final rule for the prohibition on the processing and distributing in commerce of PIP (3:1) for use in articles and PIP (3:1)-containing articles (Ref. 2). These stakeholders contended that they needed significantly more time in order to identify whether and where PIP (3:1) might be present in articles in their supply chains, find and certify alternative chemicals, and produce or import new articles that do not contain PIP (3:1). Despite EPA's extensive outreach, most stakeholders contacting EPA after the rule was finalized did not comment on the proposal or otherwise engage with the agency on the PIP (3:1) rulemaking, and do not appear to have previously surveyed their supply chains to determine if PIP (3:1) was being used. Several indicated that they did not understand that articles can be regulated under TSCA, and that, because PIP (3:1) is

not regulated by other authorities, including those of other countries or under international agreements, there was a lack of awareness relative to its presence in the supply chain. Absent engagement and timely or specific input from these stakeholders that could be used as a basis for granting further extensions or exemptions from the proposed prohibition, in the final rule EPA believed that PIP (3:1) was not widely present in articles outside the aerospace and automotive sectors. While some commenters on the 2019 proposed rule indicated that PIP (3:1) may be present in articles, their comments were very general and did not identify specific uses or specific concerns with the March 8, 2021, compliance date.

Based on the concerns raised by stakeholders shortly after publication of the final rule, EPA issued a No Action Assurance (NAA) on March 8, 2021 (Ref. 13), in an effort to ensure that the supply chains of these important articles were not interrupted while the agency collected the information needed to best inform subsequent regulatory efforts. The NAA only described how the agency will exercise its enforcement discretion; the NAA did not change the March 8, 2021, compliance date or the continued harm created by that compliance date. Moreover, the NAA did not prevent citizen suits for violations of the January 2021 rule. The NAA indicated that EPA would exercise its enforcement discretion to not pursue enforcement regarding the prohibition on processing and distribution of PIP (3:1) for use in articles, and PIP (3:1)-containing articles, for the following violations:

Shortly after the NAA was issued, EPA published in the "Proposed Rules" section of the *Federal Register* a notification and request for specific comments (Ref. 3) to address the concerns that had been raised by stakeholders regarding PIP (3:1) in articles. While the March 2021 notification and request for comment did not include a specific alternative compliance date for PIP (3:1)-containing articles and the PIP (3:1) for use in those articles, the document did describe in particular the issues raised by industry stakeholders regarding the March 8, 2021, compliance date, including the types of articles affected, such as those used in a wide variety of electronics, ranging from cellular telephones, to robotics used to manufacture semiconductors, to equipment used to move COVID-19 vaccines and keep them at the appropriate temperature. The document further outlined the complexity of international supply chains

described by industry stakeholders and how, according to those stakeholders, that complexity creates challenges for identifying and finding alternatives to PIP (3:1) in complex supply chains. Finally, EPA asked commenters to specifically describe:

- The articles that would need an alternative compliance date;

- The basis for such an alternative compliance date, taking into consideration the reasons supporting alternative compliance dates in the final rule already issued, such as the January 1, 2022, date for photographic printing articles and the January 6, 2025, date for adhesives and sealants, with supporting documentation; and

- The additional time needed for specific articles to clear channels of trade.

EPA received a total of 122 comments in response to the March 2021 notification and request for comment (Ref. 3); 78 of these were from industry stakeholders, most of whom were concerned about compliance for PIP (3:1)-containing articles (Ref. 8). Stakeholders concerned about PIP (3:1)-containing articles reiterated that they needed much more time, in some cases up to 15 years (Ref. 14), in order to identify where PIP (3:1) might be present in their supply chains, find and certify alternatives, and produce or import new articles that do not contain PIP (3:1).

1. Comments on articles that contain, or potentially contain, PIP (3:1). During the public comment period, several industry commenters identified a wide range of articles that may contain PIP (3:1). PIP (3:1) is used as a flame retardant and plasticizer in plastic articles such as polyvinyl chloride (PVC) wire covers and casings. Other articles which have been identified or are being investigated for the presence of PIP (3:1) include PVC tubes, harnesses, cables, covers, sleeves, and casings, which include AC power cords and USB cables for consumer and commercial articles such as laptops, televisions, and gaming consoles. According to the electrical manufacturing industry a representative sample of articles made possible by the qualities unique to PIP (3:1) include medical devices, capacitors, inverters, generators, transformers, semiconductor wafers, computers, and electrical appliances (Ref. 15). Manufacturers of construction, agriculture, forestry, mining, and utility equipment have identified PIP

(3:1) in fire prevention systems, engine emission control systems, electronics, wiring harnesses, hydraulic hoses, switches, fabrics, PVC articles, resin in fiberglass articles, paints, elastomers, foam, resistors, splitters, articles that are alarm components, automatic tire inflation equipment, and wire sleeving (Ref. 16). According to another commenter, in construction, agriculture, forestry, mining, and utility equipment, PIP (3:1) is frequently found in wire harnesses, starters, water pumps, motor gears, pre-wired motors, ground cables, and compressors (Ref. 17). The semiconductor manufacturing industry has identified the use of PIP (3:1) in semiconductor-related manufacturing equipment (as well as microelectromechanical-related, solar-related, and LED-related manufacturing equipment), as well as semiconductor fabrication facilities' support equipment and infrastructure, such as laboratory, substrate and device (*e.g.*, die) preparation, and assembly and test operations, including advanced packaging (Ref. 14) as well as articles that are internal components of high-tech robotics and manufacturing equipment. Additionally, the chemical has been identified in articles that are components in scanning electron microscopes utilized in research, national laboratories, and academia (Ref. 18).

EPA generally agrees with these commenters that PIP (3:1) is used in a variety of articles, especially in plastic articles that are components of electronics or electrical articles. Further, at the time the January 2021 final rule was issued, EPA did not understand the extent to which PIP (3:1) is used in articles beyond those articles specifically addressed in that final rule, which are photographic printing articles, new and replacement parts for aerospace and motor vehicles, specialized locomotive and marine engine air filters, and recycled plastics. EPA notes that this final rule does not affect the compliance dates established for these specific articles in the January 2021 final rule. EPA outlined its understanding on the use of PIP (3:1) in articles in responding to public comments on the January 2021 final rule, "[t]here is little evidence to suggest that PIP (3:1) is present in articles which may be available to consumers, and outside of activities excluded from the prohibition, little evidence to suggest it is necessary or present in commercial and industrial articles as well" (Ref. 26).

2. Comments on the challenges associated with determining whether articles contain PIP (3:1). Commenters described in detail the challenges associated with determining whether a particular article

contains PIP (3:1), especially for complex goods that contain thousands of individual parts. For example, commenters from the consumer electronics sector noted that articles that are components for their complex goods are sourced on a worldwide market and a manufacturer may have upwards of 5,000 suppliers for potentially 100,000 or more component articles across all product lines (Ref. 19). These commenters note that manufacturers do not receive a list of every chemical within each part or component article that ultimately goes into a finished electronic article because ingredient lists are highly proprietary and confidential. Rather, companies provide functionality, performance, safety and quality specifications of a part or component article to their supply chain, including specifications regarding chemical restrictions. According to these commenters, suppliers are provided lists of restricted chemicals on at least an annual basis, or more frequently if there is a triggering event, such as a new government restriction. Suppliers are notified of the lead time for the restriction of the chemical and any testing that may be required, and the suppliers communicate that information upstream to their own suppliers.

According to these commenters (Ref. 19), the task of determining whether PIP (3:1) is used in a component article in a finished electronic good is further complicated by the many article manufacturers being unable to identify or confirm the PIP (3:1) content of articles, such as supplied parts, components or commercial and consumer goods, without laboratory testing. Laboratory testing can run up to $5,000 per product and take up to one (1) month. As a result, companies must rely on material declarations by suppliers as a more practicable and reliable approach to determine the usage of PIP (3:1) within an article.

Other commenters echo these concerns. Comments from the heating, ventilation, air conditioning, and refrigeration industry note that manufacturers are currently working their way through tens of thousands of stock-keeping units (SKUs), each having hundreds of associated component articles and spare parts (Ref. 20). They contend that their suppliers have generally not been forthright about the presence of PIP (3:1) in their component articles and parts, even after receiving notification that the use of PIP (3:1) in component articles must be disclosed. According to these

commenters, some suppliers continue to claim that they will not disclose the chemical makeup of component articles as the composition is confidential intellectual property. In response, some of the larger manufacturers have started testing component articles to compensate for this lack of transparency, but testing is time-consuming and costly and most smaller businesses do not have the resources to undertake testing.

The semiconductor industry and the testing and measurement industry noted that their industries differ from the consumer electronics industry and the automotive industry, in that their industries are high-mix, low-volume industries, meaning that manufacturer portfolios are typically comprised of a large number of unique goods with relatively low unit sales (Refs. 14, 21). Their equipment is primarily custom built to order and sold directly to professional and industrial customers by the manufacturers (Ref. 21). The semiconductor industry typically places only 600 to 6,000 units of semiconductor manufacturing and related equipment into U.S. commerce each year and it is not uncommon for small groups of model units to be customized to an end user's particular needs (Ref. 14). According to this commenter, this is in stark contrast to most consumer goods, in which individual similar model units are placed into U.S. commerce in much greater number, and to the automotive and aerospace sectors, in which goods are manufactured in lower quantities but which are quite similar from model unit to model unit (Ref. 14). The semiconductor industry further noted that their sector's ability to obtain material composition data from across their supply chain is limited due to three factors: (1) the length and complexity of the supply chain; (2) the preponderance of suppliers located outside of the U.S.; and (3) the tens of thousands of parts incorporated into each article eventually manufactured or distributed in commerce within the U.S.

EPA generally recognizes the challenges described by these commenters in determining whether and where PIP (3:1) is present in articles in their supply chains and how long it may take to clear those PIP (3:1)-containing articles through the channels of trade. As to comments relating to testing, as most commenters note, there are a number of alternative steps to testing that an importer or a domestic manufacturer can take to ensure that an article does not contain PIP (3:1). The customer can include a

specification in their purchase contracts with suppliers that articles be made without PIP (3:1). The customer can also request that their suppliers provide them with a written statement or certification that the purchased or supplied goods are made without PIP (3:1). Of course, testing is always an option, but EPA recognizes that this may be a more expensive option.

3. Comments on compliance date considerations for PIP (3:1)-containing articles. Nearly all of the industry commenters responding to EPA's March 2021 notification and request for comment (Ref. 3) stated that they needed several years to phase PIP (3:1) out of their articles. Many contended that they needed much longer, up to fifteen years (Refs. 14, 18) assuming that it is even feasible to do so. Commenters identified a number of steps that would be needed in order to complete a phase-out of PIP (3:1) in articles. These steps include: (1) identifying where PIP (3:1) is present; (2) identifying and testing substitutes; (3) testing and re-certifying (as needed) the replacement article; and (4) distributing the replacement article throughout the supply chain. Many commenters provided detailed timelines for the steps needed to replace PIP (3:1).

For example, the consumer electronics industry noted that, while companies had begun to survey their suppliers as soon as the final rule was published, because of the large number of parts and suppliers involved for most manufacturers, they anticipated that completing the survey would take between six and twelve months (Ref. 19). They also noted that, because PIP (3:1) is not regulated in other international markets, there is a general lack of awareness regarding the chemical throughout the supply chain and the industry expects the surveys to take closer to twelve months than six.

According to the consumer electronics industry commenters, once PIP (3:1) is identified in a particular part by a particular supplier, the supplier must identify and investigate alternatives to PIP (3:1) that can meet regulatory requirements and manufacturer requirements with respect to functionality, performance, safety and quality (Ref. 19). Given that PIP (3:1) is typically used in electronic component articles to meet safety standards related to flammability, a component article that includes a PIP (3:1) alternative will have to be certified to the applicable safety standard (Ref. 19). Common safety standards that apply to consumer electronics, according to the commenters, include Underwriters Laboratory

UL94, entitled “Tests for Flammability of Plastic Material for Part in Devices and Applications,” and UL498, entitled “Attachment Plugs and Receptacles.” The timeline for retesting and recertification of replacement component articles is determined by the certification organization, and consumer electronics manufacturers estimate that testing could take anywhere from 3 to 24 months (Ref. 19).

The commenters detail the next steps in replacing a PIP (3:1)-containing component article (Ref. 19). Once the manufacturer of the finished consumer electronics good receives the replacement component article, the manufacturer will conduct its own internal quality assessments. The manufacturer will conduct an initial assessment on whether the component article works, has the correct performance characteristics, and maintains brand integrity. Once these basic parameters have been evaluated, the manufacturer will assemble the component article into a consumer electronics good and conduct an overall quality assessment, which may include smoke and ignition testing, current leakage testing, and temperature testing, among other things (Ref. 19). At that point, the reworked good is sent for third-party certification. If the substituted component article is considered critical by the certification body, full retesting and recertification of the good may be necessary. Industry commenters anticipate that full retesting and recertification will be required, given the use of PIP (3:1) from a fire safety perspective and the fact that the types of component articles where PIP (3:1) is used play critical roles in the goods. Manufacturers anticipate that this recertification step will take anywhere from six to thirty months (Ref. 19). Finally, according to these commenters, a minimum of one year is needed to move the newly-remanufactured goods throughout the supply chain. This commenter further contended that a chemical phase out in response to a restriction in the European Union under the Restriction on Hazardous Substances (RoHS) 2, a product-level compliance program for electrical and electronic equipment, is typically effective four years from the date of notice by the European Union (Ref. 19).

Other industries provided similarly detailed descriptions of the length of time needed to replace PIP (3:1)-containing component articles. The heavy equipment sector stated that their design cycles are typically seven years from start to finish, and that this would likely be the amount of time needed to

identify whether and to what extent PIP (3:1) exists in the supply chain, confirm the function of PIP (3:1) for the end-use application, identify alternatives, re-design for the alternative rather than PIP (3:1), test the replacement component article for safety, regulatory, and quality requirements, and re-introduce the good into the market (Ref. 16). According to this commenter, the testing requirements often take the longest time to complete during a redesign because heavy-duty industrial equipment operates in demanding and severe operating conditions over a long product life cycle. Such equipment is reportedly subject to various fire safety and flammability regulatory requirements set by the National Highway Traffic Safety Administration (Flammability Test for Motor Vehicle Interiors, 49 CFR 571.302), the Occupational Safety and Health Administration (Fire Protection and Prevention, 29 CFR 1926.24 and 1926.151), the Mine Safety and Health Administration (various fire prevention provisions, including 30 CFR part 35 and 30 CFR 75.1100, 75.1911, and 77.1100), and the Federal Railroad Administration (49 CFR parts 216, 223, 229, 231, 232, 238). Additionally, according to this commenter, engine emission sensors designed for off-road equipment to comply with the Clean Air Act currently rely on PIP (3:1) to survive the high-temperature environment in the engine compartment (Ref. 16).

A unique problem reported by this commenter and several others in the heavy equipment sector is that their supply chains often overlap with much larger industries, such as the automotive and aerospace sectors (Refs. 16, 17, 22, 23, and 24). A recent survey by one commenter found that 61% of the surveyed suppliers in the heavy equipment sector also provided parts and materials to the automotive industry (Ref. 16). According to this commenter, despite the significant overlap in suppliers, there are key differences in the product design lifecycles and volumes between the industries. Heavy-duty, industrial professional use equipment is decidedly lower volume with a higher diversity of goods than those found in the consumer automotive market. As the automotive sector is currently excluded from the January 2021 PIP (3:1) final rule, the current regulations allow suppliers to provide automotive parts that contain PIP (3:1) to their automotive manufacturers. With the higher variability of goods and lower volume nature of the heavy-duty, industrial equipment sector, commenters assert that the manufacturers of this non-automotive equipment will need to utilize custom made parts which, if

available, could cost between two and ten times the normal price of the automotive parts that they would ordinarily use (Ref. 24).

In contrast to the industry commenters, who all stated that the March 8, 2021, compliance date for PIP (3:1)-containing articles was not practicable, a comment submitted by three environmental public interest groups in response to EPA's March 2021 notification and request for comment (Ref. 3) stated that industry had been given sufficient notice of EPA's intent to regulate PIP (3:1) in articles and did not believe that EPA should excuse their failure to comment in a timely manner (Ref. 25). This commenter further noted that any exclusions or extended compliance dates should be considered under the stringent criteria of TSCA section 6(g), which requires EPA to determine one of the following: (1) that the condition of use is a critical or essential use with no feasible safer alternatives; or (2) that compliance with a requirement would significantly disrupt the national economy, national security, or critical infrastructure; or (3) that the specific condition of use provides a substantial benefit to health, the environment, or public safety.

EPA generally agrees with the industry commenters on the steps required to phase PIP (3:1) out of articles in their supply chains. Industry must first determine where PIP (3:1) is present; identify alternatives to PIP (3:1), and then design, test, and recertify, as necessary, the new articles made without PIP (3:1). Those new articles must then be distributed throughout the supply chain. However, some commenters provided detailed estimates of the time needed to take these steps while others did not. For example, comments from the consumer technology sector gave estimates for completing each one of these steps, with the overall timeline ranging from 2.25 years to 6.5 years (Ref. 19). Estimated timelines provided by commenters in response to the March 2021 notification and request for comment (Ref. 3) ranged from 2.25 years to 15 years or more (Refs. 19, 14). Given the varying estimates, and the lack of detail accompanying some of those estimates, EPA has determined that a relatively short compliance date extension until March 8, 2022, is necessary to avoid immediate and significant disruption in the supply chains for important articles, to provide the public with regulatory certainty in

the near term, and to allow EPA additional time to further evaluate the need to again extend the compliance deadlines for PIP (3:1).

EPA disagrees with the commenter who contended that any compliance date extension should be evaluated under TSCA section 6(g). As noted in response to similar comments on the 2019 proposed rule, "TSCA section 6(h)(4) directs EPA to issue regulations that reduce exposure to PBT chemicals 'to the extent practicable,' not to regulate beyond the point of practicability and then issue [section 6(g)] exemptions that would limit the scope of those regulations" (Ref. 26, at p. 44). EPA views this compliance date extension as consistent with this standard, and as discussed in Unit III, with the requirements of TSCA section 6(d) to ensure that the compliance dates are "as soon as practicable" and provide a "reasonable transition period," because this action is necessary to avoid immediate and significant disruption in the supply chains for important articles, such as cellular telephones and the HVACR equipment used to cool people, buildings, and to transport and store COVID-19 vaccines and keep them at the appropriate temperature, not as an excuse for a failure to comment earlier in this rulemaking process.

III. Provisions of this Final Rule

A. Establishing a Compliance Date under TSCA Section 6(d)

TSCA section 6(d)(1)(A) directs EPA to specify a date on which the TSCA section 6(a) rule is to take effect that is "as soon as practicable." TSCA section 6(d)(1)(B) requires EPA to specify mandatory compliance dates for each requirement of a rule promulgated under TSCA section 6(a), which must be as soon as practicable but no later than five years after promulgation except as provided in subsections (C) and (D) or in the case of a use exempted under TSCA section 6(g). TSCA section 6(d)(1)(C) states that EPA must specify mandatory compliance dates for the start of ban or phase-out requirements under a TSCA section 6(a) rule, which must be as soon as practicable but no later than five years after promulgation, except in the case of a use exempted under TSCA section 6(g); and subsection (D) requires EPA to specify mandatory compliance dates for full implementation of ban or phase-out requirements, which must be

as soon as practicable. Additionally, TSCA section 6(d)(1)(E) directs EPA to provide for a reasonable transition period.

As noted in the preamble to the January 2021 final rule, the phrases "as soon as practicable" and "reasonable transition period" as used in TSCA section 6(d)(1) are undefined, and the legislative history on TSCA section 6(d) is limited. Given the ambiguity in the statute, for purposes of the final rule under TSCA section 6(h), EPA presumed a 60-day compliance date was "as soon as practicable," unless there was support for a lengthier period of time on the basis of reasonably available information, such as information submitted in comments on the Exposure and Use Assessment or on the proposed rule, or in stakeholder dialogues. At the time, EPA believed that such a presumption would ensure that the compliance schedule is "as soon as practicable," particularly in the context of the TSCA section 6(h) rules for chemicals identified as persistent, bioaccumulative and toxic, and given that the expedited timeframe for issuing a TSCA section 6(h) proposed rule did not allow time for collection and assessment of new information separate from the comment opportunities during the development of and in response to the proposed rule. EPA noted that this approach also allows for submission of information from the sources most likely to have the information that would impact an EPA determination on whether or how best to adjust the compliance deadline to ensure that the final compliance deadline chosen is both "as soon as practicable" and provides a "reasonable transition period."

As previously noted, EPA did not receive timely or specific input from certain stakeholders during any public comment periods prior to issuance of the 2019 proposed rule or in response to the proposed rule regarding the presence of PIP (3:1) in myriad articles. Absent this input, in the final rule EPA determined that PIP (3:1) was not widely present in articles outside the aerospace and automotive sectors and that the presumption that a 60-day compliance date was practicable was appropriate. The comments received in response to EPA's March 2021 notification and request for comment (Ref. 3), and the communications received before that document published in the *Federal Register*, presented new information demonstrating that a 60-day compliance date was not a reasonable transition period for the full implementation of a ban or phase-out for many industries.

B. Compliance Date Extension

From the comments received in response to EPA's March 2021 notification and request for comment (Ref. 3), as well the information provided during stakeholder meetings since the publication of the January 2021 final rule on PIP (3:1), it is clear to EPA that the compliance date for PIP (3:1) and PIP (3:1)-containing articles, but not PIP (3:1)-containing products, must be extended. While some commenters provided detailed descriptions of the affected articles and detailed timelines for the phasing out of PIP (3:1) from these articles, most did not provide the specificity that EPA was looking for in response to the March 2021 notification and request for comment (Ref. 3). In addition, many commenters stated that they were still in the early stages of identifying the affected articles (Ref. 19). Therefore, EPA has determined that a relatively short compliance date extension until March 8, 2022, is necessary to avoid immediate and significant disruption in the supply chains for important articles, to provide the public with regulatory certainty in the near term, and to allow EPA additional time to further evaluate the need to again extend the compliance deadlines for PIP (3:1).

In addition to this final rule, EPA is planning to issue a separate NPRM in the near future to provide an opportunity for stakeholders to submit comments on the need for an additional compliance date extension for certain PIP (3:1)-containing articles, and the PIP (3:1) used to make those articles, and to include in their comments specific information detailing the necessity of such an extension. EPA is seeking this additional comment because EPA does not yet have sufficient information on which to base a decision on the length of time that will ultimately be needed for the affected industry sectors to comply with the prohibitions in the January 2021 final rule. During this upcoming comment period, EPA expects that industry will be able to provide more detailed information on the number and type of articles affected by the January 2021 final rule, given the ongoing work on the identification process and the additional six months as of the date that the comment period will close.

IV. References

The following is a listing of the documents that are specifically referenced in this document. The docket includes these documents and other information considered by EPA, including documents that

are referenced within the documents that are included in the docket, even if the referenced document is not physically located in the docket. For assistance in locating these other documents, please consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

1. EPA. Phenol, Isopropylated Phosphate (3:1) (PIP 3:1)); Regulation of Persistent, Bioaccumulative, and Toxic Chemicals Under TSCA Section 6(h); Final Rule. *Federal Register* (86 FR 894, January 6, 2021) (FRL-10018-88).

2. Letter from the Consumer Technology Association (CTA) and the Information Technology Industry Council (ITI) to EPA on March 15, 2021. EPA-HQ-OPPT-2021-0202-0015.

3. EPA. Regulation of Persistent, Bioaccumulative, and Toxic Chemicals Under TSCA Section 6(h); Proposed Rule; Request for Comments. *Federal Register* (86 FR 14398, March 16, 2021) (FRL-10021-08).

4. EPA. 2,4,6-Tris(tert-butyl)phenol (2,4,6-TTBP); Regulation of Persistent, Bioaccumulative, and Toxic Chemicals Under TSCA Section 6(h); Final Rule. *Federal Register* (86 FR 866, January 6, 2021) (FRL-10018-90).

5. EPA. Decabromodiphenyl Ether (DecaBDE); Regulation of Persistent, Bioaccumulative, and Toxic Chemicals Under TSCA Section 6(h); Final Rule. *Federal Register* (86 FR 880, January 6, 2021) (FRL-10018-87).

6. EPA. Pentachlorothiophenol (PCTP); Regulation of Persistent, Bioaccumulative, and Toxic Chemicals Under TSCA Section 6(h); Final Rule. *Federal Register* (86 FR 911, January 6, 2021) (FRL-10018-89).

7. EPA. Hexachlorobutadiene (HCBD); Regulation of Persistent, Bioaccumulative, and Toxic Chemicals Under TSCA Section 6(h); Final Rule. *Federal Register* (86 FR 922, January 6, 2021) (FRL-10018-91).

8. Comments submitted to EPA. Regulation of Persistent, Bioaccumulative, and Toxic Chemicals Under TSCA Section 6(h). Docket ID EPA-HQ-OPPT-2021-0202-0001.

9. EPA. TSCA Work Plan for Chemical Assessments: 2014 Update. October 2014. *https://www.epa.gov/assessingandmanaging-chemicals-under-tsca/tscawork-plan-chemical-assessments-2014-update*.

10. EPA. TSCA Work Plan Chemicals: Methods Document. February 2012. *https://www.epa.gov/sites/production/files/2014-03/documents/work_plan_methods_document_web_final.pdf.*

11. EPA. Regulation of Persistent, Bioaccumulative, and Toxic Chemicals Under TSCA Section 6(h); Proposed Rule. *Federal Register* (84 FR 36728, July 29, 2019) (FRL-9995-76).

12. EPA. Exposure and Use Assessment of Five Persistent, Bioaccumulative, and Toxic Chemicals. December 2020.

13. EPA. No Action Assurance Regarding Prohibition of Processing and Distribution of Phenol Isopropylated Phosphate (3:1), PIP (3:1) for Use in Articles, and PIP (3:1)-containing Articles under 40 CFR 751.407(a)(1). March 8, 2021. *https://www.epa.gov/assessing-and-managing-chemicals-under-tsca/public-comment-period-pbt-rules-and-no-action-assurance.*

14. Comment submitted by SEMI and the Semiconductor Equipment Association of Japan (SEAJ) to EPA on May 17, 2021. EPA-HQ-OPPT-2021-0202-0121.

15. Comment submitted by National Electrical Manufacturers Association (NEMA) to EPA on May 17, 2021. EPA-HQ-OPPT-2021-0202-0117.

16. Comment submitted by the Association of Equipment Manufacturers (AEM) to EPA on May 13, 2021. EPA-HQ-OPPT-2021-0202-0053.

17. Comment submitted by CNH Industrial to EPA on May 14, 2021. EPA-HQ-OPPT-2021-0202-0065.

18. Comment submitted by Hitachi High-Tech America Inc. to EPA on May 17, 2021. EPA-HQ-OPPT-2021-0202-0093.

19. Comment submitted by the Consumer Technology Association (CTA) and the Information Technology Industry Council (ITI) to EPA on May 17, 2021. EPA-HQ-OPPT-2021-0202-0148.

20. Comment submitted by the Air-Conditioning, Heating and Refrigeration Institute (AHRI) to EPA on May 17, 2021. EPA-HQ-OPPT-2021-0202-0143.

21. Comment submitted by the Test & Measurement Coalition (T&M) to EPA on May 17, 2021. EPA-HQ-OPPT-2021-0202-0122.

22. Comment submitted by LBX Company, LLC to EPA on May 17, 2021. EPA-HQ-OPPT-2021-0202-0082.

23. Comment submitted by Clark Equipment Company to EPA on May 17, 2021. EPA-HQ-OPPT-2021-0202-0095.

24. Comment submitted by Outdoor Power Equipment Institute (OPEI) to EPA on May 17, 2021. EPA-HQ-OPPT-2021-0202-0125.

25. Comment submitted by Safer Chemicals Healthy Families (SCHF) et al. to EPA on May 17, 2021. EPA-HQ-OPPT-2021-0202-0096.

26. EPA. Regulation of Persistent, Bioaccumulative, and Toxic Chemicals under TSCA Section 6(h); Response to Public Comments. December 2020. EPA-HQ-OPPT-2019-0080-0647.

V. Statutory and Executive Order Reviews

Additional information about these statutes and Executive orders can be found at *https://www2.epa.gov/lawsregulations/laws-and-executive-orders*.

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is a significant regulatory action under Executive Order 12866 (58 FR 51735, October 4, 1993) and was submitted to the Office of Management and Budget (OMB) for review under Executive

Orders 12866 and 13563 (76 FR 3821, January 21, 2011). Any changes made in response to OMB review have been reflected in the docket for this action.

B. Paperwork Reduction Act (PRA)

This action does not impose any new information collection activities or burden subject to OMB review and approval under the PRA, 44 U.S.C. 3501 *et seq*. Burden is defined in 5 CFR 1320.3(b). OMB has previously approved the information collection activities contained in the existing regulations and associated burden under OMB Control No. 2070-0213 (EPA ICR No. 2599.02). An agency may not conduct or sponsor, and a person is not required to respond to a collection of information that requires OMB approval under PRA, unless it has been approved by OMB and displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the *Federal Register*, are listed in 40 CFR part 9, and included on the related collection instrument or form, if applicable.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. In making this determination, the impact of concern is any significant adverse economic impact on small entities. An agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, has no net burden or otherwise has a positive economic effect on the small entities subject to the rule. This final rule extends the compliance date for a prohibition on the processing and distributing in commerce of PIP (3:1) for use in certain articles and the processing and distributing in commerce of certain PIP (3:1)-containing articles, along with the associated recordkeeping requirements, from March 8, 2021, to March 8, 2022. EPA has therefore concluded that this action will relieve regulatory burden for all directly regulated small entities.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531-1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local or tribal governments or the private sector.

E. Executive Order 13132: Federalism

This action does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). It will not have substantial direct effects on the states, on the relationship between the National Government and the states, or on the distribution of power and responsibilities among the various levels of government.

F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

This action does not have tribal implications as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). This final rule will not impose substantial direct compliance costs on Indian tribal governments. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks

This action is not a "covered regulatory action" under Executive Order 13045 (62 FR 19885, April 23, 1997) because it is not an economically significant regulatory action as defined by Executive Order 12866.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This is not a "significant energy action" as defined in Executive Order 13211 (66 FR 28355, May 22, 2001), because it is not likely to have a significant adverse effect on the supply, distribution or use of energy and has not otherwise been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action.

I. National Technology Transfer and Advancement Act (NTTAA)

This action does not involve technical standards. As such, NTTAA section 12(d), 15 U.S.C. 272 note, does not apply to this action.

J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

EPA believes that this action does not have disproportionately high and adverse human health or environmental effects on minority populations, low-income populations and/or indigenous peoples, as specified in Executive Order 12898 (59 FR 7629, February 16, 1994). As discussed in Unit II., this action is necessary to avoid widespread disruptions in the supply chains for a wide variety of essential goods and would not otherwise materially alter the final rule as published.

K. Congressional Review Act (CRA)

This action is subject to the CRA, 5 U.S.C. 801 *et seq*., and EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 751

Environmental protection, Chemicals, Export notification, Hazardous substances, Import certification, Reporting and recordkeeping.

Dated: September 3, 2021.

Michael S. Regan,

Administrator.

Therefore, for the reasons set forth in the preamble, 40 CFR part 751 is amended as follows:

PART 751—REGULATION OF CERTAIN CHEMICAL SUBSTANCES AND MIXTURES UNDER SECTION 6 OF THE TOXIC SUBSTANCES CONTROL ACT

1. The authority citation for part 751 continues to read as follows:

Authority: 15 U.S.C. 2605, 15 U.S.C. 2625(l)(4).

2. Amend §751.407 by adding paragraph (a)(2)(iii) and revising paragraph (d)(4) to read as follows:

§ 751.407 PIP (3:1).

(a) * * *

(2) * * *

(iii) After March 8, 2022, except as provided in paragraphs (a)(2)(ii) and (b) of this section, all persons are prohibited from all processing and distribution in commerce of PIP (3:1) for use in articles and PIP (3:1)-containing articles.

* * * * *

(d) * * *

(4) The recordkeeping requirements in paragraph (d) of this section do not apply to the activities described in paragraphs (b)(1)(vi) and (vii) of this section. The recordkeeping requirements in paragraph (d) of this section also do not apply to PIP (3:1)-containing articles until March 8, 2022.

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[FR Doc. 2021-19516 Filed: 9/16/2021 8:45 am; Publication Date: 9/17/2021]