This document is scheduled to be published in the
Federal Register on 03/08/2022 and available online at
federalregister.gov/d/2022-04945, and on **govinfo.gov**

E 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 751

[EPA-HQ-OPPT-2021-0598; FRL-6015.6-02-OCSPP]

RIN 2070-AK95

Regulation of Persistent, Bioaccumulative, and Toxic Chemicals Under TSCA Section 6(h); Phenol, Isopropylated Phosphate (3:1); Further 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 prohibition on processing and distribution in commerce of certain PIP (3:1)-containing articles, and the PIP (3:1) used to make those articles, until October 31, 2024, along with the compliance date for the associated recordkeeping requirements for manufacturers, processors, and distributors of PIP (3:1)-containing articles. This final rule follows issuance of a proposed rule for public comment on October 28, 2021; comments on the proposed rule are responded to in this action.

DATES: This final rule is effective on [INSERT DATE OF PUBLICATION IN THE *Federal Register*]. For purposes of judicial review and 40 CFR 23.5, this rule shall be promulgated at 1 p.m. eastern standard time on [INSERT DATE 14 DAYS AFTER DATE OF PUBLICATION IN THE *Federal Register*].

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA-HQ-OPPT-2021-0598, 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 opened to visitors by appointment only. 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*.

For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554-1404; email address: T*SCA-Hotline@epa.gov*.

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 action 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 presented and that 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).

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. 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 *F.C.C. v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009). Here, as explained further in Unit I.D. and Unit IV.A, based on information submitted by regulated entities, the Agency has determined that revised compliance dates are necessary to address detailed information submitted in comments demonstrating that the original compliance dates were not practicable and did not provide adequate transition time consistent with TSCA section 6(d)(1) because compliance with the original compliance date and initially extended compliance date would have caused extensive harm to the economy and public due to unavailability of critical goods and equipment.

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. F.C.C.*, 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." 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?

The January 2021 final rule for PIP (3:1) prohibits the processing and distribution in commerce 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 in commerce, and commercial use; and 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 60 days after publication, or March 8, 2021, after which processing and distribution in commerce 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. A final rule issued in September 2021 extended the compliance date applicable to the prohibition on 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, along with the compliance date for the associated recordkeeping requirements for PIP (3:1)-containing articles (Ref. 2).

This final rule amends the regulations at 40 CFR 751.407(a)(2)(iii) and (d)(4) to further extend the phased-in prohibition, established in the September 2021 final rule, for the processing and distribution in commerce of PIP (3:1) for use in certain articles, and for the processing and distribution in commerce of certain PIP (3:1)-containing articles, from March 8, 2022, to October 31, 2024. The compliance date for the recordkeeping requirements for manufacturers, processors, and distributors of PIP (3:1)-containing articles is also extended from March 8, 2022, to October 31, 2024. Articles covered by the phased-in prohibition include any article not otherwise covered by an alternative compliance deadline or exclusion described in 40 CFR

751.407(a)(2)(ii) or (b).

D. Why is the Agency taking this action?

EPA is further extending the compliance dates applicable to the prohibition on processing and distribution in commerce of PIP (3:1) for use in certain articles, and the processing and distribution in commerce of certain PIP (3:1)-containing articles, to further address the hardships inadvertently created by the January 2021 final rule on PIP (3:1) (Ref. 1) due to impacted 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. 3). In the *Federal Register* of March 16, 2021 (Ref. 4), EPA requested additional comment on this specific issue, as well as on other aspects of all the TSCA section 6(h) final rules (Refs. 1, 5, 6, 7, and 8). According to the comments received in response to the March 2021 notification and request for comments, a wide range of key consumer and commercial goods were 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. 9). In September 2021, EPA issued a final rule that extended the compliance date applicable to the prohibition on processing and distribution in commerce of certain PIP (3:1)-containing articles, and the PIP (3:1) used to make those articles, until March 8, 2022, along with the compliance date for the associated recordkeeping requirements for manufacturers, processors, and distributors of PIP (3:1)-containing articles (Ref. 2). The September 2021 final rule provided a necessary short-term extension to avoid immediate and significant disruption in the supply chains for certain 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). Shortly thereafter, EPA issued a proposal to further extend

the compliance dates to October 31, 2024 (Ref. 10). This final rule extending the compliance dates from March 8, 2022, until October 31, 2024, is based on the detailed information provided by several industry commenters in response to the proposal.

E. What are the incremental economic impacts?

Pursuant to TSCA section 6(c)(2), EPA evaluated the potential incremental economic impacts of further extending the compliance deadline and determined that the changes being finalized in this action would reduce the existing burden of the March 8, 2022, compliance date. The quantified effect of this compliance date extension (from March 8, 2022, to October 31, 2024) reflects the difference between the incremental cost and benefits of the January 2021 final rule as it was originally promulgated and the incremental cost and benefits of this final rule with the new compliance date in place. This was estimated as the difference between the cost and benefits of the final rule after the compliance extension to March 8, 2022, and the cost and benefits of this final rule with an October 31, 2024, compliance date. Quantified costs for substitution and recordkeeping were estimated to be incurred later than they would have been under the January 2021 rule, assuming they will be incurred when the compliance date extension expires. In summary, extending the compliance date from March 8, 2022, to October 31, 2024, for PIP (3:1)-containing articles results in an estimated annualized cost savings of $1.8 million (from $24.1 to $22.3 million) at a 3 percent discount rate or $2.4 million (from $23.4 to $21.0 million) at a 7 percent discount rate over a 25-year time horizon. While the Agency has no data to quantify this, qualitative costs savings may include savings stemming from the additional 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. In addition to these cost savings, reformulation (which can include research and development, laboratory testing, and re-labeling) will be facilitated once an acceptable substitute is identified given that companies will have more time to gather information regarding the steps involved in the reformulation process. Cost reductions for reformulation are not certain, however, since the time

required for the regulated community to identify viable substitutes can be complex and unpredictable. 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 about supply chain impacts that could alleviate the necessity for chemical testing of certain articles to identify whether and where PIP (3:1) might be present in their supply chains.

With respect to benefits, pursuant to TSCA section 6(h)(2), for chemical substances that meet the criteria of TSCA section 6(h)(1), a risk evaluation is not required to be conducted for EPA to meet its obligations under TSCA section 6(h). As discussed in the January 2021 final rule, while EPA reviewed hazard and exposure information for the PBT chemicals, this information did not provide a basis for EPA to develop scientifically robust and representative risk estimates to evaluate whether or not any of the chemicals present a risk of injury to health or the environment. Benefits were not quantified due to the lack of risk estimates. Although the benefits of the January 2021 and September 2021 final rules 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 due to continued exposures. On balance, this further extension of the compliance dates is appropriate to prevent the disruptive consequences of implementing the March 8, 2022, compliance date without a further compliance extension. The economic consequences (such as loss of supply) could be severe, given the apparent extent 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. The January 2021 Final Rule

A 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 prohibited processing and distribution in commerce of PIP (3:1), and products or articles containing the chemical substance, for all uses after March 8, 2021, 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, provided no new PIP (3:1) is added during the recycling or production process.

In addition, the final rule required manufacturers, processors, and distributors of PIP (3:1) and products containing PIP (3:1) to notify their customers of these restrictions. Finally, the rule prohibited releases to water from the remaining manufacturing, processing, and distribution in commerce activities, and required commercial users of PIP (3:1) and PIP (3:1)-containing products to follow existing regulations and best management 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 PIP (3:1) final rule, are the terms “article” and “product” (Ref. 5). “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.

B. The March 2021 Notification and Request for Comments and the No Action Assurance

Shortly after the publication of the January 2021 final rule, a wide variety of stakeholders from various sectors started raising concerns about the March 8, 2021, compliance date 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. 3). These stakeholders contended that they needed significantly more time 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 (Refs. 1, 2, 4 and 10), 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.

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, 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 (Ref. 11). The NAA was written

to expire on September 4, 2021, or "the effective date of a final action addressing the compliance date for the prohibition on processing and distributing in commerce of PIP (3:1), including in PIP (3:1)-containing articles, whichever occurs earlier." In addition, shortly after the NAA was issued, EPA published in the "Proposed Rules" part of the *Federal Register* a notification and request for comments on the five final PBT rules in general and, more specifically, on the compliance date issues with respect to PIP (3:1)-containing articles that had been raised by stakeholders (Ref. 4). The March 2021 *Federal Register* notification and request for comments is described in detail in EPA's October 2021 proposal (Ref. 10). EPA received a total of 122 comments in response to the March 2021 notification and request for comments (Ref. 9), nearly all of which addressed PIP (3:1) issues. Based on the comments received in response to the March 2021 notification and request for comments, EPA issued a final rule in September 2021, extending the compliance dates 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, until March 8, 2022, along with the associated recordkeeping requirements for manufacturers, processors, and distributors of PIP (3:1)-containing articles (Ref. 2). While most commenters on the March 2021 notification and request for comments requested a longer compliance date extension (Ref. 9), EPA determined that a short-term extension was necessary to ensure that the supply chains for these important articles continue uninterrupted in the near term while allowing EPA to conduct notice and comment rulemaking on a longer-term compliance date extension generally.

C. The October 2021 Proposal

Accordingly, in October 2021, EPA proposed to further extend until October 31, 2024, the compliance dates for the prohibition on the distribution in commerce of certain PIP (3:1)-containing articles, and the PIP (3:1) used to make those articles, along with the compliance date for the associated recordkeeping requirements for manufacturers, processors, and distributors of PIP (3:1)-containing articles (Ref. 10). EPA based the October 2021 proposal on the comments received on the March 2021 notification and request for comments, as well as information EPA

received from stakeholders after the January 2021 final rule was published but prior to the issuance of the March 2021 notification and request for comments.

Industry stakeholders commenting on the March 2021 notification and request for comments contended that they needed more time 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). As described in the October 2021 proposed rule, industry commenters identified a wide range of articles that may contain PIP (3:1), which generally is used as a flame retardant and plasticizer in plastic articles (Refs. 9 and 10). Commenters on the March 2021 notification and request for comments also described the challenges associated with determining whether a particular article contains PIP (3:1), especially for complex goods that contain thousands of individual parts. Some commenters stated that article manufacturers may be unable to identify or confirm the PIP (3:1) content of articles, such as supplied parts and components, without laboratory testing, which can be expensive and time-consuming. 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. However, the ability to obtain material composition data from across the supply chain may be limited (Ref. 12).

As described in the October 2021 proposal, nearly all of the industry commenters responding to EPA's March 2021 notification and request for comments stated that they needed several years to phase PIP (3:1) out of their articles (Refs. 9 and10). Estimated timelines provided by commenters in response to the March 2021 notification and request for comments ranged from 2.25 years to 15 years or more (Ref. 9). Given the varying estimates, and the lack of detail accompanying some of those estimates, EPA proposed to further extend the compliance dates until October 31, 2024, which was consistent with the lower end of the time estimates provided by commenters. EPA reasoned that this would avoid significant disruption in the supply chains for certain articles and would provide the public with regulatory certainty while EPA determines whether any further compliance date extensions are necessary for certain industry

sectors, based on information submitted in the context of revisions to the PBT rules more generally. As announced in March 2021 and in the October 2021 proposal, EPA intends to consider any additional information of this kind in the context of revisions to the final PBT rules to further reduce exposures, promote environmental justice, and better protect human health and the environment. More information on the March 2021 notification and request for comments, and a summary of the comments received in response to the notification, are in the October 2021 proposal (Ref. 10).

III. Comments on the October 2021 Proposal

EPA received a total of 40 public comments on the October 2021 proposal: 38 from industry stakeholders, one from environmental, public health, children's health organizations, and one from a tribal partnership group (Ref. 13). Many of the industry commenters on this proposal also commented on the March 2021 notification and request for comments, some providing additional details about their efforts to identify PIP (3:1) in their supply chains since the earlier public comment period.

A. Comments supporting the proposed compliance dates or further extensions.

Approximately one-third of the industry commenters on the October 2021 proposal expressed qualified support for the proposed compliance date of October 31, 2024, for the prohibition on the processing and distribution in commerce of certain PIP (3:1)-containing articles and the PIP (3:1) used to make those articles.

1. Summary of public comments supporting extension of compliance dates.

A commenter from the heating, ventilation, air-conditioning, and refrigeration (HVACR) industry noted that their comments on the March 2021 notification and request for comments provided two scenarios for the length of time needed to eliminate PIP (3:1) in their supply chains (Ref. 14). While the first scenario resulted in an estimate of three years to complete the phase-out of PIP (3:1), the commenter noted that this was a best-case scenario, assuming that a number of potential difficulties with identifying PIP (3:1) in the supply chain and scheduling scarce

laboratory time for recertifications would be eliminated. The more realistic scenario, according to this commenter, was the scenario that estimated that a period of five years would be needed to eliminate PIP (3:1) in their supply chain. This commenter reiterated concerns with the process for eliminating PIP (3:1), noting that it remains difficult to obtain information from suppliers, testing is an expensive and time-consuming alternative, and that it will be challenging to find and test substitute chemicals with the fire-retardant characteristics of PIP (3:1) for every application. The commenter further explained that the industry is dealing with a shortage of acrylonitrile butadiene styrene plastic due to the ongoing COVID-19 pandemic as well as a mandatory refrigerant transition. Finally, this commenter contended that the compliance date should be a "manufactured-by" date, rather than a processing and distribution in commerce prohibition, and expressed concern over the need for replacement parts for equipment that is produced before the "manufactured-by" date.

Commenters from the consumer technology sector noted that they had originally estimated in their comments on the March 2021 notification and request for comments that they would need four years to phase PIP (3:1) out of their articles, but now believe that they can achieve this by October 31, 2024 (Ref 15). They conditioned their support for the 2024 date on the date being a "manufactured-by" date, rather than a prohibition on processing and distribution in commerce, and also raised the issue of replacement parts for consumer articles produced before the "manufactured-by" date.

The home appliance industry also supported the October 2024 date, noting that their comments on the March 2021 notification and request for comments recommended a three-year extension of the compliance date. They also requested that the compliance date be applied as a "manufactured-by" date, and that there be an exclusion for spare or replacement parts (Ref. 16).

Other commenters maintained that they would need more time to complete a phase-out of PIP (3:1) from their supply chains. A commenter from the electrical manufacturing industry stated that they would need at least five years to eliminate PIP (3:1) in their articles, and eight

years would be preferred (Ref. 17). The commenter described the complexity of the sector's supply chains, estimating that six to twelve months would be needed to identify PIP (3:1) in articles and two to three years would be needed to identify an alternative, after which it would be necessary to test and certify components made with the alternative. This commenter also noted that it would be very expensive to replace PIP (3:1) throughout the electrical manufacturing industry. Finally, this commenter stated that an additional three years would be needed for "sell-through," *i.e.*, allowing articles made with PIP (3:1) to clear the supply chain.

Several commenters from the semiconductor manufacturing industry indicated that they would need a phase-out timeline of at least fifteen years (Refs. 12, 18, and 19). One commenter noted that the same considerations that led EPA to exclude new and replacement parts for the aerospace and automotive industry from the January 2021 final rule could be applied to the semiconductor manufacturing industry and, therefore, that industry should also be excluded (Ref. 12). This commenter suggested a fifteen-year delay in the compliance date for the semiconductor manufacturing industry, which was consistent with the comments this commenter provided in May 2021. The commenter provided a chart showing the typical cycle for one part going through an engineering change under normal conditions. While the chart showed that the process could be completed in ten years, and that process steps could overlap, the commenter noted that a PIP (3:1) phase-out would involve the entire industry going through these processes for many parts at once, leading to numerous logjams. The commenter estimated that 30 months would be needed to identify PIP (3:1)-containing components in the supply chain, 20 months would be needed to identify and test alternatives, 6 to 48 months would be needed to requalify suppliers to the manufacturer's requirements, 18 months would be needed to laboratory testing and recertification, and 36 months would be needed for customer qualification (Ref. 12).

In addition to comments regarding the extension of compliance dates for prohibitions, one commenter further requested that EPA make the compliance date for recordkeeping for excluded articles, such as new and replacement automotive parts, consistent with the

recordkeeping compliance date for articles that are the subject of this rulemaking (Ref. 20).

2. EPA response.

EPA notes that one-third of the commenters overall estimated that impacted industries would be able to comply with the October 2024 compliance date, albeit with some reservations related to replacement parts, the ability to sell articles produced before the compliance date, and pandemic impacts on global supply chains. EPA appreciates the efforts that many of the commenters made to provide the details requested by EPA in the October 2021 proposal as to:

• The specific uses of PIP (3:1) in articles throughout their supply chains;

• Concrete steps taken to identify, test, and qualify substitutes for those uses, including details on the substitutes tested and the specific certifications that would require updating;

• Estimates of the time required to identify, test, and qualify substitutes with supporting documentation; and

• Documentation of the specific need for replacement parts, which may include the documented service life of the equipment and specific identification of any applicable regulatory requirements for the assurance of replacement parts.

EPA also appreciates the comments that provide updated estimates of needed time to comply and which provide more detailed information than was provided in response to the March 2021 notification and request for comments. Overall, EPA finds the description of concrete steps taken in some industries to identify alternatives or continue engaging in phase-outs to provide a compelling rationale for the need for an extension of the compliance date to October 31, 2024, with an expectation that in several industries this extension would be sufficient. While EPA appreciates the information submitted by some commenters to support a further compliance date extension beyond October 31, 2024, EPA also recognizes that, for many industries, the collection of this information is still ongoing. EPA does not find that the Agency has sufficient information at this time to identify an appropriate compliance date beyond October 31, 2024, or to justify extending the compliance date beyond October 31, 2024. As commenters

stated, obtaining information from suppliers continues to present challenges, and EPA anticipates that additional time to investigate supply chains as well as substitute chemicals will result in more robust information regarding the need for compliance date extensions beyond October 31, 2024, including the number of years that will be needed to qualify the substitutes and distribute them throughout the supply chain. As discussed in the October 2021 proposal and in more detail in Unit IV.B., EPA will consider any additional information on this issue in the context of the broader rulemaking EPA plans to undertake for PIP (3:1) and other PBTs. As part of that broader rulemaking, EPA will also review the justifications underlying the exclusions in the January 2021 PIP (3:1) final rule to consider whether to adopt new restrictions for activities currently excluded, such as new and replacement automotive and aerospace vehicle parts, consistent with the statutory directive to reduce exposure to the extent practicable.

Regarding commenters' statements that compliance date extensions should be combined with a further regulatory change allowing for a "manufactured-by" date, rather than a processing and distribution in commerce prohibition, EPA's response is provided in Unit III.D.2.

Regarding compliance dates for recordkeeping, based on the comments received from the non-road mobile machinery and other similar industries (described in more details in comments requesting exclusions from the prohibitions), EPA understands that the scope of the exclusion for new and replacement motor vehicle parts is broader than what would strictly be considered the automotive industry, and not all suppliers eligible for the motor vehicle parts exclusion participate in the automotive industry's recordkeeping system. EPA recognizes the benefits in extending the recordkeeping compliance date in the way described by the commenter; details of the recordkeeping compliance date extension are described in Unit IV.B.

B. Comments supporting exclusions.

A number of commenters from the construction, agriculture, mining, forestry and utility industries, which EPA is referring to as the non-road mobile machinery industry, argued that they should be afforded the same exclusion that was provided in the January 2021 final rule for

new and replacement parts for the aerospace and automotive industries.

1. Summary of public comments supporting exclusions.

One commenter from the non-road mobile machinery industry stated that this industry faces the same types of safety, design, manufacturing and purchasing issues experienced by the aerospace and automotive sectors (Ref. 22). According to the commenter, this leads to overlapping supply chains with the much-larger aerospace and automotive industries. As a result of these overlapping supply chains, the exclusions granted to the aerospace and automotive industries, without a similar exclusion for the non-road mobile machinery industry, greatly complicate efforts to comply with the provisions of the January 2021 final rule in that the non-road mobile machinery industry may be forced to find new suppliers to provide replacements for PIP (3:1)-containing components at a higher cost.

As an alternative to an exclusion, this commenter stated that they would need seven years to eliminate PIP (3:1)-containing components from their supply chain. The commenter provided a detailed timeline in support of this assertion, as well as an estimate of the costs that would be incurred in eliminating PIP (3:1). Other commenters supported a seven-year delayed compliance date as an alternative to their preferred approach of excluding the heavy machinery industry (Refs. 22 and 23).

Relatedly, commenters representing the automotive and similar industries, such as the non-road mobile machinery industry, requested that EPA clarify several provisions. Several commenters noted that EPA had provided its understanding of the meaning of the term "motor vehicle," as that term is used in the January 2021 final rule, to stakeholders upon request (Ref. 20, 22, and 24). These commenters asked that EPA provide its understanding of the term "motor vehicle" in the regulatory text itself, or in a companion guidance document.

2. EPA response.

EPA appreciates the detailed estimates that several commenters provided describing the time that would be needed to identify PIP (3:1) in their supply chain, find and test alternatives,

recertify and requalify parts and finished goods, and distribute them through the supply chain (Ref. 21). EPA notes that some of the articles produced by these commenters would be considered motor vehicles. As EPA has stated in response to stakeholder inquiries (Refs. 20, 22, and 24), EPA generally interprets the term "motor vehicle" to mean a transport vehicle that is propelled or drawn by mechanical power, such as cars, trucks, motorcycles, boats, and construction, agricultural, and industrial machinery. To the extent that the commenters produce motor vehicles, they are currently covered under the exclusion provided in the January 2021 final rule for new and replacement motor vehicle parts. However, as EPA announced in the March 2021 notification and request for comments and further described in the October 2021 proposal, EPA, as part of its planned future rulemaking on all five of the PBTs, will review the justifications underlying the exclusions in the January 2021 PIP (3:1) final rule to consider whether to adopt new restrictions for activities currently excluded, consistent with the statutory directive to reduce exposure to the extent practicable (Refs. 4 and 10). As noted previously, in the future rulemaking, EPA will also consider comments addressing any need for a further extension to compliance dates that have already been extended. For example, in the upcoming rulemaking, EPA intends to evaluate whether a compliance date can be established for new automotive parts that contain PIP (3:1). As part of that evaluation, EPA will consider a similar compliance date for adjacent industries, such as non-road mobile machinery, given that they share supply chains. Similarly, EPA appreciates the suggestion from the commenters regarding a definition of "motor vehicle" in the regulatory text and will consider proposing such a definition in relevant regulatory text as part of the upcoming broader rulemaking on PIP (3:1) and other PBT chemicals.

C. Comments opposed to further compliance date extensions.

In contrast to industry commenters, commenters from environmental, public health, children's health organizations, or tribal partnership groups contended that no additional compliance date delay was warranted.

1. Summary of public comments opposed to further compliance date extensions.

Two commenters expressed concern over the additional exposures that could result from further extensions to the compliance date, including to children, persons who are exposed to PIP (3:1) through multiple pathways, subsistence fishers and others who are likely to have higher dietary exposures than those of the general population, and persons exposed through the disposal of PIP (3:1)-containing materials at certain landfills and through open burning (Refs. 25 and 26).

One comment from several environmental, public health, and children's health organizations stated that an extension of the compliance date would perpetuate exposure to a toxic chemical contrary to the statutory requirement to take expedited action to reduce exposure to the extent practicable for the PBT chemicals (Ref. 25). The comment emphasized that a further extension of the compliance deadline would reward industry's lack of participation in the regulatory process that preceded the January 2021 final rules, and stated their position that EPA failed to justify the proposed compliance extension by dismissing its impact on exposure risks, instead focusing only on industry hardship, and that this approach contravenes Congress' intent in TSCA. The commenter cited EPA's proposed rule to note that PIP (3:1) is among the highest scoring PBT chemicals based on its scores for hazard, exposure, and persistence and bioaccumulation. The commenter also stated that, because the general prohibition against PIP (3:1) took effect within sixty days, the commenter believed that EPA had not considered whether there were steps that could be taken during a multi-year phase-in period to reduce exposure to PIP (3:1), such as public notifications and labeling of products containing PIP (3:1) or additional safeguards for the workers who manufacture, recycle, or dispose of those products (Ref. 25). Additionally, the comment cited studies in stating that the proposed extension will be especially harmful to communities where PIP (3:1) is manufactured, imported, released, and disposed of, and that multiple exposures to PIP (3:1) would have a disproportionate impact on those communities that raise environmental justice concerns. The commenter added that the proposed extension will be especially harmful to children, providing citations of industry reports of the

presence of PIP (3:1) in children's products. Finally, the commenter requested that EPA initiate information gathering rulemakings under TSCA section 8(a) to prevent any future attempts by industry to evade regulatory control on the basis of ignorance of chemicals present in products and supply chains.

The National Tribal Toxics Council (NTTC), an EPA Tribal Partnership group, stated that, prior to the original compliance date, EPA had provided more than adequate advance notice as well as ample opportunities for stakeholder engagement, and thus further extensions are not warranted. The commenter emphasized that any regulatory action that pertains to PBTs has significant tribal implications, and expressed concern that the rule would result in 31 additional months of PIP (3:1) products being disposed in or near tribal lands without monitoring for environmental releases (Ref. 26).

2. EPA response.

EPA appreciates the commenters' descriptions of their concerns, their input during the current and previous rulemakings, and their support of EPA's stakeholder engagement process. EPA agrees that earlier industry stakeholder engagement during the multiple years the original PIP (3:1) regulation was under development would have been of great help to EPA in crafting practicable compliance dates for various industry sectors as is required by TSCA section 6(d)(1). EPA also acknowledges that PIP (3:1) scores high for hazard, exposure, and persistence and bioaccumulation. However, EPA finds the information industry stakeholders have provided in response to the March 2021 and October 2021 notices to be compelling justification for the necessity of extension of the relevant compliance dates to October 2024 because of the potential for significant disruption to the supply chains for important articles such as HVACR equipment and personal electronics.

EPA appreciates the recommendations for steps that could be taken to phase out PIP (3:1) or further reduce exposure, such as the public notifications or worker protections the commenter described. EPA will consider these recommendations as part of EPA's planned future

rulemaking on PIP (3:1) and other PBTs, as described in the October 2021 proposal, and EPA will be seeking more detailed comments and information on issues of this kind to determine whether additional measures as proposed would be practicable. Similarly, as part of that future rulemaking, EPA will assess how environmental justice could be promoted through further exposure reduction. While EPA has taken note of the information provided by the commenters on the reports of PIP (3:1) in products used by children, as well as the potential impacts on communities near importers of PIP (3:1), EPA emphasizes that the agency has not determined at what level exposure to PIP (3:1) represents a risk to human health or the environment. In the future rulemaking on PIP (3:1) and other PBTs, EPA intends to identify whether exposure to PIP (3:1) could be further practicably reduced, including by reducing or removing current exclusions from prohibitions or by modifying compliance timeframes. EPA emphasizes that, as part of the future rulemaking, information such as that provided in the comment will be considered.

Regarding the concerns raised in both comments regarding tribes and environmental justice communities, EPA recognizes that while the compliance date extension may result in the potential for exposures that might otherwise have been precluded, EPA does not have information to suggest that such potential exposures are likely to be substantial or direct. For example, according to another commenter, the risk of exposure to PIP (3:1) to workers, consumers, and end-users is low because the PIP (3:1) is generally incorporated into the composition (polymer matrix) of the components that are internal to equipment accessible only by trained technicians (Ref. 14). In contrast, EPA does know that the use of PIP (3:1) for these articles in the near term is necessary to avoid significant disruption to the supply chains for certain important articles such as HVACR systems and personal electronic devices such as cellular telephones. Thus, an earlier compliance date would not be practicable or provide a reasonable transition period as is required by TSCA section 6(d)(1). More information on TSCA section 6(d) is provided in Unit IV.A. As EPA works to develop planned future rulemakings on PIP (3:1) and other PBTs, described in the October 2021 proposal, EPA will consider to what

extent impacts to tribes and environmental justice communities could be reduced further and welcomes NTTC's interest in tribal consultation and developing a more effective process for determining whether an action is of tribal significance.

EPA agrees with commenters' concern regarding several industries' lack of information on the presence of chemicals in their supply chains, particularly in imported articles. EPA notes that the commenters' recommendation for promulgation of a rule under TSCA section 8 is outside the scope of this compliance date extension.

D. Comments on other topics.

Commenters also provided information on other topics, including their interest in a "manufactured-by" date for articles, applicability of the rule to replacement parts, and establishment of a *de minimus* threshold. Additionally, a commenter requested clarification of downstream notification requirements.

1. Summary of comments on other topics.

Many of the industry commenters stated that the compliance date referenced in the proposal should be a "manufactured-by" date, rather than a compliance date for a prohibition on processing and distribution in commerce. By this, the commenters generally meant that any article manufactured before the "manufactured-by" date could be processed and distributed in commerce at any time in the future without restriction. One commenter noted that the only date that the industry has control over is the date by which an article is manufactured (Ref. 15). The commenter asserted that manufacturers of consumer goods and EPA could more readily determine compliance using this approach because a "manufactured-by" date can be confirmed based on unique product identifiers, such as lot or serial numbers, that are often marked on the article. According to the commenter, retailers do not have control over how quickly goods are sold and do not necessarily operate under a first-in, first-out system, which adds to the challenge of inventory management. The commenter further stated that in the absence of a "manufactured-by" compliance date, retailers would be unable to determine whether a good was compliant, *i.e.*,

does not contain PIP (3:1). This commenter stated that an "imported-by" date would present challenges for the industry, primarily due to the potential for import delays associated with the process itself as well as with shipping, which have been exacerbated by the COVID-19 pandemic. However, the commenter stated that an "imported-by" date would be more manageable for the industry than a compliance date associated with distribution in commerce.

Another commenter stated that the date of compliance should be a "manufactured-by" date for domestically produced articles, and an "imported-by" date for those articles produced abroad (Ref. 27). This commenter noted that distributors do not necessarily ship finished goods based on when they receive them, and it may be difficult for manufacturers, importers, distributors, and retailers to differentiate with certainty between goods that appear the same but may have different chemical compositions. This commenter further noted that a distribution in commerce prohibition is also unworkable because distribution in commerce has been very broadly interpreted by EPA to include, in some cases, any movement of a regulated product, even among facilities within the same business enterprise and its affiliates and subsidiaries.

While some commenters (Refs. 15 and 27) stated that the only compliance date should be a "manufactured-by" date, or "imported-by" date, other commenters indicated that a restriction on distribution in commerce might be workable as long as sufficient time was provided for articles manufactured before the "manufactured-by" date to move through the channels of trade to the end user. These commenters often used the phrase "sell-through" to describe the date by which sales of articles manufactured before the "manufactured-by" date must cease. Two commenters stated that a three-year "sell-through" date would be adequate (Refs. 17 and 28). One commenter representing the retail industry indicated that the minimum time needed would be 18 months, based on more-detailed information provided by a retailer of electronic products (Ref. 29). This commenter noted that more time would be needed for products that tend to sell more slowly, such as furniture.

Many of the industry commenters also expressed concern over the applicability of the

January 2021 final rule's provisions only to some types of replacement parts. One commenter noted that HVACR and water-heating equipment can safely remain in operation for as long as fifty years or more and, in many cases, buildings are designed and built around such equipment, making it difficult to replace (Ref. 28). This commenter contended that to ensure that this critical HVACR and water heating equipment can still function in the future, the components and parts used in servicing the equipment must be able to be used without restriction. Another commenter stated that components or parts of articles typically are held by the manufacturer until needed for repair or replacement (Ref. 15). The commenter noted that electronic finished goods may have warranties upwards of fifteen years, meaning that components or parts of articles for repair or replacement can be kept in a manufacturer's warehouse for well over a decade. This commenter further explained that, when transitioning from one generation of an electronic finished good to the next, spare parts for the first generation are bought under a "last time buy" from the supplier to create the inventory of spare parts needed to support warranty claims. After this "last time buy", the tooling needed to manufacture those parts is decommissioned. The commenter further noted that spare and replacement parts or articles that contain PIP (3:1) would be expected to be in inventory well past the proposed October 2024 compliance date, but the "manufactured-by" date approach would solve this problem.

A number of commenters recommended that EPA establish a *de minimis* threshold for PIP (3:1) regulation, particularly in articles. Commenters gave a variety of reasons for why EPA should establish a threshold level. One commenter stated that the difficulty in determining whether PIP (3:1) is present in a component article was at least partly due to potential discomfort with claiming absolute "zero" PIP (3:1) when there is ambiguity about how that will be determined or whether it is feasible to determine due to the potential for miniscule contamination (Ref. 30). This commenter contended that ambiguity in the material declaration process makes that process extremely time consuming and adds months to the process for each supplier. Other commenters also expressed concern for the potential for trace contamination and the feasibility

of controlling such contamination (Refs. 15 and 31). Another commenter noted the high expense that is entailed by having to test down to the detection limit in the absence of a *de minimis* threshold (Ref. 21). Yet another commenter noted that other chemical regulatory programs such as REACH incorporate a *de minimis* threshold (Ref. 16).

One commenter requested that EPA clarify the downstream notification requirements for manufacturers, processors, and distributors of PIP (3:1) for use in certain articles, and whether those requirements would be extended along with the compliance dates for the prohibition on processing and distribution of certain PIP (3:1) containing articles (Ref. 27).

2. EPA response.

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, how long it may take to clear those PIP (3:1)-containing articles through the channels of trade, and the steps needed to phase PIP (3:1) out of articles in the supply chain. EPA will consider these comments in the context of the broader rulemaking EPA plans to undertake for PIP (3:1) and other PBT chemicals (Ref. 10). In that rulemaking, EPA plans to request public comment on the utility as well as the drawbacks of a "manufactured-by" date and the amount of time needed for articles to clear the channels of trade, the applicability of the rule to replacement parts, and a *de minimis* threshold in the context of reducing exposure to PIP (3:1) to the extent practicable. Regarding the request for clarification regarding downstream notification requirements, EPA is not extending the compliance date for downstream notification requirements to align with the extended compliance dates for PIP (3:1)-containing articles in this final rule. The downstream notification requirements apply only to the chemical PIP (3:1) and mixtures (products) that contain the chemical PIP (3:1); they are not applicable to PIP (3:1) containing articles. However, EPA is conforming the required downstream notification language with the compliance date extensions. Details of these amendments are in Unit IV.C.

IV. Provisions of this Final Rule

A. Establishing a Revised Compliance Date

TSCA section 6(d) includes a number of provisions relating to establishment of effective or compliance dates in rules promulgated under TSCA section 6. Specifically, 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 TSCA section 6(d)(1)(D) requires EPA to specify mandatory compliance dates for full implementation of ban or phase-out requirements under a TSCA section 6(a) rule, 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 term "practicable" as used in the phrase "to the extent practicable" in TSCA section 6(h) is undefined, the phrases "as soon as practicable" and "reasonable transition period" as used in TSCA section 6(d)(1) are also undefined, and the legislative history on each provision is limited. Given the ambiguity in the statute, for purposes of the January 2021 final rule under TSCA section 6(h), EPA presumed a 60-day compliance date was "as soon as practicable" where EPA determined a prohibition or restriction was 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 allowed 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 was both "as soon as practicable" and provides a "reasonable transition period."

As noted in the September 2021 final rule and the October 2021 proposal, despite significant outreach efforts, EPA did not receive timely or specific input from certain stakeholders during any public comment periods prior to issuance of the January 2021 final rule regarding the presence of PIP (3:1) in myriad articles (Refs. 2 and 10). Absent this input, in the January 2021 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 comments, and the communications received before that document published in in the *Federal Register*, presented new information demonstrating that a 60-day compliance date was not practicable and did not provide a reasonable transition period for the full implementation of a ban or phase-out for many industries.

B. Compliance Dates in this Final Rule

Based upon EPA's analysis of the comments received on the October 2021 proposal, along with the information provided in comments received on the March 2021 notification and request for comments, EPA is extending until October 31, 2024, the compliance date for the prohibition on processing and distribution in commerce of PIP (3:1)-containing articles, and the PIP (3:1) used to make those articles. As discussed in the October 2021 proposal, and in the response to comments earlier, the October 2024 compliance date is consistent with the lower end of the time estimates provided by commenters on the March 2021 notification and request for

comments. As described in Unit III.A., approximately one-third of the commenters on the October 2021 proposal estimated that they would be able to comply with the October 2024 compliance date, albeit with some reservations related to replacement parts, the ability to sell articles produced before the compliance date, and COVID-19 pandemic impacts on global supply chains. EPA has determined that this further extension of the March 8, 2022 compliance date to October 31, 2024, for the prohibition on processing and distribution in commerce is necessary to avoid significant disruption in the supply chains for certain articles, such as HVACR equipment and consumer electronics, and will provide a measure of regulatory certainty while industry collects and submits additional information to inform whether a further compliance date extension may be necessary for certain industry sectors, such as the semiconductor manufacturing industry. While EPA expects that that in several industries this extension would be sufficient, EPA also recognizes the challenges described by commenters with complex supply chains and the potential need for a longer compliance date extension in certain industries. The compliance date extension to October 31, 2024, will allow EPA additional time to further evaluate the need to again extend the compliance deadlines for PIP (3:1) for certain industries such as the semiconductor manufacturing industry. As discussed in the October 2021 proposal and in more detail in Unit II.C., EPA plans to consider this information in the context of revisions to PIP (3:1) and other PBT rules more generally.

EPA is also extending the recordkeeping compliance date in 40 CFR 751.407(d) for PIP (3:1)-containing articles until October 31, 2024. Because industry is still in the process of identifying whether and where PIP (3:1) is present in many of the articles in their supply chains, it would be difficult, if not impossible, for them to supply the required information. Additionally, as described earlier, a public comment requested that EPA make the compliance date for recordkeeping for excluded articles, such as new and replacement automotive parts, consistent with the recordkeeping compliance date for articles that are the subject of this rulemaking (Ref. 20). Based on the comments received from the non-road mobile machinery and other similar

industries, EPA understands that not all suppliers eligible for the motor vehicle parts exclusion participate in the automotive industry's recordkeeping system. Therefore, EPA is extending the recordkeeping compliance dates specified in paragraphs 40 CFR 751.407 (a)(2)(iii) and (d)(4) from March 8, 2022, to October 31, 2024. However, the compliance dates specified in 40 CFR 751.407(a)(2)(ii) remain in effect.

EPA also recognizes that, for many industries, the collection of information on the presence of PIP (3:1) in their supply chains is still ongoing. As discussed in the October 2021 proposal, EPA will consider any additional information of this kind in the context of the broader rulemaking EPA plans to undertake for PIP (3:1) and other PBT chemicals (Ref. 10). In that future rulemaking, EPA also plans to consider the comments, discussed in Unit III.D., regarding a "manufactured-by" date, replacement parts, and a *de minimis* threshold.

C. Conforming Amendments to the Downstream Notification Requirements

In reviewing the comments received on the October 2021 proposal (*e.g.*, Ref. 27), EPA realized that the downstream notification requirements in the January 2021 final rule could be misleading, resulting in potential confusion for the regulated community. 40 CFR 751.407(e) requires manufacturers, processors, and distributors in commerce of PIP (3:1) and PIP (3:1)-containing products to provide notification of the restrictions on the chemical substance to their customers, either through specific mandatory language on a Safety Data Sheet (SDS) or a label. EPA notes that the notification requirements only apply to the chemical PIP (3:1) or to products containing the chemical PIP (3:1). As discussed in Unit II.A., the term "product" excludes articles. Therefore, the downstream notification requirements on 40 CFR 751.407(e) do not apply to PIP (3:1)-containing articles.

However, the mandatory language in 40 CFR 751.407(e)(3)(i) through (iii) does not reflect the fact that EPA is extending the compliance date for the prohibition on processing and distribution in commerce of certain PIP (3:1)-containing articles. Thus, purchasers of PIP (3:1) and PIP (3:1)-containing products who intend to use them in articles may be confused by the

mandatory language on an SDS or a label that says that they may not use the PIP (3:1) or PIP (3:1)-containing product in this manner. Therefore, EPA is amending the mandatory language at 40 CFR 751.407(e)(3)(i) through (iii) to conform to the compliance date extension for the prohibition on processing and distribution in commerce of certain PIP (3:1)-containing articles.

V. 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. EPA. Regulation of Persistent, Bioaccumulative, and Toxic Chemicals Under TSCA Section 6(h); Phenol, Isopropylated Phosphate (3:1); Compliance Date Extension. *Federal Register* (86 FR 51823, September 17, 2021) (FRL-6015.5-03-OCSPP).

3. 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.

4. EPA. Regulation of Persistent, Bioaccumulative, and Toxic Chemicals Under TSCA Section 6(h); Phenol, Isopropylated Phosphate (3:1); Request for Comments. *Federal Register* (86 FR 14398, March 16, 2021) (FRL-10021-08).

5. 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).

6. 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).

7. 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).

8. 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).

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

10. EPA. Regulation of Persistent, Bioaccumulative, and Toxic Chemicals Under TSCA Section 6(h); Phenol, Isopropylated Phosphate (3:1); Further Compliance Date Extension. *Federal Register* (86 FR 59684, October 28, 2021) (FRL-6015.6-01-OCSPP).

11. 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.

12. Comment submitted by SEMI to EPA on December 22, 2021. EPA-HQ-OPPT-2021-0598-0038.

13. Comments submitted to EPA. Regulation of Persistent, Bioaccumulative, and Toxic Chemicals Under TSCA Section 6(h); Phenol, Isopropylated Phosphate (3:1); Further Compliance Date Extension. EPA-HQ-OPPT-2021-0598-0001.

14. Comment submitted by Air Conditioning, Refrigeration, and Heating Institute (AHRI) to EPA on December 21, 2021. EPA-HQ-OPPT-2021-0598-0027.

15. Comment submitted by Consumer Technology Association (CTA), IPC and

Information Technology Industry Council (ITI) to EPA on December 21, 2021. EPA-HQ-OPPT-2021-0598-0030.

16. Comment submitted by the Alliance of Home Appliance Manufacturers (AHAM) to EPA on December 23, 2021. EPA-HQ-OPPT-2021-0598-0033.

17. Comment submitted by the National Electrical Manufacturers Association (NEMA) to EPA on December 22, 2021. EPA-HQ-OPPT-2021-0598-0031.

18. Comment submitted by the Semiconductor Industry Association (SIA) to EPA on December 21, 2021. EPA-HQ-OPPT-2021-0598-0025.

19. Comment submitted by Hitachi High-Tech America, Inc. (HTA) to EPA on December 22, 2021. EPA-HQ-OPPT-2021-0598-0041.

20. Comment submitted by Alliance for Automotive Innovation and Motor & Equipment Manufacturers Association (MEMA) to EPA on December 23, 2021. EPA-HQ-OPPT-2021-0598-0046.

21. Comment submitted by the Association of Equipment Manufacturers (AEM) to EPA on December 23, 2021. EPA-HQ-OPPT-2021-0598-0047.

22. Comment submitted by Truck and Engine Manufacturers Association (EMA) to EPA on December 23, 2021. EPA-HQ-OPPT-2021-0598-0044.

23. Comment submitted by Kubota North America Corporation (KNA) to EPA on December 21, 2021. EPA-HQ-OPPT-2021-0598-0028.

24. Comment submitted by the Outdoor Power Equipment Institute (OPEI) to EPA on December 22, 2021. EPA-HQ-OPPT-2021-0598-0032.

25. Comment submitted by Alaska Community Action on Toxics *et al*. to EPA on December 23, 2021. EPA-HQ-OPPT-2021-0598-0043.

26. Comment submitted by National Tribal Toxics Council (NTTC) To EPA on December 27, 2021. EPA-HQ-OPPT-2021-0598-0057.

27. Comment submitted by Chemical Users Coalition (CUC) to EPA on December 22,

2021. EPA-HQ-OPPT-2021-0598-0036.

28. Comment submitted by Air Conditioning, Heating, and Refrigeration Institute (AHRI) to EPA on December 21, 2022. EPA-HQ-OPPT-2021-0598-0027.

29. Comment submitted by the Retail Industry Leaders Association (RILA) to EPA on December 27, 2021. EPA-HQ-OPPT-2021-0598-0055.

30. Comment submitted by Advanced Medical Technology Association (AdvaMed) to EPA on December 17, 2021. EPA-HQ-OPPT-2021-0598-0022.

31. Comment submitted by Thermo Fisher Scientific to EPA on December 24, 2021. EPA-HQ-OPPT-2021-0598-0049.

VI. 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, 5 U.S.C. 601 *et seq*. In making this determination, EPA concludes that the impact of concern for this rule is any significant adverse economic impact on small entities, and the Agency is certifying that this rule will not have a significant economic impact on a substantial number of small entities because the rule relieves regulatory burden. This action would extend 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, 2022, to October 31, 2024. EPA has therefore concluded that this action would 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) because it does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the

distribution of power and responsibilities between the Federal Government and Indian tribes. 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 report

containing this rule and other required information 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.

Michael S. Regan,

Administrator.

Therefore, for the reasons stated 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:

a. In paragraphs (a)(2)(iii) and (d)(4) by removing "March 8, 2022" and adding "October 31, 2024" in its place; and

b. By revising paragraphs (e)(3)(i) through (iii).

The revisions read as follows:

§ 751.407 PIP (3:1).

* * * * *

(e) * * *

(3) * * *

(i) *SDS Section 1(c)*. "The Environmental Protection Agency prohibits processing and distribution of this chemical/product for any use other than: (1) In hydraulic fluids either for the aviation industry or to meet military specifications for safety and performance where no

alternative chemical is available that meets U.S. Department of Defense specification requirements, (2) lubricants and greases, (3) New or replacement parts for motor and aerospace vehicles, (4) as an intermediate in the manufacture of cyanoacrylate glue, (5) In specialized engine air filters for locomotive and marine applications, (6) In adhesives and sealants before January 6, 2025, after which use in adhesives and sealants is prohibited, and (7) in other articles before October 31, 2024, after which use in articles other than new or replacement parts for motor and aerospace vehicles or specialized engine air filters for locomotive and marine applications is prohibited. In addition, all persons are prohibited from releasing PIP (3:1) to water during manufacturing, processing, and distribution in commerce, and must follow all existing regulations and best practices to prevent the release of PIP (3:1) to water during the commercial use of PIP (3:1).”; and

(ii) *SDS Section 15*. “The Environmental Protection Agency prohibits processing and distribution of this chemical/product for any use other than: (1) In hydraulic fluids either for the aviation industry or to meet military specifications for safety and performance where no alternative chemical is available that meets U.S. Department of Defense specification requirements, (2) lubricants and greases, (3) new or replacement parts for motor and aerospace vehicles, (4) as an intermediate in the manufacture of cyanoacrylate glue, (5) In specialized engine air filters for locomotive and marine applications, (6) in adhesives and sealants before January 6, 2025, after which use in adhesives and sealants is prohibited, and (7) in other articles before October 31, 2024, after which use in articles other than new or replacement parts for motor and aerospace vehicles or specialized engine air filters for locomotive and marine applications is prohibited. In addition, all persons are prohibited from releasing PIP (3:1) to water during manufacturing, processing, and distribution in commerce, and must follow all existing regulations and best practices to prevent the release of PIP (3:1) to water during the commercial use of PIP (3:1).”; or

(iii) *Labeling*. “The Environmental Protection Agency prohibits processing and

distribution of this chemical/product for any use other than: (1) In hydraulic fluids either for the aviation industry or to meet military specifications for safety and performance where no alternative chemical is available that meets U.S. Department of Defense specification requirements, (2) lubricants and greases, (3) new or replacement parts for motor and aerospace vehicles, (4) as an intermediate in the manufacture of cyanoacrylate glue, (5) In specialized engine air filters for locomotive and marine applications, (6) In adhesives and sealants before January 6, 2025, after which use in adhesives and sealants is prohibited, and (7) in other articles before October 31, 2024, after which use in articles other than new or replacement parts for motor and aerospace vehicles or specialized engine air filters for locomotive and marine applications is prohibited. In addition, all persons are prohibited from releasing PIP (3:1) to water during manufacturing, processing, and distribution in commerce, and must follow all existing regulations and best practices to prevent the release of PIP (3:1) to water during the commercial use of PIP (3:1)."

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[FR Doc. 2022-04945 Filed: 3/7/2022 8:45 am; Publication Date: 3/8/2022]