



RETAIL INDUSTRY LEADERS ASSOCIATION

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December 27, 2021

Via regulations.gov (EPA-HQ-OPPT-2021-0598)

ATTN: Cindy Wheeler, Existing Chemicals Management Division
Office of Pollution Prevention and Toxics
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington, D.C. 20460-0001

Re: Proposed Rule – Regulation of Persistent, Bioaccumulative, and Toxic (PBT) Chemicals Under TSCA Section 6(h); Phenol, Isopropylated Phosphate (PIP) (3:1); Further Compliance Date Extension (Oct. 28, 2021); Docket ID: EPA-HQ-OPPT-2021-0598

Dear Ms. Wheeler:

The Retail Industry Leaders Association (RILA or the Association) want to take this opportunity to express its appreciation of the U.S. Environmental Protection Agency's (EPA's or Agency's) temporary moratoriums on enforcing the Final TSCA Section 6(h) rule for Phenol, Isopropylated Phosphate (3:1) (PIP (3:1), (hereafter the Final PIP Rule), with respect to manufactured articles. RILA also appreciate the opportunity to supplement its previous comments on the issue of a new compliance date for the prohibition on the distribution of PIP (3:1)-containing articles.

By way of background, RILA's members include the largest and most innovative retailers. The retail industry employs over 42 million Americans and accounts for \$1.5 trillion in annual sales. RILA and its member companies strongly support the mission and goals of the EPA to protect human health and the environment, including preventing exposure risk from chemical substances that may be present in consumer goods and products. RILA members have robust compliance programs in place and work closely with trusted suppliers to ensure that all products that they sell meet or exceed all applicable U.S. safety standards and legal requirements.

RILA wishes to reiterate our support for EPA's efforts to eliminate environmental risks and minimize exposure to PIP (3:1) to the extent practicable, including PIP (3:1) that may be contained in manufactured articles, for the general public and susceptible subpopulations. In comments

previously submitted on May 17, 2021,¹ the Association outlined retailers' concerns with the original March 2021 compliance deadline and urged the Agency to develop a realistic compliance date that takes into consideration the following key supply chain realities. Those concerns remain unchanged, and the Association wishes to incorporate them here by reference.

RILA understands that EPA received comments from stakeholders that varied greatly in the lengths of time requested for compliance date extensions for its Final PIP Rule. EPA is now proposing to extend the compliance date to October 31, 2024 "*consistent with the lower end of the estimates provided [during earlier comment periods] . . . [to] avoid significant disruption in the supply chains for important articles and will provide the public with regulatory certainty while industry collects and submits additional information to inform whether a further compliance date extension may be necessary for certain industry sectors. EPA will consider any additional information of this kind in the context of the broader rulemaking described in more detail in Unit III.C.*"² RILA also recognizes that at this time, EPA is requesting information on any *specific articles* that need an alternative compliance date, and the basis for the alternative dates along with supporting documentation.

For the same reasons stated in our May 2021 comments, retailers do not have ready access to product formulation information and data, including the chemical composition of finished articles and their component parts, and the time that will be required to substitute PIP (3:1) in those formulations. In many cases this information may be considered confidential and proprietary. Therefore, we defer to the comments and supporting data and documentation the Agency will receive from product manufacturers and their representatives as to whether the October 31, 2024, compliance deadline is adequate for specific products or if an alternative date is necessary to transition specific product categories.

I. Additional Information on Time Required to Sell Through On-Hand Products Containing PIP (3:1) and Build Up Adequate Inventory of PIP (3:1)-free Product to Sell to U.S. Consumers

As the Agency evaluates any comments on the timeline to transition specific products, RILA wishes to reiterate and reemphasize our previous request that any compliance deadlines take in to account the time required to sell through existing inventory of PIP (3:1)-containing products. Our May 2021 comments addressed this issue in more detail, including a general description of the retail supply chain process and timeline from a retailer placing a purchase order, to production and shipment by the manufacturer and arrival at a retailer's distribution center, to scanning into inventory and ultimately stocking the product on a retail shelf or selling it via e-commerce. Depending on the product, the timespan from placement of a purchase order to production and shipment to a retailer could alone take up to one year. As witnessed by the

¹ See RILA Comments re: Proposed Rule – Regulation of Persistent, Bioaccumulative and Toxic Chemicals Under TSCA Section 6(h) (May 17, 2021); Docket ID: EPA-HQ-OPPT-2021-0202-0086.

² 86 Fed. Reg. 59690.

current supply chain crisis and shipping delays, it could be several months before U.S. retailers ultimately receive the products in their stores and distribution centers.

Subsequent to RILA's May 2021 comments, one retailer provided additional context around the timeline for sell through of electronic products – a category that historically has included PIP (3:1) in components of finished articles. For this particular retailer's "owned brands" (i.e., private labels) new product development for an electronic product is initiated 55 weeks prior to its in-store set date when it will be available for purchase by a consumer. Included within the new product development timeframe is the initiation of the purchase order, production, and transit, and stocking the product in store. Production for this product category generally begins 30 to 45 days after the retailer issues a purchase order to the manufacturer-supplier. The actual production time may vary depending on the product. However, 160 days is the average estimated amount of time from the time production begins until an electronic product arrives in the U.S. and is set in store available for purchase (though current supply chain delays may lengthen this overall time). Once set in store, the sell through could take up to 20 weeks (or 140 days) depending on the item. Taking those two timeframes together, when accounting for new product development (55 weeks) and sell through (up to 20 weeks), a total of 75 weeks (or 1.5 years) is the overall timeframe that may follow from initiating a purchase order to sell through of an electronic product for one national retail chain.

It is important to note that an average sell through time periods may be greater for slower churn consumer product categories like furniture. Additionally, the electronics example provided does not include the time the manufacturer-supplier would need to reformulate electronics with a substitute for PIP (3:1). Likewise, reformulation timeframes for PIP (3:1) may vary depending on the product category. We expect EPA will receive information on reformulation and transition timeframes directly from manufacturing stakeholders on a product-specific basis.

RILA and its members also appreciate that EPA recognizes that all stakeholders are likely continuing to gather information on PIP (3:1) substitutions to determine the time that may be needed to reformulate and transition specific products. We understand that the Agency remains open to considering any additional information to support alternative product-based compliance deadlines as part of its anticipated future PBT rule proposal expected in 2023 that will include PIP (3:1).

Closing

RILA appreciates the opportunity to submit additional information on the issue of a new compliance date for the prohibition on the distribution of PIP (3:1)-containing articles. RILA and its members look forward to further engagement with the Agency during its rulemaking process, and its many efforts that serve to protect consumers from exposure to toxic chemicals and unsafe products.

If you have any questions or need any additional information, please contact me at susan.kirsch@rila.org or (202) 866-7477.

Sincerely,

A handwritten signature in blue ink that reads "Susan Kirsch". The signature is written in a cursive style with a small mark above the 'i' in "Kirsch".

Susan Kirsch
Vice President, Regulatory Affairs
RILA