RETAIL INDUSTRY LEADERS ASSOCIATION

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Document Control Office (7407M)
U.S. Environmental Protection Agency
Office of Pollution Prevention and Toxics (OPPT)
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460-0001

Re: Regulation of Persistent, Bioaccumulative, and Toxic Chemicals Under TSCA Section 6(h), Docket No. EPA-HQ-OPPT-2019-0080

Dear Sir or Madam:

The Retail Industry Leaders Association (RILA) has long supported the goals of Toxic Substances Control Act (TSCA) to promote public safety by eliminating toxic and hazardous substances from commerce. Most recently, RILA strongly supported the passage of the Frank R. Lautenberg Chemical Safety for the 21st Century Act,[1] which authorized the Environmental Protection Agency (EPA) to prioritize substances, conduct hazard assessments, and take appropriate action including potential rulemaking. With respect to certain persistent, bioaccumulative, and toxic substances, it directed EPA to take expedited action to address the risks to health or the environment that EPA determines are presented by those substances. RILA welcomes the opportunity to comment on the proposed rules for five chemicals, DecaBDE, PIP (3:1), 2,4,6-TTBP, HCBD, and PCTP. They are chemical substances subject to section 6(h) of TSCA. 84 Fed. Reg. 36728 (July 29, 2019) (Proposed Rules).[2]

BACKGROUND AND EXECUTIVE SUMMARY

RILA is the U.S. trade association for leading retailers. We convene decision-makers, advocate for the industry, and promote operational excellence and innovation. Our aim is to elevate a dynamic industry by transforming the environment in which retailers operate. RILA members include more than 200 retailers, product manufacturers, and service suppliers, which together account for more than $1.5 trillion in annual sales, millions of American jobs, and more than 100,000 stores, manufacturing facilities, and distribution centers domestically and abroad.

[1] Public Law 114-182 (June 22, 2016).
[2] EPA extended the comment period until October 28, 2019. 84 Fed. Reg. 50809 (Sept. 26, 2019).

RILA members collectively sell millions of consumer products across a broad range of product categories, including home furnishings, appliances, tools, apparel, footwear, children's products and toys, pet supplies, auto, office supplies, grocery, pharmacy, personal care products and more. Many of these products qualify as "articles" under TSCA. Each of these consumer products in turn may each contain hundreds if not thousands of individual component parts. An unknown number of finished products and component parts – but potentially a significant number – may contain DecaBDE, PIP (3:1), or PCTP.

The retail industry has vast and complex supply chains. With very rare exceptions, RILA members are not vertically integrated and do not manufacture the products they sell. In most cases, they have limited or no knowledge of the chemicals that their foreign direct suppliers (and their foreign direct suppliers' component and raw material suppliers) use in producing those products. However, retailers do import products to meet customer demand and expectations, and as importers they qualify as "manufacturers" of those products for TSCA purposes.

With minor exclusions, the Proposed Rules would prohibit any person from manufacturing, importing or distributing products or articles containing DecaBDE, PIP (3:1), or PCTP. The prohibitions would take effect 60 days after promulgation of the final rules. Once finalized, these rules would have the effect of making the importation or distribution of a product or article containing any of those substances a violation of TSCA, even though there is no requirement for foreign suppliers to disclose the presence of any of those chemicals in products or articles that contain them to importers.

RILA members take no position on EPA's evaluation of the hazards of the five chemicals in the Proposed Rules. Instead, RILA's comments are limited to discussion of the practical impact of the Proposed Rules on the retail industry and importers and include recommendations for changes to the Proposed Rule that will enable its efficient and effective implementation. A summary of RILA's comments is below.

- The broad scope of the Proposed Rules will impact a significant number of finished consumer product sold by RILA members.As currently written, the Proposed Rules will have a significant negative impact on the retail industry.
- EPA should phase in the compliance deadlines for the bans on importation or distribution of products or articles containing DecaBDE, PIP (3:1), or PCTP over a period of three to five years following promulgation of the final rules. Retailers need this time to: educate their foreign supply chains and work to revise product design, if necessary; work with their supply chains to help ensure that products and articles to be exported to the U.S. are produced without the banned substances; and implement effective compliance programs.
- RILA urges EPA to revise the bans to provide a sell-through provision that allows articles containing DecaBDE, PIP (3:1), or PCTP that are manufactured and imported prior to the compliance deadlines to be distributed thereafter without restriction. EPA's prior practice involving consumer products, including the recent rules on formaldehyde in composite wood products (40 C.F.R. § 770.2(e)(4), provide precedents for such a provision. A sell-through provision is needed to

prevent an untold number of lawfully manufactured and imported articles from suddenly becoming unsaleable, which would result in significant costs for retailers and importers.

- EPA should revise the proposed recordkeeping requirements to reflect that importers typically will not generate records demonstrating the absence of the regulated chemicals in products in the ordinary course of business.
- The proposed strict liability standard of compliance should be revised to information "known to or reasonably ascertainable" by the importer. Given the substantial hurdles for retailers to learning whether imported articles contain DecaBDE, PIP (3:1), or PCTP, retailers who import articles should not face strict liability for violations where they cannot reasonably ascertain that information. A "known to or reasonably ascertainable" standard is consistent with EPA's precedent and proposed compliance guidance for importers. A written certificate or statement of compliance from the foreign supplier should be sufficient to establish compliance by the retailer/importer.
- Finally, EPA should clarify that retailers of products exempted from the Proposed PIP (3:1) Rule have no obligation to provide consumers with notices of prohibition on water release.

DISCUSSION

1. The Broad Scope of the Proposed Rules Covers a Substantial Number of Products Sold by Retailers

With very limited exceptions detailed further below, the Proposed Rules cover all consumer products that could potentially contained the listed chemicals. At a minimum, three of the four Proposed Rules will apply to retailers as importers of finished consumer products. In the preamble to the Proposed Rule, EPA confirms that DecaBDE[3] is still used in a wide variety of consumer products, many of which are imported by retailers:

> DecaBDE is used as an additive flame retardant in plastic enclosures for televisions, computers, audio and video equipment, textiles and upholstered articles, wire and cables for communications and electronics, and other applications …. Examples of products that have been made with DecaBDE as a flame retardant include:
>
> - Consumer products made of both hard and soft plastics, such as furniture and furnishings, foam in furniture or mattresses, computer casings, and other plastic products including toys and other children's products (such as play structures);
> - Fabrics and textiles, such as apparel, furniture and furnishings curtains, and construction and building materials;
> - Rubber articles, such as wire casings and other rubber articles ….[4]

[3] In proposed 40 C.F.R. § 751.403, EPA defines DecaBDE as decabromodiphenyl ether, CAS No. 1163-19-5, whose CAS name is benzene, 1,1'-oxybis[2,3,4,5,6-pentabromo-.

[4] 84 Fed. Reg. at 36734-35. See also examples of various consumer products cited at 84 Fed. Reg. at 36741.

Although DecaBDE is subject to state and well as international restrictions,[5] the Economic Analysis reported that this flame retardant is still used for wire and cable rubber casings, textiles, electronic equipment casings, all of which could be imported by retailers as part of finished articles.[6]

Similarly, EPA reports that PIP (3:1)[7] also is widely present in consumer products imported into the U.S.:

> PIP (3:1) has been identified as a possible component in plastic products and articles, including children's products …. PIP (3:1) also is added to articles as a plasticizer or flame-retardant additive in plastic components, adhesives and sealants, and paints and coatings. Use of PIP (3:1) in complex articles (such as in casings of electronics …), plastic articles including furniture and furnishings, and toys intended for children's use, has been identified (Ref. 7). PIP (3:1) is sold as a plastic flame-retardant additive and is a component of some flame-retardant additives for flexible polyurethane foam (Ref. 7).[8]

Unlike DecaBDE, PIP (3:1) is not subject to international restrictions[9] and, thus, foreign suppliers are free to include it in such products. The Economic Analysis attributed 22% of PIP (3:1) production to flexible polyurethane foam and other plastics and resins associated with furniture, furnishings, and children's articles. It added that "PIP (3:1) may be present in a wide range of imported articles …."[10]

Finally, EPA notes that PCTP[11] may be present in rubber-based consumer products, including golf balls. The preamble to the Proposed Rule states:

> [Z]inc PCTP can be used as a peptizer in rubber manufacturing and as an ingredient in the rubber core of golf balls to enhance certain performance characteristics of the ball, such as spin, rebound,

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[5] For example, the District of Columbia and at least six states (Maine, Maryland, Minnesota, Oregon, Vermont, and Washington) ban the sale of mattresses, electronics, and/or transportation equipment that contains more than 0.1% of DecaBDE. Several states require notification if DecaBDE is present in children's products above a prescribed threshold.

[6] EPA, Economic Analysis for Proposed Regulation of Persistent, Bioaccumulative, and Toxic Chemicals Under TSCA Section 6(h) (June 2019) (Economic Analysis), EPA Docket No. EPA-HQ-OPPT-2019-0080, Table 4-4.

[7] In proposed 40 C.F.R. § 751.403, EPA would define PIP (3:1) as phenol, isopropylated, phosphate (3:1), CAS No. 68937-41-7. 84 Fed. Reg. at 36736. Earlier, EPA had described it as a family of structures in which each of the three aryl groups has at least one isopropyl group, including at least tris(3-isopropylphenyl) phosphate, CAS No. 72668-27-0; tri(isopropylphenyl) phosphate, CAS No. 26967-76-0; and tri(4-isopropylphenyl) phosphate, CAS No. 2502-15-0. EPA, Preliminary Information on Manufacturing, Processing, Distribution, Use, and Disposal: Phenol, isopropylated, phosphate (3:1) (Aug. 2017) at 2, https://www.epa.gov/sites/production/files/2017-08/documents/pip3-1_-_use_information_8-10-17.pdf.

[8] 84 Fed. Reg. at 36736.

[9] Economic Analysis § 1.2.4.

[10] Id.

[11] Proposed 40 C.F.R. § 751.403 defines PCTP as pentachlorophenol, CAS No. 133-49-3. Its CAS name is benzenethiol, 2,3,4,5,6-pentachloro-.

> and distance …. EPA considers the addition of PCTP to rubber during manufacturing, whether as a peptizer or an impurity, to be processing under TSCA.[12]

While the Economic Analysis suggests that PCTP is only present in golf balls,[13] EPA has not determined whether zinc PCTP or PCTP itself is present in other kinds of rubber-containing products or articles. Thus, PCTP may be present in many more products and articles than just golf balls.

The broad scope of the Proposed Rules potentially impacts a significant portion of retailers' inventories. The recommendations outlined below are necessary to allow retailers to continue to meet consumers' needs and expectations, operate with minimal disruptions to supply chains and retail operations and avoid severe economic damage.

2. RILA Members Support the Proposed Exclusions to the Proposed Rules

Among the several exclusions proposed by EPA to the Proposed Rules for DecaBDE and PIP (3:1) is a specific exclusion for new and replacement parts for automobiles and other vehicles. This scope exclusion recognizes that including new and replacement auto parts in the scope of the Proposed Rule would only result in a very small reduction in meaningful exposure. EPA has determined that this potential limited benefit does not outweigh the unique safety considerations for autos and other vehicles and the significant costs that would result but for the exclusions.

Additionally, EPA proposes to exclude recycled products from the Proposed Rules for DecaBDE and PIP (3:1). This proposal recognizes the growing public concern about the end of life and disposal of plastic products and the increasing consumer demand for environmentally friendly consumer products made from recycled plastic. The proposed exclusion will permit discarded products originally made from plastic containing some DecaBDE or PIP (3:1) to be recycled into new plastic products as long as additional DecaBDE and PIP (3:1) content is not added.

RILA members support both proposed exclusions to the Proposed Rules.

3. EPA Should Set Realistic Timeframes and Reasonable Implementation Requirements for the Proposed Rules

a. A 60-Day Implementation Date is Unrealistic - EPA Should Postpone the Compliance Dates for the Bans to Provide Time for Retailers to Work with Their Foreign Supply Chains

EPA has proposed to make the bans on importing and distributing products and articles containing DecaBDE, PIP (3:1), or PCTP effective a mere 60 days after publication of the final rules. As noted above,

[12] 84 Fed. Reg. at 36739.
[13] Economic Analysis § 5.3.3.

the Proposed Rules cover an expansive range of consumer products imported by retailers. Given the vast number of potentially covered products, retailers' large and complex supply chains, and the time required to make changes to product design, manufacture, ship and deliver new products, it would be impossible for retailers to comply with a 60-days effective date.

Most retailers finalize their choice of suppliers and product specifications at least six to eight months, and in some instances up to one year, before the manufacture, shipment, importation and delivery of products to stores. Products imported by retailers after the proposed 60-day effective date would have been contracted for many months prior to the promulgation of the final rule. It will take time for retailers to communicate the new ban on DecaBDE, PIP (3:1), or PCTP in consumer products to suppliers; coordinate any required chemical substitutions with suppliers; and implement any new recordkeeping requirements. Retailers need three to five years after promulgation of a final rule to come into compliance.

Such a timeframe is contemplated within section 6(d) of TSCA, which authorizes EPA to allow up to five years for the start date for bans and phase-outs, along with a reasonable transition period. Thus, the full implementation dates for phase-outs presumably can even be longer than five years:

> **In any rule under subsection (a)** [i.e., including those for section 6(h) substances], the Administrator shall—
>
> (A) specify the date on which it shall take effect, which date shall be as soon as practicable;
>
> …
>
> (C) specify mandatory compliance dates for the start of ban or phase-out requirements under a rule under subsection (a), which shall be **as soon as practicable, but not later than 5 years after the date of promulgation of the rule**, except in the case of a use exempted under subsection (g);
>
> (D) specify mandatory compliance dates for full implementation of ban or phase-out requirements under a rule under subsection (a), which shall be **as soon as practicable**; **and**
>
> (E) **provide for a reasonable transition period**.

EPA has recognized that the complex supply chains for consumer products create significant compliance challenges, which require a transition period and extended timeframes for compliance. Within the current Proposed Rules, EPA proposes to allow manufacturers of hospitality curtains additional time to comply with proposed ban on DecaBDE.[14] Another example of where EPA similarly has provided for a transition period and extended time for compliance is the rule on formaldehyde in composite wood products (Formaldehyde Rule). There, in response to comments by multiple stakeholders regarding the complicated supply chain for composite wood panels and products, EPA delayed the compliance deadline to allow regulated entities time to comply (originally a one-year delay after the publication date, which EPA later extended).[15]

[14] 84 Fed. Reg. at 36730.
[15] See generally 40 C.F.R. § 770.2.

Here, however, subject to limited exceptions, EPA has not provided a transition period and instead proposes a 60 days date after publication of the final rule for full implementation and compliance with the chemical bans DecaBDE, PIP (3:1), and PCTP. As detailed above, retailers will need additional time to review existing products for compliance; where necessary work their suppliers (who in turn will need to work with their component and raw material suppliers) to develop, manufacture and deliver new compliant product. Therefore, consistent with its prior practice for rules related to article and consumer products, EPA should similarly delay the compliance deadline for the rules on decaBDE, PIP (3:1), and PCTP for a period of three to five years.

b. It is Critical that EPA Include a Sell-Through Provision in the Final Rules To Avoid Severe Economic Injury to the Retail Industry and Market Disruption for Consumers

EPA has proposed to ban distribution of products and articles containing DecaBDE, PIP (3:1), or PCTP beginning 60 days after publication of the final rule (the presumable effective date of those rules). It has not proposed to allow articles containing DecaBDE, PIP (3:1), or PCTP that are legally manufactured and imported *prior* to the effective date to continue to be distributed *after* that date. In contrast, in its Formaldehyde Rule, EPA provided that finished goods imported prior to the compliance date are forever free to be distributed.[16] The Formaldehyde Rule sell-through provision recognizes that it would be unreasonable and unfair to importers and their suppliers to ban the sale of products that were lawfully manufactured and imported prior to the effective compliance date of new regulation.

In this case, given the vast scope of potential products covered, the omission of a sell-through provision would be crippling to retailers. It would mean that lawfully imported products and articles would suddenly become unsaleable. To avoid potential liability for violation of the ban on distribution, retailers would be required to destroy or otherwise dispose of the products resulting in significant economic loss. In addition, under EPA's current proposed compliance timeframe, retailers will not have had the time or opportunity to acquire new compliant inventory. This would create a situation where retailers have no inventory to sell and are unable to meet consumer needs and expectations resulting in significant market disruptions for consumers.

A final ban without a sell-through period would create a nightmare scenario for retailers. It is critical that EPA adopt a sell-through provision similar to that in the Formaldehyde Rule allowing distribution of products and articles containing DecaBDE, PIP (3:1), or PCTP manufactured and imported prior to the compliance deadline.

4. EPA Should Revise the Proposed Recordkeeping Requirements

[16] 40 C.F.R. § 770.2(e)(4) ("Composite wood products manufactured (including imported) before June 1, 2018 may be sold, supplied, offered for sale, or used to fabricate component parts or finished goods at any time.").

The Proposed Rules for DecaBDE, PIP (3:1), and PCTP include requirements that importers:

> maintain ordinary business records, such as invoices and bills-of-lading, that demonstrate compliance with the prohibitions, restrictions, and other provisions of this section.

The Proposed Rules further require that importers maintain those records for a period of three years. RILA has no objection to a requirement that regulated entities maintain the records they generate in the ordinary course of business. The problem here, however, is that in many cases ordinary business records will not demonstrate compliance with or lack thereof with the Proposed Rules. This is because the records that importers maintain rarely, if ever, indicate the presence *or absence* of decaBDE, PIP (3:1), or PCTP in imported products or articles.

The Formaldehyde Rule has a similar provision requiring importers to keep records demonstrating compliance.[17]There, however, EPA expressly required importers to retain:

> bills of lading, invoice, or comparable documents that include a written statement from the supplier that the composite wood products, component parts, or finished goods are TSCA Title VI compliant ….[18]

Here, EPA has not required importers to have their foreign suppliers provide similar statements.

Instead, the Economic Analysis recommended that importers consider establishing compliance through reliance on:

> any *a priori* knowledge of the material and its manufacture to assess the probability whether each regulated substance may be present.[19]

Importers choosing this option may not generate <u>any</u> ordinary business records demonstrating compliance. For example, typically, an importer would not generate records demonstrating that a particular imported product, or category of imported products, does *not* contain DecaBDE, PIP (3:1), or PCTP. Requiring documents or business records in this situation would put form over substance. Importers would be forced to choose between taking on the additional costs and administrative burdens of creating documents that have the sole purpose of documenting the *absence* of DecaBDE, PIP (3:1), or PCTP in imported products, or risk being noncompliant with the proposed recordkeeping requirement.

To prevent such an illogical result, EPA should either delete the recordkeeping requirement or modify it to acknowledge that importers who rely on *a priori* knowledge are unlikely to have any ordinary business records demonstrating compliance.

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[17] 40 C.F.R. § 770.40(d).
[18] 40 C.F.R. § 770.30(b).
[19] Economic Analysis § 4.8.

4. The Proposed Strict Liability Standard of Compliance should be Revised to Information "Known to or Reasonably Ascertainable" by the Importer

EPA seemingly plans to make importers strictly liable for violating the bans on importing products containing DecaBDE, PIP (3:1), or PCTP. As noted above, retailers generally do not manufacture the products they sell, and instead, purchase finished consumer goods from U.S. and foreign suppliers for resale to consumers. Holding retailers strictly liable for compliance with the proposed chemical bans when they have little insight into suppliers' manufacturing processes and no control over suppliers' component or raw material suppliers would be inherently unfair. Instead, EPA should only impose liability for noncompliant imported products where the fact that the articles contained any of the banned substances was "known to or reasonably ascertainable by" the importer.

EPA's past practice supports the use of the "known to or reasonably ascertainable by" standard. It is the standard for reporting under both the Chemical Data Reporting rule and the premanufacture notification rules. Additionally, EPA has defined this standard in its regulations[20] and has provided guidance in connection with its Instructions for Reporting 2016 TSCA Chemical Data Reporting Rule explaining what this standard means for importers.[21]

The "known to or reasonably ascertainable by" standard also is consistent with the Proposed Rules' compliance guidance for importers, which acknowledged the substantial challenges that companies purchasing finished goods face when trying to determine the presence or absence of specific chemicals in products. The Proposed Rule guidance mirrors the suggestions EPA made five years ago in the document "Understanding the Costs Associated with Eliminating Exemptions for Articles in SNURs" (Nov. 20, 2014) which were based on ASTM F2577, Standard Guide for Assessment of Materials and Products for Declarable Substances. The Proposed Rules make five specific compliance suggestions based on ASTM F2577:[22]

> "**1) Understand applicable requirements (per-firm cost).** All importers will read and understand the rule, within the context of the company's products."[23]
> "**2) Identify the type of imported articles that potentially use the chemicals subject to the rule (per-firm cost).** This determination may be done based on an understanding of the uses of the

[20] 40 C.F.R. §§ 704.3, 710.23, 712.3, 720.3(p).
[21] EPA, Instructions for Reporting 2016 TSCA Chemical Data Reporting (June 23, 2016), § 4.2, https://www.epa.gov/sites/production/files/2016-05/documents/instructions_for_reporting_2016_tsca_cdr_13may2016.pdf.
[22] Economic Analysis § 4.8.
[23] This step reflects the recommendation of ASTM F2577 that regulated entities see whether exemptions in the rules apply to their products. *See e.g.*, ASTM F2577-14, § 5.1.1 ("Determine if the material or product is covered under the scope of the requirements, taking into account any exemptions from the scope.").

subject chemical substances and the application of any *a priori* knowledge of the material and its manufacture to assess the probability whether each regulated substance may be present." [24]

"**3) Identify all suppliers involved (per-firm cost).** The importer may choose to identify all suppliers from whom the articles identified in the previous step are imported, and as appropriate, to make them aware of the importer's potential notice obligations respecting the regulated chemical substances."

"**4) Collect data from suppliers (per-article cost).** Importers may choose to obtain verification from suppliers identified in Step 3 that the regulated chemical substance is or is not found in the article. This may be accomplished through, for example, agreements with suppliers, declarations through databases or surveys, or by using a third-party certification system."

"**5) Chemical testing (per-article cost).** "Importers may choose to assess imported articles for chemical content. This could involve requiring suppliers to provide certificates of analysis/laboratory reports for a lot or batch of the material produced. Importers may perform their own laboratory testing of certain articles (or components of articles) to determine if they use the restricted substance."

What is "reasonably ascertainable by" an importer will vary according to the importer's available resources and expertise, the type and number of products involved, size of supply chain. EPA's Economic Analysis frankly acknowledges the challenges companies face when trying to determine if specific articles contain banned or declarable substances[25] and that costs of supplier verification or testing products for the presence of DecaBDE, PIP (3:1), or PCTP will be "high."[26] As a bottom line, EPA states that importers will have to make individualized decisions about how much risk of non-compliance to accept:

> EPA expects that in all likelihood, importers will take actions that are commensurate with the company's perceived likelihood that a chemical substance might be a part of an article and the resources it has available.[27]

Considering the numerous compliance challenges noted above, it is would be unfair and inappropriate for EPA to impose strict liability on retailers who inadvertently import articles that contain DecaBDE, PIP (3:1), or PCTP when that fact was neither known to nor reasonably ascertainable by the

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[24] ASTM F2577's explanation of the meaning and use of "*a priori*" knowledge is as follows: "*A priori* knowledge is based on logical deduction and scientific principles, so actual testing of a material may not be required in order to assess conformance to requirements. For example, it is possible to deduce that organic substances will not survive the temperatures required to produce wrought steel, so there is no need to test for organic substances in wrought steel nor is it possible to develop test methods and reference materials for determination of organic substances within wrought steel." ASTM F2577-14, § 4.2.

[25] ASTM F2577-14, Standard Guide for Assessment of Materials and Products for Declarable Substances (2014), § 4.1 makes a similar assessment. ("Due to requirements being placed on concentrations of substances within (or on) materials, assessing conformance of products has become a complex, time-consuming and expensive task.")

[26] EPA estimates that the cost for obtaining verification from suppliers that the regulated chemical substance is or is not found in the article as $6.31 to $631 per article. Economic Analysis, Table 4-38, § 4.8, Table 4-37. The estimated cost for product testing is $20.50 to $843 per article. Economic Analysis § 4.8, Table 4-37.

[27] Economic Analysis § 4.8.

retailers. EPA should revise this provision to include a "known to or reasonably ascertainable by" standard.

In those situations where an importer does obtain a certificate or written statement from a foreign supplier that an imported article is in compliance with the bans on DecaBDE, PIP (3:1), or PCTP, such a certificate or statement should establish compliance by the importer. An importer who has engaged in outreach to foreign suppliers and in good faith relied upon suppliers' written confirmation of compliance should not be held strictly liable for noncompliance of the product.

5. EPA Should Clarify and Provide Guidance on the Proposed PIP (3:1) Rule Requirement for Notice to Customers Related to Exempted Products

As noted above, the Proposed PIP (3:1) Rule would exempt new and replacement parts for automobiles and other vehicles. However, the Proposed Rule would require:

> Each person who manufactures, processes, or distributes PIP (3:1) or PIP (3:1)-containing products or articles … to … notify companies to whom PIP (3:1) is shipped, in writing, of the restrictions described in this subpart.

These notifications would have to be made in sections 1 and 15 of the safety data sheet provided with the PIP (3:1) or with any PIP (3:1)-containing product.

Several RILA members sell products that could fall under the category of new and replacement parts for autos and other vehicles. Some of these finished consumer products may be imported by the retailer from a foreign supplier for ultimate sale to a consumer. In that situation, it is not clear what customer notice obligation, if any, applies to the retailer/importer. In light of the extremely limited possibility of release to water of PIP (3:1) contained in a finished auto part, RILA urges EPA to clarify that retailer/importers of such products have no notice obligations.

In the event that EPA determines that such notice for finished auto parts should still be provided to ultimate end user/customers, it should clarify that retailer/importers can rely upon notices provided by the manufacturer/supplier via product labeling or notices or warnings within the product packaging to meet this requirement. Such alternatives are necessary since most articles do not have safety data sheets. The OSHA requirement to have safety data sheets has an exemption for articles.[28]

[28] 29 C.F.R. § 1910.1200(b)(6)(v).

RILA appreciates the opportunity to comments on the Proposed Rules and looks forward to working with the Agency on this issue.

Sincerely,

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