



December 23, 2021

Submitted via regulations.gov

Ms. Cindy Wheeler
Existing Chemical Risk Management Division
Office of Pollution Prevention and Toxics
Environmental Protection Agency
1200 Pennsylvania Ave. NW, Washington, DC 20460-0001

Re: Docket ID No: EPA-HQ-OPPT-2021-0598
Proposed Rulemaking, "Regulation of Persistent, Bioaccumulative, and Toxic Chemicals Under TSCA Section 6(h); Phenol, Isopropylated Phosphate (3:1); Further Compliance Date Extension"

Dear Ms. Wheeler:

The Alliance for Automotive Innovation¹ (Auto Innovators) and Motor & Equipment Manufacturers Association² (MEMA) appreciate the opportunity to provide comments on the Environmental Protection Agency's (EPA) proposed rule, "Regulation of Persistent, Bioaccumulative, and Toxic Chemicals Under TSCA Section 6(h); Phenol, Isopropylated Phosphate (3:1); Further Compliance Date Extension"³ (hereafter, "the proposed rule"). As you are aware, Auto Innovators and MEMA have followed the progression of proposed actions on Phenol, Isopropylated Phosphate (3:1) ("PIP (3:1)") with significant interest, because this is a chemical that serves a number of essential safety and functional purposes within the motor vehicle sector, including in motor vehicle articles, processing, facilities, and manufacturing equipment.

Auto Innovators and MEMA support this new proposed rule, which will extend the phased-in prohibition for the processing and distributing in commerce of PIP (3:1) for use in certain articles, and for the processing and distributing in commerce of certain PIP (3:1)-containing articles, from March 8, 2022 to October 31, 2024; and extend the compliance date for the recordkeeping requirements for

¹ Formed in 2020, the Alliance for Automotive Innovation is the singular, authoritative and respected voice of the automotive industry. Focused on creating a safe and transformative path for sustainable industry growth, the Alliance for Automotive Innovation represents the manufacturers producing nearly 99 percent of cars and light trucks sold in the U.S. The organization, a combination of the Association of Global Automakers and the Alliance of Automobile Manufacturers, is directly involved in regulatory and policy matters impacting the light-duty vehicle market across the country. Members include motor vehicle manufacturers, original equipment suppliers, technology and other automotive-related companies and trade associations. The Alliance for Automotive Innovation is headquartered in Washington, DC, with offices in Detroit, MI and Sacramento, CA. For more information, visit our website <http://www.autosinnovate.org>.

² MEMA represents more than 900 companies that manufacture new original equipment (OE) and aftermarket components, systems and materials for use in passenger cars and heavy trucks. MEMA represents its member companies via the Automotive Aftermarket Suppliers Association (AASA); Heavy Duty Manufacturers Association (HDMA); MERA – The Association for Sustainable Manufacturing; and, Original Equipment Suppliers Association (OESA). The motor vehicle components manufacturing industry is the largest sector of manufacturing jobs in the U.S. – employing more than 907,000 workers in all 50 states. Our members develop and provide 77 percent of the value of a new vehicle including a multitude of technologies and products, components and systems that make vehicles safer, more efficient and reduce emissions.

³ 86 FR 59684, October 28, 2021. Found at: <https://www.federalregister.gov/documents/2021/10/28/2021-23337/regulation-of-persistent-bioaccumulative-and-toxic-chemicals-under-tsca-section-6h-phenol>.

manufacturers, processors, and distributors of PIP (3:1) containing articles from March 8, 2022, to October 31, 2024.⁴ We appreciate that EPA is allowing time to better understand the myriad of PIP (3:1) uses in industrial sectors and the supply chain challenges that would result from any regulatory approaches that would prohibit the use of PIP (3:1) prematurely and in the absence of safe and effective alternatives. We believe EPA staff have worked diligently to expand upon a robust stakeholder outreach process, address industry concerns, and prevent a disruption in the supply chain or ability to manufacture vehicles or vehicle parts. Auto Innovators and MEMA also support EPA's decision to continue to exempt certain essential uses, including use in new and replacement motor vehicle parts,⁵ as was included in the previous rulemakings.⁶

While the proposed rule is clear in many respects, there are four specific areas where more detail would help better implement the regulations. Specifically, we request clarification regarding (1) recordkeeping deadlines for articles that have received exemption status, (2) specific guidance on what constitutes "recordkeeping" and who must maintain records, (3) downstream notification requirements, and (4) facility use of PIP (3:1) in maintaining existing manufacturing equipment and importing new machinery for assembling motor vehicles and their parts in the United States.

(1) Recordkeeping deadlines for articles that have received exemption status

In this proposed rule, EPA extends the recordkeeping requirements compliance deadline for manufacturers, processors, and distributors of PIP (3:1)-containing articles, clarifying that "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)."⁷

PIP (3:1) uses in new and replacement motor vehicle parts are exempt under these regulations, and therefore, it is our understanding that these uses are covered by the phrase "an alternative compliance exclusion."

Nonetheless, in this proposed rule, EPA states: "while PIP (3:1) for use in articles described in 40 CFR 751.407(a)(ii) or (b) will continue to have recordkeeping requirements, EPA proposes to extend the recordkeeping compliance date in 40 CFR 751.407(d) for certain PIP (3:1)-containing articles, until October 31, 2024."⁸ It is not clear, if the extended compliance deadline for recordkeeping requirements also applies to the exempted uses. We request that EPA add a clear statement to that effect in the final rule. In addition, based on the edits identified by the proposed regulatory amendments,⁹ Auto

⁴ 86 FR at 59685.

⁵ PIP (3:1) is used in motor vehicle parts, including but not limited to vehicle wiring, body panels, seating, headlamps, foam, gasket and coating applications, permanent magnet or electric motor lubricants, general lubricants in motor vehicle components, and windshield wiper modules. In these parts, PIP (3:1) serves many different functions including but not limited to use as a flame retardant, as an elastomer, and lubricant and as an essential component of some hydraulic fluids. Motor vehicle suppliers also use PIP (3:1) in their facilities including but not limited to hydraulic fluids, lubricants, sealants, and adhesives, among other critical uses. PIP (3:1) is also present in motor vehicle industry's manufacturing equipment and is essential to the ability to produce motor vehicles and their parts.

⁶ 86 FR 894, January 6, 2021. Found at: <https://www.federalregister.gov/documents/2021/01/06/2020-28692/phenol-isopropylated-phosphate-31-pip-31-regulation-of-persistent-bioaccumulative-and-toxic>.

⁷ 86 FR at 59685.

⁸ 86 FR at 59691.

⁹ "Amend § 751.407 in paragraphs (a)(2)(iii) and (d)(4) by removing "March 8, 2022" and adding "October 31, 2024" in its place." 86 FR at 59693.

Innovators and MEMA believe it is also EPA's intent to amend § 751.407 paragraph (d)(1) by removing "March 8, 2022" and adding "October 31, 2024" to remain consistent with the other amended paragraph.

(2) Clarification of what constitutes recordkeeping

In the January 2021 final rule, the regulatory text states:

d) Recordkeeping. (1) After March 8, 2021, persons who manufacture, process, or distribute in commerce PIP (3:1) or PIP (3:1)-containing products or articles must maintain ordinary business records, such as invoices and bills-of-lading, related to compliance with the prohibitions, restrictions, and other provisions of this section. These records must be maintained for a period of three years from the date the record is generated.¹⁰

EPA added further explanation in the preamble to the January 2021 final rule, stating:

First, the records that are kept must include a statement that the PIP (3:1), or the PIP (3:1)-containing products or articles, are in compliance with 40 CFR 751.407(a). The statement need not be included on every business record, such as every invoice or bill of lading, although regulated entities may certainly choose to reformat their documents to include the statement. For example, importers of replacement automobile parts that contain PIP (3:1) who import from the same suppliers over and over need only have a single statement for each part or each supplier.¹¹

Based on this explanatory preamble text, we believe that EPA intended that motor vehicle manufacturers are not required to maintain records on each and every of the thousands of articles that are used to assemble motor vehicles and that vehicle parts suppliers are not required to maintain and provide records on each and every one of the thousands of articles provided to other vehicle suppliers or vehicle manufacturers. We further understand that that recordkeeping requirements do not extend to retail automotive dealerships.

The time and cost associated with keeping records for all the articles and other uses that have been exempted in the final rule would far exceed the estimates that EPA has assumed in the economic analysis associated with this rule. Thus, we request that EPA provide more clarity as to what is needed.

For example, the International Material Data System (IMDS) is the automobile industry's material data system used to determine compliance with relevant global chemical regulations, including those required by the EPA. However, not all motor vehicle application products are available through the IMDS system (*e.g.*, parts that are solely aftermarket parts) and IMDS does not readily track whether an article is imported. Within the IMDS system, there is a unique "MDS ID/Version", which is systematically generated when the material data sheet (MDS) is created. An MDS with an 'accepted' status, indicates that it has been reviewed by the recipient and meets acceptance criteria, inclusive of compliance with global chemical requirements.

¹⁰ 86 FR at 910.

¹¹ 86 FR at 906.

Based on EPA's recordkeeping requirements, Auto Innovators believes that the "MDS ID / Version" and MDS "accepted" status would satisfy the requirements of "ordinary business records," presuming IMDS data is made available to EPA within 30 days, if requested. Therefore, Auto Innovators and MEMA request that EPA clarify in its response to comments that EPA will accept the "MDS ID / Version" and MDS "accepted" status as a confirmation that the article meets the requirements in 40 CFR 751.407(a), satisfies the requirement as a "statement," and that no additional "statements" are necessary to be created in order to satisfy this part of the rule for articles in the motor vehicle sector.

We request that EPA affirm our understanding of these recordkeeping requirements. Any interpretation of the recordkeeping requirements that differ from our interpretation would require that EPA revise its economic analysis to reflect those actual costs and volume of records that would need to be generated and maintained.

(3) Downstream notification requirements

In the preamble to the January 2021 final rule, EPA clarifies that the downstream notification requirement applies only to those scenarios where a product has an accompanying safety data sheet (SDS). We interpret this to mean that motor vehicle manufacturers or motor vehicle parts suppliers are not required to notify downstream buyers of articles containing PIP (3:1) if the article does not possess an SDS, and that this would also exclude downstream notification for small repair kits that may accompany a new motor vehicle when sold to the consumer. We request that EPA affirm this interpretation.

(4) Exemption for use of PIP (3:1) in facilities

Auto Innovators and MEMA request that EPA clarify that this compliance date extension, both for processing and distribution in commerce as well as recordkeeping requirements, also applies to the use of PIP (3:1) in facilities. The motor vehicle industry has ongoing uses in facilities, maintaining existing manufacturing equipment, and importing new machinery necessary for building, manufacturing, and assembling motor vehicles and their parts in the United States.¹² Motor vehicle manufacturers and motor vehicle suppliers use PIP (3:1) in their facilities in hydraulic fluids, sealants, and adhesives, among other critical uses. These uses do not involve further distribution in commerce, nor do they present opportunities for worker exposure as the PIP (3:1) is bound up in the internal components of the machinery. While the industry does not manufacture this equipment, the industry does import the equipment. As the motor vehicle industry retools and builds new manufacturing capacity here, particularly for technologies like electric vehicles and their batteries, the ability to import this equipment is essential to meeting U.S. consumer demand, needs, and our nation's transportation sector climate goals. We request that EPA consider an extension for the exemption for facilities if there is no new technically and economically feasible viable alternative found in a timely manner.

¹² Some of this equipment is being imported to retool and build electric vehicle manufacturing capacity in the United States, which is critically important to the administration's goals to address climate change, reduce air pollution, and be a leading country for innovation and advanced technologies. This equipment is not available for purchase in the United States, and we are not yet aware of alternatives or options available that do not contain PIP (3:1).

Thank you in advance for your consideration of these comments. Auto Innovators and MEMA welcome the opportunity to meet with EPA to discuss these comments. In addition, Auto Innovators and MEMA reiterate our goal to work with EPA to find a feasible and appropriate pathway to address articles under TSCA, and we look forward to continuing working together toward this goal.

Sincerely,



Julia M. Rege
Vice President, Energy & Environment
Alliance for Automotive Innovation



Laurie Holmes
Senior Director, Environmental Policy
Motor & Equipment Manufacturers Association