



**ALLIANCE
FOR AUTOMOTIVE
INNOVATION**

Comments of the

Motor & Equipment Manufacturers Association

and

The Alliance for Automotive Innovation

to the

U.S. Environmental Protection Agency

**RE: Regulation of Persistent, Bioaccumulative, and Toxic Chemicals
Under TSCA Section 6(h)**

Docket No. EPA-HQ-OPPT-2021-0202; FRL-10021-08

May 17, 2021

The Motor & Equipment Manufacturers Association¹ (MEMA) and Alliance for Automotive Innovation² (Auto Innovators) submit these comments to the U.S. Environmental Protection Agency (EPA) on the “Regulation of Persistent, Bioaccumulative, and Toxic Chemicals Under Toxic Substances Control Act (TSCA) Section 6(h); Request for Comments” notice of proposed rulemaking (NPRM).³

In development of the Persistent, Bioaccumulative, and Toxic (PBT) final rules,⁴ EPA undertook an impressive process for stakeholder outreach and engagement and took into account the large amount of input and data provided by the engaged industries. MEMA and Auto Innovators truly appreciate the efforts of EPA staff in development of this novel TSCA rule, as directed by the Lautenberg Act.⁵ Despite this substantial EPA effort, a number of industries not routinely subject to TSCA regulations now find themselves potentially regulated, and additional stakeholder input is necessary at this juncture. MEMA and Auto Innovators appreciate that EPA is providing an important opportunity for stakeholders to provide further

¹ MEMA represents more than 1,000 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. – directly 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. For more information, visit <http://www.mema.org>.

² 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 and is focused on creating a safe and transformative path for sustainable industry growth. Members include motor vehicle manufacturers, original equipment suppliers, technology and other automotive-related companies and trade associations. For more information, visit <http://www.autosinnovate.org>.

³ 86 Fed Reg 14398

⁴ 86 Fed Reg 880, 86 Fed Reg 894, 86 Fed Reg 866, 86 Fed Reg 922, and 86 Fed Reg 911

⁵ Frank R. Lautenberg Chemical Safety for the 21st Century Act, Public Law 114-182, June 22, 2016.

feedback on EPA's PBT NPRM. Additional collaboration between the agency and a wide array of stakeholders not traditionally covered by TSCA rulemakings is key to the success of a significant and complex technical rulemaking on TSCA PBT chemicals. We support the rigorous assessment process that EPA undertook to create a risk mitigation framework that recognizes the need for certain exemptions. As such, MEMA and Auto Innovators urge EPA to maintain the current exemptions provided for the motor vehicle industry⁶ and extend the exemption for the reasons stated herein.

Key Requirements of PBT Chemicals Final Rules

EPA requests comments on any aspect of the recently issued final rules on the five PBT chemicals: Phenol, Isopropylated Phosphate (3:1) (PIP) (CASRN 732-26-3), Hexachlorobutadiene (HCBd), Pentachlorothiophenol (PCTP) (CASRN 133-49-3), 2,4,6-tris(tert-butyl) phenol (2,4,6-TTBP) (CASRN 732-26-3), and Decabromodiphenyl Ether (DecaBDE) (CASRN 1163-19-5).⁷ In particular, EPA is seeking comments on recently raised issues regarding the compliance date for the prohibition on the processing and distribution of PIP (3:1) for use in articles and articles containing PIP (3:1).

EPA's final rule on PIP (3:1) prohibits, with limited exceptions, the processing and distribution of PIP (3:1), including most products and articles that contain PIP (3:1), after March 8, 2021. However, PIP (3:1) is not restricted for processing and distribution in commerce for several uses including vehicle parts (original equipment parts and aftermarket replacement parts), and the distribution in commerce of those parts to which PIP (3:1) has been added.

The final rule also prohibits releases to water from manufacturing, processing, and distributing in commerce of PIP (3:1). Manufacturers of products containing PIP (3:1) that have an accompanying Safety Data Sheet (SDS) are required to notify their customers of these prohibitions on processing and distribution, and the prohibition on releases to water via SDS or labeling. EPA's final rule also requires businesses that manufacture, process, and distribute in commerce PIP (3:1) or PIP (3:1)-containing products and articles to keep business records. Entities are required to maintain, for three years from the date the record was generated, ordinary business records related to compliance with the restrictions, prohibitions, and other requirements established in the final rule.

The final rule also prohibits all manufacture and processing of decaBDE including products and articles to which decaBDE has been added. EPA provides an exemption that allows for manufacture, processing, and distribution in commerce of decaBDE for use in replacement parts for motor vehicles. This exemption expires for such vehicles after the end of the vehicle service lives, or 2036, whichever is earlier. EPA's final rule also requires businesses that manufacture, process, and distribute in commerce decaBDE and decaBDE-containing products and articles to keep business records. Entities are required to maintain, for three years from the date the record was generated, ordinary business records related to compliance with the restrictions, prohibitions, and other requirements established in the final rule.

⁶ As we discuss below, we use the term motor vehicles to include on-road light, medium and heavy vehicles (classes 1-8) and non-road vehicles including construction and agriculture vehicles.

⁷ EPA-HQ-OPPT-2019-0080; FRL 10018-87; FRL 10018-88; FRL 10018-89; FRL 10018-90; FRL 10018-91

Summary of MEMA and Auto Innovators Comments

MEMA and Auto Innovators greatly appreciate EPA granting the motor vehicle industry an exemption for PIP (3:1) and a similar exemption with a reasonable transition time for motor vehicle replacement parts with decaBDE.⁸ MEMA and Auto Innovators also appreciate EPA providing a No Action Assurance on PIP (3:1) for use in non-road vehicles.⁹

MEMA and Auto Innovators thank EPA for the opportunity for stakeholders to provide additional information and clarification on the chemical uses,¹⁰ and we incorporate our previous comments here by reference.¹¹ As in 2019, our comments will be focused on information and recommendations regarding PIP (3:1) and decaBDE.

MEMA and Auto Innovators' comments on the PBT NPRM discuss the following:

- **MEMA and Auto Innovators Urge EPA to Preserve and Extend the Exemptions within the Motor Vehicle Industry's Use of PIP (3:1)** – In 2019, MEMA and the Auto Alliance requested a TSCA section 6(g)(1) exemption for PIP (3:1) uses.¹² EPA addressed the need for an exemption by using its section 6 authority to grant a general exemption in the final rule that meets the needs of the motor vehicle sector. We urge EPA to preserve the provisions as finalized in the January 2021 PIP (3:1) final rule. The information and data submitted by the motor vehicle sector clearly demonstrate a need for the exemption and EPA staff reached that same conclusion after careful review and consideration. Nothing has changed in terms of the “criticality” of PIP (3:1) to allow the motor vehicle industry to meet the safety standards that PIP (3:1) supports. MEMA and Auto Innovators also urge EPA to extend the motor vehicle exemption for PIP (3:1) to all on-road vehicles (light, medium, and heavy), non-road vehicles (agriculture and construction vehicles), and other applications powered by internal combustion engines (ICEs). Many of these parts included in light vehicles are also used in medium, heavy, and non-road vehicles, are involved in mission critical applications, and should be included in the exemption. We also request that EPA exempt motor vehicle industry facility uses of PIP (3:1), including ongoing uses, maintaining existing manufacturing equipment, and importing new machinery necessary for building, manufacturing, and assembling motor vehicles and their parts in the United States.¹³ These latter uses do not involve further distribution in commerce, nor do they present opportunities for

⁸ 86 Fed Reg 894

⁹ https://www.epa.gov/sites/production/files/2021-03/documents/oeca_naa_tsca_pip_3-1_rule_3_8_21.pdf

¹⁰ In 2019, MEMA submitted two sets of comments providing information to EPA on why the motor vehicle industry should be granted a TSCA section 6(g) critical use exemption for PIP (3:1). Likewise, Auto Innovators also submitted comments, but they were submitted by its predecessor organizations, the Alliance of Automobile Manufacturers (Auto Alliance) and Association of Global Automakers.

¹¹ See EPA-HQ-OPPT-2019-0080-0547 and EPA-HQ-OPPT-2019-0080-0037.

¹² The motor vehicle industry meets all the required criteria for the critical use exemption. Use of PIP (3:1) in motor vehicle parts is critical because there is no technically feasible safer alternative currently available; use of PIP (3:1) in motor vehicle parts manufacturing has substantial benefits to public safety; and, compliance with a ban on use of PIP (3:1) in motor vehicle supplier uses would significantly disrupt the national economy.

¹³ 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).

worker exposure as the PIP (3:1) is bound up in the internal components of the machinery.

- **Since There is No Feasible Alternative to Motor Vehicle Industry Use of PIP (3:1), at a Minimum, MEMA and Auto Innovators Request a Lengthy Phase-Out Period for PIP (3:1)** – If, after consideration of any new information or data received during this new public comment period, EPA determines it will reconsider the current exemptions, a lengthy phase out period would be necessary to conduct the research, development, and testing of any replacement chemical. Any such consideration must consider the time the vehicle industry needs to: (1) conduct extensive research and development for a viable alternative to PIP (3:1); (2) implement any viable alternatives once determined; and, (3) coordinate substitution of PIP (3:1) throughout the complex, global motor vehicle supply chain. A long phase-out would be necessary to avoid a disruption in the supply chain or ability to manufacture vehicles. Furthermore, a long phase-out would be needed to avoid regrettable substitutions with a chemical(s) that has not gone through normal rigorous industry evaluation and validation for safety and performance purposes. If EPA determines to place a sunset provision on the exemption(s), MEMA and Auto Innovators urge EPA to provide a significant transition or phase-out period for motor vehicle original equipment parts and motor vehicle industry facility use if that is the agency’s determination. Further, a phase-out of PIP (3:1) in replacement parts would be extraordinarily challenging.
- **MEMA and Auto Innovators Request Preservation of the Motor Vehicle Industry Exemption for Use of DecaBDE in Replacement Parts** – MEMA and Auto Innovators strongly urge EPA to preserve its current exemption for the motor vehicle industry for decaBDE use in motor vehicle replacement parts and distribution in commerce of motor vehicle replacement parts that contain decaBDE.¹⁴ MEMA and Auto Innovators are appreciative of the exemption provided to the industry for use of decaBDE in motor vehicle replacement parts, which aligns with federal requirements to maintain a supply of parts and the typical lifecycle of light-duty vehicles. Thus, we urge EPA to expressly clarify that the exemption remains intact.
- **Recordkeeping and Downstream Notification Requirements** – We appreciate that EPA added clarifying language and examples regarding recordkeeping requirements and downstream notification as part of the PBT final rules’ preamble. However, the regulatory text lacks clarity as to what is required. If motor vehicle manufacturers and motor vehicle suppliers are required to retain records on the thousands of articles that suppliers assemble and supply to motor vehicle manufacturers and to the aftermarket, the time and cost associated with keeping these records far exceed the estimates EPA calculated in the rules’ economic analysis.
- **Motor Vehicle Industry Challenges** – We truly appreciate EPA’s efforts in development of this novel TSCA rule and providing the motor vehicle industry with an exemption for the industry use of PIP (3:1) and decaBDE. MEMA and Auto Innovators strongly request that those exemptions remain. Going forward, we request that EPA take into account the significant challenges of confirming all chemical usage and phasing out chemicals in a tight timeframe throughout the entire motor vehicle

¹⁴ 84 Fed Reg 36746

industry. This includes, but is not limited to, our uniquely complex global supply chain, the hundreds of thousands of component parts, and the thousands of chemicals the industry manages. The motor vehicle industry needs a reasonable lead time in all situations. We are committed to working with EPA through these challenges as TSCA is implemented.

- **EPA Exceeded Its Authority** – Under the Lautenberg Act, the U.S. Congress significantly limited EPA’s authority to regulate articles and replacement parts. MEMA and Auto Innovators respectfully disagree with EPA’s interpretation of TSCA section 6(c)(2)(D) and 6(c)(2)(E) regarding articles and replacement parts and its application to PBT chemicals rules. EPA’s interpretation places a significant, costly burden on parties that manufacture, sell, assemble, or use articles containing chemicals, which often are deeply embedded in product components and present low risk for human exposures or environmental releases.

Motor Vehicle Industry Use of PIP (3:1)

The motor vehicle industry uses PIP (3:1) extensively in motor vehicle parts (light, medium and heavy on-road vehicles, and non-road vehicles) and these parts are used to assemble, operate, and maintain vehicles throughout their service lives. Currently, the motor vehicle industry has no known technically feasible alternatives to industry use of PIP (3:1). PIP (3:1) is critical to meeting the industry’s safety, durability, and quality standards. The motor vehicle parts that contain PIP (3:1) include, but are 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. Based on a recent vehicle manufacturer data collection, PIP (3:1) was identified in more than 800 motor vehicle components in the International Material Data System (IMDS) record submissions.¹⁵

In these parts, PIP (3:1) serves many different and sometimes overlapping functions including, but not limited to, as a flame retardant, as an elastomer, a lubricant, and as an essential component of some hydraulic fluids.¹⁶ The motor vehicle industry also use PIP (3:1) in their facilities including, but not limited to, in hydraulic fluids, lubricants, sealants, and adhesives, among other critical uses. PIP (3:1) is also present in the motor vehicle industry’s manufacturing equipment and is essential to the ability to produce motor vehicles and motor vehicle parts. 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 United States consumer demand and needs.

MEMA and Auto Innovators Request that EPA Preserves the Ability to Use PIP (3:1) throughout the Motor Vehicle Industry

Under TSCA, EPA has the authority to grant continued use of appropriately designated ongoing uses. As explained below, use of PIP (3:1) in motor vehicle parts and manufacturing is critical and necessary, and currently has no technically feasible safer alternative available. Use

¹⁵ This number is not reflective of total parts in the motor vehicle universe that contain PIP (3:1). Vehicle manufacturers do not include part number information in the data collection query, and therefore, it is not a 1:1 ratio.

¹⁶ As recognized in the exemption provided for the aerospace sector.

of PIP (3:1) in motor vehicle parts has substantial benefits to public safety, and compliance with a ban on use of PIP (3:1) in motor vehicle original equipment and aftermarket manufacturing and in tooling equipment would significantly disrupt the national economy. Consequently, MEMA and Auto Innovators are reconfirming our previous information, submitted to the record, that ongoing uses of PIP (3:1) are necessary and cannot be feasibly or quickly replaced at this time, given the lack of technically feasible and safer alternatives.¹⁷ We urge EPA to maintain the provisions that exempt motor vehicle parts, hydraulic fluids, lubricants, and, for a limited time, sealants and adhesives, to avoid any unnecessary and highly disruptive impacts on the motor vehicle industry and the economy.

Use of PIP (3:1) is Critical for Motor Vehicles and Motor Vehicle Parts Manufacturers and Provides Substantial Benefit to Public Safety

MEMA and Auto Innovators request that EPA use its authority under TSCA to allow ongoing uses of PIP (3:1) in the motor vehicle industry, including use in new parts, replacement parts, hydraulic fluids, lubricants, and, for a limited five-year time, sealants and adhesives.¹⁸ An exemption for the motor vehicle industry is necessary because of the chemical's performance characteristics and benefits to public safety. Without PIP (3:1) or an effective alternative, vehicles would not function as intended and there would be a decrease in performance and safety.

Motor vehicle safety requirements encompass a large and complex area of issues, including regulatory compliance, testing, customer protection, and reliability. The motor vehicle industry uses PIP (3:1) as a flame retardant, necessary to ensure that these components perform appropriately and adequately to comply with vehicle safety requirements. The use of PIP (3:1) in motor vehicles and motor vehicle parts as a flame retardant is essential for public safety as PIP (3:1) is particularly important for preventing vehicle fires. For example, PIP (3:1) is used in vehicle wiring to function as a flame retardant and is necessary to minimize the risk of a fire from electrical ignition sources during vehicle operation. Motor vehicles and motor vehicle parts are required to comply with a variety of federal and state safety laws and regulations, including Federal Motor Vehicle Safety Standard (FMVSS) No. 302 "Flammability of Interior Materials," which is mandated by the U.S. Department of Transportation's National Highway Traffic Safety Administration (NHTSA).¹⁹ This regulation applies broadly to passenger cars, multipurpose passenger vehicles, trucks, and buses. The regulation specifies burn resistance requirements for materials used in occupant compartments of motor vehicles such as seat cushions, seat belts, headlining, convertible tops, arm rest, all trim panels including door, front, rear, and side panels and floor coverings, sun visors and many other interior materials. While this standard does not mandate the use of PIP (3:1), it does set the performance criteria that industry can meet using the substance. The industry has made great strides in reducing the number of annual vehicle fires in the U.S by more than half from 1980

¹⁷ EPA-HQ-OPPT-2019-0080-0037. See also OMB meeting documentation: EPA-HQ-OPPT-2019-0080-0036.

¹⁸ Alternatively, EPA can provide an exemption under section 6(g)(1) from a risk management rule. if the agency finds that: (1) the specific condition of use is a critical or essential use for which there are not any technically and economically feasible safer alternatives available; (2) compliance with the requirements, as applied with respect to the specific condition of use, would significantly disrupt the national economy; or (3) the specific condition of use of the chemical substance or mixture, as compared to reasonably available alternatives, provides a substantial benefit to health, the environment, or public safety.

¹⁹ 49 CFR Section 571.302.

to 2015.²⁰ Thus, removal of PIP (3:1) from motor vehicle components, without a feasible alternative flame retardant, would threaten the industry's progress in safety advancements.

Given EPA and states' regulations of flame retardants, there is significant uncertainty regarding certain flame retardants, and their use generally. Consequently, the motor vehicle industry hesitates to transition to any new flame retardant until a new alternative has been validated as technically equivalent and safer. It may also be appropriate to seek EPA input that any technically viable alternative to PIP (3:1) is deemed safe for use.

There is No Known Technically and Economically Feasible Alternative to PIP (3:1) for Use in Motor Vehicle Parts

MEMA and Auto Innovators are requesting that EPA use its authority under TSCA to allow such critical uses of PIP (3:1) in the motor vehicle industry to continue, primarily because the industry's specific conditions of use have no known viable alternative available. As explained in detail in previous comments, PIP (3:1) is used in the manufacturing of motor vehicles and motor vehicle parts and is a critical use for which no feasible safer alternative is currently available. Because a focus on the potential harmful effects of PIP (3:1) in products has only recently developed, motor vehicle manufacturers and motor vehicle suppliers have not begun the lengthy, complex process for conducting research and validating the suitability of substituting another flame retardant for PIP (3:1) for its functions in the motor vehicle industry. Meanwhile, motor vehicle manufacturers and motor vehicle suppliers have been exerting extensive effort to phase out other flame retardants and TSCA section 6(h) chemicals such as decaBDE and Hexabromocyclododecane.

Furthermore, published literature shows that there is a lack of peer reviewed information on suitable alternatives to PIP (3:1). A motor vehicle industry literature review of the properties of PIP (3:1) and other non-halogenated flame retardants identified a number of data gaps. In many instances, data inputs inferred feasibility based on performance data for applications other than those PIP (3:1) is typically used for in light-duty vehicles. The State of Washington was directed to evaluate the use of PIP (3:1) as a flame retardant in children's products and upholstered furniture, including the availability of possible substitutes for PIP (3:1), but no report on this effort has been completed.²¹

In the EPA docket for PIP (3:1), ICL Industrial Products commented that its flame-retardant products, based on isobutyleneated phenol phosphate, are an alternative to PIP (3:1).²² However, from the letter, it is not clear for which applications ICL has developed or tested this alternative. Given the properties of isobutyleneated phenol product, it is unlikely that it could be technically feasible for motor vehicle applications. Importantly, isobutyleneated phenol phosphate has been identified as a "new environmental pollutant,"²³ suggesting it could potentially be a regrettable substitution.

²⁰ National Fire Protection Association (NFPA) (Quincy, MA); Ahren, M. January 2017 (Trends and Patterns of U.S. Fire Loss." NFPA No. USS47 REV. 21p.

²¹ Washington State Dept. of Health. September 28, 2018. "Flame Retardant Advisory Committee Sept 28, 2018 meeting notes." 12p.

²² Howell, L. [ICL-IP America, Inc.]. January 12, 2018. "Letter to US EPA Docket re: ICL's additional comments for phenol, isopropylated, phosphate (3:1)." EPA-HQ-OPPT-2016-0730.

²³ Kemsley, J. 2018. "New pollutant identified in homes, environment." *Chem. Eng. News* 96(44):17.

Focused analysis needs to be completed to ensure any alternative meets the motor vehicle industry's specific performance and safety standards to determine whether there are any viable PIP (3:1) alternatives for our particular motor vehicle applications where PIP (3:1) is currently being used.

Impact on the National Economy if PIP (3:1) is Banned in Motor Vehicles and Motor Vehicle Parts

As outlined above, PIP (3:1) is critical and essential for a wide range of motor vehicle uses and has many different functions depending on the application. The vehicle industry supply chain is global, diverse, and complex. Motor vehicle and motor vehicle parts manufacturing and facilities, throughout its complex supply chain, across the United States and globally would be substantially disrupted by a ban on the use of PIP (3:1). A ban on the use of PIP (3:1) would be particularly devastating given its lack of proven viable alternatives. The recent shortage of vehicle grade semiconductors is a real-world, illustrative example of how disruption (in this case a shortage) of one component can leave the global vehicle industry reeling and impact the national economy.

Similarly, our industry needs to be able to import the necessary manufacturing equipment to retool and build electric vehicle and other advanced technology manufacturing capacity in the United States. While we do not manufacture tooling equipment, 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). This equipment is critically important to our industry, and ultimately to the administration's goals to address climate change, reduce air pollution, and be a global leader for innovation and advanced technologies. Without the ability to import manufacturing equipment and machinery, potentially containing PIP (3:1), there could be a disruption in retooling current and building new facilities to expand advanced technology production in the United States.

Motor Vehicle Industry Use of PIP (3:1) Does Not Pose a Risk to Consumers or Workers

When used in motor vehicle parts and motor vehicles, PIP (3:1) exposure is very low and does not present an unreasonable risk to public health, including potentially exposed and susceptible subpopulations such as consumers. Although PIP (3:1) is used in hundreds of components throughout the vehicle, consumer exposure to PIP (3:1) is very low. Uses such as wiring harnesses or motor lubricants would not foreseeably result in consumer exposure, as these parts are inaccessible to consumers. Even in instances where PIP (3:1) is used in motor vehicle components where contact is possible (*e.g.*, seating, door panels), exposure is low. For most motor vehicle components that contain PIP (3:1), the substance is generally used in low concentrations (*e.g.*, *de minimis*), and bound in the article. Further, the motor vehicle industry workforce that handles articles containing PIP (3:1) and PIP (3:1) facility uses strictly follow all OSHA workplace safety regulations and use required personal protective equipment, eliminating any risk to industry employees.

Additionally, PIP (3:1) volatility is very low. It has a vapor pressure on the order of 10^{-8} mm Hg at room temperature.²⁴ Thus, off-gassing of PIP (3:1) would not be anticipated to lead to significant exposures via inhalation. Furthermore, PIP (3:1) has not been found in vehicle dust or vehicle air in the interior of the vehicle. A presentation by the State of Washington's

²⁴ EPA, Design for the Environment. August 2015. "Flame Retardants Used in Flexible Polyurethane Foam: An Alternatives Assessment Update," pp.7-273 to -274. EPA 744-R-15-002.

Department of Health indicated that PIP (3:1) has been detected in the indoor dust of homes, daycare facilities and schools, but not in vehicle dust or vehicle air.²⁵

Special Considerations for Exemptions for Motor Vehicle Replacement Parts Containing PIP (3:1)

Another source of impact on the national economy is the need for replacement parts made with or containing PIP (3:1). As we outline further below, TSCA section 6(c)(2)(D) provides EPA only very limited authority to regulate replacement parts for complex durable goods, such as motor vehicles, unless EPA makes a specified finding via a risk evaluation. MEMA and Auto Innovators urge EPA to allow the ongoing use of motor vehicle replacement parts containing PIP (3:1). It is critical that replacement parts are provided special consideration as outlined above and below.

The Fixing America's Surface Transportation (FAST) Act of 2015²⁶ requires that the motor vehicle industry remedy recalls and defects for a period of 15 years post-manufacture. As a result, motor vehicle manufacturers and motor vehicle suppliers retain a portion of the produced parts for a period of 15 years, sometimes longer. If EPA prohibits the presence of PIP (3:1) in these parts, it could require motor vehicle suppliers to redesign, re-source, and re-validate parts for vehicles that are no longer in production and require suppliers to produce a whole new set of compliant parts while scrapping currently retained parts. Even a sunset or exemption deadline on replacement parts that contain PIP (3:1) would significantly disrupt the industry by disallowing millions of crucial motor vehicle replacement parts to be used.

MEMA and Auto Innovators Urge EPA to Specify that Motor Vehicle Industry Facility Uses of PIP (3:1) Are Covered for Ongoing Uses

MEMA and Auto Innovators thank EPA for the motor vehicle industry exemption for PIP (3:1) use in parts (original equipment parts and aftermarket replacement parts). As explained above, motor vehicle manufacturers and motor vehicle suppliers also use PIP (3:1) in their facilities in hydraulic fluids, sealants, and adhesives, among other critical uses, for all the reasons outlined above. The motor vehicle industry's use of manufacturing equipment containing PIP (3:1) is essential to producing motor vehicle components and producing motor vehicles. While the industry does not necessarily manufacture this equipment, the industry may import the equipment. Consequently, MEMA and Auto Innovators urge that EPA specify that the TSCA exemption for the motor vehicle industry also extends to use of PIP (3:1) for processing and importing to maintain manufacturing equipment in these types of circumstances in facilities.

MEMA and Auto Innovators Urge EPA to Extend the Motor Vehicle Exemption for PIP (3:1) to All Motor Vehicle Industry Applications

EPA's final rule on PIP (3:1) specifies a TSCA exemption for "new and replacement parts for the automotive industry."²⁷ "Automotive" usually refers to just light vehicles. Since the light vehicle parts that contain PIP (3:1) are either the same or very similar to the parts used in medium and heavy on-road vehicles, non-road vehicles and other applications with ICEs, we urge EPA to extend the existing PIP (3:1) exemption to all motor vehicle applications.

²⁵ Morrissey, B. [Washington State Dept, of Health, Office of Environmental Public Health Sciences]. September 28, 2018. "Human Health Review." Presented at Flame Retardant Stakeholder Advisory Committee, 21p.

²⁶ Pub. L. No. 114 94

²⁷ 86 Fed Reg 894

The motor vehicle industry uses PIP (3:1) in heavy-duty non-road vehicles, such as agricultural equipment and construction vehicles (*e.g.*, forklifts). As with on-road vehicle applications of PIP (3:1), there is currently no known viable alternative. On-road motor vehicle parts (light, medium and heavy) that contain PIP (3:1) are either the same or very similar to the parts used in non-road vehicles. This is also true for any other applications utilizing ICEs. The non-road heavy vehicle application of PIP (3:1) has the same challenges of phasing out PIP (3:1) as on-road vehicles: a complex, global supply chain shared with the on-road vehicle industry and long product lifecycles. Non-road heavy vehicle applications also have the same challenges with testing and validation. Consequently, MEMA and Auto Innovators urge EPA to ensure the PIP (3:1) motor vehicle exemption applies to all motor vehicle applications and their replacement parts.

MEMA and Auto Innovators request that EPA use the term “motor vehicle application” instead of the terms “automotive” or “automotive industry.” The term “motor vehicle” is used in the decaBDE final rule and is more inclusive of vehicles that are not passenger vehicles by including medium and heavy vehicles and non-road vehicles (construction and agricultural vehicles). We request that EPA use the term motor vehicle application consistently and specifically to include on-road vehicles (*i.e.*, classes 1-8) and non-road vehicles. Clarification of applicability is necessary and important.

At a Minimum, MEMA and Auto Innovators Emphasize that A Significant Phase-Out Period for PIP (3:1) Would be Necessary

We recognize that EPA is under extreme pressure to re-examine the exemptions it provided in the final PIP (3:1) rule and to limit those exemptions if practicable. After consideration of any new information or data received during this new public comment period, if EPA determines to reconsider the current exemptions provided for the industry, we propose that EPA provide for a phase out period, or sunset date, consistent with the timeframe needed for motor vehicle applications that allows for the research, development, testing and implementation of a viable alternative that works with the industry’s lengthy design and production cycles. This would include the time the vehicle industry needs to (1) conduct research and development for a viable alternative with similar performance characteristics, (2) ensure original equipment and replacement parts provide continued compliance with all federal and state safety requirements, and (3) coordinate implementation of substitution for PIP (3:1) throughout the complex, global motor vehicle supply chain.

A phase out period of, for example, at least seven to ten years, would provide the time needed to accomplish the steps outlined above and ensure that vehicles continue to be manufactured using the safest and most effective materials available. We further recommend that this option include language that such an end date is contingent upon a technically feasible and safer alternative. While a sunset date is not our preferred option due to the lack of a viable alternative at this time, MEMA and Auto Innovators are willing to work with EPA to provide information on research and development of alternatives, as the information comes available, and to support agency decision-making regarding any next steps consistent with needed industry timeframes to end PIP (3:1) uses. If a technically feasible safer alternative is not available in the upcoming three to four years, then it will be necessary to continue the exemption to accommodate product cycles. As EPA recognized in its final PIP (3:1) rule, it is essential to avoid a disruption in the supply chain or ability to manufacturing vehicles, and to avoid regrettable substitutions: “The rationale given by commenters from industry supported

the information outlined in the proposal; namely, PIP (3:1) is used to meet safety standards in new and replacement parts for automobiles and there is currently no feasible alternative.”²⁸

This option would not apply to replacement parts, because a phase-out of PIP (3:1) in replacement parts would be extraordinarily challenging. We urge EPA to maintain this exemption as promulgated.

As we outline below, the vehicle industry would need a transition period of at least seven to ten years, assuming a viable alternative is available in the next three to four years.

Time Requirements for Determining a Viable Alternative

The motor vehicle industry will need a significant transition period to phase out PIP (3:1) in a manner that allows for enough time to determine a viable alternative and implement that alternative. It will be necessary to conduct testing to determine any alternative and in order to avoid a regrettable substitution. Based on industry knowledge of the alternatives analysis process, a conservative estimate of time to complete just a preliminary screening and then a more in-depth analysis – including stakeholder surveys to collect additional information on performance and economic feasibility for various alternatives to PIP (3:1) – could range from 12 to 18 months (or longer). This estimate is in line with the timeframe described in the California Department of Toxic Substances Control (DTSC) Safer Consumer Products (SCP) regulations (six months from priority product notification to submittal of preliminary alternatives analysis, 12 months after DTSC provides comments on preliminary analysis to submit a final analysis). Based on industry experience, an additional one to two years to conduct adequate performance testing would be required before motor vehicle suppliers and motor vehicle manufacturers would be able to commit to using particular alternatives.

For context, the motor vehicle industry investigated alternative refrigerants to comply with the mobile air conditioning (MAC) directive implemented by the European Union (EU). The analysis focused on comparative technology risks, performance and material compatibility testing, and revision of relevant standards. The entire process, which involved a drop-in replacement chemical and did not require system redesigns, took a little over eight years to reach a clear industry consensus on an alternative.²⁹

This brings the entire timeframe of finding a suitable alternative to at least three and a half years, and possibly much longer given the multiple functions – performance and safety – in motor vehicle parts.³⁰ This timeframe aligns with our ask that any consideration of sunseting existing exemptions be reassessed through a review of any progress in development of alternative in four years’ time.

Time Requirements Needed for Implementing a Substitute

Once a suitable alternative has been identified by industry, significant time is needed for implementation. Implementing a new formulation could require redesigning, testing, and

²⁸ 86 Fed Reg 904

²⁹ Lewandowsky, TA [Gradient]. July 24, 2013. “Additional Risk Assessment of Alternative Refrigerant R-1234yf” Report to SAE International (Warrendale, PA) 106p.

³⁰ It should also be noted that since EPA is the first major regulatory body to identify PIP (3:1) as a chemical of concern, work to explore, develop and test alternatives is only at the earliest stages. For comparison, the flame retardant, decaBDE, was simultaneously being reviewed by Europe, Canada, Asia, and the U.S., and efforts to explore substitutions were well underway by the time the PBT rule was finalized. Nonetheless, it has taken approximately 10 years to phase it out of use in new motor vehicles.

validating new parts with applicable performance and safety standards. The implementation of a viable alternative is a resource-intensive and time-consuming process, particularly when a chemical performs a variety of functions in a diverse set of uses. A reasonable estimate of the time needed just for implementation of an alternative to PIP (3:1) is four to five years, and even then, it is possible that some alternatives may not provide the same level of performance, durability, or protection as the current use of PIP (3:1).

An example illustrating the amount of time the motor vehicle industry needs to implement a single chemical replacement after an alternative is found is the industry's replacement of N, N'-Diphenyl-p-phenylenediamine (DDPD) [CAS# 74-31-7]. After the research and development work to find a viable alternative, replacing this single material with a suitable alternative, and then completing the change throughout the supply chain is currently underway, which is forecasted to take four to five years to finalize. This period does not include a full and complete transition in a motor vehicle manufacturers' product line, as further described below.

The motor vehicle industry has a global, complex and vast supply chain with multiple tiers of suppliers feeding a single component or system into a vehicle manufacturer. Consequently, hundreds of global customer approvals are necessary. The chemical change of this magnitude also requires upstream and downstream part number changes for traceability, product validation testing, IMDS submissions and approvals at multiple levels, and Production Part Approval Process (PPAP) submissions and approvals at multiple levels before an engineering change could be completed.

Since PIP (3:1) is used in multiple motor vehicle applications, it is possible that all these requirements and steps could disrupt and delay motor vehicle production schedules. Furthermore, motor vehicle manufacturers have four to seven-year product development cycles. As a result, a significant timeframe of at least seven to ten years should be granted for finding and implementing a viable alternative. Even then, additional time may be needed to fully phase in any new parts into vehicle product lines.

However, all this further emphasizes that a more practical measure would be for industry to work with EPA to provide information on the ability to determine a safer alternative and for EPA to revise any exemption deadline or sunset consistent with the findings of this research. The motor vehicle industry commits to providing EPA with updates on alternatives, and to working with EPA sooner than four years if a viable alternative is identified before then. Alternatively, if EPA provides a sunset date as part of this rulemaking, we urge EPA to provide the motor vehicle industry with the option to extend the sunset date based on the availability of a technically viable, safer alternative. Given the reasons stated above, a mandated phase out date for the motor vehicle industry's use of PIP (3:1), ahead of development of technically feasible, safe alternatives or the ability to conduct necessary testing and validation, would significantly disrupt the industry and eventually have national economic consequences.

Cost Considerations for Determining a Viable Alternative and Implementing a Substitute

In addition to time requirements, the motor vehicle industry could incur substantial costs to conduct adequate alternatives analysis and implement a feasible safer alternative with the necessary performance characteristics. These costs might include performance testing and additional information gathering to fill data gaps and ensure an informed decision. If no viable alternatives are easily and immediately identified, additional costs could be associated with research and development of new chemistries, and subsequent process development and

scaling up necessary to achieve a feasible alternative. According to motor vehicle suppliers, estimates for conducting evaluations of alternative technologies range from \$100,000 to \$1,000,000, depending on if the evaluation requires extensive testing and data acquisition. If no viable alternatives are readily identified, significant financial investments may be required to develop new technologies. New chemistries costs associated with developing a new technology as a feasible alternative can range from millions to tens of millions of dollars.³¹

Due to the extremely complex nature of the automotive production process, changing just one critical chemical could require significant financial investments and burden. Motor vehicle industry implementation costs include changing manufacturing infrastructure such as retooling, motor vehicle parts redesign costs, and employee retraining. All of these are not only costly but could result in disruption in the motor vehicle part products or the full vehicle production process. In addition, implementation costs also include testing and validating any parts changes for quality, durability, and compliance with applicable safety, emissions, or other federal, state or even global requirements.

Motor vehicle part redesigns are an involved and expensive process. As a result, a ban on the motor vehicle applications of PIP (3:1) would be a substantially costly process and could significantly disrupt the national economy. The industry employs engineers and designers that work months if not years on new redesigns. Suppliers also have multiple tiers of suppliers; any redesign or transition to a new chemical requires substantial coordination within their supply chain and retooling of assembly lines. The cost of this process could be hundreds of millions of dollars across the industry.³²

As an example of the significant costs associated with implementing a product reformulation, the European Chemicals Agency (ECHA) Committee for Socioeconomic Analysis (SEAC) estimated the costs for removing methanol from windshield wiper fluids and substituting with alternative formulations at a range of 400,000€ to 4,000,000€ per year in Finland alone.³³ Since the motor vehicle industry would have to replace PIP (3:1) in multiple applications in a complex, durable product, which must also meet safety, emissions and other regulatory requirements, substitution could potentially cost tens of millions of dollars per year, particularly if the redesign had to be conducted, or unnecessarily expedited, outside the normal product development process.

Special Considerations for Motor Vehicle Replacement Parts Containing PIP (3:1)

MEMA and Auto Innovators appreciate EPA's acknowledgement in the original proposed rule that restrictions on replacement parts for the automotive industries "could increase costs and safety concerns without meaningful exposure reductions."³⁴ As explained in detail above, if there is a set transition and phase out of PIP (3:1) in motor vehicle parts, it would be extraordinarily burdensome to phase PIP (3:1) out of motor vehicle replacement parts for any parts manufactured to maintain and repair vehicles assembled with parts containing PIP (3:1). This is one reason why the U.S. Congress provided EPA limited authority under TSCA section

³¹ <https://clepa.eu/mediaroom/innovate-uk-funding-83-million-automotive-rd/> and https://www.nrel.gov/transportation/assets/pdfs/mac_2005.pdf

³² Blonigen, BA; Knittel, CR; Soderberry, A. April 2013. "Keeping it Fresh Strategic Product Redesigns and Welfare." National Bureau of Economic Research (Cambridge, MA) NBER Working Paper No. 18997. 46p. Accessed on March 28, 2019 at <https://www.nber.org/papers/w18997>.

³³ <https://echa.europa.eu/documents/10162/cc415549-cac9-4/8497/dc21/0d0b18125> accessed April 2019

³⁴ 84 Fed Reg 36749

6(c)(2)(D) to regulate replacement parts. Again, other regulatory provisions such as the FAST Act of 2015,³⁵ require the motor vehicle industry remedy recalls and defects for a period of 15 years post-manufacture. As a result, motor vehicle manufacturers and suppliers retain a portion of the produced parts for a period of 15 years.

If EPA prohibits replacement parts from containing PIP (3:1), motor vehicle manufacturers and suppliers would be forced to produce a whole new set of complaint parts and scrap currently retained parts. Industry would be forced to redesign, resource, and retest parts for vehicles that are no longer in production. At a minimum, if there is a phase out date for replacement parts with PIP (3:1), we request that EPA use a tactic such as “motor vehicle industry replacement parts manufactured before a certain date” or “motor vehicle industry replacement parts for use in motor vehicle industry applications manufactured on or before a certain date.”³⁶

MEMA and Auto Innovators Urge EPA to Preserve the Motor Vehicle Industry’s Exemption and Sunset Date for Use of decaBDE

MEMA and Auto Innovators thank EPA for providing the motor vehicle industry an exemption and a reasonable sunset date for the use of decaBDE in motor vehicle replacement parts and urge EPA to clarify that the exemption provided remains intact due to the impractical, infeasible, and costly application of a ban on existing replacement part supplies. This is critical to the ability to “remedy recalls and defects” and generally maintain and repair vehicles throughout their full service life. MEMA and Auto Innovators strongly urge EPA to preserve its current exemption for the motor vehicle industry where the manufacture, processing, and distribution of decaBDE in commerce for use in motor vehicle replacement parts and distribution in commerce of motor vehicle replacement parts that contain decaBDE are not restricted.³⁷ An exemption of decaBDE in replacement parts is reasonable, justified and necessary based on product cycles and the length of time these parts have been in the market. MEMA and Auto Innovators agree with EPA’s acknowledgement that “any restriction on replacement parts [containing decaBDE] for the automotive industries could increase costs and safety concerns without meaningful exposure reductions.”³⁸ This is particularly true given that supplies of replacement parts containing decaBDE will continue to decline year after year, as new motor vehicles are being manufactured with parts that do not contain decaBDE.

The motor vehicle industry has made extensive efforts over the last decade to phase out the use of decaBDE in production parts. MEMA commented publicly in 2012 that decaBDE is being phased out by the motor vehicle industry.³⁹ To our knowledge, the motor vehicle industry has completed its phase out of decaBDE in production of U.S. vehicles as of 2021.⁴⁰

While decaBDE is completely phased out of production, there may be some replacement parts possibly still in circulation that contain decaBDE. The current average age of vehicles in the U.S. fleet is 11.9 years (and growing).⁴¹ Therefore, decaBDE may still remain in aftermarket

³⁵ Pub. L. No. 114 94

³⁶ Motor vehicle here includes on-road light, medium and heavy vehicles (classes 1-8) and non-road vehicles.

³⁷ 84 Fed Reg 36746

³⁸ 84 Fed Reg 36749

³⁹ EPA-HQ-OPPT-2010-1039

⁴⁰ EPA-HQ-OPPT-2019-0080-0011

⁴¹ IHS Markit, July 2020, “Average Age of Cars and Light Trucks in the U.S. Approaches 12 Years.” Available [here](#).

replacement parts because vehicles are intended to operate for many years and thousands of miles and will require periodic service and maintenance. Because of manufacturing processes, equipment and tooling, motor vehicle parts manufacturers will typically produce replacement parts in close succession to those made as original equipment parts. Further, automakers are obligated by law and customer requirements to maintain a supply of replacement parts for 15 years or more after production of the automobile has ceased.⁴² Consequently, due to the industry's phase-out, replacement parts containing decaBDE will continue to significantly decline over time.

If the agency does not provide these exemptions and forces industry to reformulate and produce replacement parts, this would be a significant concern for the motor vehicle industry because of the significant cost and negative impact on the economy with minimal benefits. It would be impracticable and nearly impossible to reformulate and reproduce replacement parts – parts that are no longer being actively manufactured – but are still needed in inventory for the service, maintenance, and repair of in-service vehicles. Such a regulation would place a significant burden on motor vehicle suppliers.

Recordkeeping and Downstream Notification Requirements for PBTs

We appreciate that EPA added clarifying language and examples regarding recordkeeping requirements and downstream notification as part of the PBT final rules. However, the regulatory text still lacks specificity as to which entities must maintain records, the purpose of these records, and what exactly those records should contain. If EPA could provide more explanation on their reasoning and purpose for these records, the industry may be able to determine if there are information and procedures in place today that could help the industry achieve EPA's goals on recordkeeping.

As an example, EPA states in the preamble language that these recordkeeping requirements "exclude PIP (3:1)-containing products and articles that have previously been sold or supplied to an end user, *i.e.*, any person who purchased or acquired the finished good for the purposes of resale."⁴³ However, EPA then adds the 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."

Our interpretation of this text is that recordkeeping may be required for importers of replacement parts. Further, we interpret this to mean that for any of the activities that are exempted in the final rule, a statement saying that the product or article is exempted and therefore in compliance with 40 CFR 751.407(a) would be adequate to meet the recordkeeping requirements for any motor vehicle supplier or motor vehicle manufacturer. Additionally, we interpret that a vehicle supplier could provide one statement to either a motor vehicle manufacturer or another supplier thus fulfilling its responsibilities under this provision.

EPA needs to clarify which entities are required to keep records. Otherwise, if all users must keep records for all exempted uses, then this requirement would far exceed EPA's estimates assumed in the economic analysis for this rule. Therefore, we request that EPA revise its economic analysis to reflect the actual costs and volume of records that would need to be generated and maintained.

⁴² Fixing America's Surface Transportation (FAST) Act of 2015, Public Law 114-94, § 30120(g)(1), Dec. 4, 2015

⁴³ 86 Fed Reg 901

In addition, the industry needs clarification as to what is required in the record. For example, the IMDS is the material data system used throughout the global motor vehicle supply chain to collect article data and analyze all parts and materials on the vehicle at the point of sale, including replacement parts. IMDS supports the motor vehicle industry obligations to global substance laws and regulations, including those required by EPA.

Within the IMDS system there is an “IMDS approval ID,” which is created as a receipt that the article’s (*e.g.*, a steering wheel assembly) material content data has been reviewed by the vehicle manufacturer. An approved IMDS record serves as confirmation that the article meets all global chemical requirements, including those set by EPA. EPA should clarify that this information available in the IMDS satisfies the requirements of “ordinary business records,” presuming IMDS data is readily available within 30 days (if requested). If IMDS data is not readily available (*i.e.*, depending on who must provide the information within the supply chain, or if a *de minimis* amount is present), it potentially could take more than 30 days to collect requested information for the agency.

However, it is important to note that not all motor vehicle application products are available through the IMDS system (*e.g.*, parts that are solely aftermarket parts). In addition, IMDS does not readily track whether an article is imported.

Since these recordkeeping provisions in the rule are not explicitly defined, the language creates ambiguity as to what is needed, and which entities are implicated. If EPA can provide clarity on the purpose and function of these business records – including specifying if the purpose is to quantify and track incoming and outgoing articles – there may be other industry procedures already in place that could more easily meet EPA’s recordkeeping requirements. In section 2(d)(2), the final rule states that “these records **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)” (emphasis added). For motor vehicle components, we request that EPA would accept the IMDS Approval ID as a confirmation that the article meets the requirements stated in 40 CFR 751.407(a), and satisfies the requirement as a “statement” and that no additional “statements” are necessary. If the motor vehicle article or condition of use is not contained in the IMDS, then industry could determine alternative ways of keeping records once more clarity is provided.

EPA clarifies that the downstream notification requirement applies only to those scenarios where a product has an accompanying safety data sheet (SDS). For such products, the option of fulfilling the downstream notification may be done either by text in the SDS or on the article label. The motor vehicle industry interprets this to mean that motor vehicle manufacturers are not required to notify downstream buyers of articles containing PIP (3:1) if the article does not possess a SDS. We also interpret this to mean that motor vehicle suppliers are not required to notify its downstream suppliers of articles containing PIP (3:1) if the article does not possess a SDS. Our interpretation would also exclude downstream notification for small repair kits that may accompany a new vehicle when sold to the consumer. For clarity, MEMA and Auto Innovators request that EPA affirm these interpretations.

EPA Exceeded its Statutory Authority in Regulating Articles and Replacement Parts

In EPA’s original proposal, the agency explains that it interprets TSCA section 6(h) as directing the agency to provide the prohibitions and restrictions identified in section 6(a)(1)-(7), but not applying the provisions of section 6(c) that conflict with section 6(h).

The agency interprets a conflict with section 6(c) and section 6(h) because section 6(c) assumes that there is a section 6(b) risk evaluation. However, section 6(h)(2) specifically provides that EPA is not required to conduct a risk evaluation on PBT chemicals. Since the agency did not conduct risk evaluations, the agency has taken the position that the statutory exemptions for replacement parts and articles of TSCA section 6(c)(2)(D) and 6(c)(2)(E) do not apply.⁴⁴ In 2019, MEMA expressed concern with EPA's interpretation of the statute, and we remain concerned with this current interpretation.

EPA has exceeded its authority under TSCA even under the specific statutory criteria for this PBT rule section 6(h) by placing restrictions on articles and replacement parts in the absence of a risk evaluation.⁴⁵ EPA misconstrued the statutory directive of TSCA section 6(c)(2)(D) and 6(c)(2)(E) regarding articles and replacement parts. These provisions significantly limit the agency's authority to regulate replacement parts (designed prior to the date of publication in the *Federal Register*) and articles. TSCA's exemption of replacement parts in section 6(c)(2)(D) requires EPA to "exempt replacement parts for complex durable goods and complex consumer goods" except in instances where the "replacement parts contribute significantly to the risk" identified in the risk evaluation under section 6(b)(4)(A). Therefore, EPA's section 6(a) authority is limited to applying regulatory restrictions on replacement parts only if there is a risk evaluation under section 6(b)(4)(A). If there is a risk evaluation conducted, then the risk evaluation must make a finding that there is an unreasonable risk. If the risk evaluation finds that there is an unreasonable risk, the agency must find that the replacement parts contribute significantly to that risk. Therefore, in the absence of a risk evaluation, the replacement parts exemption provided in section 6(c)(2)(D) applies to this rulemaking.

Similarly, section 6(c)(2)(E) limits EPA's authority to regulate articles in commerce. The statute permits EPA to apply prohibitions and restrictions on articles "only to the extent necessary" to address risks identified in a risk evaluation (under 6(b)(4)(A)). The statutory language is clear that EPA's authority is limited to applying regulatory restrictions on articles only if there is an unreasonable risk finding pursuant to a risk evaluation. The risk evaluation must find that placing restrictions on the article is necessary to address that risk. Therefore, in the absence of a risk evaluation in the rulemaking, the agency's limited authority in section 6(c)(2)(E) to regulate articles applies to this rulemaking.

EPA's interpretation places a significant, costly burden on parties that manufacture, sell, assemble, or use articles containing chemicals, which often are deeply embedded in product components and present low risk for human exposures or environmental releases. These exemptions for replacement parts and articles were written by the U.S. Congress to provide some regulatory certainty for manufacturers of articles and motor vehicle replacement parts. Again, motor vehicle suppliers are obligated by law and customer requirements to maintain supply of replacement parts for 15 years or more after production of the automobile has ceased. Therefore, restricting certain chemicals in these parts could feasibly require vehicle parts suppliers and vehicle manufacturers to redesign, re-source, and re-validate parts for vehicles that are no longer in production.

⁴⁴ 84 Fed Reg 36733 and 36746

⁴⁵ EPA-HQ-OPPT-2019-0080-0547

Motor Vehicle Industry Challenges

EPA's final rules to reduce exposure to the PBT chemicals under TSCA section 6(h) required a quick phase out of these chemicals for some uses and industries.⁴⁶ EPA undertook an impressive process for stakeholder outreach and engagement and took into account the large amount of input and data provided by the engaged industries. Again, the motor vehicle industry is very appreciative of EPA listening to the information, data and reasoning the industry provided on decaBDE and PIP (3:1). As a result of the comprehensive public comments and information on these two chemicals, providing an exemption for PIP (3:1) and a reasonable phase out for decaBDE.

Going forward, requiring industry to phase it out within a tight timeframe will remain challenging for the motor vehicle industry. Consequently, we request that EPA, when requiring a phase out, sunset or ban of a certain chemical, provide a reasonable transition period for the industry in all circumstances. We outline industry's obstacles below.

Motor vehicles are complex durable goods with more than 30,000 components and subsystems, many of which contain a multitude of chemicals. As an example, a certain windshield wiper blade contains approximately 31 different chemicals, a starter contains approximately 193 chemicals, and a diesel injection pump includes 106 chemicals. Therefore, it is difficult for the motor vehicle industry, especially suppliers, to have absolute knowledge on select chemicals in components they are assembling.

Our challenges of confirming chemical usage and phasing chemicals out are also in part because of our uniquely complex supply chain and a myriad of performance standards and safety regulations to which the motor vehicle industry is subject. The global supply chain for motor vehicles and their components has thousands of suppliers, creating a complex structure, which is up to ten tiers removed from raw material supplier up to the vehicle manufacturer. Motor vehicle suppliers themselves also have suppliers that are several tiers deep. All these elements provide unique challenges and pose difficulties accurately determining which chemicals are in each component, at what level.

The motor vehicle industry has a sophisticated material data system, IMDS, which provides analysis capabilities of the substances present in motor vehicles and vehicle components. The data is extremely valuable, but it does have its limitations. IMDS manages aggregated material data sent forward through the supply chain, however, interaction between the tiered suppliers regarding material compositions can be challenging and very time consuming. Vehicle manufacturers are limited to the data provided by their tiered suppliers. Suppliers are also limited to the data provided by their tiered suppliers. The IMDS represents years of development, ongoing training and education for users, and tens of millions of dollars of investment to maintain, update and refine. It is a reliable and valuable tool for vehicle manufacturers to quickly use in identifying, for the most part, the chemical content in articles.⁴⁷ Efforts to continuously improve the data quality in IMDS is continually addressed by the motor vehicle industry.

⁴⁶ 86 Fed Reg 14398

⁴⁷ Exceptions may include chemicals in *de minimis* quantities, chemicals protected as part of trade secrets (note: chemicals listed on the Global Automotive Declarable Substance List (GADSL) must be reported in IMDS), and uses other than articles, like manufacturing equipment, facility or non-dimensional uses, and determination of imports.

In contrast, while information is ultimately aggregated and available to vehicle manufacturers through IMDS, suppliers may not have access to the various tiers of information in the IMDS. For instance, lower tiered suppliers or smaller sub-suppliers may rely on upper tiers or the vehicle manufacturers for capturing their ongoing uses in data submissions to EPA. Suppliers that supply to several other industries and use the same or similar parts as the motor vehicle supply chain will likely have access to material data, but their uses will not be captured by a vehicle manufacturer data collection process. Furthermore, parts that are used solely aftermarket are not typically reported in IMDS. Alternatively, SDS are also used to determine chemical compositions, but in fact, most of the products in the motor vehicle industry do not require the use of and therefore do not have SDS.

Prior to reformed TSCA, it was not necessary to have detailed knowledge of the chemicals in each component, article or replacement part. In fact, historically, EPA has consistently selected to not require reporting, data, or information for articles, recognizing the extreme cost, complexity and burden of doing so for parts that generally have little to no exposure risk.⁴⁸ Importantly, as outlined above, EPA has very limited authority to regulate articles of and replacement parts for complex durable goods and complex consumer goods per TSCA sections 6(c)(2)(D) and 6(c)(2)(E). These exemptions for replacement parts and articles were written by the U.S. Congress to provide some regulatory certainty for manufacturers of articles and motor vehicle replacement parts. These TSCA provisions were also intended to alleviate burdens and complexities for manufacturers of articles that have already been designed and are currently being distributed in commerce.

Consequently, MEMA and Auto Innovators urge EPA to consider these outlined industry challenges when EPA deems it necessary to regulate, require a phase out, or ban a chemical in motor vehicle industry application parts or replacement parts. The motor vehicle industry needs a reasonable lead time in all situations. We look forward to working with EPA through these challenges, and to ensuring a well-informed process, as TSCA implementation continues.

Conclusion

The motor vehicle industry is very appreciative of EPA undertaking an impressive process for stakeholder outreach and engagement and listening to the information and reasoning the industry provided on decaBDE and PIP (3:1) and providing an exemption for PIP (3:1) and a reasonable phase out for decaBDE.

MEMA and Auto Innovators urge EPA to preserve the motor vehicle industry exemptions of PIP (3:1) and decaBDE. PIP (3:1) serves a critical function in motor vehicle uses as a widely-employed flame retardant, essential for maintaining required and expected standards of motor vehicle safety. PIP (3:1) provides essential services and, as a result, it is found in hundreds of motor vehicle components throughout the vehicle or other applications. However, consumer exposure to PIP (3:1) is minimal. Importantly, there is currently neither a technically viable,

⁴⁸ “Because it would be enormously difficult for an importer to determine the identity and inventory status of each chemical substance in imported articles (e.g., automobiles), the rule does not require persons to submit notices on new substances imported as part of articles.” [48 Fed Reg 21722, 21726 (PMN regulations)], and “...extremely burdensome for importers to identify the chemical substances contained in the articles they import... [estimated] total direct cost would range from \$187 million to about \$437 million...health and environmental risk posed by a chemical substance in an imported article may be less than the risk posed by a chemical substance imported in bulk” (in 1977 dollars) [42 Fed Reg 39185].

nor a safer, alternative to PIP (3:1) in motor vehicle industry applications identified at this time. For these reasons, EPA should preserve the motor vehicle industry's ability to continue to use PIP (3:1).

MEMA and Auto Innovators also urge EPA to extend the PIP (3:1) exemption to all "motor vehicle applications" including on-road vehicles, non-road heavy vehicles and other motor vehicle industry applications utilizing an ICE, since many of the same or similar parts used in light vehicles are also used in all motor vehicle applications (on-road and non-road). Further, we request that EPA allow for the continued import of manufacturing equipment and machinery that may contain PIP (3:1). This will ensure the United States can continue to retool and build out advanced technology capacity, such as for electric vehicles and automated and connected vehicle technologies, that are so critical to this administration's goals to be a global leader in innovation, address climate change, and provide safer roadways.

Importantly, after consideration of new information or data received during this new public comment period, if EPA decides to apply a sunset on the motor vehicle industry's exemption of PIP (3:1), MEMA and Auto Innovators request the agency provide a significant timeframe of seven to ten years for an industry phase out. A lengthy timeframe will be needed for the motor vehicle industry to find and implement a safe and viable alternative. Additionally, a sunset date must be accompanied with recognition that it could potentially be extended if no technically viable alternative is identified in the next four years. Not having this option could result in a significant disruption of the motor vehicle industry global supply chain and impact the national economy. Equally detrimental, a phase-out of PIP (3:1) in replacement parts would be insurmountable and would significantly increase costs and safety concerns without meaningful exposure reductions.

For more information, please do not hesitate to contact Laurie Holmes, MEMA senior director of environmental policy at lholfmes@mema.org, or Julia Rege, Auto Innovators vice president of energy and environment at jrege@autosinnovate.org.

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