



1111 19th Street NW > Suite 402 > Washington, DC 20036
t 202.872.5955 f 202.872.9354 www.aham.org

February 1, 2021

Submitted via e-mail

Dan Utech, Chief of Staff
Victoria Arroyo, Associate Administrator for Policy
Michal Freedhoff, Principal Deputy Assistant Administrator for Chemical Safety and Pollution Prevention
Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington, DC 20460-0001

Re: Phenol, Isopropylated Phosphate (3:1) (PIP 3:1); Regulation of Persistent, Bioaccumulative, and Toxic Chemicals Under TSCA Section 6(h); Final Rules 01/06/2021

Dear Mr. Utech, Ms. Arroyo, and Ms. Freedhoff:

On behalf of the Association of Home Appliance Manufacturers (AHAM), I am writing to raise concerns regarding the compliance timeframes for the Final Rules dated 01/06/2021 for Phenol, Isopropylated Phosphate (3:1) (PIP 3:1).

AHAM represents manufacturers of major, portable and floor care home appliances, and suppliers to the industry. AHAM's more than 150 members employ hundreds of thousands of people in the U.S. and produce more than 95% of the household appliances shipped for sale within the U.S. The factory shipment value of these products is more than \$50 billion annually. The home appliance industry, through its products and innovation, is essential to U.S. consumer lifestyle, health, safety and convenience. Through its technology, employees and productivity, the industry contributes nearly \$200 billion annually to the economic security of the United States. Home appliances also are a success story in terms of energy efficiency and environmental protection. New appliances often represent the most effective choice a consumer can make to reduce home energy use and costs.

As other trade associations such as the Consumer Technology Association (CTA) and the Information Technology Industry (ITI) have done, we request consideration of an extension of the compliance dates based on the concerns outlined below and respectfully request a meeting at your convenience to further discuss this matter.¹ We are asking for immediate relief as our members need to assess compliance actions as the effective date is little more than a month away.

¹ CTA and ITI submitted an extension request to EPA on January 28, 2021.

PIP (3:1) is used many different components made of PVC. Therefore, PIP (3:1) is present in articles, contrary to EPA's assessment in the Response to Public Comments: Regulation of Persistent, Bioaccumulative, and Toxic Chemicals under Section 6(h) of the Toxic Substances Control Act, where EPA stated that "there is little evidence to suggest that PIP (3:1) is present in commercial and industrial articles" as a justification for why additional compliance time was not needed for articles. Unfortunately, this is not the case.

Our member companies fully intend to comply with the EPA regulation to prohibit PIP (3:1), but additional time is needed to ensure companies can comply under a reasonable timeframe while maintaining quality and safety. Given the use of PIP (3:1), the 60-day timeframe is unrealistic for the reasons we outline below. Because of the 60-day timeframe, compliance decisions will need to be made soon which could cause disruption in the availability of certain products to U.S. consumers.

As noted by several commenters during the public comment period, the European Chemicals Agency (ECHA) does not classify PIP (3:1) as a persistent, bioaccumulative, and toxic (PBT) chemical. In fact, PIP (3:1) remains largely unregulated throughout the world. We raise this to highlight the fact that companies which are manufacturers (and importers) of articles may not have been tracking PIP (3:1) within their supply chain given it lacked compliance restrictions in any jurisdiction. This means that because of EPA's action, companies have been given only 60 days to identify the use of PIP (3:1) and remove it from the supply chain. This is an enormous and unprecedented task.

Once the use of a restricted chemical is identified, companies generally undertake a process within their chemical management programs to identify alternatives, formulate and procure new components, conduct quality assessments, certify to safety standards, potentially rework the manufacturing process, and ultimately ship and import products that comply with the chemical restrictions. **Generally, this process can take up to 24-months.**

Accordingly, AHAM requests that EPA establish a 24-month compliance timeframe from the date of the initial publication of the Final Rule for the manufacture and import of articles containing PIP (3:1). There should be a later compliance date (ideally 12 months) for distribution in commerce and a sell-through provision as recommended by others during the public comment period and granted by EPA for other PBT chemicals.

Please note that the above 24-month compliance timeframe is significantly *faster* than compliance timelines established in other jurisdictions. For example, a chemical phase out in the European Union under the Restriction of Hazardous Substances in Electrical and Electronic Equipment 2 (RoHS 2) is typically effective 48-months from the date of notice. **The 24-month timeline we are requesting is a minimum and involves industry prioritizing and working at a faster speed than is typical.**

As you are aware, EPA did grant a 48-month compliance extension for adhesives and sealants under the PIP (3:1) Final Rule to "allow for a reasonable period of time to transition to alternatives." AHAM urges EPA to consider half that time for articles to "allow for a reasonable period of time to transition to alternatives" and to avoid the unintended consequence of

ultimately banning articles containing PIP (3:1) from the U.S. and reducing consumer choice for products that are essential to their everyday lives, especially during the pandemic.²

AHAM members are not seeking to argue the merits of prohibiting the distribution of articles containing PIP (3:1); we are merely requesting a more realistic timeframe that is responsive to the implemented chemical management and quality and safety assurance programs of our companies. Because we and other trade associations are now informing EPA that the basis for its 60-day compliance timeframe was incorrect, we are hopeful that EPA will quickly make this necessary adjustment.

Accordingly, we propose the following regulatory text:

§ 751.407(a)(2) Phase-in Prohibitions for Specific uses of PIP (3:1) and PIP (3:1)-containing products and articles.

(iii) After January 1, 2023, all persons are prohibited from all manufacturing (including import) of PIP (3:1) for use in electronic and electrical articles, including electronic and electrical devices, appliances and components, and PIP (3:1)-containing electronic electrical articles, including electronic and electrical devices, appliances and components.

(iv) After January 1, 2024, all persons are prohibited from all processing and distributing in commerce of PIP (3:1) for use in electronic and electrical articles, including electronic and electrical articles, appliances and components, and PIP (3:1) containing electronic and electrical articles, including electronic and electrical devices, appliances and components.

Additionally, we request that EPA allow an exemption for replacement parts. Per California law, appliance companies that have sold products valued at \$100 or more and with an express warranty are required to “make available to service and repair facilities sufficient service literature and functional parts to effect the repair of a product for at least seven years after the date a product model or type was manufactured.” Given the law requires AHAM’s member to provide replacement parts, an exemption should be granted for replacement parts for appliances for a seven-year time period once the compliance date is effective. To require these companies to reformulate or redesign replacements parts for appliances currently on the market or appliances no longer being manufactured is not practicable because these parts have already been manufactured and/or there are no currently feasible alternatives.

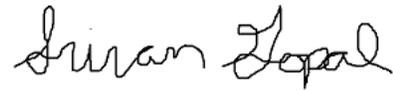
The exemption for replacement parts for appliances is justified because it is 1) required by law and 2) important to the performance and safety of appliances. The latter is the same justification used by EPA for its exemption for replacement parts of automobiles.

AHAM requests a meeting with you and any appropriate EPA staff to discuss the above concerns and ways in which we can move forward with a reasonable timeline. As noted above, time is of the essence as the March 8 deadline is quickly approaching.

² The use and purchase of home appliances surged during the pandemic according to both internal AHAM data and publicly available sources. See, for example, <https://www.wsj.com/articles/refrigerators-ovens-get-a-hygiene-makeover-during-covid-19-pandemic-11606913490>.

Thank you for allowing AHAM to submit this request for an extension and we thank the EPA for its continued collaboration. We look forward to additional timely discussion with EPA on this critical matter.

Best Regards,

A handwritten signature in black ink that reads "Sriram Gopal". The signature is written in a cursive, flowing style.

Sriram Gopal
Director, Technology & Environmental Policy