



News & Types: Client Advisories

EPA Issues Extension for PIP (3:1) Compliance to March 8, 2022

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Practices: Commercial, Competition & Trade

As an update to our March 26, 2021 and September 3, 2021 Client Advisories, the U.S. Environmental Protection Agency (“EPA”) on September 3, 2021 announced its plan to initiate a new separate rulemaking in Spring 2023 and propose new rules for the five identified chemicals that are considered persistent, bioaccumulative and toxic (“PBT Chemicals”), including phenol, isopropylated phosphate (3:1) (“PIP (3:1)”). With the exceptions regarding PIP (3:1) described further below, the current January 2021 rules in place for the PBT Chemicals will remain in effect while the EPA works toward the Spring 2023 target for the new rulemaking.

PIP (3:1) COMPLIANCE DATE EXTENSION

On September 3, 2021 the EPA extended the compliance date for the January 21, 2021 PIP (3:1) final rule’s (“Final Rule”) prohibitions on the processing and distribution of PIP (3:1) and PIP (3:1)-containing articles, as well as the Final Rule’s associated record-keeping requirements for manufacturers, processors and distributors of PIP (3:1)-containing articles, until March 8, 2022. The EPA further stated that it will soon issue notice of proposed rulemaking to create a new 60-day public comment period to request comments on a further compliance date extension for certain PIP (3:1)-containing articles, the PIP (3:1) used to make such articles, and the recordkeeping associated with PIP (3:1)-containing articles.

EPA EXPECTATIONS FOR FURTHER PIP (3:1) COMMENTS

As part of the EPA’s rulemaking for each of the five PBT Chemicals planned to occur in 2023, the EPA announced its intention to reevaluate its current rules for PIP (3:1) and the other PBT Chemicals, and also indicated its expectations for the specific kinds of information the EPA will require for comments to support any additional extensions to the compliance dates. In particular, the EPA will expect commenters to “provide documentation of the specific uses of PIP (3:1) in articles throughout their supply chains, documentation of concrete steps taken to identify, test, and qualify substitutes for those uses, documentation of specific certifications that would require updating and an estimate of the time that would be required.” The EPA further stated that without receiving this specific information from commenters, the EPA “will be unlikely to extend the compliance dates again.”

NEXT STEPS

In summary, the relatively short-term extension of the PIP (3:1) compliance dates to March 8, 2022 and the current uncertainty regarding any additional future extensions means that manufacturers, processors and distributors of PIP (3:1)-containing articles must continue to work with their supply chain partners to identify how PIP (3:1) is used in their products and determine what substitutions can be made for the portions of the products that contain PIP (3:1).

If you have any questions regarding PIP (3:1)-related issues in your business's supply chain, please contact your Masuda Funai relationship attorney for a consultation.