



Environment, Land Use & Natural Resources ADVISORY ■

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PIP (3:1) Rule Downstream Notification Requirements Now Effective – What’s Next?

By [Kevin Minoli](#), [Ronnie Gosselin](#), and [Shannon Vreeland](#)

Companies that process or distribute products that contain PIP (3:1) in commerce are now required to notify the recipients of those products of the provisions of the controversial PIP (3:1) Rule – even if the companies are covered by the U.S. Environmental Protection Agency’s (EPA) 180-day [no-action assurance](#) issued earlier this year. When the EPA extended the no-action assurance for companies subject to the Toxic Substances Control Act (TSCA) Section 6(h) rulemaking that prohibits the processing and distribution of most PIP (3:1) and PIP (3:1)-containing articles (“PIP (3:1) Rule”), the agency was explicit that the temporary partial relief only applied to the PIP (3:1) Rule’s prohibitions on the processing and distributing in commerce of PIP (3:1) for use in articles and PIP (3:1)-containing articles and certain associated recordkeeping requirements. Significantly, and as explained in our previous [advisory](#), the no-action assurance did *not* provide a reprieve from all aspects of the PIP (3:1) ban. The EPA specifically noted that the no-action assurance did not include the rule’s prohibition on discharges to water, certain recordkeeping requirements, and downstream notification requirements for PIP (3:1) and articles containing PIP (3:1).

For manufacturers of PIP (3:1), the downstream notification requirements became effective on March 9, 2021. Companies purchasing PIP (3:1) should have received notification from their suppliers regarding the restrictions contained in the rule. The PIP (3:1) Rule mandates the text that must be used in the notification and requires that notice be provided either in the Safety Data Sheet that accompanies the product or on product labels.

On July 7, 2021, the PIP (3:1) Rule’s downstream notification requirements *also* became effective for all companies that *process or distribute* PIP (3:1) or PIP (3:1)-containing products in commerce. Whether they received a notification from their supplier or not, companies that process or distribute such products must now notify persons to whom PIP (3:1) or products that contain PIP (3:1) are shipped of the rule’s prohibitions on the processing, distribution, and release to water of PIP (3:1), and do so before or concurrent with shipment by including the EPA-mandated language in the Safety Data Sheet or on the product label, in conformance with the requirements of 40 C.F.R. § 751.407(e). These obligations apply to all companies, including companies covered by the EPA’s no-action assurance and companies that are excluded from the PIP (3:1) Rule’s prohibition of the processing and distribution of PIP (3:1), such as companies that make new and replacement parts for motor vehicles and aerospace vehicles and companies that make vehicles that include such parts.

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Finally, companies may lose the limited protection provided by the EPA's no-action assurance if they fail to comply with these new downstream notification requirements. The EPA's no-action assurance for the processing and distribution prohibition only extends to companies that comply with all other aspects of the PIP (3:1) Rule – including the downstream notification obligation. A company that has continued to process and distribute PIP (3:1) and PIP (3:1)-containing articles may face an EPA enforcement action for both a failure to provide downstream notification *and* a failure to comply with the PIP (3:1) Rule's processing and distributing prohibition. Companies that are currently covered by the EPA's no-action assurance that are unclear on how to comply with the PIP (3:1) Rule's downstream notification requirements should review the [regulations](#) and consult with counsel.

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