

## **EPA Proposes Revisions to PBT Rules for DecaBDE and PIP (3:1)**

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### **Key Takeaways**

The U.S. Environmental Protection Agency (EPA) **published** proposed revisions to its regulations for decabromodiphenyl ether (decaBDE) and phenol, isopropylated phosphate (3:1) (PIP (3:1)) on November 24. EPA first regulated these two substances as persistent, bioaccumulative, and toxic chemicals (PBTs) under the Toxic Substances Control Act (TSCA) in January 2021. With limited exceptions and under various compliance timeframes, those 2021 rules prohibited the manufacture (including import), processing, and distribution in commerce of decaBDE, and products and articles containing decaBDE. The rules likewise prohibited the processing and distribution in commerce of PIP (3:1) and products and articles containing PIP (3:1).

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The proposed revisions would grant compliance extensions for certain uses of these substances, such as an extension to the end of service life for decaBDE used in wire insulation for nuclear power plants and 10 years for PIP (3:1) used in manufacturing equipment and in the semiconductor industry. In addition, the proposal would modify several of the exclusions in the PIP (3:1) rule, including by narrowing the exclusion for lubricants and greases to aviation and turbine uses and by replacing the exclusion for new and replacement parts for motor vehicles with a 15-year phased-in prohibition for new parts and an additional 15 years for replacement parts. The revisions would also include new workplace protection requirements for the use of both substances. Comments on the proposed rule are due on **January 8, 2024**.

## **Background**

When Congress amended TSCA in 2016, it added section 6(h), which directed EPA to restrict or ban certain PBTs. Following this, EPA finalized rules on five PBTs, including decaBDE and PIP (3:1), on January 6, 2021. The other three PBTs were 2,4,6- tris(tert-butyl)phenol (2,4,6-TTBP), pentachlorothiophenol (PCTP), and hexachlorobutadiene (HCBD). DecaBDE is a flame retardant widely used in textiles, plastics, adhesives, and polyurethane foam. PIP (3:1) is a flame retardant, plasticizer, and an anti-compressibility and anti-wear additive.

DecaBDE has generally been phased out globally with certain limited exemptions (and is listed in the Stockholm Convention on Persistent

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Organic Pollutants). PIP (3:1), on the other hand, has not been the subject of material restriction or reporting requirements in other jurisdictions.

EPA first announced in March 2021 that, in accordance with the Biden-Harris Administration executive orders and directives, it was re-examining the five PBT rules. Shortly after the 2021 rules were finalized, several trade associations wrote to EPA to explain that an extension to the original PIP (3:1) compliance deadline of March 8, 2021 was needed to remove the substance from electronics and electrical equipment. Following this, EPA **extended** the compliance date for the processing and distribution in commerce of PIP (3:1) for use in certain articles, and for the processing and distribution in commerce of certain PIP (3:1)-containing articles, first to March 8, 2022 and then to October 31, 2024.

In addition, on May 3, 2023, EPA **announced** its intent to extend the January 6, 2023 compliance date for the prohibition on processing and distribution of decaBDE for use in wire and cable insulation in nuclear power generation facilities, and decaBDE-containing wire and cable insulation. The agency also granted enforcement discretion to the nuclear industry and suppliers to resume using wire and cable intended for use in nuclear power facilities containing decaBDE.

As part of the compliance date extensions to the PIP (3:1) rule, EPA announced that it planned to propose, in 2023, a new rulemaking that could re-examine all of the control measures adopted in the 2021 final rules for the five PBTs, including the new deadlines for the PIP (3:1) rule. However,

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in the current proposed rule, EPA only addressed the PIP (3:1) and decaBDE rules and noted that the agency is not proposing to revise the other three rules at this time.

## **Proposed Revisions to the DecaBDE Rule**

EPA **summarized** the proposed revisions to the decaBDE rule as follows:

Require a label on existing plastic shipping pallets that are known to contain decaBDE;

Require the use of personal protective equipment (PPE) for some activities involving decaBDE, codifying existing practices, including a NIOSH-approved N95 respirator with an assigned protection factor (APF) of 10 and gloves that are chemically resistant to decaBDE;

Prohibit releases to water during the manufacturing, processing, and distribution in commerce of decaBDE, decaBDE-containing products, and require all persons to follow any applicable regulations and best management practices for preventing the release of decaBDE;

Extend the compliance date for processing and distribution in commerce of decaBDE-containing wire and cable insulation for use in nuclear power generation facilities;

Require export notification for decaBDE-containing wire and cable for use in nuclear power generation facilities; and

Modify existing recordkeeping requirements and require records associated with the workplace protection requirements.

## **Proposed Revisions to the PIP (3:1) Rule**

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**EPA likewise summarized the proposed revisions to the PIP (3:1) rule as follows:**

Require the use of PPE for the domestic manufacturing and processing of PIP (3:1) and some PIP (3:1)-containing products and articles, codifying existing practices, including at least a NIOSH-approved respirator with an APF of 10 and gloves that are chemically resistant to PIP (3:1);

Require the use of engineering controls and PPE for the use of PIP (3:1) as an intermediate in the manufacturing of cyanoacrylate adhesives, codifying existing practices, including at least a NIOSH-approved respirator with an APF of 50 and gloves that are chemically resistant to PIP (3:1);

Narrow the scope of the exclusion for lubricants and greases to aviation and turbine uses, with a 5-year phased-in prohibition for all other uses;

Add new exclusions for use in wire harnesses and electric circuit boards;

Replace the exclusion for new and replacement parts for motor vehicles with a 15-year phased-in prohibition for new parts and an additional 15 years for replacement parts;

Replace the exclusion for new and replacement parts for aerospace vehicles with a 30-year phased-in prohibition for new parts and until the end of the service life of the vehicle for replacement parts;

Extend the compliance timeframe for an additional 10 years for use in manufacturing equipment and in the semiconductor industry; and

Add a new 5-year compliance timeframe deadline for processing and distribution of PIP (3:1) for use as an inert ingredient in a Federal Insecticide, Fungicide, and Rodenticide Act-approved antifouling paint coating for U.S. Navy applications; and

Modify existing recordkeeping requirements and require records associated with the workplace protection requirements.

## Commentary

Key components of the proposal include extensions to compliance deadlines, various adjustments to scope exclusions, and new mandates for workplace safety. The rule, if finalized, would significantly impact the use of decaBDE and PIP (3:1) in a range of sectors, including but not limited to the electronics, semiconductor, automotive, and nuclear industries. All affected stakeholders are therefore encouraged to comment.

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