UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

YUROK TRIBE, CONSUMER FEDERATION OF AMERICA, LEARNING DISABILITIES ASSOCIATION OF AMERICA, and CENTER FOR ENVIRONMENTAL TRANSFORMATION, *Petitioners*, v. UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, and MICHAEL REGAN, Administrator, United States Environmental Protection Agency, *Respondents*.	No. _____

PETITION FOR REVIEW

Pursuant to the Toxic Substances Control Act, 15 U.S.C. § 2618, the Administrative Procedure Act, 5 U.S.C. §§ 701–706, and Rule 15 of the Federal Rules of Appellate Procedure, Petitioners Yurok Tribe, Consumer Federation of America, Learning Disabilities Association of America, and Center for Environmental Transformation hereby petition for review of Respondent United States Environmental Protection Agency's (EPA's) Final Rule, Decabromodiphenyl Ether (DecaBDE); Regulation of Persistent, Bioaccumulative, and Toxic Chemicals Under TSCA Section 6(h), 86 Fed. Reg. 880 (Jan. 6, 2021), a copy of which is attached as Exhibit 1.

The Final Rule was "promulgated" for purposes of judicial review on January 21, 2021. 86 Fed. Reg. at 880; *see also* 40 C.F.R. § 23.5(a); 15 U.S.C. §§ 2605(i)(2), 2618(a).

Petitioner Yurok Tribe is a sovereign nation and federally recognized Indian Tribe whose reservation and seat of government are located within this Circuit. This Court accordingly has jurisdiction to review EPA's rule pursuant to 15 U.S.C. § 2618(a). The other petitioners' principal places of business are not within this Circuit, but pursuant to Federal Rule of Appellate Procedure 15(a)(1), their interests make joinder to this petition practicable.

Dated: March 19, 2021

Respectfully submitted,

/s/Katherine K. O'Brien

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1, Petitioner Yurok Tribe states that it is a sovereign nation and federally recognized Indian Tribe. Petitioners Consumer Federation of America, Learning Disabilities Association of America, and Center for Environmental Transformation state that they are non-profit organizations. None of the petitioners has a parent corporation and no publicly held corporation owns 10% or more of any petitioner organization's stock.

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing/attached documents with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit using the Appellate Electronic Filing system, and that the foregoing documents were served on Respondents via Overnight Mail to each of the following addresses on this 19th day of March, 2021, in accordance with Federal Rule of Appellate Procedure 15(c).

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Exhibit 1

prohibitions, restrictions, and other provisions of this section. These records must be maintained for a period of three years from the date the record is generated.

§ 751.411 [Reserved]

§ 751.413 [Reserved]

[FR Doc. 2020–28690 Filed 1–5–21; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 751

[EPA–HQ–OPPT–2019–0080; FRL–10018–87]

RIN 2070–AK34

Decabromodiphenyl Ether (DecaBDE); Regulation of Persistent, Bioaccumulative, and Toxic Chemicals Under TSCA Section 6(h)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is finalizing a rule under the Toxic Substances Control Act (TSCA) to address its obligations under TSCA for decabromodiphenyl ether (decaBDE) (CASRN 1163–19–5), which EPA has determined meets the requirements for expedited action under of TSCA. This final rule prohibits all manufacture (including import), processing, and distribution in commerce of decaBDE, or decaBDE-containing products or articles, with some exclusions. These requirements will result in lower amounts of decaBDE being manufactured, processed, distributed in commerce, used and disposed, thus reducing the exposures to humans and the environment.

DATES: This final rule is February 5, 2021. For purposes of judicial review and 40 CFR 23.5, this rule shall be promulgated at 1 p.m. eastern standard time on January 21, 2021.

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPPT–2019–0080, is available at *http://www.regulations.gov* or at the Office of Pollution Prevention and Toxics Docket (OPPT Docket), Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

Please note that due to the public health emergency, the EPA Docket Center (EPA/DC) and Reading Room was closed to public visitors on March 31, 2020. Our EPA/DC staff will continue to provide customer service via email, phone, and webform. For further information on EPA/DC services, docket contact information and the current status of the EPA/DC and Reading Room, please visit *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: *For technical information contact:* Clara Hull, Existing Chemicals Risk Management Division, Office of Pollution Prevention and Toxics (7404T), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: 202–564–3954; email address: *hull.clara@epa.gov.*

For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA-Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Executive Summary

A. Does this action apply to me?

You may be potentially affected by this action if you manufacture (including import), process, distribute in commerce, or use decabromodiphenyl ether (decaBDE) and decaBDE-containing products and articles, especially wire and cable rubber casings, textiles, electronic equipment casings, building and construction materials, and imported articles such as aerospace and automotive parts. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Nuclear Electric Power Generation (NAICS Code 221113);
- Power and Communication Line and Related Structures Construction (NAICS Code 237130);
- Nonwoven Fabric Mills (NAICS Code 313230);
- Fabric Coating Mills (NAICS Code 313320);
- All Other Basic Organic Chemical Manufacturing (NAICS Code 325199);
- Paint and Coating Manufacturing (NAICS Code 325510);
- Custom Compounding of Purchased Resins (NAICS Code 325991);
- All Other Miscellaneous Chemical Product and Preparation Manufacturing (NAICS Code 325998);
- Unlaminated Plastics Film and Sheet (except Packaging) Manufacturing (NAICS Code 326113);
- Laminated Plastics Plate, Sheet (except Packaging), and Shape Manufacturing (NAICS Code 326130);
- Urethane and Other Foam Product (except Polystyrene) Manufacturing (NAICS Code 326150);
- All Other Plastics Product Manufacturing (NAICS Code 326199);
- Copper Rolling, Drawing, Extruding, and Alloying (NAICS Code 331420);
- Computer and Peripheral Equipment Manufacturing (NAICS Code 3341);
- Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing (NAICS Code 334220);
- Other Communications Equipment Manufacturing (NAICS Code 334290);
- Audio and Video Equipment Manufacturing (NAICS Code 334310);
- Other Communication and Energy Wire Manufacturing (NAICS Code 335929);
- Current-Carrying Wiring Device Manufacturing (NAICS Code 335931);
- Motor Vehicle Manufacturing (NAICS Code 3361), *e.g.,* automobile, aircraft, ship, and boat manufacturers and motor vehicle parts manufacturers;
- Other Motor Vehicle Parts Manufacturing (NAICS Code 336390);
- Aircraft Manufacturing (NAICS Code 336411);
- Guided Missile and Space Vehicle Manufacturing (NAICS Code 336414);
- Surgical Appliance and Supplies Manufacturing (NAICS Code 339113);
- Doll, Toy, and Game Manufacturing (NAICS Code 33993);
- Automobile and Other Motor Vehicle Merchant Wholesalers (NAICS Code 423110);
- Motor Vehicle Supplies and New Parts Merchant Wholesalers (NAICS Code 423120);
- Hotel Equipment and Supplies (except Furniture) Merchant Wholesalers (NAICS Code 423440);
- Household Appliances, Electric Housewares, and Consumer Electronics Merchant Wholesalers (NAICS Code 423620);
- Sporting and Recreational Goods and Supplies Merchant Wholesalers (NAICS Code 423910);
- Toy and Hobby Goods and Supplies Merchant Wholesalers (NAICS Code 423920);

• Other Chemical and Allied Products Merchant Wholesalers (NAICS Code 424690);
• New Car Dealers (NAICS Code 441110);
• Boat Dealers (NAICS Code 441222);
• Automotive Parts and Accessories Stores (NAICS Code 441310);
• Furniture Stores (NAICS Code 442110);
• Household Appliance Stores (NAICS Code 443141);
• Electronics Stores (NAICS Code 443142);
• All Other Home Furnishing Stores (NAICS Code 442299);
• Children's and Infant's Clothing Stores (NAICS Code 448130);
• Hobby, Toy, and Game Stores (NAICS Code 451120);
• General Merchandise Stores (NAICS Code 452);
• Electronic Shopping and Mail-Order Houses (NAICS Code 454110);
• Aircraft Maintenance and Repair Services (NAICS Code 488190);
• Traveler Accommodations (NAICS Code 7211);
• General Automotive Repair (NAICS Code 811111).

If you have any questions regarding the applicability of this action to a particular entity, consult the technical information contact listed under **FOR FURTHER INFORMATION CONTACT**.

B. What is the Agency's authority for taking this action?

Section 6(h) of TSCA, 15 U.S.C. 2601 *et seq.,* directs EPA to issue a final rule under TSCA section 6(a) on certain persistent, bioaccumulative, and toxic (PBT) chemical substances. More specifically, EPA must take action on those chemical substances identified in the 2014 Update to the TSCA Work Plan for Chemical Assessments (Ref. 1) that, among other factors, EPA has a reasonable basis to conclude are toxic and that with respect to persistence and bioaccumulation score high for one and either high or moderate for the other, pursuant to the TSCA Work Plan Chemicals: Methods Document (Ref. 2). DecaBDE (CASRN 1163–19–5) is one such chemical substance. Other chemical substances are being addressed through separate **Federal Register** notices. For the purposes of this final rule, these specific chemical substances are hereinafter collectively referred to as the PBT chemicals. This final rule is final agency action for purposes of judicial review under TSCA section 19(a).

C. What action is the Agency taking?

EPA published a proposed rule on July 29, 2019, to address the five PBT chemicals EPA identified pursuant to TSCA section 6(h) (84 FR 36728; FRL–9995–76). After publication of the proposed rule, EPA determined to address each of the five PBT chemicals in separate final actions. This final rule prohibits the manufacture (including import) and processing of decaBDE, and products and articles to which decaBDE has been added effective 60 days after publication of the final rule, and distribution in commerce of products and articles to which decaBDE has been added one year after the effective date of the rule. Different compliance dates or exclusions from the date of publication of this prohibition include:

• 18 months for any manufacture, processing and distribution in commerce of decaBDE for use in curtains in the hospitality industry, and the curtains to which decaBDE has been added.

• Two years for any processing and distribution in commerce of decaBDE for use in wire and cable insulation in nuclear power generation facilities, and the decaBDE-containing wire and cable insulation.

• Three years for any manufacture, processing and distribution in commerce of decaBDE for use in parts installed in and distributed as part of new aerospace vehicles, and the parts to which decaBDE has been added for such vehicles. After the end of their service lives for import, processing, and distribution in commerce of aerospace vehicles manufactured before January 7, 2024 that contain decaBDE in any part. After the end of their service lives for manufacture, processing, and distribution in commerce of decaBDE for use in replacement parts for aerospace vehicles, and the replacement parts to which decaBDE has been added for such vehicles.

• After the end of their service lives, or 2036, whichever is earlier, for manufacture, processing, and distribution in commerce of decaBDE for use in replacement parts for motor vehicles, and the replacement parts to which decaBDE has been added for such vehicles.

• After the end of their service lives for distribution in commerce of plastic shipping pallets manufactured prior to March 8, 2021 that contain decaBDE.

• Exclusion for processing and distribution in commerce for recycling of decaBDE-containing plastic products and articles (*i.e.,* the plastic to be recycled is from products and articles that were originally made with decaBDE), and for decaBDE-containing products or articles made from such recycled plastic, where no new decaBDE is added during the recycling or production process.

Persons manufacturing, processing, and distributing in commerce decaBDE or decaBDE-containing products and articles are required to maintain, for three years from the date the record is generated, ordinary business records related to compliance with this rule that include the name of the purchaser, and list the products or articles. Excluded from the recordkeeping requirement are persons processing and distributing in commerce for; recycling of plastic that contains decaBDE, those products and articles containing decaBDE from recycled plastic as long as no new decaBDE was added during the recycling process, and plastic shipping pallets manufactured prior to the effective date of the rule. These records must include a statement that the decaBDE, or the decaBDE-containing products and articles, are in compliance with 40 CFR 751.405(a) and be made available to EPA within 30 calendar days upon request.

D. Why is the Agency taking this action?

EPA is issuing this final rule to fulfill EPA's obligations under TSCA section 6(h) to take timely regulatory action on PBT chemicals, including decaBDE, ''to address the risks of injury to health or the environment that the Administrator determines are presented by the chemical substance and to reduce exposure to the substance to the extent practicable.'' Consistent with that requirement, the Agency is finalizing this rule to reduce exposures to decaBDE to the extent practicable.

E. What are the estimated incremental impacts of this action?

EPA has evaluated the potential costs of these restrictions and prohibitions and the associated reporting and recordkeeping requirements. The ''Economic Analysis for Final Regulation of Decabromodiphenyl ether (decaBDE) under TSCA section 6(h)'' (Economic Analysis) (Ref. 3), is available in the docket and is briefly summarized here.

• *Benefits.* EPA was not able to quantify the benefits of reducing the potential for human and environmental exposures to decaBDE. As discussed in more detail in Unit II.A., EPA did not perform a risk evaluation for decaBDE, nor did EPA develop quantitative risk estimates. Therefore, the Economic Analysis (Ref. 3) qualitatively discusses the benefits of reducing the exposure under the final rule for decaBDE.

• *Costs.* Total quantified annualized social costs for this final rule are approximately $157,000 (at both 3%

and 7% discount rates). Quantified costs were developed for rule familiarization, product substitution, and recordkeeping. Potential unquantified costs and are those associated with testing, reformulation, importation of articles, foregone profits, and indirect costs. The limited data available for those costs prevents EPA from constructing a quantitative assessment.

• *Small entity impacts.* This final rule would impact approximately 17 small businesses of which none are expected to incur cost impacts of 1% of their revenue or greater.

• *Environmental Justice.* This final rule may increase the level of protection for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority or low-income population or children and other downstream receptors such as recreational fishers.

• *Effects on State, local, and Tribal governments.* This final rule does not have any significant or unique effects on small governments, or federalism or tribal implications.

F. Children's Environmental Health

Executive Order 13045 applies if the regulatory action is economically significant and concerns an environmental health risk or safety risk that may disproportionately affect children. While the action is not subject to Executive Order 13045, the Agency's Policy on Evaluating Health Risks to Children (*https://www.epa.gov/children/epas-policy-evaluating-risk-children*) is to consider the risks to infants and children consistently and explicitly during its decision making process. This final rule will reduce the exposures to decaBDE that could occur from activities now prohibited under this final rule for the general population and for potentially exposed or susceptible subpopulations such as children. More information can be found in the Exposure and Use Assessment (Ref. 4).

II. Background

A. History of This Rulemaking

TSCA section 6(h) requires EPA to take expedited regulatory action under TSCA section 6(a) for certain PBT chemicals identified in the 2014 Update to the TSCA Work Plan for Chemical Assessments (Ref. 1). As required by the statute, EPA issued a proposed rule to address five persistent, bioaccumulative, and toxic (PBT) chemicals identified pursuant to TSCA section 6(h) (84 FR 36728, July 29, 2019). The statute required that this be followed by promulgation of a final rule no later than 18 months after the proposal. While EPA proposed regulatory actions on each chemical substance in one proposal, in response to public comments (EPA–HQ–OPPT–2019–0080–0544), (EPA–HQ–OPPT–2019–0080–0553), (EPA–HQ–OPPT–2019–0080–0556), (EPA–HQ–OPPT–2019–0080–0562) requesting these five actions be separated, EPA is finalizing five separate actions. EPA intends for the five separate final rules to publish in the same issue of the **Federal Register**. The details of the proposal for decaBDE are described in more detail in Unit II.D.

Under TSCA section 6(h)(1)(A), the subject chemical substances subject to expedited action are those that:

• EPA has a reasonable basis to conclude are toxic and that with respect to persistence and bioaccumulation score high for one and either high or moderate for the other, pursuant to the 2012 TSCA Work Plan Chemicals: Methods Document or a successor scoring system;

• Are not a metal or a metal compound; and

• Are chemical substances for which EPA has not completed a TSCA Work Plan Problem Formulation, initiated a review under TSCA section 5, or entered into a consent agreement under TSCA section 4, prior to June 22, 2016, the date that the Frank R. Lautenberg Chemical Safety for the 21st Century Act was enacted.

In addition, in order for a chemical substance to be subject to expedited action, TSCA section 6(h)(1)(B) states that EPA must find that exposure to the chemical substance under the conditions of use is likely to the general population or to a potentially exposed or susceptible subpopulation identified by the Administrator (such as infants, children, pregnant women, workers or the elderly), or to the environment on the basis of an exposure and use assessment conducted by the Administrator. TSCA section 6(h)(2) further provides that the Administrator shall not be required to conduct risk evaluations on chemical substances that are subject to TSCA section 6(h)(1).

Based on the criteria set forth in TSCA section 6(h), EPA proposed to determine that five chemical substances meet the TSCA section 6(h)(1)(A) criteria for expedited action, and decaBDE is one of these five chemical substances. In addition, in accordance with the statutory requirements to demonstrate that exposure to the chemical substance is likely under the conditions of use, EPA conducted an Exposure and Use Assessment for decaBDE. As described in the proposed rule, EPA conducted a review of available literature with respect to decaBDE to identify, screen, extract, and evaluate reasonably available information on use and exposures. This information is in the document entitled ''Exposure and Use Assessment of Five Persistent, Bioaccumulative and Toxic Chemicals'' (Ref. 4). Based on this review, which was subject to peer review and public comment, EPA proposed to find that exposure to decaBDE is likely, based on information detailed in the Exposure and Use Assessment.

B. Other Provisions of TSCA Section 6

1. EPA's approach for implementing TSCA section 6(h)(4).

TSCA section 6(h)(4) requires EPA to issue a final TSCA section 6(a) rule to ''address the risks of injury to health or the environment that the Administrator determines are presented by the chemical substance and reduce exposure to the substance to the extent practicable.'' EPA reads this text to require action on the chemical, not specific conditions of use. The approach EPA takes is consistent with the language of TSCA section 6(h)(4) and its distinct differences from other provisions of TSCA section 6 for chemicals that are the subject of required risk evaluations. First, the term ''condition of use'' is only used in TSCA section 6(h) in the context of the TSCA section 6(h)(1)(B) finding relating to likely exposures under ''conditions of use'' to ''the general population or to a potentially exposed or susceptible subpopulation . . . or the environment.'' In contrast to the risk evaluation process under TSCA section 6(b), this TSCA section 6(h)(1)(B) threshold criterion is triggered only through an Exposure and Use Assessment regarding the likelihood of exposure and does not require identification of every condition of use (Ref. 4). As a result, EPA collected all the information it could on the use of each chemical substance, without regard to whether any chemical activity would be characterized as ''known, intended or reasonably foreseen to be manufactured, processed, distributed in commerce, used, or disposed of,'' and from that information created use profiles and then an Exposure and Use Assessment to make the TSCA section 6(h)(1)(B) finding for at least one or more ''condition of use'' activities where some exposure is likely. EPA did not attempt to precisely classify all activities for each chemical substance as a ''condition of use'' and thus did not attempt to make a TSCA section

6(h)(1)(B) finding for all chemical activities summarized in the Exposure and Use Assessment. Second, TSCA section 6 generally requires a risk evaluation under TSCA section 6(b) for chemicals based on the identified conditions of use. However, pursuant to TSCA section 6(h)(2), for chemical substances that meet the criteria of TSCA section 6(h)(1), a risk evaluation is neither required nor contemplated to be conducted for EPA to meet its obligations under TSCA section 6(h)(4). Rather, as noted in Unit II.B.3., if a previously prepared TSCA risk assessment exists, EPA would have authority to use that risk assessment to ''address risks'' under TSCA section 6(h)(4), but even that risk assessment would not necessarily be focused on whether an activity is ''known, intended or reasonably foreseen,'' as those terms were not used in TSCA prior to the 2016 amendments and a preexisting assessment of risks would have had no reason to use such terminology or make such judgments. It is for this reason EPA believes that the TSCA section 6(h)(4) ''address risk'' standard refers to the risks the Administrator determines ''are presented *by the chemical substance*'' and makes no reference to ''conditions of use.'' Congress did not contemplate or require a risk evaluation identifying the conditions of use as defined under TSCA section 3(4). The kind of analysis required to identify and evaluate the conditions of use for a chemical substance is only contemplated in the context of a TSCA section 6(b) risk evaluation, not in the context of an expedited rulemaking to address PBT chemicals. Similarly, the TSCA amendments require EPA to ''reduce exposure *to the substance* to the extent practicable,'' without reference to whether the exposure if found ''likely'' pursuant to TSCA section 6(h)(1)(B).

Taking this into account, EPA reads its TSCA section 6(h)(4) obligation to apply to the chemical substance generally, thus requiring EPA to address risks and reduce exposures to the chemical substance without focusing on whether the measure taken is specific to an activity that might be characterized as a ''condition of use'' as that term is defined in TSCA section 3(4) and interpreted by EPA in the Risk Evaluation Rule, 82 FR 33726 (July 20, 2017). This approach ensures that any activity involving a TSCA section 6(h) PBT chemical, past, present or future, is addressed by the regulatory approach taken. Thus, under this final rule, manufacturing, processing, and distribution in commerce activities that are not specifically excluded are prohibited. The specified activities with particular exclusions are those which EPA determined were not appropriate to regulate under the TSCA section 6(h)(4) standard. Consistently, based on the Exposure and Use Assessment, activities associated with decaBDE that may no longer be occurring, such as domestic manufacture of the chemical substance or production of plastic enclosure for electronics, are addressed by this rule and thus the prohibitions adopted in this rule reduce the exposures that will result with resumption of past activities or the initiation of similar or other activities in the future. Therefore, EPA has determined that prohibiting these activities will reduce exposures to the extent practicable. The approach taken for this final rule is limited to implementation of TSCA section 6(h) and is not relevant to any other action under TSCA section 6 or other TSCA statutory actions.

2. *EPA's interpretation of practicable.*

The term ''practicable'' is not defined in TSCA. EPA interprets this requirement as generally directing the Agency to consider such factors as achievability, feasibility, workability, and reasonableness. In addition, EPA's approach to determining whether particular prohibitions or restrictions are practicable is informed in part by certain other provisions in TSCA section 6, such as TSCA section 6(c)(2)(A) which requires the Administrator to consider health effects, exposure, and environmental effects of the chemical substance; benefits of the chemical substance; and the reasonably ascertainable economic consequences of the rule. In addition, pursuant to TSCA section 6(c)(2)(B), in selecting the appropriate TSCA section 6(a) regulatory approach, the Administrator is directed to ''factor in, to the extent practicable'' those same considerations.

EPA received comments on the proposed rule regarding this interpretation of ''practicable.'' EPA has reviewed these comments and believes the interpretation described previously within this Unit is consistent with the intent of TSCA and has not changed that interpretation. EPA's interpretation of an ambiguous statutory term receives deference. More discussion on these comments is in the Response to Comments document for this rulemaking (Ref. 5).

3. *EPA did not conduct a risk evaluation or assessment.*

As EPA explained in the proposed rule, EPA does not interpret the ''address risk'' language to require EPA to determine, through a risk assessment or risk evaluation, whether risks are presented. EPA believes this reading gives the Administrator the flexibility Congress intended for issuance of expedited rules for PBTs and is consistent with TSCA section 6(h)(2) which makes clear a risk evaluation is not required to support this rulemaking.

EPA received comments on the proposed rule regarding its interpretation of TSCA section 6(h)(4) and regarding EPA's lack of risk assessment or risk evaluation of decaBDE. A number of commenters asserted that while EPA was not compelled to conduct a risk evaluation, EPA should have conducted a risk evaluation under TSCA section 6(b) regardless. The rationales provided by the commenters for such a risk assessment or risk evaluation included that one was needed for EPA to fully quantify the benefits to support this rulemaking, and that without a risk evaluation, EPA would not be able to determine the benefits, risks, and cost effectiveness of the rule in a meaningful way. As described by the commenters, EPA would therefore not be able to meet the TSCA section 6(c)(2) requirement for a statement of these considerations. Regarding the contradiction between the mandate in TSCA section 6(h) to expeditiously issue a rulemaking and the time needed to conduct a risk evaluation, some commenters argued that EPA would have had enough time to conduct a risk evaluation and issue a proposed rule by the statutory deadline.

EPA disagrees with the commenters' interpretation of EPA's obligations with respect to chemicals subject to TSCA section 6(h)(4). TSCA section 6(h)(4) provides that EPA shall: (1) ''Address the risks of injury to health or the environment that the Administrator determines are presented by the chemical substance'' and (2) ''reduce exposure to the substance to the extent practicable.'' With respect to the first requirement, that standard is distinct from the ''unreasonable risk'' standard for all other chemicals for which a section 6(a) rule might be issued. EPA does not believe that TSCA section 6(h) contemplates a new evaluation of any kind, given that evaluations to determine risks are now addressed through the TSCA section 6(b) risk evaluation process and that TSCA section 6(h)(2) explicitly provides that no risk evaluation is required. Moreover, it would have been impossible to prepare a meaningful evaluation under TSCA and subsequently develop a proposed rule in the time contemplated for issuance of a proposed rule under TSCA section 6(h)(1). Although EPA does not believe the statute contemplates a new

evaluation of any kind for these reasons, EPA reviewed the hazard and exposure information on the five PBT chemicals EPA had compiled. However, while this information appropriately addresses the criteria of TSCA section 6(h)(1)(A) and (B), it did not provide a basis for EPA to develop sufficient and scientifically robust and representative risk estimates to evaluate whether or not any of the chemicals present an identifiable risk of injury to health or the environment.

Rather than suggesting a new assessment is required, EPA reads the ''address risk'' language in TSCA section 6(h)(4) to contemplate reliance on an existing EPA assessment under TSCA, similar to a risk assessment that may be permissibly used under TSCA section 26(l)(4) to regulate the chemical under TSCA section 6(a). This interpretation gives meaning to the ''address risk'' phrase, without compelling an evaluation contrary to TSCA section 6(h)(2), and would allow use of an existing determination, or development of a new determination based on such an existing risk assessment, in the timeframe contemplated for issuance of a proposed rule under TSCA section 6(h). However, there were no existing EPA assessments of risk for any of the PBT chemicals. Thus, because EPA had no existing EPA risk assessments or determinations of risk, the regulatory measures addressed in this final rule focus on reducing exposures ''to the extent practicable.''

In sum, because neither the statute nor the legislative history suggests that a new evaluation is compelled to identify and thereby provide a basis for the Agency to ''address risks'' and one could not be done prior to preparation and timely issuance of a proposed rule, and no existing TSCA risk assessment exists for any of the chemicals, EPA has made no risk determination finding for any of the PBT chemicals. Instead, EPA implements the requirement of TSCA section 6(h)(4) by reducing exposures of each PBT chemical ''to the extent practicable.''

For similar reasons, EPA does not believe that TSCA section 6(c)(2) requires a quantification of benefits, much less a specific kind of quantification. Under TSCA section 6(c)(2)(A)(iv), EPA must consider and publish a statement, based on reasonably available information, on the reasonably ascertainable economic consequences of the rule, but that provision does not require quantification, particularly if quantification is not possible. EPA has reasonably complied with this requirement by including a quantification of direct costs and a qualitative discussion of benefits in each of the preambles to the final rules. EPA was unable to quantify the indirect costs associated with the rule. More discussion on these issues raised in the comments is in the Response to Comments document (Ref. 5).

4. *Replacement parts and articles.*

In the preamble to the proposed rule, EPA explained that it did not read provisions of TSCA section 6 that conflict with TSCA section 6(h) to apply to TSCA section 6(h) rules. Specifically, TSCA sections 6(c)(2)(D) and (E) require a risk finding pursuant to a TSCA section 6(b) risk evaluation to regulate replacement parts and articles. Yet, TSCA section 6(h) neither compels nor contemplates a risk evaluation to precede or support the compelled regulatory action to ''address the risks . . .'' and ''reduce exposures to the substance to the extent practicable''. TSCA section 6(h)(2) makes clear no risk evaluation is required, and the timing required for conducting a risk evaluation is not consistent with the timing compelled for issuance of a proposed rule under TSCA section 6(h). Moreover, even assuming a prior risk assessment might allow a risk determination under the TSCA section 6(h)(4) ''address risk'' standard, such assessment would still not satisfy the requirement in TSCA section 6(c)(2)(D) and (E) for a risk finding pursuant to a TSCA section 6(b) risk evaluation. Because of the clear conflict between these provisions, EPA determined that those provisions of TSCA section 6(c) that assume the existence of a TSCA section 6(b) risk evaluation do not apply in the context of this TSCA section 6(h) rulemaking. Instead, EPA resolves this conflict in these provisions by taking into account the TSCA section 6(c) considerations in its determinations as to what measures ''reduce exposure to the substance to the extent practicable''.

Commenters contended that TSCA section 6(c)(2)(D) and (E) bar a TSCA section 6(h) rule in the absence of a risk evaluation, representing Congress's recognition of the special burdens associated with regulating replacement parts and articles, including the difficulty of certifying newly designed replacement parts for automobiles and aircraft, and the difficulty importers face in knowing what chemicals are present in the articles they import. As noted earlier in this Unit and further discussed in the Response to Comment document, while EPA determined that provisions of TSCA section 6(c)(2)(D) and (E) do not apply because they conflict with the requirements of TSCA section 6(h), EPA interpreted the ''practicability'' standard in TSCA section 6(h)(4) to reasonably contemplate the considerations embodied by TSCA section 6(c)(2)(D) and (E). As a result, EPA disagrees with any suggestion that the clear conflict between Congress' mandates in TSCA section 6(h) and TSCA section 6(c)(2)(D) and (E) must be read to bar regulation of replacement parts and articles made with chemicals that Congress believed were worthy of expedited action under TSCA section 6(h) and in the absence of a risk evaluation. The statute does not clearly communicate that outcome. Instead, Congress left ambiguous how best to address the conflict in these provisions, and EPA's approach for taking into consideration the TSCA section 6(c)(2)(D) and (E) concepts in its TSCA section 6(h)(4) ''practicability'' determinations is a reasonable approach. In addition, with respect to comments that TSCA section 6(c)(2)(D) and (E) were intended to address Congress's concerns regarding burdens associated with regulation of replacement parts and articles, EPA agrees that these concerns are relevant and takes them into account in its implementation of the TSCA section 6(h)(4) mandate, with respect to the circumstances for each chemical. Finally, EPA does not believe that Congress intended, through the article provisions incorporated into the TSCA amendments, to absolve importers of the duty to know what they are importing. Importers can and should take steps to determine whether the articles they are importing contain chemicals that are prohibited or restricted. Therefore, as discussed earlier in this Unit and in the Response to Comment document, EPA is continuing to interpret TSCA sections 6(c)(2)(D) and 6(c)(2)(E) to be inapplicable to this rulemaking. While this interpretation has not changed, EPA has reviewed the practicability of regulating replacement parts and articles in accordance with the statutory directive in TSCA section 6(h)(4) to reduce exposures to the PBT chemicals to the extent practicable. This is discussed further in Unit III.A.

C. DecaBDE Overview, Health Effects, and Exposure

DecaBDE is used as an additive flame retardant in plastic enclosures for televisions, computers, audio and video equipment, textiles and upholstered articles, wire and cables for communication and electronic equipment, and other applications (Ref. 6). DecaBDE is also used as a flame retardant for multiple applications for aerospace and automotive vehicles, including replacement parts for aircraft and cars (Refs. 7, 8). Exposure

information for decaBDE is detailed in EPA's Exposure and Use Assessment (Ref. 4), and the proposal. There is potential for exposure to decaBDE under the conditions of use at all stages of its lifecycle (*i.e.,* manufacturing, processing, use (industrial, commercial, and consumer), distribution, and disposal) of the chemical (Ref 4). DecaBDE was produced and released at higher levels in the past but continues to be released. Releases from manufacturing and processing are declining over time, as are releases associated with use, disposal, and recycling (Ref. 4).

Exposure assessments on decaBDE have been conducted by EPA (including industry-supplied information as part of the Voluntary Children's Chemical Evaluation Program), the National Academy of Sciences, and international governments. These assessments describe exposure potential for polybrominated diphenyl ethers (PBDEs), including decaBDE, through a variety of pathways. Adult and child exposures occur via dust ingestion, dermal contact with dust, and dietary exposures (such as dairy consumption). Household consumer products have been identified as the main source of PBDEs (including decaBDE) in house dust. The next highest exposure pathways included dairy ingestion, and inhalation of indoor air (via dust). Infant and child exposures occur via breastmilk ingestion and mouthing of hard plastic toys and fabrics. Occupational exposures for breastfeeding women were highest in women engaged in activities resulting in direct contact with decaBDE (Ref. 4).

DecaBDE is toxic to aquatic invertebrates, fish, and terrestrial invertebrates. Data indicate the potential for developmental, neurological, and immunological effects, general developmental toxicity and liver effects in mammals. There was some evidence of genotoxicity and carcinogenicity. The studies presented in the document entitled ''Environmental and Human Health Hazards of Five Persistent, Bioaccumulative and Toxic Chemicals (Hazard Summary) (Ref. 9) demonstrate these hazardous endpoints. EPA did not perform a systematic review or a weight of the scientific evidence assessment for the hazard characterization of these chemicals. As a result, this hazard characterization is not definitive or comprehensive. Other hazard information on these chemicals may exist in addition to the studies summarized in the Hazard Summary that could alter the hazard characterization. In the 2014 Update to the TSCA Work Plan for Chemical Assessments (Ref. 1), decaBDE scored high (3) for hazard (based on developmental effects in mammals and aquatic toxicity); high (3) for exposure (based on its use in textiles, plastics, and polyurethane foam; and information reported to the 2012 and 2016 Chemical Data Reporting (CDR) and the 2017 Toxics Release Inventory (TRI))(Ref. 10,11,12); and high (3) for persistence and bioaccumulation (based on high environmental persistence and high bioaccumulation potential). The overall screening score for decaBDE was high (9).

Taking all this into account, and the discussion in Response to Comments Document and in this preamble, EPA determines in this final rule that decaBDE meets the TSCA section 6(h)(1)(A) criteria. In addition, EPA determines, in accordance with TSCA section 6(h)(1)(B), that, based on the Exposure and Use Assessment and other reasonably-available information, exposure to decaBDE is likely under the conditions of use to the general population, to a potentially exposed or susceptible subpopulation, or the environment. EPA's determination is based on the opportunities for exposure throughout the lifecycle of decaBDE, including the potential for consumer exposures. EPA did not receive any comments with information to call the exposure finding into question.

D. EPA's Proposed Rule Under TSCA Section 6(h) for decaBDE

In the proposed rule (84 FR 36728), EPA proposed to prohibit the manufacture (including import), processing, and distribution in commerce of decaBDE, and articles and products to which decaBDE has been added. Proposed compliance dates or exclusions from the date of publication of the prohibition included:

- 18 months for any manufacture, processing and distribution in commerce of decaBDE for use in curtains in the hospitality industry, and the curtains to which decaBDE has been added.
- Three years for manufacture, processing and distribution in commerce of decaBDE for use in parts installed in and distributed as part of new aerospace vehicles, and the parts to which decaBDE has been added for such vehicles.
- The exclusion from prohibitions for manufacturing (including import), processing, and distribution in commerce for use in replacement parts for motor and aerospace vehicles, and the replacement parts to which decaBDE has been added for such vehicles.
- The exclusion from prohibitions for processing and distribution in commerce for recycling of plastic that contains decaBDE, (*i.e.,* the plastic to be recycled is from products and articles that were originally made with decaBDE), so long as no new decaBDE is added during the recycling process.
- The exclusion from processing and distribution in commerce of finished products and articles made from plastic recycled from products and articles containing decaBDE, where no new decaBDE was added during the production of the products and articles.

In addition, EPA proposed to require that all persons who manufacture, process, or distribute in commerce decaBDE and decaBDE-containing products and articles maintain ordinary business records, such as invoices and bills-of-lading, that demonstrate compliance with the prohibitions and restrictions. EPA proposed that these records would have to be maintained for a period of three years from the date the record is generated with an exclusion for persons processing and distributing in commerce for recycling of plastic that contains decaBDE, and those products or articles containing decaBDE from recycled plastic, as long as no new decaBDE was added during the recycling process.

E. Public Comments and Other Public Input

The proposed rule provided a 60-day public comment period, with a 30-day extension provided. (Ref. 5) The comment period closed on October 28, 2019. EPA received a total of 48 comments, with three commenters sending multiple submissions with attached files, for a total of 58 submissions on the proposal for all the PBT chemicals. This includes the previous request for a comment period extension (EPA–HQ–OPPT–2019–0080–0526). Two commenters submitted confidential business information (CBI) or copyrighted documents with information regarding economic analysis and market trends. Copies of all the non-CBI documents, or redacted versions without CBI, are available in the docket for this action. EPA also communicated with companies, and other stakeholders to identify and verify uses of decaBDE. These interactions and comments further informed EPA's understanding of the current status of uses for decaBDE. Public comments and stakeholder meeting summaries are available in the public docket at EPA–HQ–OPPT–2019–0080.

In this preamble, EPA has responded to the major comments relevant to the decaBDE final rule. Of the comment

submissions, 27 directly addressed EPA's proposed regulation of decaBDE. Additional discussion related to this final action can be found in the Response to Comments document (Ref. 5).

F. Activities Not Directly Regulated by This Rule

EPA is not regulating all activities or exposures to decaBDE, even though the Exposure and Use Assessment (Ref. 4) identified potential for exposures under many conditions of use. One such activity is disposal. EPA generally presumes compliance with federal and state laws and regulations, including, for example, Resource Conservation and Recovery Act (RCRA) and its implementing regulations and state laws, as well as the Clean Air Act, the Clean Water Act, and the Safe Drinking Water Act (SDWA). As described in the proposed rule, regulations promulgated under the authority of the RCRA govern the disposal of hazardous and non-hazardous wastes. Although decaBDE is not a listed hazardous waste under RCRA, it is subject to the requirements applicable to solid waste under Subtitle D of RCRA. This means there is a general prohibition on open dumping (which includes a prohibition on open burning). Wastes containing this chemical that do not otherwise meet the criteria for hazardous waste would be disposed of in municipal solid waste landfills (MSWLFs), industrial nonhazardous, or, in a few instances construction/demolition landfills. Non-hazardous solid waste is regulated under Subtitle D of RCRA, and states play a lead role in ensuring that the federal requirements are met. The requirements for MSWLFs include location restrictions, composite liners, leachate collection and removal systems, operating practices, groundwater monitoring, closure and post-closure care, corrective action provisions, and financial assurance. Industrial waste (non-hazardous) landfills and construction/demolition waste landfills are primarily regulated under state regulatory programs, and in addition they must meet the criteria set forth in federal regulations, which may include requirements such as siting, groundwater monitoring and corrective action depending upon what types of waste are accepted. Disposal by underground injection is regulated under both RCRA and SDWA. In view of this comprehensive, stringent program for addressing disposal, EPA proposed that it is not practicable to impose additional requirements under TSCA on the disposal of the PBT chemicals, including decaBDE.

EPA received a number of comments on this aspect of its proposal. Some commenters agreed with EPA's proposed determination that it is not practicable to regulate disposal, while others disagreed. However, in EPA's view establishing an entirely new disposal program for decaBDE-containing wastes would be expensive and difficult to establish and administer. In addition, imposing a requirement to treat these wastes as if they were listed as hazardous wastes would have impacts on hazardous waste disposal capacity and be very expensive for states and local governments as well as for affected industries. Therefore, EPA has determined that it is not practicable to further regulate decaBDE-containing wastes for disposal. More information on the comments received and EPA's responses can be found in the Response to Comments document (Ref. 5). One commenter, the Institute of Scrap Recycling Industries, Inc. (ISRI) (EPA–HQ–OPPT–2019–0080–0559) noted that while EPA proposed to not regulate disposal of the PBT chemicals under TSCA, the effect of EPA's proposed prohibition on manufacturing, processing, and distribution in commerce would prohibit the processing and distribution in commerce of the PBTs and products and articles containing the PBT chemicals for disposal. EPA did not intend such an effect, and has added an exclusion in the final regulatory text for processing and distribution in commerce for disposal.

EPA also proposed not to use its TSCA section 6(a) authorities to regulate commercial use of products and articles containing the PBT chemicals, such as televisions and computers, because such regulation would not be practicable. It would be extremely burdensome, necessitating the identification of products containing decaBDE, and the disposal of countless products and articles, that would have to be replaced. If EPA prohibited the continued commercial use of these items, widespread economic impacts and disruption in the channels of trade would occur while the prohibited items were identified and replaced. While some commenters agreed with EPA's proposed determination that it is not practicable to regulate commercial use, and others disagreed, for the reasons noted in the proposal and discussed further in the Response to Comments document (Ref. 5), EPA continues to believe that prohibiting or otherwise restricting the continued commercial use of products and articles containing decaBDE would result in extreme burdens in exchange for what in most cases will be low exposure reductions. For example, as discussed in the Exposure and Use Assessment, releases from articles are expected to be minimal because decaBDE is entrained in the articles and is not expected to volatize or migrate readily under normal use (Ref. 4). Thus, EPA concludes that it is impracticable to prohibit or otherwise restrict the continued commercial use of decaBDE-containing products and articles.

EPA also proposed not to use its TSCA section 6(a) authorities to directly regulate occupational exposures. As explained in the proposed rule, as a matter of policy, EPA assumes compliance with federal and state requirements, such as worker protection standards, unless case-specific facts indicate otherwise. The Occupational Safety and Health Administration (OSHA) has not established a permissible exposure limit (PEL) for decaBDE. However, under section 5(a)(1) of the Occupational Safety and Health Act of 1970, 29 U.S.C. 654(a)(1), each employer has a legal obligation to furnish to each of its employees employment and a place of employment that are free from recognized hazards that are causing or are likely to cause death or serious physical harm. The OSHA Hazard Communication Standard at 29 CFR 1910.1200 requires chemical manufacturers and importers to classify the hazards of chemicals they produce or import, and all employers to provide information to employees about hazardous chemicals to which they may be exposed under normal conditions of use or in foreseeable emergencies. The OSHA standard at 29 CFR 1910.134(a)(1) requires the use of feasible engineering controls to prevent atmospheric contamination by harmful substances and requires the use of the use of respirators where effective engineering controls are not feasible. The OSHA standard at 29 CFR 1910.134(c) details the required respiratory protection program. The OSHA standard at 29 CFR 1910.132(a) requires the use of personal protective equipment (PPE) by workers when necessary due to a chemical hazard; 29 CFR 1910.133 requires the use of eye and face protection when employees are exposed to hazards including liquid chemicals; and 29 CFR 1910.138 requires the use of PPE to protect employees' hands including from skin absorption of harmful substances. The provisions of 29 CFR 1910.132(d) and (f) address hazard assessment, PPE selection, and training with respect to PPE required under 29 CFR 1910.133,

1910.135, 1910.136, 1910.138, and 1910.140. EPA assumes that employers will require, and workers will use, appropriate PPE consistent with OSHA standards, taking into account employer-based assessments, in a manner sufficient to prevent occupational exposures that are capable of causing injury.

EPA assumes compliance with other federal requirements, including OSHA standards and regulations. EPA does not read TSCA section 6(h)(4) to direct EPA to adopt potentially redundant or conflicting requirements. Not only would it be difficult to support broadly applicable and safe additional measures for each specific activity without a risk evaluation and in the limited time for issuance of this regulation under TSCA section 6(h), but imposing such measures without sufficient analysis could inadvertently result in conflicting or confusing requirements and make it difficult for employers to understand their obligations. Such regulations would not be practicable. Rather, where EPA has identified worker exposures and available substitutes, EPA is finalizing measures to reduce those exposures. As discussed in the proposed rule, EPA assumes that the worker protection methods used by employers, including in response to existing OSHA standards, in addition to the regulatory measures taken for each chemical, meaningfully reduce the potential for occupational exposures. Although some commenters agreed with this approach, others thought that EPA should establish worker protection requirements for those uses that would be allowed to continue under the final rule. Information provided to EPA before and during the public comment period on the proposed rule indicates that employers are using engineering and process controls and providing appropriate personal protective equipment (PPE) to their employees consistent with these requirements, and EPA received no information on decaBDE to suggest this is not the case. Further, EPA has not conducted a risk evaluation on decaBDE or any of the five PBT chemicals. Without a risk evaluation and given the time allotted for this rulemaking, EPA cannot identify additional engineering or process controls or PPE requirements that would be appropriate to each chemical-specific circumstance. For these reasons, EPA has determined that it is not practicable to regulate worker exposures in this rule through engineering or process controls or PPE requirements.

EPA received comments regarding the use of PBT chemicals in research and development and lab use. Lab use is addressed under newly established 40 CFR 751.401(b) as the manufacturing, processing, distribution-in-commerce and use of any chemical substance, or products and articles that contain the chemical substance, for research and development, as defined in new 40 CFR 751.403. Research and Development is defined in new 40 CFR 751.403 to mean laboratory and research use only for purposes of scientific experimentation or analysis, or chemical research on, or analysis of, the chemical substance, including methods for disposal, but not for research or analysis for the development of a new product, or refinement of an existing product that contains the chemical substance. This will allow, for example, for samples of environmental media containing PBTs, such as contaminated soil and water, to be collected, packaged and shipped to a laboratory for analysis. Laboratories also must obtain reference standards containing PBTs to calibrate their equipment, otherwise they may not be able to accurately quantify these chemical substances in samples being analyzed. However, research to develop new products that use PBTs subject to 40 CFR part 751 subpart E, or the refinement of existing uses of those chemicals, is not included in this definition, and those activities remain potentially subject to the chemical specific provisions in 40 CFR part 751 subpart E. EPA believes it is not practicable to limit research and development activity as defined, given the critical importance of this activity to the detection, quantification and control of these chemical substances.

Finally, EPA received comments regarding requirements for resale of decaBDE-containing products and articles, as well as products and articles containing other PBT chemicals undergoing TSCA section 6(h) rulemaking. One commenter stated that because the proposed definition of ''person'' includes ''any natural person,'' the proposed prohibitions would seem to apply to anyone selling products or articles containing decaBDE at a garage or yard sale. (EPA–HQ–OPPT–2019–0080–0559) EPA did not intend to impose these final decaBDE regulations on yard sales or used product or article sales and has added language in 40 CFR 751.401 to clarify this. The prohibition and recordkeeping requirements in this final rule exclude decaBDE-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 purposes other than resale.

III. Provisions of This Final Rule

A. Scope and Applicability

EPA carefully considered all public comments and information received related to the proposal. This rule finalizes with some modifications EPA's proposal to prohibit the manufacturing and processing of decaBDE, and products and articles that contain decaBDE, except for the following exclusions and delayed compliance dates from the date of publication of the prohibition:

- One year for distribution in commerce of products and articles containing decaBDE.
- 18 months for any manufacture, processing and distribution in commerce of decaBDE for use in curtains in the hospitality industry, and the curtains to which decaBDE has been added.
- Two years for any processing and distribution in commerce of decaBDE for wire and cable insulation in nuclear power generation facilities, and the decaBDE-containing wire and cable insulation.
- Three years for any manufacture, processing and distribution in commerce of decaBDE for use in parts installed in and distributed as part of new aerospace vehicles, and the parts to which decaBDE has been added for such vehicles. After the end of their service lives for import, processing, and distribution in commerce of aerospace vehicles manufactured before three years after the effective date of the rule that contain decaBDE in any part. After the end of their service lives for manufacture, processing, and distribution in commerce for use in replacement parts for aerospace vehicles, and the replacement parts to which decaBDE has been added for such vehicles.
- After the end of their service lives, or 2036, whichever is earlier, for manufacture, processing, and distribution in commerce for use in replacement parts for motor vehicles, and the replacement parts to which decaBDE has been added for such vehicles.
- After the end of their service lives for distribution in commerce of plastic shipping pallets manufactured prior to publication of the final rule, that contain decaBDE.
- The exclusion for processing and distribution in commerce for recycling of decaBDE-containing plastic products and articles (*i.e.,* the plastic to be recycled is from product and articles that were originally made with decaBDE), and for decaBDE containing products and articles made from such

recycled plastic, where no new decaBDE is added during the recycling or production process.

Affected persons manufacturing, processing, and distributing in commerce decaBDE or decaBDE-containing products and articles are required to maintain, for three years from the date the record is generated, ordinary business records related to compliance with the restrictions, prohibitions, and other requirements, with an exclusion for persons processing and distributing in commerce for; recycling of plastic that contains decaBDE, those products and articles containing decaBDE from recycled plastic as long as no new decaBDE was added during the recycling process, and plastic shipping pallets manufactured prior to the effective date of the rule. These records must include a statement of compliance with this final rule and be made available to EPA within 30 calendar days upon request.

1. General prohibition and exclusions.

EPA received comments supporting and opposing the proposed general prohibition on manufacture, processing and distribution in commerce of decaBDE and products and articles containing decaBDE. A few commenters suggested a total ban would be practicable instead of the proposed prohibition with exclusions. EPA disagrees, and believes that this rule prohibits the manufacture, processing and distribution in commerce for use of decaBDE to the extent practicable, reducing any potential activities involving the chemical as a whole, while allowing for several industries to safely finish and replace their applications of the chemical substance. However, even these uses of decaBDE are not unlimited and therefore are expected to decline until they cease completely. EPA may review these particular practicability determinations in the future. The prohibition on manufacture, processing and distribution in commerce for all but excluded activities is expected to result in the reduced potential for exposures. The practicability of prohibiting an excluded activity is further discussed in this Unit and in the Response to Comment document.

2. Hospitality curtains.

As described in the proposed rule, with respect to curtains used in the hospitality industry, EPA understands that most of the industry has moved away from using decaBDE as a flame retardant. However, EPA is aware of one small business that is still using decaBDE while it searches for a replacement flame retardant. EPA believes that 18 months from the date of publication of the final rule, rather than an immediate compliance date from manufacturing, processing, and distribution in commerce, is the soonest practicable date for the small business to find a substitute.

3. Aviation and automotive replacement parts and new aviation parts.

As described in the proposed rule, aerospace and automotive vehicles have included parts made with decaBDE, and in many cases decaBDE has been used to meet various flame-retardant standards. Based on comments received, all production of new automotive vehicles with decaBDE-containing parts will have ceased prior to the effective date for this rule; aerospace vehicles will cease such production within a 3-year timeframe. However, the decaBDE-containing parts originally produced for such automotive or for such aerospace vehicles may require replacement parts to meet flame-retardancy standards through the end of the service lifves of the vehicles. Any transition to alternatives for those replacement parts will require verification to meet these standards.

Imposing immediate restrictions on replacement parts for those vehicles could increase costs and safety concerns, but, as noted in this Unit, without meaningful exposure reductions. As a result, in this final rule, EPA is adopting an alternative compliance deadline of 2036 for motor vehicles and the end of the service lives for aerospace vehicles from the prohibition on the manufacture (including import), processing, and distribution in commerce of decaBDE for use in aerospace or automotive replacement parts, and the replacement parts that contain decaBDE. The manufacture (including import), processing, and distribution in commerce of decaBDE for use in new automotive parts will be prohibited, as discussed further in this Unit, and the manufacture (including import), processing, and distribution in commerce of decaBDE for use in new aerospace parts will be prohibited three years after publication of the final rule. For the purpose of this rule, replacement parts are those parts designed before the rule promulgation date to replace parts already made with decaBDE. Thus, for example, this exclusion does not allow replacement parts containing decaBDE to be manufactured, processed or distributed in commerce to replace parts that were not previously designed to contain decaBDE.

EPA's alternative compliance deadline for replacement parts for these vehicles results from several considerations. Article components containing decaBDE for finished parts in automobiles and aircraft have limited releases. (Exposure and Use Assessment). In addition to limited releases, and therefore limited exposures, as further discussed in the proposed rule and in the Response to Comment document, identifying and adopting appropriate substitutes for use in replacement parts for these vehicles can be a complex and time-consuming process. Further, the scope of this alternative compliance deadline is limited. For automotive vehicles, the scope is limited only to those parts intended to replace decaBDE-containing parts for automotive vehicles already produced; no new parts may be produced for new automotive vehicles under this alternative deadline. For aerospace vehicles, the scope is similarly limited to only those parts intended to replace decaBDE-containing parts for aerospace vehicles produced before the 3-year compliance deadline for such vehicles. That means those aerospace parts and the vehicles will have already been designed and in the production process; no newly designed parts may be produced using decaBDE even during the 3-year alternative compliance period, and after the 3-year compliance period only replacement parts, as defined earlier in the Unit, will be permitted. Finally, the compliance deadlines in each case are consistent with comments provided, *e.g.,* identifying 15 years as the needed period for retaining replacement parts for automotive vehicles, and identifying the aerospace vehicle service life as the needed period for retaining replacement parts for aerospace vehicles. (Ref. 7, EPA–HQ–OPPT–2019–0080–0542) Such compliance deadlines also align with the specified exemption for use of decaBDE in parts for such vehicles in the Stockholm Convention. For the use of replacement parts for automotive vehicles, for example, EPA is not aware of any decaBDE-containing parts that are outside the scope of the replacement parts listed in Annex A, Part IX of the Stockholm Convention (Ref. 13). In the case of aerospace vehicles, the timeframe provided in this final rule is actually narrower (more restrictive) than the timeframe provided by the Stockholm Convention. These examples support that the market for replacement parts containing decaBDE will have diminished by the compliance dates in this rule. Three commenters requested EPA change its statutory interpretation

to exempt these replacement parts using the replacement parts provision under TSCA section 6(c)(2)(D) instead of a practicability determination under TSCA section 6(h); however, for the reasons stated in Unit II.B., EPA is continuing to interpret TSCA section 6(c)(2)(D) to be inapplicable to this rulemaking. Other commenters challenged a complete exclusion for replacement parts, as discussed in Unit III.A.1. EPA agrees it is practicable to impose the specified alternative compliance deadline for the prohibition on the manufacture, processing and distribution in commerce of decaBDE for use in replacement parts.

In addition, as noted in the proposed rule and according to comments received from various industries, including the Aerospace Industries Association (AIA) (Ref. 5), the aerospace industry expects to have phased out its use of decaBDE in new aircraft products by the end of 2023. As a result, EPA is finalizing its proposed compliance date to allow the manufacture, processing and distribution in commerce for use of decaBDE and products and articles containing decaBDE, for use in new parts produced through 2023. In addition, the manufacture, processing and distribution in commerce of decaBDE for use in replacement parts intended for aerospace vehicles will continue to be allowed until the end of the service lives of the vehicles. However, this compliance deadline does not allow the manufacture, processing or distribution in commerce of decaBDE for parts that are newly designed for such new aerospace vehicles. This compliance deadline is based on comments received indicating the intent to phase-out use of decaBDE in parts for aerospace vehicles already designed, but which specify the need for replacement parts for the service lives of the vehicles to avoid the high cost of identifying appropriate and safe alternatives for vehicles already designed and in production, but for a limited period of time. (EPA–HQ–OPPT–2019–0080–0542) The deadline for new parts also is more restrictive than the Stockholm Convention's specific exemption for use of decaBDE in parts for those aerospace vehicles with designs approved by 2022, and thus further supports that the market for parts containing decaBDE for these vehicles will have diminished by the compliance date in this rule. For similar reasons, EPA is also not prohibiting the manufacture (including import), processing and distribution in commerce of whole aircraft manufactured within that specified compliance deadline and containing those new parts with decaBDE. With respect to motor vehicles, comments received from automotive industries, including the Motor Equipment and Manufacturers Association (MEMA) (EPA–HQ–OPPT–2019–0080–0547) indicate that the automotive industry will have phased out use of decaBDE for newly produced motor vehicles by the effective date of this final rule and therefore the final rule prohibits any manufacture, processing or distribution in commerce of decaBDE for any use in motor vehicles manufactured after the effective date of the rule.

Thus, for all the reasons noted, the prohibitions and compliance deadlines adopted in this final rule for the aerospace and automotive industries will reduce exposures to the extent practicable as required under TSCA section 6(h)(4) and will do so as ''soon as practicable'' pursuant to TSCA section 6(d)(1)(D), while allowing a reasonable transition time as contemplated by TSCA section 6(d)(1)(E).

4. Recycling and recycled products and articles.

EPA received submissions from 14 environmental groups that recommended EPA remove the exclusions for recycling. Commenters disagreed that it would be overly burdensome and not practicable to impose restrictions on the recycling of decaBDE containing plastic of products and articles that may contain decaBDE. The commenters cited and attached the Stockholm Convention 2015 Report of the Persistent Organic Pollutants Review Committee on the work of its eleventh meeting: Risk Management Evaluation on decabromodiphenyl ether (commercial mixture, c-decaBDE) (Ref. 13), which did not include recycling exemptions.

EPA recognizes the importance and impact of recycling, which contributes to American prosperity and the protection of our environment. EPA believes that it would be overly burdensome and not practicable to impose restrictions on the recycling of plastics that may contain decaBDE, or on the use of recycled plastic in plastic articles, because the decaBDE is typically present in such articles at low levels (Ref. 14). Because these articles typically contain low levels of decaBDE and taking into account the significant prohibitions being adopted in this rulemaking that are in alignment or more stringent than requirements under the Stockholm Convention and the general movement to use of substitutes, EPA expects the amount of recycled plastic that contains decaBDE from recycled plastic to significantly decline over time. In contrast, banning the recycling of plastics containing decaBDE would require this decaBDE-containing plastic to be identified through prohibitively expensive and complicated testing, and separated from other types of plastic before recycling, which is usually done manually. EPA believes it would be difficult to make plastic sorting for this purpose to be cost-effective, and that it would be overly burdensome and not practicable to prohibit recycling of decaBDE-containing plastic in the United States at this time. Further discussion on the burdens with prohibiting recycling are in the Response to Comments document (Ref. 5).

5. Plastic shipping pallets.

EPA received a comment from a company requesting to continue to process and distribute in commerce their existing inventory of plastic shipping pallets that contain decaBDE previously added as a flame retardant. (EPA–HQ–OPPT–2019–0080–0535) Although the company ceased its use of decaBDE in the manufacture of new pallets prior to 2013, those previously manufactured pallets are still in use and being rented for use. This final rule allows such continued rental and use until the end of the service lives of the pallet, at which point it may be recycled into new plastic pallets consistent with 40 CFR 751.405(b). No new decaBDE may be added during this recycling process. Based on the comment received, EPA has added a delayed compliance date for the continued distribution in commerce of such pallets.

6. Wire and cable insulation.

EPA requested comment from companies still processing and using wire and cable insulation containing decaBDE despite phase-out initiatives and the availability of relatively inexpensive substitutes. One commenter responded that while alternatives were available, they would need more time to successfully test and qualify an alternative chemical to decaBDE to meet the Institute of Electrical and Electronics Engineers (IEEE) 383 standard for instrumentation and power cable insulation for nuclear power plants. (EPA–HQ–OPPT–2019–0080–0583) Considering the unique safety certifications to qualify and approve an alternative chemical for this use, EPA has added a compliance delay of two years for the prohibition on the manufacture, processing and distribution in commerce of decaBDE for use in wire and cable insulation and of decaBDE containing wire and cable insulation.

7. Compliance Dates for the Prohibition.

The proposed rule did not delay the compliance date beyond the rule's effective date; the processing and distribution bans would come into effect 60 days after publication of the final rule notice. EPA stated in the proposed rule that at that time it had no information indicating that a compliance date of 60 days after publication of the final rule is not practicable for the activities that would be prohibited, or that additional time is needed for products to clear the channels of trade. The phrases ''as soon as practicable'' and ''reasonable transition period'' as used in TSCA section 6(d)(1) are undefined, and the legislative history on TSCA section 6(d) is limited. Given the ambiguity in the statute, for purposes of this expedited rulemaking, EPA presumed a 60-day compliance date was ''as soon as practicable,'' unless there was support for a lengthier period of time on the basis of reasonable available information, such as information submitted in comments on the Exposure and Use Assessment or in stakeholder dialogues. Such a presumption ensures the compliance schedule is ''as soon as practicable,'' particularly in the context of the TSCA section 6(h) rules for chemicals identified as persistent, bioaccumulative and toxic, and given the expedited timeframe for issuing a TSCA section 6(h) proposed rule did not allow time for collection and assessment of new information separate from the comment opportunities during the development of and in response to the proposed rule. Such presumption also allows for submission of information from the sources most likely to have the information that will affect an EPA determination on whether or how best to adjust the compliance deadline to ensure that the final compliance deadline is both ''as soon as practicable'' and provides a ''reasonable transition period.''

EPA received public comments regarding the 60-day compliance date for the prohibition in the proposed rule. Many commenters stated that this date would be unrealistic and requested that EPA phase in the compliance deadlines for the bans on importation or distribution of products and articles containing decaBDE over a longer period following promulgation of the final rule. In addition, commenters requested that EPA allow products and articles containing decaBDE that are manufactured and imported prior to the compliance deadlines to be distributed thereafter without restriction and that this would be needed to prevent an untold number of lawfully manufactured and imported products and articles from suddenly becoming unsaleable, which would result in significant costs for retailers and importers. Other commenters supported the compliance date.

However, in response to retail and business commenters requesting additional time given complex supply chains and the need to educate downstream users, EPA is extending the compliance date for distribution in commerce to one year after publication of the final rule. Extending the compliance date for one year will, as commenters note, allow additional time for products and articles containing decaBDE that were produced prior to the effective date for the prohibition on manufacture and processing to clear channels of trade. However, EPA is not extending the compliance date for manufacture or processing of these products and articles containing decaBDE, and therefore is not extending the compliance date for import which under TSCA section 3 is a subset of manufacture activities. Unless reasonably available information otherwise supports that it is not practicable to impose a 60-day compliance deadline for manufacture, which includes import, or for processing of decaBDE and decaBDE-containing products and articles, for purposes of meeting EPA's obligations under TSCA section 6(h), EPA presumes a compliance date of 60 days is ''as soon as practicable.'' EPA received only general comments taking the position, without support, that the 60-day compliance period for the prohibition on manufacture or processing is not practicable. Specified exclusions to the manufacturing compliance date are described in Unit I.C.

8. Recordkeeping.

EPA is requiring that all persons who manufacture, process, or distribute in commerce decaBDE and products and articles containing decaBDE maintain ordinary business records, such as invoices and bills-of-lading, related to compliance with the prohibitions and restrictions. EPA revised this language slightly from the proposal to improve clarity. These records will have to be maintained for a period of three years from the date the record is generated, beginning on March 8, 2021. Exempted from the recordkeeping requirement are persons processing and distributing in commerce for recycling of decaBDE containing plastic products or articles and decaBDE containing products or articles made from such recycled plastic as long as no new decaBDE is added during the recycling process, and persons distributing in commerce until the end of their service life plastic shipping pallets manufactured prior to the publication of the final rule. EPA requested comment on alternative recordkeeping requirements that could help ensure compliance with the decaBDE prohibitions, particularly for importers and others who do not produce articles. After reviewing the comments received, EPA has decided to include two additional requirements to help ensure compliance (EPA–HQ–OPPT–2019–0080–0539; –0542; –0546; –0549). First, the records that are kept must include a statement that the decaBDE, or the decaBDE-containing products and articles, are in compliance with 40 CFR 751.405(a). The statement need not be included on every business record, such as every invoice or bill of lading, although regulated entities may certainly choose to reformat their documents to include the statement. Importers of replacement automobile parts that contain decaBDE who, for example, import from the same suppliers over and over, need only have a single statement for each part or each supplier. Finally, EPA is adding a requirement that the records kept pursuant to this final rule be made available to EPA within 30 calendar days upon request to ensure that EPA can review records in a timely manner.

B. TSCA Section 6(c)(2) Considerations

1. Health effects, exposure, and environmental effects.

DecaBDE is toxic to aquatic invertebrates, fish, and terrestrial invertebrates. Data indicate the potential for developmental, neurological, and immunological effects, general developmental toxicity and liver effects in mammals. Additionally, toxicological studies indicated evidence of genotoxicity and evidence of carcinogenicity. These hazard statements are not based on a systematic review of the available literature and information may exist that could refine the hazard characterization. Additional information about decaBDE's health effects, use, and exposure is in Unit II.C. and is further detailed in EPA's Hazard Summary (Ref. 9) and Exposure and Use Assessment (Ref. 4).

2. The benefits of the chemical substance or mixture for various uses.

DecaBDE is a brominated flame retardant that has been added to plastics, textiles, and other materials. When fire occurs, decaBDE and other PBDEs, are part of vapor-phase chemical reactions that interfere with the combustion process, thus delaying ignition and inhibiting the spread of fire. DecaBDE has been considered an

economical flame retardant because relatively small quantities are necessary to be effective (Ref 4).

3. The reasonably ascertainable economic consequences of the rule.

i. *Overview of cost methodology.* EPA has evaluated the potential costs of the final action for decaBDE. Costs of the final rule were estimated based on the assumption that under regulatory limitations on decaBDE, processors that use decaBDE in their products would switch to available alternative chemicals to manufacture the product, or to products that do not contain decaBDE. For decaBDE, the costs were assessed based on chemical substitutes only. Substitution costs were estimated on the industry level using the price differential between the cost of the chemical and identified substitutes. Costs for rule familiarization and recordkeeping were estimated based on burdens estimated for other similar rulemakings. Costs were annualized over a 25-year period. Other potential costs include, but are not limited to, those associated with testing, reformulation, distribution, imported articles, and some portion of potential revenue loss. However, these costs are discussed only qualitatively, due to lack of data availability to estimate quantified costs. More details of this analysis are presented in the Economic Analysis (Ref. 3).

ii. *Estimated costs of this final rule.* Total quantified annualized industry costs for the final rule are $2,012 at the 3% discount rate and $2,100 at the 7% discount rate annualized over 25 years. Total annualized Agency costs associated with implementation of the final rule were based on EPA's best judgment and experience with other similar rules. For the final regulatory action, EPA estimated it will require 1 FTE at $155,152 per year (Ref. 3).

Total quantified annualized social costs for the final rule are estimated to be $157,000 at both 3% and 7% discount rate. As described earlier in Unit III.B.3., potential costs such as testing, reformulation, release prevention, and imported articles, could not be quantified due to lack of data availability to estimate quantified costs. These costs are discussed qualitatively in the Economic Analysis (Ref. 3).

iii. *Benefits.* As discussed in Unit II.A., while EPA reviewed hazard and exposure information for the PBT chemicals, this information did not provide a basis for EPA to develop scientifically robust and representative risk estimates to evaluate whether or not any of the chemicals present a risk of injury to health or the environment. Benefits were not quantified due to the lack of risk estimates. A qualitative discussion of the potential benefits associated with the final action for decaBDE is provided. DecaBDE is persistent and bioaccumulative and has been associated with developmental neurological effects, developmental immunological effects, general developmental toxicity, and thyroid and liver effects in mammals, as well as with toxicity in aquatic organisms. Under this final rule, manufacturing, processing and distribution in commerce will be prohibited, except for specific exclusions and different compliance dates as detailed in Unit I.C. With reduced manufacturing, processing and distribution of decaBDE and decaBDE-containing products and articles, EPA anticipates that this regulation will result in a phase-out of decaBDE use overall, and therefore a reduced presence of decaBDE in products and articles. These impacts will result in the decreased potential for exposures to workers in the industrial sectors that currently use decaBDE, and the decreased potential for releases of decaBDE to the environment, including through disposal activities. With decreased potential for releases to the environment and reduced presence in products and articles, there will also be decreased potential for exposures for the general population or potentially exposed or susceptible subpopulations. Thus, the final regulatory action will have benefits for the environment, general population, and potentially exposed or susceptible subpopulations, and benefits to health for workers. Substitute chemicals should be carefully selected to realize benefits to human health and the environment because there are numerous potential substitutes for decaBDE.

iv. *Cost effectiveness, and effect on national economy, small business, and technological innovation.* With respect to the cost effectiveness of the final regulatory action and the primary alternative regulatory action, EPA is unable to perform a traditional cost-effectiveness analysis of the actions and alternatives for the PBT chemicals. As discussed in the proposed rule, the cost effectiveness of a policy option would properly be calculated by dividing the annualized costs of the option by a final outcome, such as cancer cases avoided, or to intermediate outputs such as tons of emissions of a pollutant curtailed. Without the supporting analyses for a risk determination, EPA is unable to calculate either a health-based or environment-based denominator. Thus, EPA is unable to perform a quantitative cost-effectiveness analysis of the final and alternative regulatory actions. However, by evaluating the practicability of the final and alternative regulatory actions, EPA believes that it has considered elements related to the cost effectiveness of the actions, including the cost and the effect on exposure to the PBT chemicals of the final and alternative regulatory actions.

EPA considered the anticipated effect of this rule on the national economy and concluded that this rule is highly unlikely to have any measurable effect on the national economy (Ref. 3). EPA analyzed the expected impacts on small business and found that no small entities are expected to experience impacts of more than 1% of revenues (Ref. 3). Finally, EPA has determined that this rule is unlikely to have significant impacts on technological innovation, although the rule may create some incentives for chemical manufacturers to develop new chemical alternatives to decaBDE.

4. Consideration of alternatives.

EPA believes that there are viable substitutes that may be used as an alternative to decaBDE. In January 2014, EPA's Design for the Environment (DfE) published an alternatives assessment for decaBDE (Ref. 15). EPA identified 29 potential functional, viable alternatives to decaBDE for use in select polyolefins, styrenics, engineering thermoplastics, thermosets, elastomers, or waterborne emulsions and coatings (Ref. 15).

C. TSCA Section 26(h) Considerations

In accordance with TSCA section 26(h) and taking into account the requirements of TSCA section 6(h), EPA has used scientific information, technical procedures, measures, and methodologies that are fit for purpose and consistent with the best available science. EPA based its determination that human and environmental exposures to decaBDE are likely in the Exposure and Use Assessment (Ref. 4) discussed in Unit II.A.2., which underwent a peer review and public comment process, as well as using best available science and methods sufficient to make that determination. The extent to which the various information, procedures, measures, and methodologies, as applicable, used in EPA's decision making have been subject to independent verification or peer review is adequate to justify their use, collectively, in the record for this rule. Additional information on the peer review and public comment process, such as the peer review plan, the peer review report, and the Agency's Response to Comments document, are in the public docket for this action (EPA–HQ–OPPT–2018–0314). In

addition, in accordance with TSCA section 26(i), and taking into account the requirements of TSCA section 6(h), EPA has made scientific decisions based on the weight of the scientific evidence.

IV. References

The following is a list of the documents that are specifically referenced in this document. The docket includes these documents and other information considered by EPA, including documents that are referenced within the documents that are included in the docket, even if the referenced document is not physically located in the docket. For assistance in locating these other documents, please consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

1. EPA. TSCA Work Plan for Chemical Assessments: 2014 Update. October 2014. *https://www.epa.gov/assessingand-managing-chemicals-under-tsca/tsca-work-plan-chemical-ssessments-2014-update.* Accessed March 1, 2019.
2. EPA. TSCA Work Plan Chemicals: Methods Document. February 2012. *https://www.epa.gov/sites/production/files/2014-03/documents/work_plan_methods_document_web_final.pdf.* Accessed March 1, 2019.
3. EPA. Economic Analysis for Final Regulation of Decabromodiphenyl ether (DecaBDE) Final Rule Under TSCA Section 6(h). July 2020.
4. EPA. Exposure and Use Assessment of Five Persistent, Bioaccumulative, and Toxic Chemicals. December 2020.
5. EPA Regulation of Persistent, Bioaccumulative, and Toxic Chemicals under TSCA 6(H) Response to Comments. December 2020. (Docket EPA–HQ–OPPT–2019–0080).
6. EPA. Preliminary Information on Manufacturing, Processing, Distribution, Use, and Disposal: Decabromodiphenyl ether. August 2017. (EPA–HQ–OPPT–2016–0724–0002).
7. Stakeholder Comment from Auto Alliance. February 2018.
8. Stakeholder Comment from iGPS. January 2018.
9. EPA. Environmental and Human Health Hazards of Five Persistent, Bioaccumulative and Toxic Chemicals. December 2020.
10. EPA. Public Database 2012 Chemical Data Reporting. Washington, DC: US Environmental Protection Agency, Office of Pollution Prevention and Toxics.
11. EPA. Public Database 2016 Chemical Data Reporting. Washington, DC: US Environmental Protection Agency, Office of Pollution Prevention and Toxics.
12. EPA. Toxics Release Inventory (TRI) Basic Plus Data Files. 2017.
13. United Nations Environmental Program Stockholm Convention on Persistent Organic Pollutants (2015). Risk profile on decabromodiphenyl ether. Report of the Persistent Organic Pollutants Review Committee on the work of its eleventh meeting.
14. Norwegian Environmental Agency. (2015) Final Report. Literature Study—DecaBDE in Waste Streams.
15. EPA. An Alternatives Assessment for the Flame Retardant Decabromodiphenyl Ether (DecaBDE). January 2014. *https://www.epa.gov/sites/production/files/2014-05/documents/decabde_final.pdf.* Accessed March 1, 2019.
16. Keweenaw Bay Indian Community. Re: Notification of Consultation and Coordination on a Rulemaking Under the Toxic Substances Control Act: Regulation of Persistent, Bioaccumulative, and Toxic Chemicals Under TSCA Section 6(h). September 25, 2018.
17. Harper, Barbara and Ranco, Darren, in collaboration with the Maine Tribes. Wabanaki Traditional Cultural Lifeways Exposure Scenario. July 9, 2009.

V. Statutory and Executive Order Reviews

Additional information about these statutes and Executive orders can be found at *https://www.epa.gov/laws-regulations-and-executive-orders.*

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulations and Regulatory Review

This action is a significant regulatory action that was submitted to the Office of Management and Budget (OMB) for review under Executive Order 12866 (58 FR 51,735 (Oct. 4, 1993)) and Executive Order 13563 (76 FR 3821 (Jan. 21, 2011)). Any changes made in response to OMB recommendations have been documented in the docket for this action as required by section 6(a)(3)(E) of Executive Order 12866.

EPA prepared an economic analysis of the potential costs and benefits associated with this action. A copy of this economic analysis, *Economic Analysis for Final Regulation of Decabromodiphenyl ether (DecaBDE) under TSCA Section 6(h),* (Ref. 3) is in the docket and is briefly summarized in Unit III.B.3.

B. Executive Order 13771: Reducing Regulation and Controlling Regulatory Costs

This action is considered a regulatory action under Executive Order 13771 (82 FR 9339 (Feb. 3, 2017)). Details on the estimated costs of this final rule can be found in the Economic Analysis (Ref. 3), which is briefly summarized in Unit III.B.3.

C. Paperwork Reduction Act (PRA)

The information collection activities in this rule have been submitted for approval to OMB under the PRA. The Information Collection Request (ICR) document that the EPA prepared has been assigned EPA ICR number 2599.02 and OMB Control No. 2070–0213. A copy of the ICR is available in the docket for this rule, and it is briefly summarized here. The information collection requirements are not enforceable until OMB approves them.

Affected persons manufacturing, processing, and distributing in commerce decaBDE or decaBDE-containing products and articles are expected to familiarize themselves with the rule and are required to maintain, for three years from the date the record is generated, ordinary business records related to compliance with the restrictions, prohibitions, and other requirements, with an exclusion for persons processing and distributing in commerce for; recycling of plastic that contains decaBDE, those products and articles containing decaBDE from recycled plastic as long as no new decaBDE was added during the recycling process, and plastic shipping pallets manufactured prior to the effective date of the rule.

Respondents/affected entities: Entities potentially affected by paperwork requirements of this final rule include 17 importers, 26 processors, and five distributors. The total number of respondents is 46, given that two entities are both importers and processors.

Respondent's obligation to respond: Mandatory. (40 CFR 751.407).

Estimated number of respondents: 46.

Frequency of response: On occasion.

Total estimated burden: 39 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $3,014 (per year), includes $0 annualized capital or operation & maintenance costs.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40

CFR are listed in 40 CFR part 9. When OMB approves this ICR, the Agency will announce that approval in the **Federal Register** and publish a technical amendment to 40 CFR part 9 to display the OMB control number for the approved information collection activities contained in this final rule.

D. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA, 5 U.S.C. 601 *et seq.* The small entities subject to the requirements of this action are small businesses that manufacture/import, process, or distribute decaBDE. In total, 17 small businesses are expected to be affected by the final action. Of the 17 small entities assessed, none (0%) are expected to experience negative impacts of more than 1% of revenues. Because only 17 small businesses are directly impacted and negative impacts are less than 1% for all small entities, EPA presumes no significant economic impact on a substantial number of small entities (no SISNOSE). Details of this analysis are presented in the Economic Analysis (Ref. 3).

E. Unfunded Mandates Reform Act (UMRA)

This action does not contain an unfunded mandate of $100 million or more as described in UMRA, 2 U.S.C. 1531–1538, and would not significantly or uniquely affect small governments. The final rule is not expected to result in expenditures by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more (when adjusted annually for inflation) in any one year. Accordingly, this final rule is not subject to the requirements of sections 202, 203, or 205 of UMRA. The total quantified annualized social costs for this the final rule are approximately $157,000 (at both 3% and 7% discount rates), which does not exceed the inflation-adjusted unfunded mandate threshold of $160 million.

F. Executive Order 13132: Federalism

This action does not have federalism implications because it is not expected to have substantial direct effects on the states, on the relationship between the National Government and the states, or on the distribution of power and responsibilities among the various levels of government as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). Thus, Executive Order 13132 does not apply to this action.

G. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications because it is not expected to have substantial direct effects on tribal governments, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). Thus, Executive Order 13175 does not apply to this final rule.

Consistent with the EPA Policy on Consultation and Coordination with Indian Tribes, the EPA consulted with tribal officials during the development of this action. EPA consulted with representatives of Tribes via teleconference on August 31, 2018, and September 6, 2018, concerning the prospective regulation of the five PBT chemicals under TSCA section 6(h).

Tribal members were encouraged to provide additional comments after the teleconferences. EPA received two comments from the Keweenaw Bay Indian Community and Maine Tribes (Ref. 16, 17).

H. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

This action is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it is not an economically significant regulatory action as defined by Executive Order 12866. Although the action is not subject to Executive Order 13045, the Agency considered the risks to infants and children under EPA's Policy on Evaluating Health Risks to Children. EPA did not perform a risk assessment or risk evaluation of decaBDE, however available data indicate exposure to decaBDE may disproportionately affect children, and information indicates decaBDE is a neurodevelopment toxicant and has been detected in breastmilk. More information can be found in the Exposure and Use Assessment (Ref. 4) and the ''Environmental and Human Health Hazards of Five Persistent, Bioaccumulative and Toxic Chemicals'' (Ref. 9). This regulation will reduce the exposure to decaBDE for the general population and for potentially exposed or susceptible subpopulations such as workers and children.

I. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not a ''significant energy action'' as defined in Executive Order 13211 (66 FR 28355, May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy and has not been designated by the Administrator of the Office of Information and Regulatory Affairs of the Office of Management and Budget as a significant energy action.

J. National Technology Transfer and Advancement Act (NTTAA)

Because this action does not involve any technical standards, NTTAA section 12(d), 15 U.S.C. 272 note, does not apply to this action.

K. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

The EPA believes that this action does not have disproportionately high and adverse health or environmental effects on minority populations, low-income populations and/or indigenous peoples, as specified in Executive Order 12898 (59 FR 7629, February 16, 1994). The documentation for this decision is contained in the Economic Analysis (Ref. 3), which is in the public docket for this action. EPA believes that the restrictions in on decaBDE in this final rule will reduce the potential for exposure in the United States over time, thus benefitting all communities including environmental justice communities.

L. Congressional Review Act (CRA)

This action is subject to the CRA, 5 U.S.C. 801 *et seq.,* and EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 751

Environmental protection, Chemicals, Export Notification, Hazardous substances, Import certification, Reporting and recordkeeping.

Andrew Wheeler,

Administrator.

Therefore, for the reasons stated in the preamble, 40 CFR part 751 is amended as follows:

PART 751—REGULATION OF CERTAIN CHEMICAL SUBSTANCES AND MIXTURES UNDER SECTION 6 OF THE TOXIC SUBSTANCES CONTROL ACT

■ 1. The authority citation for part 751 continues to read as follows:

Authority: 15 U.S.C. 2605, 15 U.S.C. 2625(l)(4).

■ 2. Amend § 751.403 by adding in alphabetical order the term ''*DecaBDE*'' to read as follows:

Subpart E—Persistent, Bioaccumulative, and Toxic Chemicals

§ 751.403 Definitions.

* * * * *

DecaBDE means the chemical substance decabromodiphenyl ether (CASRN 1163–19–5).

* * * * *

■ 3. Add § 751.405 to read as follows:

§ 751.405 DecaBDE.

(a) *Prohibition.* (1) *General.* Except as provided in paragraphs (a)(2) and (b) of this section, all persons are prohibited from all manufacturing and processing of decaBDE or decaBDE-containing products or articles after March 8, 2021, and all persons are prohibited from all distribution in commerce of decaBDE or decaBDE-containing products or articles after January 6, 2022.

(2) *Phase-in of Prohibitions for Specific Uses of decaBDE and decaBDE-containing Products or Articles.* (i) After July 6, 2022, all persons are prohibited from all manufacturing, processing, and distribution in commerce decaBDE for use in curtains in the hospitality industry, and the curtains to which decaBDE has been added.

(ii) After January 6, 2023, all persons are prohibited from all processing and distribution in commerce of decaBDE for use in wire and cable insulation in nuclear power generation facilities, and decaBDE-containing wire and cable insulation.

(iii) After January 8, 2024, all persons are prohibited from all manufacturing, processing, and distribution in commerce of decaBDE for use in parts installed in and distributed as part of new aerospace vehicles, and the parts to which decaBDE has been added for such vehicles. After the end of the aerospace vehicles service lives, all persons are prohibited from all importing, processing, and distribution in commerce of aerospace vehicles manufactured before January 8, 2024 that contain decaBDE in any part. After the end of the aerospace vehicles service lives, all persons are prohibited from all manufacture, processing and distribution in commerce of decaBDE for use in replacement parts for aerospace vehicles, and the replacement parts to which decaBDE has been added for such vehicles.

(iv) After the end of the vehicles service lives or 2036, whichever is earlier, all persons are prohibited from all manufacture, processing and distribution in commerce of decaBDE for use in replacement parts for motor vehicles, and the replacement parts to which decaBDE has been added for such vehicles.

(v) After the end of the pallets' service life, all persons are prohibited from all distribution in commerce of plastic shipping pallets that contain decaBDE and were manufactured prior March 8, 2021.

(b) *Exclusions to the Prohibition.* Processing and distribution in commerce for recycling of decaBDE-containing plastic from products or articles and decaBDE-containing products or articles made from such recycled plastic, where no new decaBDE is added during the recycling or production processes is not subject to the prohibition in paragraph (a) of this section.

(c) *Recordkeeping.* (1) After March 8, 2021, all persons who manufacture, process, or distribute in commerce decaBDE or decaBDE-containing products or articles must maintain ordinary business records, such as invoices and bills-of-lading related to compliance with the prohibitions, restrictions, and other provisions of this section.

(i) These records must be maintained for a period of three years from the date the record is generated.

(ii) These records must include a statement that the decaBDE or the decaBDE-containing products or articles are in compliance with 40 CFR 751.405(a).

(iii) These records must be made available to EPA within 30 calendar days upon request.

(2) The recordkeeping requirements in paragraph (c)(1) do not apply to the activities described in paragraphs (a)(2)(v) and (b) of this section.

[FR Doc. 2020–28686 Filed 1–5–21; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 751

[EPA–HQ–OPPT–2019–0080; FRL–10018–88]

RIN 2070–AK58

Phenol, Isopropylated Phosphate (3:1) (PIP 3:1); Regulation of Persistent, Bioaccumulative, and Toxic Chemicals Under TSCA Section 6(h)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is finalizing a rule under the Toxic Substances Control Act (TSCA) to address its obligations under TSCA for phenol, isopropylated phosphate (3:1) (PIP (3:1)) (CASRN 68937–41–7), which EPA has determined meets the requirements for expedited action under TSCA. This final rule prohibits the processing and distribution of PIP (3:1) and PIP (3:1)-containing products, with specified exclusions, and prohibits the release of PIP (3:1) to water during manufacturing, processing, and distribution. This final rule also requires commercial users to follow existing regulations and best practices to prevent the release to water of PIP (3:1) and products containing PIP (3:1) during use. These requirements will result in lower amounts of PIP (3:1) being manufactured, processed, distributed in commerce, used and disposed, thereby reducing exposures to humans and the environment.

DATES: This final rule is effective February 5, 2021. For purposes of judicial review and 40 CFR 23.5, this rule shall be promulgated at 1 p.m. eastern standard time on January 21, 2021.

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPPT–2019–0080, is available at *http://www.regulations.gov* or at the Office of Pollution Prevention and Toxics Docket (OPPT Docket), Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

Please note that due to the public health emergency, the EPA Docket Center (EPA/DC) and Reading Room was closed to public visitors on March 31, 2020. Our EPA/DC staff will continue to provide customer service via email, phone, and webform. For further information on EPA/DC services, docket contact information and the current status of the EPA/DC and Reading Room, please visit *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT:

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