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## Restricting persistent, bioaccumulative, and toxic substances: EPA issues five new Toxic Substances Control Act rules

By Alison Torbitt and Dana Stanton

The U.S. Environmental Protection Agency (EPA) finalized five new rules under the Toxic Substances Control Act (TSCA) restricting the manufacture and distribution of five chemicals that EPA determined are persistent, bioaccumulative, and toxic (PBTs).

- **Phenol, isopropylated phosphate (3:1)** (PIP (3:1)): a widely-used flame retardant additive in various lubricating oils, grease, adhesives, sealants, paints, coatings, and plastic components
- **Decabromodiphenyl Ether** (DecaBDE): used in many products, including various wire and cable rubber casings, textiles, electronic equipment casings, and building and construction materials
- **2,4,6-tris(tert-butyl)phenol** (2,4,6-TTBP): sometimes used as an additive in various oils and lubricants
- **Hexachlorobutadiene** (HCBD): sometimes used as a plastic additive, a hydraulic fluid additive, and a chemical intermediate in the production of rubber and lubricants
- **Pentachlorothiophenol** (PCTP): sometimes used in the rubber manufacturing process

These chemicals are used in many every-day applications, such as lubricants, rubber, wire casings, and electronic equipment casings. The new restrictions have far-reaching impacts on a variety of industries, including automotive, aerospace, nuclear power, textiles, and electronics industries, and are already disrupting supply chains as manufacturers, processors, and distributors struggle to find alternatives and to halt contracts and shipped goods that include these chemicals. This alert examines the new prohibitions on each of these five chemicals.

For each of these, there are also recordkeeping requirements requiring, after March 8, 2021 (January 6, 2026, for 2,4,6-TTBP), that businesses that manufacture, import, process, or distribute products containing these chemicals maintain ordinary business records, such as invoices and bills-of-lading, demonstrating compliance with the new rules.

Industry attorneys and lobbyists are pleading with EPA for extensions, exemptions, alternatives, and enforcement discretion as the above rules caught many by surprise when it was issued in January 2021, under the last days of the Trump administration. Many in the industry point to the March 8 effective date as impossible for compliance as products containing these banned PBTs were already contracted for, ordered, shipped, and/or in transport, making it impossible to comply with the prohibition without defaulting on contracts or refusing container ships upon arrival.

### **PIP (3:1)**

After March 8, 2021, processing and distributing PIP (3:1) and PIP (3:1)-containing products is prohibited. However, certain applications have an extended time period before the prohibition takes effect, including photographic printing articles (effective January 1, 2022) and adhesives and sealants (effective January 6, 2025).

Limited exemptions are included for lubricants and greases, new and replacement parts for motor and aerospace vehicles, cyanoacrylate adhesives, engine air filters for locomotive and marine applications, recycled plastic, and hydraulic fluids used in aviation or for the U.S. Department of Defense.

In addition to the process and distribution ban, after March 8, 2021, the release of PIP (3:1) and PIP (3:1)-containing products to water during their manufacture, processing, and distribution is prohibited. In addition, existing regulations and best management practices for preventing the release of PIP (3:1) and PIP (3:1)-containing products to water during commercial uses must continue to be followed.

Processors and distributors of PIP (3:1) or PIP (3:1)-containing products for any use after July 6, 2021, must, prior to or concurrent with the shipment, also include certain language proscribed by the new rules on the Safety Data Sheet or the product label.

### **DecaBDE**

The new rules prohibit the manufacture and processing of decaBDE or decaBDE-containing products after March 8, 2021. After January 6, 2022, the distribution of decaBDE or decaBDE-containing products is prohibited. Certain applications, such as motor vehicle parts and specialty wire and cable insulation for nuclear power generation facilities, have longer periods of time before the prohibition goes into effect. DecaBDE-containing products or articles made from recycled plastic are exempt from the new rules.

### **2,4,6-TTBP**

After January 6, 2026, the distribution of 2,4,6-TTBP or 2,4,6-TTBP-containing oil and lubricant additives at any concentration above 0.3% by weight is prohibited.

### **HCBD**

After March 8, 2021, manufacturing, processing, and distributing HCBD and HCBD-containing products is prohibited.

### **PCTP**

Manufacturing and processing PCTP or PCTP-containing products is prohibited after March 8, 2021, unless PCTP concentrations are at or below 1% by weight. Distributing PCTP or PCTP-

containing products after January 6, 2022, is prohibited unless PCTP concentrations are at or below 1% by weight.

For more information on the content of this alert, please contact your Nixon Peabody attorney or:

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