

111TH CONGRESS  
1ST SESSION

# H. R. 4394

To provide for a phased ban on decabrominated diphenylether and mixtures or products containing that chemical, and for other purposes.

---

## IN THE HOUSE OF REPRESENTATIVES

DECEMBER 16, 2009

Ms. PINGREE of Maine introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committees on Foreign Affairs and Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

---

## A BILL

To provide for a phased ban on decabrominated diphenylether and mixtures or products containing that chemical, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Decabromine Elimina-  
5 tion and Control Act of 2009”.

1 **SEC. 2. BAN ON DECAHDE, DECAHDE MIXTURES, AND**  
2 **DECAHDE PRODUCTS.**

3 Beginning January 1, 2013, it shall be unlawful for  
4 any entity to produce for distribution in commerce, dis-  
5 tribute in commerce, import, or export—

- 6 (1) decaBDE;  
7 (2) decaBDE mixtures; or  
8 (3) decaBDE products.

9 **SEC. 3. PHASING IN OF BAN.**

10 (a) REPORT OF DECAHDE ACTIVITY DURING  
11 2009.—Not later than 90 days after the date of enactment  
12 of this Act, each entity who, during 2009, engaged in any  
13 activity that will be prohibited under paragraph (1) or (2)  
14 of section 2 shall report to the Administrator of the Envi-  
15 ronmental Protection Agency (hereinafter in this Act re-  
16 ferred to as the “Administrator”), in such form and detail  
17 as the Administrator requires in order to carry out this  
18 Act, the following:

19 (1) Each such activity engaged in with regard  
20 to decaBDE, including the amount of decaBDE  
21 used in that activity.

22 (2) Each such activity engaged in with regard  
23 to decaBDE mixtures, including the amount of such  
24 mixtures used in that activity.

25 (b) ESTABLISHMENT OF QUOTAS FOR EACH ENTI-  
26 TY.—Not later than 15 days after receiving a report from

1 an entity under subsection (a), the Administrator shall es-  
2 tablish an annual quota for that entity for each activity  
3 that entity reports, in accordance with the following:

4 (1) For activities with regard to decaBDE, each  
5 such annual quota shall be equal to the amount of  
6 decaBDE reported to have been used in that activ-  
7 ity.

8 (2) For activities with regard to decaBDE mix-  
9 tures, each such annual quota shall be equal to the  
10 amount of such mixtures reported to have been used  
11 in that activity.

12 (c) ONLY ENTITIES WITH QUOTAS ABLE TO EN-  
13 GAGE IN ACTIVITIES.—Not later than 90 days after the  
14 date of enactment of this Act, it shall be unlawful for any  
15 entity to engage in an activity that will be prohibited  
16 under paragraph (1) or (2) of section 2 if the Adminis-  
17 trator has not established an annual quota for that entity  
18 for that activity.

19 (d) ANNUAL QUOTAS.—During each year shown on  
20 the left column of the table below, it shall be unlawful  
21 for any entity to engage in an activity with regard to an  
22 amount of decaBDE or decaBDE mixture that exceeds  
23 the percentage, shown on the right column of the table  
24 below, of the annual quota established for that entity for  
25 that activity:

2010 .....	100 percent
2011 .....	66 percent
2012 .....	33 percent.

1 **SEC. 4. REPORTING DURING PHASE OUT.**

2       Beginning on the date that is 1 year after the date  
3 on which an entity reports an activity under section 3(a),  
4 that entity shall submit to the Administrator an annual  
5 report on that activity, in such manner as the Adminis-  
6 trator determines appropriate.

7 **SEC. 5. DISCLOSURE OF INFORMATION REGARDING**  
8 **DECAHDE PRODUCTS.**

9       (a) IN GENERAL.—Beginning on the date of enact-  
10 ment of this Act, any entity that produces for distribution  
11 in commerce, distributes in commerce, imports, or exports  
12 decaBDE, decaBDE mixtures, or decaBDE products shall  
13 disclose to any entity that receives such decaBDE,  
14 decaBDE mixtures, or decaBDE products that such  
15 decaBDE, decaBDE mixtures, or decaBDE products con-  
16 tain decaBDE.

17       (b) DECAHDE PRODUCTS.—Not later than 1 year  
18 after the date of enactment of this Act, any entity that  
19 produces for distribution in commerce, distributes in com-  
20 merce, imports, or exports decaBDE products shall dis-  
21 close to the Administrator any articles that contain  
22 decaBDE.

1 **SEC. 6. ENFORCEMENT RELATING TO VIOLATIONS.**

2 (a) SAME ENFORCEMENT MECHANISM AS USED FOR  
3 VIOLATIONS OF SECTION 15 OF THE TOXIC SUBSTANCES  
4 CONTROL ACT.—The same enforcement procedures as  
5 would apply to a violation of section 15 of the Toxic Sub-  
6 stances Control Act shall apply to each violation of this  
7 Act.

8 (b) RULES.—

9 (1) The Administrator shall make rules to en-  
10 force the annual quotas and ban of this Act on the  
11 production for distribution in commerce, distribution  
12 in commerce, or importation of decaBDE, decaBDE  
13 mixtures, or decaBDE products.

14 (2) The President shall exercise the authorities  
15 set forth in section 203 of the International Emer-  
16 gency Economic Powers Act, consistent with the re-  
17 quirements of this Act, to enforce the annual quotas  
18 and ban of this Act on the exportation of decaBDE,  
19 decaBDE mixtures, or decaBDE products.

20 (c) CITIZENS' CIVIL ACTIONS.—Any entity may com-  
21 mence a civil action against any other entity that is alleged  
22 to be in violation of this Act to restrain such violation.  
23 To the extent practicable, such an action shall be handled  
24 in the same way as a civil action under section 7002 of  
25 the Solid Waste Disposal Act.

1 **SEC. 7. EXCEPTIONS.**

2 (a) **CRITICAL USES.**—A use of decaBDE, decaBDE  
3 mixtures, or decaBDE products by the Armed Forces or  
4 the aviation industry shall be exempt from the annual  
5 quotas or ban imposed by this Act if the Administrator  
6 determines that there is not a feasible alternative to such  
7 use. Such exemption shall be for a term of 5 years, and  
8 the Administrator may renew such exemption only if the  
9 Administrator determines that there is not a feasible alter-  
10 native to such use at the time of such renewal.

11 (b) **RECYCLED ARTICLES.**—A recycled article that  
12 contains decaBDE shall be exempt from the annual quotas  
13 and ban imposed by this Act, unless the Administrator de-  
14 termines by rule that the article poses a threat to public  
15 health.

16 (c) **RESOLD ARTICLES.**—This Act does not apply  
17 with regard to a decaBDE product subsequent to its first  
18 sale at retail.

19 (d) **LOW CONCENTRATION ARTICLES.**—The Adminis-  
20 trator may by rule make exemptions from this Act for arti-  
21 cles that contain decaBDE in concentrations that the Ad-  
22 ministrator determines to be unavoidable due to contami-  
23 nation of the environment by decaBDE.

24 **SEC. 8. SAFER ALTERNATIVES.**

25 (a) **POLICY.**—DecaBDE shall be replaced by safer al-  
26 ternatives. For the purposes of this section, a “safer alter-

1 native” means a substitute process, product, material,  
2 chemical, strategy, or combination of these that serves a  
3 functionally equivalent purpose to decaBDE that, when  
4 compared to decaBDE, would reduce the potential for  
5 harm to human health or the environment.

6 (b) REPLACEMENTS.—With regard to a use of  
7 decaBDE, decaBDE mixtures, or decaBDE products, no  
8 chemical substance (as defined in section 3(2) of the Toxic  
9 Substances Control Act), mixture (as defined in section  
10 3(8) of the Toxic Substances Control Act) containing that  
11 chemical substance, or article containing that chemical  
12 substance may be used in lieu thereof if the Administrator  
13 determines that such chemical substance is a persistent,  
14 bioaccumulative, and toxic chemical.

15 (c) STUDIES AND NOTIFICATION.—The Adminis-  
16 trator shall require any entity who produces for distribu-  
17 tion in commerce a chemical substance that is a substitute  
18 for decaBDE to provide the Administrator with all exist-  
19 ing information about the hazard and exposure character-  
20 istics of the chemical substance that—

21 (1) is known to, in the possession or control of,  
22 or reasonably ascertainable by the entity; and

23 (2) has not previously been submitted to the  
24 Administrator. The Administrator shall require any  
25 such entity to notify the Administrator not less than

1       90 days before new or existing chemicals are intro-  
2       duced into interstate commerce for significant new  
3       uses as substitutes for decaBDE.

4   **SEC. 9. REPORT TO CONGRESS.**

5       The Administrator shall monitor, and, not later than  
6       December 31, 2014, submit a report to Congress on, the  
7       production, use, and consumption of decaBDE. Such re-  
8       port shall include data on production, use, and consump-  
9       tion of decaBDE in the United States and on the environ-  
10      mental and economic effects of decaBDE.

11   **SEC. 10. RELATION TO OTHER LAWS.**

12      Nothing in this Act affects the right of a State or  
13      local government to adopt or enforce any regulation, re-  
14      quirement, or liability that is more stringent than a regu-  
15      lation, requirement, or liability established by this Act.

16   **SEC. 11. DEFINITIONS.**

17      In this Act:

18           (1)     The     term     “decaBDE”     means  
19           decabromodiphenyl ether, CAS No. 1163–19–5, ei-  
20           ther pure or in commercial mixtures which are pre-  
21           dominantly decabromodiphenyl ether.

22           (2)     The term “decaBDE mixture” means any  
23           mixture (as defined in section 3(8) of the Toxic Sub-  
24           stances Control Act) containing decaBDE.

1           (3) The term “decaBDE product” means any  
2 article containing decaBDE.

3           (4) The terms “distribute in commerce” and  
4 “distribution in commerce” have the meanings given  
5 such terms in section 3(4) of the Toxic Substances  
6 Control Act.

7           (5) The term “export” means to engage in any  
8 of the actions that the President has authority over  
9 under section 203 of the International Emergency  
10 Economic Powers Act.

11           (6) The term “first sale at retail” means, with  
12 regard to an article, the first occasion on which that  
13 article is sold to an end user.

○