

Department of Legislative Services
Maryland General Assembly
2011 Session

FISCAL AND POLICY NOTE
Revised

House Bill 54

(Delegate Hubbard)

Environmental Matters

Education, Health, and Environmental Affairs

Environment - Decabrominated Diphenyl Ether - Trace Amounts

This emergency bill alters the current phase-out of decabrominated diphenyl ether (decaBDE) in specified products to add a permissible threshold level of 0.1% decaBDE by mass. The 0.1% threshold applies to all product categories of the phase-out; however, the bill provides an additional exemption from the phase-out for aircraft and aircraft parts.

Fiscal Summary

State Effect: The bill does not materially affect State operations or finances.

Local Effect: None.

Small Business Effect: Minimal.

Analysis

Current Law: A person may not manufacture, lease, sell, or distribute for sale or lease in the State any of the following products containing any decaBDE:

- beginning December 31, 2010, mattresses, upholstered furniture designed for residential use, or electrical or electronic equipment;
- beginning December 31, 2012, any product, except transportation or military equipment or components thereof; and
- beginning December 31, 2013, transportation or military equipment or components thereof.

Shipping pallets used to transport unpackaged fruits and vegetables do not qualify as transportation or military equipment or components thereof. In addition, the phase-out does not apply to a vehicle or a product or part thereof, or to any original equipment manufacturer replacement service parts or other products manufactured before January 1, 2011, in compliance with applicable local, State, and federal laws.

The phase-out also does not prohibit (1) a retailer in possession of phased-out products from selling, recycling, or otherwise disposing of remaining inventory after the date on which a prohibition takes effect; (2) a person from recycling a product that contains decaBDE; (3) a person from selling, leasing, recycling, or otherwise disposing of a product that contains recycled decaBDE; (4) any activity involving a product that contains decaBDE that occurs subsequent to the first sale at retail; or (5) a person from transporting or storing a product containing decaBDE for later distribution outside the State.

Background: Polybrominated diphenyl ethers, or PBDEs, are a subcategory of brominated flame retardants. PentaBDE, octaBDE, and decaBDE are three PBDE compounds commonly used in flame retardants. PBDEs have been routinely used in the plastic housing of computers and circuit boards and in the foam and textiles used in furniture. According to the Maryland Department of the Environment, manufacturers of pentaBDE and octaBDE agreed to voluntarily discontinue production of these two forms of PBDEs at the end of 2004 due to environmental and health concerns. While pentaBDE and octaBDE are no longer manufactured, decaBDE was still used in a wide range of products as of 2009.

Although decaBDE has long been considered to be minimally toxic, scientific research continues to focus on determining whether decaBDE breaks down into more toxic substances, such as pentaBDE and octaBDE. Research has shown that decaBDE bioaccumulates in both wildlife and people, and that concentrations in the blood of Americans are generally higher than in people of other countries. As a result, Maryland and several other states, including Maine, Oregon, Washington, and Vermont, have since enacted legislation restricting or prohibiting the use of decaBDE in certain products.

The U.S. Environmental Protection Agency has also reached agreement with manufacturers and importers to voluntarily phase out decaBDE from most uses by December 31, 2012 (with the exception of transportation and military equipment), and from all uses by December 31, 2013. While the voluntary phase-out comprises a total ban with no permissible threshold level of decaBDE for the several participating

chemical manufacturers, decaBDE may nevertheless continue to be found in trace amounts in certain products for sale in the United States as a result of recycled materials used in the supply chain.

Additional Information

Prior Introductions: None.

Cross File: SB 221 (Senator Conway) – Education, Health, and Environmental Affairs.

Information Source(s): Maryland Department of the Environment, U.S. Environmental Protection Agency, Department of Legislative Services

Fiscal Note History: First Reader - February 3, 2011
ncs/lgc Revised - House Third Reader - March 16, 2011

Analysis by: Evan M. Isaacson

Direct Inquiries to:
(410) 946-5510
(301) 970-5510