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.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Decabromine Elimination and Control Act of 2009”.
SEC. 2. BAN ON DECABDE, DECABDE MIXTURES, AND DECABDE PRODUCTS.

Beginning January 1, 2013, it shall be unlawful for any entity to produce for distribution in commerce, distribute in commerce, import, or export—

1. decaBDE;
2. decaBDE mixtures; or
3. decaBDE products.

SEC. 3. PHASING IN OF BAN.

(a) Report of DecaBDE Activity During 2009.—Not later than 90 days after the date of enactment of this Act, each entity who, during 2009, engaged in any activity that will be prohibited under paragraph (1) or (2) of section 2 shall report to the Administrator of the Environmental Protection Agency (hereinafter in this Act referred to as the “Administrator”), in such form and detail as the Administrator requires in order to carry out this Act, the following:

1. Each such activity engaged in with regard to decaBDE, including the amount of decaBDE used in that activity.
2. Each such activity engaged in with regard to decaBDE mixtures, including the amount of such mixtures used in that activity.

(b) Establishment of Quotas for Each Entity.—Not later than 15 days after receiving a report from
an entity under subsection (a), the Administrator shall es-
tablish an annual quota for that entity for each activity
that entity reports, in accordance with the following:

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

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

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

(d) ANNUAL QUOTAS.—During each year shown on
the left column of the table below, it shall be unlawful
for any entity to engage in an activity with regard to an
amount of decaBDE or decaBDE mixture that exceeds
the percentage, shown on the right column of the table
below, of the annual quota established for that entity for
that activity:
SEC. 4. REPORTING DURING PHASE OUT.

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

SEC. 5. DISCLOSURE OF INFORMATION REGARDING DECAZBD PRODUCTS.

(a) In General.—Beginning on the date of enactment of this Act, any entity that produces for distribution in commerce, distributes in commerce, imports, or exports decaBDE, decaBDE mixtures, or decaBDE products shall disclose to any entity that receives such decaBDE, decaBDE mixtures, or decaBDE products that such decaBDE, decaBDE mixtures, or decaBDE products contain decaBDE.

(b) DecaBDE Products.—Not later than 1 year after the date of enactment of this Act, any entity that produces for distribution in commerce, distributes in commerce, imports, or exports decaBDE products shall disclose to the Administrator any articles that contain decaBDE.
SEC. 6. ENFORCEMENT RELATING TO VIOLATIONS.

(a) SAME ENFORCEMENT MECHANISM AS USED FOR VIOLATIONS OF SECTION 15 OF THE TOXIC SUBSTANCES CONTROL ACT.—The same enforcement procedures as would apply to a violation of section 15 of the Toxic Substances Control Act shall apply to each violation of this Act.

(b) RULES.—

(1) The Administrator shall make rules to enforce the annual quotas and ban of this Act on the production for distribution in commerce, distribution in commerce, or importation of decaBDE, decaBDE mixtures, or decaBDE products.

(2) The President shall exercise the authorities set forth in section 203 of the International Emergency Economic Powers Act, consistent with the requirements of this Act, to enforce the annual quotas and ban of this Act on the exportation of decaBDE, decaBDE mixtures, or decaBDE products.

(c) CITIZENS’ CIVIL ACTIONS.—Any entity may commence a civil action against any other entity that is alleged to be in violation of this Act to restrain such violation. To the extent practicable, such an action shall be handled in the same way as a civil action under section 7002 of the Solid Waste Disposal Act.
SEC. 7. EXCEPTIONS.

(a) Critical Uses.—A use of decaBDE, decaBDE mixtures, or decaBDE products by the Armed Forces or the aviation industry shall be exempt from the annual quotas or ban imposed by this Act if the Administrator determines that there is not a feasible alternative to such use. Such exemption shall be for a term of 5 years, and the Administrator may renew such exemption only if the Administrator determines that there is not a feasible alternative to such use at the time of such renewal.

(b) Recycled Articles.—A recycled article that contains decaBDE shall be exempt from the annual quotas and ban imposed by this Act, unless the Administrator determines by rule that the article poses a threat to public health.

(c) Resold Articles.—This Act does not apply with regard to a decaBDE product subsequent to its first sale at retail.

(d) Low Concentration Articles.—The Administrator may by rule make exemptions from this Act for articles that contain decaBDE in concentrations that the Administrator determines to be unavoidable due to contamination of the environment by decaBDE.

SEC. 8. SAFER ALTERNATIVES.

(a) Policy.—DecaBDE shall be replaced by safer alternatives. For the purposes of this section, a “safer alter-
native” means a substitute process, product, material, chemical, strategy, or combination of these that serves a functionally equivalent purpose to decaBDE that, when compared to decaBDE, would reduce the potential for harm to human health or the environment.

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

(c) STUDIES AND NOTIFICATION.—The Administrator shall require any entity who produces for distribution in commerce a chemical substance that is a substitute for decaBDE to provide the Administrator with all existing information about the hazard and exposure characteristics of the chemical substance that—

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

(2) has not previously been submitted to the Administrator. The Administrator shall require any such entity to notify the Administrator not less than
90 days before new or existing chemicals are introduced into interstate commerce for significant new uses as substitutes for decaBDE.

SEC. 9. REPORT TO CONGRESS.

The Administrator shall monitor, and, not later than December 31, 2014, submit a report to Congress on, the production, use, and consumption of decaBDE. Such report shall include data on production, use, and consumption of decaBDE in the United States and on the environmental and economic effects of decaBDE.

SEC. 10. RELATION TO OTHER LAWS.

Nothing in this Act affects the right of a State or local government to adopt or enforce any regulation, requirement, or liability that is more stringent than a regulation, requirement, or liability established by this Act.

SEC. 11. DEFINITIONS.

In this Act:

(1) The term “decaBDE” means decabromodiphenyl ether, CAS No. 1163–19–5, either pure or in commercial mixtures which are predominantly decabromodiphenyl ether.

(2) The term “decaBDE mixture” means any mixture (as defined in section 3(8) of the Toxic Substances Control Act) containing decaBDE.
(3) The term “decaBDE product” means any article containing decaBDE.

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

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

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