

Manufacturers Seek PBT Rules ‘Pause’ Due To Implementation Concerns

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The National Association of Manufacturers (NAM) is asking EPA to “pause” at least some mandates in its first-time TSCA rules limiting use of five “persistent, bioaccumulative and toxic” (PBT) chemicals, warning the agency’s March 8 deadline is too early for many companies to eliminate the substances from their supply chains.

In a March 3 interview with *Inside TSCA*, Rachel Jones, NAM’s vice president for energy and resources policy, says that she and officials from other trade associations are in contact with EPA on options for relief from the PBT rules, which generally ban both use and “distribution in commerce” of the five chemicals, with March 8 as the deadline for the first round of restrictions.

The groups are seeking “timelines that can work with real supply chains in the real world, so the rule can effectively work to transition out the chemicals of concern,” she says.

And she adds that while NAM and others are hoping for a negotiated agreement, they have left open the possibility of a lawsuit against EPA where industry could seek a court-ordered change to the rule or its implementation. “If we get to the point on this where we need to file litigation to make sure we can hit pause, all options are on the table. But we’re working on them in a collaborative way.”

Manufacturers have also spoken with “a few key members on the Hill,” Jones says.

And she says the Biden EPA’s broad effort to review and potentially reconsider Trump-era Toxic Substances Control Act (TSCA) rulemakings will provide a vehicle for reworking either the scope of the PBT rules, their compliance deadlines, or other aspects that could aid industry.

“Knowing that President Biden has already asked for that, and given the unprecedented scope” of the PBT rules, “I think it makes sense for them to push pause on this as they take a second look at these things,” she says.

[EPA previously announced](#) that while it would allow the Jan. 6 PBT rules to take effect as scheduled, the agency would “consider” future changes to aid implementation or make them more protective.

And a wide range of industry stakeholders are now urging such changes quickly, warning that the current March 8 deadline is unworkable.

Unlike most TSCA rules, the PBT bans make no exception for substances that appear as components in finished products or articles, which Jones and other sources say threatens to sweep in a long and ill-defined list of companies and sectors that have never before been subject to federal chemicals policy and who are now [scrambling to determine](#) how to comply.

“Just because of how broad of an issue this is, it’s different from the scenario where there’s a clearly defined regulated sector . . . that paradigm is not where we are right now,” Jones says.

For instance, since the rule bans distribution of articles containing the five PBTs, retailers could be held in violation if they sell or import products whose components include one or more banned chemicals, such as consumer electronics that use the flame retardant phenol, isopropylated phosphate, or PIP (3:1), in their wiring.

Jones says PIP (3:1) specifically has emerged as the most serious concern for NAM members. “It’s possible” that some members will face concerns over other chemicals, but “PIP is really the only one of these that’s come up as being this big unexpected challenge for downstream users,” she says.

For retailers to ensure they are not selling banned goods, or for manufacturers to guarantee PBTs have been removed from their supply chains, will be a difficult and time-consuming task, Jones says. However, she adds that companies are more prepared for such an undertaking than they were a year ago, since the COVID-19 pandemic disrupted international supply chains and forced firms to adapt quickly.

“If we were trying to figure this out two years ago, it would’ve been even more difficult. . . . Our understanding of the complexities of global supply chains was even more in its infancy,” she says.

Not A ‘Peep About PIP’

Even though EPA first announced that it would regulate PIP (3:1) and the other PBTs in 2016, shortly after Congress approved the reformed TSCA, many companies that will be subject to the rules were unaware of the rulemaking until this year, because they were unaware they could be subject to TSCA limits at all.

Jones says she first saw concerns raised about the rules “a month ago at most. . . . At the time, no one else had even said a peep about PIP.”

That is in part because of the five PBTs that EPA identified, PIP is the only one not already subject to significant regulatory limits in other countries, in particular the European Union’s Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) program.

“Usually, on any of these things you get word of it via Europe and what’s happening with REACH,” she says.

The other chemicals [subject to the rules](#) are: decabromodiphenyl ether (DecaBDE), another flame retardant; 2,4,6-tris(tert-butyl)phenol (TTBP), used as an additive in fuels, oils and hydraulic fluid; Pentachlorothio-phenol (PCTP), used to make rubber more pliable in industrial uses, and in some consumer items such as golf balls; and hexachlorobutadiene (HCBD), used as a solvent and in making rubber compounds and lubricants.

Together, the rules bar most industrial uses of the chemicals, and sales of most products containing them -- although with significant exceptions, such as for DecaBDE in replacement motor vehicle parts.

Those exceptions have already drawn at least one [legal challenge](#); Alaska Community Action on Toxics on Jan. 27 filed a petition for review of the DecaBDE rule in the U.S. Court of Appeals for the 9th Circuit. -- David LaRoss (dlaross@iwpnews.com)